CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

OA 1452/87 Date of decision: 12-2-1993.

Shiv Nandan ...Applicant

Versus

Union of India & Another ...Respondents

WITH

OA 1461/88

Jai Prakash ...Applicant

Versus

Union of India ...Respondent

CORAM:

THE HON'BLE MR. JUSTICE V.S.MALIMATH, CHAIRMAN.
THE HON'BLE MR. S.R.ADIGE, MEMBER(A).

For the applicant ...Shri Rishi Kesh, Counsel

For the respondents ...Shri P.P.Khurana, Counsel

JUDGMENT (ORAL)

(By Hon'ble Mr. Justice V.S.Malimath, Chairman) :

The petitioners in these two cases were working as Mates under the Delhi Milk Scheme and posted for milk distribution duty on the 5th of May, 1984. They were assigned the duty of loading the van for carrying the milk for distribution purposes. The van no.136 was loaded with milk crates by the petitioners and thereafter the vehicle was moved out of the premises. It is at that time when it was checked when it was found that the vehicle was carrying 24 bottles of half litre milk each over and above the quantity that was reflected as the quantity to be carried on the vehicle on that trip. It is in this background that the disciplinary enquiry was held against both the petitioners who are the Mates, as well as the driver of the vehicle. The Enquiry Officer held all

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the petitioners guilty which finding was accepted by the disciplinary authority. So far as the petitioners in these two cases are concerned, they are inflicted with the penalty of compulsory retirement whereas the driver was inflicted with the penalty of withholding of one increment with cumulative effect. We are concerned in these two cases only with the orders of compulsory retirement imposed on the petitioners which have been affirmed on appeal by the appellate authority.

2. Learned counsel for the petitioners firstly contended that the entire enquiry is vitiated as the Enquiry Officer refused to furnish the copies of the documents sought by them. No particulars of the documents have been furnished; no date on which the request was made has been stated and the copy of the application seeking supply of documents has also not been furnished. In the reply filed by the respondents, there is a specific denial of the assertions of the petitioners that they demanded supply of any documents. It is stated that no such request was made at any time. Having regard to the nature of the pleadings and the relevant circumstances, we are inclined to believe the statement in the reply that the petitioners had not applied for furnishing copies of any particular documents. The stand taken in this behalf is clearly an after-thought and, therefore, does not merit acceptance.

3. The next contention of the learned counsel for the petitioners is that the Enquiry Officer's report was not furnished to the petitioners resulting deprivation of their right to make appropriate submissions before the disciplinary authority in the light of the finding recorded in

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the Enquiry Officer's report. No such contention has been taken in these two cases. There is no averment that Enquiry Officer's report was not furnished to them and that is the infirmity. Learned counsel for the petitioners, however, submitted that having regard to the law laid down by the Supreme Court in Judgments Today 1990(4) S.C. 456 between Union of India and Others Vs. Mohd. Ramzan Khan, we should permit the petitioners to raise this contention during the arguments. /Though no such plea has been taken in the two petitions, it was submitted that as it is a question of law, we should permit such contention being argued. Firstly, it is necessary to point out that this is not a pure question of law. One of the essential question of fact to determine in applicability of the principles in Mohd. Ramzan's case is as to whether the copy of the Enquiry Officers's report was furnished to the delinquent official before the disciplinary authority proceeded to take a decision in the light of the Enquiry Officer's report. There is no averment in this behalf in these two petitions. Learned counsel for the petitioners, however, submitted that there is intrinsic material in the order of the disciplinary authority wherein it is stated that the Enquiry Officer's report is now enclosed. Though this statement in the order may help the petitioners' case, it is not possible to draw a reasonable inference that the Enquiry Officer's report was not earlier furnished to the petitioners. Besides, it is necessary to advert to the subsequent decision of the Supreme Court in 1991 Supp.(2) SCC 269 between S.P.Viswanathan Vs. Union of India and Others, wherein the judgment of the Supreme Court in Mohd. Ramzan's case has been explained. It has been stated that the decision in Mohd. Ramzan's case is prospective and that, therefore, it will not affect orders passed prior to the

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date of judgment, namely, November 29, 1990. The clear effect of the judgment in Viswanathan's case is to explain the scope and ambit of the earlier judgment of the Supreme Court in Mohd. Ramzan's case. It is explained that the principle laid down in the said case cannot be invoked in respect of orders made before the date of the judgment, namely, 29-11-1990. The orders in this case having been passed long before that date in the year 1986, the petitioners cannot invoke the principles laid down in Mohd. Ramzan's case in their favour.

