6

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A. NO. 552/89

New Delhi this the 2nd day of March, 1994

CORAM :

THE HON'BLE MR. JUSTICE B. C. SAKSENA, V.C.(J)
THE HON'BLE MR. S. R. ADIGE, MEMBER (A)

R. C. Tiwari S/O A.S.R. Tiwari,
R/O E-28, Sector 20, NOIDA,
Distt. Ghaziabad (UP) ... Applicant

By Applicant Shri Mahesh Srivastava

Versus

1. Union of India through the Secretary to the Govt. of India, Ministry of Agriculture, (Department of Agriculture & Cooperation), Krishi Bhawan, New Delhi.

2. Delhi Milk Scheme through its General Manager, West Patel Nagar, New Delhi - 110008. ... Respondents

By Advocate Shri M. L. Verma

O R D E R (ORAL)

Hon'ble Mr. Justice B. C. Saksena —

The applicant feeling aggrieved by an order dated 3.4.1973 removing him from service filed a writ petition in the High Court of Delhi in the year 1974. The same after coming into force of the Administrative Tribunals Act, 1985 came to be transferred to this Tribunal and registered as T.A. No. 135 of 1985. A decision was rendered in the said T.A. on 30.1.1987. This Tribunal came to the conclusion that the penalty of removal from service was excessive in the given circumstances

of the case particularly when most of the injector nozzles had been recovered and the theft was committed by another individual. It was noted that the petitioner had put in nearly seven years of service at that time. Therefore, while upholding the impugned finding of the inquiry officer, it was observed, "we are of the view that it is a fit case where the appellate authority should have modified the punishment of removal from service to any other penalty consistent with the facts of the case. Accordingly, we direct the appellate authority to reconsider the punishment by reviewing its order dated 19th March, 1974. The petition is disposed of in the light of the above direction."

2. Thereafter, the appellate authority reconsidered the matter and passed an order on 6.7.1988 (Annex.-C). The appellate authority in the said order indicated that after having carefully gone into the merits of the case for reconsideration as per directions of the Tribunal it had come to the conclusion that the penalty of removal from service imposed by the disciplinary authority on Shri Tiwari was severe and the ends of justice would be met if a penalty of compulsory retirement from service is imposed on Shri Tiwari. It was further indicated in the order in the pen ultimate paragraph that "in exercise of the powers under Rule 27 of CCS (CCA) Rules, 1965 for good and sufficient reasons hereby imposes a revised penalty of compulsory retirement from service on Shri R. C. Tiwari Ex-Store Clerk with immediate effect instead of removal from service already imposed by the

disciplinary authority. The intervening period from the date of removal from service of Shri Tiwari to the date of his compulsory retirement will be treated as dies-non." Learned counsel for the applicant submitted that this order for treating the period from the date of removal from service till the date of compulsory retirement as dies non has been passed in violation of the principles of natural justice. It was urged that the applicant was not afforded an opportunity of showing cause before passing the said order. We are not impressed by this submission. In the first place as the appellate order shows and as clearly directed in the order of the Tribunal in TA-135/85, the appellate authority was required to review the punishment and pass an order. In the circumstances, we are not satisfied that the principles of natural justice in any manner ~~are~~ Can be said to be attracted.

3. Learned counsel for the applicant next submitted that the order for treating the period from removal from service till the date of compulsory retirement as dies non is illegal since the order for compulsory retirement was passed on 6.7.1988. He stressed that the said order had been passed with immediate effect and, therefore, submits that the order of compulsory retirement would only take effect from 6.7.1988, and since the order of removal from service was passed earlier, there was no justification to pass the order for treating the intervening period as dies non. On a complete reading of the order of the appellate

authority, we are satisfied that the order of removal from service has only been substituted; the order has not been set aside by the appellate authority. This Tribunal also in its order passed in TA-135/85 had not set aside the order of removal from service. The applicant thus remained out of service from the date of the order of removal from service upto the date of compulsory retirement. In these circumstances as the applicant has not physically worked on the said post and the appellate authority was required to provide for the period from the date of removal from service till the date of compulsory retirement. If it had in its wisdom provided that the period shall be treated as dies non, no error can be said to have been committed by the appellate authority.

4. Learned counsel for the applicant next urged that the appellate authority was required to consider the aspects under Rule 27 of the C.C.S. (C.C.A.) Rules. He draws our attention to clause (c) of sub-rule (2) of Rule 27 under which the appellate authority was required to consider whether the penalty or the enhanced penalty imposed was adequate, inadequate or severe. He, therefore, submits that once the appellate authority had come to the conclusion that the penalty was severe, he could have set aside the same or could have reduced the same. He, therefore, submits that the order of compulsory retirement should be treated as an order reducing the order of removal from service to one of compulsory

retirement, and thus, his further submission is that the appellate authority could not have passed an order of compulsory retirement from the date of the order of removal from service. There is no merit in this submission. The appellate authority under the directions given by this Tribunal in T.A.135/85 was required to review the penalty. It has done so and being of the opinion that the penalty of removal was severe, substituted the same with the penalty of compulsory retirement. We have already held that the order by the appellate authority to treat the intervening period as dies non cannot be faulted. We are of the view that there is no merit in this submission also.

5. Learned counsel for the applicant lastly urged that under F.R. 17-A, the intervening period at best could have been treated as period of unauthorised absence. We have perused F.R.17-A. Learned counsel for the applicant has not been able to indicate under which relevant clause of F.R.17-A the case of the applicant falls. The assumption that the period from the date of removal from service till the date of compulsory retirement has to be treated as unauthorised absence is without substance and is not tenable. We, therefore, hold that F.R.17-A is not attracted at all in the given facts and circumstances.

6. In the result, this O.A. lacks merit and is accordingly dismissed. No costs.

(S. R. Adige)
Member (A)

(B. C. Saksena)
Vice-Chairman (J)

/as/