

CENTRAL ADMINISTRATIVE TRIBUNAL: PRINCIPAL BENCH.

O.A. NO. 584/89

New Delhi this the 2nd day of May, 1994.

Shri Justice V.S. Malimath, Chairman.

Shri P.T. Thiruvengadam, Member(A).

Jai Bhagwan
 S/o Shri Umrao Singh,
 R/o N-1004, Mangolpuri,
Delhi.

... Petitioner.

By Advocate Shri Mahesh Srivastava.

Versus

1. Union of India through
 Secretary,
 Ministry of Food and Agriculture,
 Govt. of India,
New Delhi.

2. Chairman,
 Delhi Milk Scheme,
 West Patel Nagar,
New Delhi.

... Respondents.

By Advocate Shri V.S.R. Krishna.

ORDER (ORAL)Shri Justice V.S. Malimath.

Shri Jai Bhagwan, the petitioner, has challenged in this case the order, Annexure 'A' dated 2.4.1987 by which he was compulsory^{ad} retired from service and the appellate order, Annexure 'B' dated 28.6.1988 affirming the same. A disciplinary inquiry was held against him alleging that he made an attempt to pilfer certain quantity of milk, and the Inquiry Officer submitted his report. Accepting the said report, the disciplinary authority imposed the punishment of compulsory retirement from service which has been affirmed by the appellate authority.

2. The findings recorded being essentially findings of fact, we cannot reappreciate the evidence and substitute our findings for those arrived at by the disciplinary authority. This is not a case of there being no evidence nor is it possible to take the view that the findings recorded are perverse. The only infirmity which the counsel for the petitioner highlighted so far as the procedural aspect which bears on the opportunity of defending himself is concerned, is that Major Amarnath Duggal, who was cited as a witness on behalf of the petitioner, was not examined. Major Duggal, no doubt true, was cited as a witness and steps were taken to summon him but he could not be examined as he appears to have expressed his difficulty for appearing on the date fixed. In this background, the counsel for the petitioner submits that the Inquiry Officer should have made an effort to examine him by fixing another date.

3. In the reply filed on behalf of the respondents, the answer given is that the petitioner himself failed to produce the defence witness Major Duggal and he cannot, therefore, blame the respondents in this behalf. Be that as it may, we are not satisfied that he was a material witness and that, therefore, non-examination of the said witness has caused any prejudice to the petitioner. That there is a short supply of milk at 505 Army Base Workshop is not disputed. Major Duggal was not the person who was concerned directly with the receipt of the milk at 505 Army Base Wksp. The official concerned had reported about the short supply of milk. It is no doubt true that Major Duggal had made a report couple of days later about the short supply of milk. ✓ We are, therefore, satisfied that non-examination of Major

Duggal has not in any way caused prejudice to the petitioner. The steps not having been taken by the petitioner to produce Major Duggal as a witness, he cannot complain without specific request being made for summoning him as a witness in this behalf. Hence, there is no substance in this contention either.

4. Before concluding we should say that Shri Khurana's name was shown in the cause list and as he is no more in the Government panel, he did not appear. As there was no one appearing for the respondents, we requested Shri V.S.R. Krishna, Counsel, who was one of the Government counsel in the panel, to assist us. Accordingly, he looked into the records and assisted the court. He was also permitted to file memo of appearance.

5. For the reasons stated above, this petition fails and is dismissed. No costs.

P.T. Thiruvengadam

(P.T. Thiruvengadam)
Member(A)

V.S. Malimath

(V.S. Malimath)
Chairman

'SRD'