4. It was next urged that the findings holding the petitioners guilty of negligence and pilferage suffer from an error apparent on the face of the records. We have read the Enquiry Officer's report which has been enclosed along with the rejoinder; the order of the disciplinary authority as well as the orders of the appellate authority. We find that findings of guilt are based on evidence produced in the enquiry. The inferences are reasonable inferences based on the evidence recorded in these cases. It is not the function of the Tribunal dealing with an application under Section 19 of the Administrative Tribunals Act, 1985 to reappreciate the finding and substitute its own findings for those of the disciplinary and appellate authority. The findings in our opinion do not in the circumstances call for interference. However, learned counsel for the petitioners submitted that the reference to the instruction of the Department dated 2-11-1979 is not right. Though copy of the same was not furnished along with the petitioners' application or the rejoinder, the learned counsel for the petitioners sought during the course of the arguments to place the copy of such an instruction in Hindi along with the translation of the same. We

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are not too sure about the authenticity of the same. Even assuming that it is an authentic copy, the contention of the learned counsel for the respondents is that it only shows that the Drivers and the Mates of the vehicle are also responsible for ensuring that the proper quantity of the milk bottles are loaded on the van. It cannot be regarded as an instruction which approves or condones the conduct which is in the very nature dishonest or grossly negligent. It was, therefore, rightly pointed out by the counsel for the respondents that if on the basis of the materials on record it is clear that these two petitioners are guilty of a criminal act of dishonestly loading more than the required quantity of milk on the van, they cannot escape their liability for their misconduct. We are inclined to agree with this submission of the learned counsel for the respondents. We, therefore, do not see any good grounds to interfere with the findings of fact recorded by the disciplinary authority and the appellate authority.

5. It was lastly contended by the learned counsel for the petitioners that the penalty of compulsory retirement imposed on the two petitioners is discriminatory and disproportionate to the gravity of the offence. Disrcimination, it was contended, flows from the fact that the driver of the vehicle has been given a much lighter punishment of withholding only one increment. In the matter of imposition of punishment, the nature and extent of misconduct committed by each delinquent official has to be assessed in the light of the facts and circumstances of the case. Merely becuase the driver got the smaller punishment, it does not mean that the petitioners who were directly involved in the

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stocking of the bottles, should also receive the same punishment. The records show that so far as driver is concerned, there were other circumstances indicating that at the relevant point of time, he was examining the engine when this incident took place. There is no good reason for comparing the misconduct of the petitioners with that of the driver in this case. Hence, the question of discrimination does not arise.

6. The only other question that survives for consideration is that the punishment imposed is excessive justifying interference. Our attention was drawn to the instances when the different Benches of the Tribunal have reduced the punishment imposed by the disciplinary authority. But, we should not be unmindful of the law laid down by the Supreme Court in ATLT 1989(1) 481 between Union of India Vs. Parma Nand. It is held that the Tribunal cannot interfere with the penalty if the conclusion of the disciplinary authority is based on evidence even if some of it is found to be irrelevant or extraneous to the matter. If the penalty can be lawfully imposed and is imposed on the proved misconduct, it is held that the Tribunal has no power to substitute its own discretion for that of the authority. In the light of the law laid down by the Supreme Court, we should not take a different course than the one charted out by the Supreme Court. Hence, it is not just and proper to interfere with the punishment imposed in these cases. The substance of the misconduct in these cases is one of pilferage. The petitioners were charged in stocking of milk bottles on the van. They made an attempt to commit theft and to cause loss to the administration. This is certainly

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gross misconduct. Petitioners, instead of protecting the interests of the administration, have tried to misappropriate or become party to pilferage of articles of the administration. Hence, it would be difficult for the administration to have faith in the conduct of these officials. Loss of confidence is obvious. The punishment of compulsory retirement imposed on the petitioners is not excessive and does not call for interference.

7. For the reasons stated above, we see no good ground to interfere. Hence, both the petitions fail and are dismissed. No costs.

(S.R.ADIGE)
MEMBER(A)

(V.S.MALIMATH)
CHAIRMAN

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