

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI.

OA No. 457 of 1989

New Delhi, this the 2nd day of January, 1995.

HON'BLE MR JUSTICE S.K.DHAON, VICE CHAIRMAN

HON'BLE MR. B.N.DHOJDIYAL, MEMBER(A)

Corrected vide order
dt-1/3/95 in MA-539/95
Jep 2/95
50/3-2

Smt. Kamla Devi
W/O Shri Mollar Singh, W/O Shri Richhpal Singh, *Jep 2/95*
R/O Gali No. 2, Bank Colony,
Near Anbar Talkies, Modi Nagar(UP). Petitioner.
(through Mr J. C. Madan, Advocate).

vs.

1. Union of India, through
The Secretary,
Ministry of Agriculture & RD
(Deptt. of Agriculture & Coopn.)
Krishi Bhavan, New Delhi.
2. The Chairman,
Delhi Milk Scheme,
Est Patel Nagar, New Delhi.
(through Mr M.K. Gupta, Advocate). Respondents.

ORDER (Oral)

JUSTICE S.K.DHAON, VICE CHAIRMAN

The petitioner, a Dairy Supervisor/
Assistant Manager, in the Delhi Milk Scheme was
subjected to disciplinary proceedings under Rule 14
of CCS(CCA)Rules(the Rules). On 14.4.1988, the
Disciplinary Authority, after accepting the
Inquiry Officer's report, awarded the punishment
of compulsory retirement from service to the
petitioner. On 31.12.1988, the appellate authority
dismissed the appeal preferred by the petitioner.
The two orders are being impugned in the
present application.

2. The statement of articles of charge
framed against the petitioner is before us

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In substance, the charges can be broken into following parts:

- a) On 21.11.1985, he misbehaved with two senior officers on duty;
- b) From 21.11.1985, he attended to his duties on his sweet will, ignoring the duty roster;
- c) He marked his attendance in the Register from 28.10.1985 to 30.10.1985 without performing any duty;
- d) He remained unauthorisedly absent from 9.11.1985 to 18.11.1985 and left the duty place without any intimation or approval on 8.11.1985 and 6.11.1985 ;
- e) He remained unauthorisedly absent from duty from 5.4.1986 to 8.11.1986 and from 6.5.1987 onwards; and
- f) He is in the habit of coming late and leaving the place of duty before time without any information or prior sanction of the competent authority.

2. The statement of imputation of misconduct or misbehaviour clarifies that on 21.11.1985 he misbehaved with Shift Manager(B) and M(Ⓞ). It is in evidence that Shift Manager(B) and M(Ⓞ) were S/Shri S.K.Bhattacharya and R.K.Bhargava, respectively.

3. The petitioner was supplied with copies of not less than 15 documents, those included the reports of Shri S.K.Bhattacharya dated 22.11.1986 and 1.12.1986, reports dated 18.11.85 and 23.11.85 and various other reports. List of witnesses included amongst others S/Shri R.K.Bhargava and S.K.Bhattacharya.

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4. It appears to be an admitted position that a preliminary inquiry was held and in that inquiry the statements of witnesses were recorded. Those statements were tendered in the proceedings before the Inquiry Officer and the petitioner had, therefore, an opportunity of cross-examining the witnesses (it is disputed by the petitioner that he was ever given the opportunity to cross-examine the witnesses).

5. The Inquiry Officer has recorded a finding that inspite of due notice and registered notice, the petitioner failed to cooperate in the proceedings before him. Relying on the oral as well as the documentary evidence, which was before him, he recorded the finding that the charges, as framed against the petitioner have been brought home to him.

6. Before we examine the contentions advanced on behalf of the petitioner, we may examine the preliminary point raised, and that is, that prior to giving of the charge-sheet, which is the subject matter of the present inquiry and punishment, two other charge-sheets were given to the applicant. Those related to minor penalty. The first was given on 5.1.1986 and the second was given on 19.7.1988. On 12.1.1987, the first was withdrawn with reservation that the same was being done without prejudice to the right of the department to issue a fresh charge-sheet. The second was withdrawn on 7.12.1986 with the same reservation. It is contended that such a procedure is ^{not} legal. We are unable to appreciate this submission. We have already indicated that the department reserved ~~his~~ ^{its} right to issue fresh charge-sheet to the petitioner. Furthermore, it has not been shown that prejudice has been caused to the petitioner in any manner.

7. It is now an admitted position that on 31.10.1987, the petitioner appeared before the Inquiry Officer and made an application for the appointment of yet another defence assistant. He was informed that under the law he could take the assistance of only one defence assistant. Now comes the crunch. It is admitted that on 31.10.1987, the next date was fixed as 12.11.1987. It is the petitioner's case that on that date, no hearing took place and the proceedings were adjourned sine-die. Admittedly, on 2.12.1987, 22.12.1987 and 11.1.1988, proceedings were held and in those proceedings the witnesses had been examined. Indisputably, the petitioner was not present on the aforesaid three dates and examination of the witnesses took place behind his back. In the counter-affidavit filed, it is stated that after 12.11.1987 another date 21.11.1987 was fixed and on that date, the petitioner was present and in his presence the hearing was fixed as 2.12.1987 and he even noted that date. It is to be noted that the averments made in this behalf in the counter-affidavit, have not been controverted in the rejoinder filed on behalf of the petitioner. Further more, the averments made in the counter-affidavit have been amply corroborated by the recitals in the findings recorded by the Inquiry Officer. The Inquiry Officer has also taken pains to point out that inspite of due service, the petitioner failed to appear on the three dates when the witnesses were examined. He also categorically stated that inspite of the notices/registered notice, having been served upon the petitioner, he failed to appear. We are, therefore, unable to accept the argument advanced on behalf of the petitioner that the proceedings were held in violation of the rules of natural justice.

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The learned counsel strenuously urged that, assuming that the petitioner had the notice of the next date of hearing, that is, 2.12.1987, the Inquiry Officer was duty bound under the Rules to inform him of the next date, that is, 22.12.1987. We are unable to give any such interpretation to any Rule. Rule only attempts to avoid the non-observance of the principles of natural justice and, therefore, its import clearly is that whenever ex-parte proceedings is held on a certain date, notice of hearing of the subsequent date should be given to a delinquent government servant. But, that is not the situation in the present case. We have already indicated that the petitioner had due notice of the next date of hearing. If for any reason, the petitioner could not appear on 2.12.1987, he could have enquired about the next date fixed.

8. Learned counsel next urged that, on 11.1.1988, that the date on which the prosecution witnesses were examined, the applicant appeared before the Inquiry Officer and made a request that he may be allowed to cross-examine the witnesses already examined. The argument is that the Inquiry Officer, having failed to accede to this request, violated the principles of natural justice. It is not the case of the petitioner that on 11.1.1988 any written application was made by him before the Inquiry Officer. However, it is averred in the O.A. that an oral request was made in that behalf. In the absence of any written application, it was not expected that the Inquiry Officer would pass an order in writing. The whole transaction

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being oral, we are unable to discern the truth. If a written application had been filed and a written order was passed thereon, one could examine the reason given by the Inquiry Officer for rejecting the prayer and then it could have been argued by the petitioner that the said Officer acted arbitrarily in rejecting the prayer for permission to cross-examine the witnesses, who had already been examined.

9. We have already referred to the contents of the charges and, we are unable to accept the contention that the same are vague. The argument is that in the statement of charges, the name of the two officers with whom the petitioner had allegedly misbehaved should have been disclosed. We have already noted that in the statement of imputation, the particulars of the two officers have been clearly mentioned. Therefore, the petitioner could have no difficulty in identifying the two officers. We have already indicated that those two officers were S/Shri R.K. Bhargava and S.K.Bhattacharya.

10. On 11.1.1988, the petitioner made an application to the Deputy General Manager. We have examined the contents of the application and we are satisfied that in it, there is not even a whisper of bias of the Inquiry Officer towards the petitioner. Therefore, petitioner cannot derive any advantage from the representation.

11. The next submission is that the procedure, as prescribed has been observed in its breach in so far as the Inquiry Officer did not maintain the daily order-sheets or the daily notes. We do not find any such averment in the memorandum

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of appeal of the petitioner. Had this been done, the appellate authority, which was the competent authority to go into questions of fact and which had the record before it could be expected to examine this question. Moreover, we are satisfied that even in the absence of the daily order-sheet, in the circumstances of the present case, the petitioner did not suffer any prejudice.

12. It is next urged that copies of the statement of witnesses were not supplied to the petitioner. There is no such averment made in the O.A. Counsel for the respondents has urged that the petitioner cannot be permitted to raise this point for the first time in the Tribunal.

13. We have examined the matter with care it deserves and we are satisfied that the rule of evidence applicable to a departmental inquiry namely preponderance of probabilities squarely applies to the facts of the present case. We have already indicated that the two officers who had been mal-treated by the petitioner entered into the witness box and proved the charges. We are satisfied that there was sufficient documentary evidence before the disciplinary authority as well as the appellate authority to come to the conclusion that the petitioner, had, in fact, not been observing the duty roster and had also absented himself from duties.

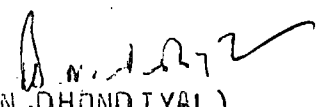
14. In a judicial review, what has to be examined is whether there has been fairness-in-action. We are satisfied that that is the position in the present case. So far as the quantum of punishment is concerned, we cannot interfere with the same unless we record a finding that the authority concerned acted irrationally or perversely. And that is not the position here.


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15. We are informed at the Bar that unfortunately the petitioner died during the pendency of this O.A. and his heir and legal representative has been brought on record.

16. The punishment awarded to the petitioner is compulsory retirement from service. His family is, therefore, entitled to the family pension. We are informed that the petitioner died on 30.8.1994. It is stated at the Bar that during his life-time, the petitioner was not paid any pension to which he was entitled to. We direct the respondents No. 2 & 3 to pay to the legal heir and legal representative of the petitioner (Smt. Kamla Devi, the widow of the petitioner) the arrears of pension, which would have been paid to the petitioner till his death and also the entire amount, which would be payable to Smt. Kamla Devi towards family pension on or after the death of her husband (The petitioner) within a period of two months from the date of receipt of a certified copy of this order. The respondents shall also be liable to pay interest to Smt. Kamla Devi on the arrears of pension as and when the same accrued at the rate of 12 per cent per annum.

17. With these directions, the O.A. is disposed of.


(B.N. DHONDIYAL)
MEMBER (A)


(S.K. DHAON)
Vice Chairman.

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