

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

O.A. No. 1581/88

New Delhi this the 3rd day of December 1993

THE HON'BLE MR. J.P. SHARMA, MEMBER (J)
THE HON'BLE MR. B.K. DHOUDIYAL, MEMBER(A)

Shri Kanwal Singh,
Son of Late Mela Ram
Heavy Vehicle Driver,
Delhi Milk Scheme,
West Patel Nagar,
New Delhi.

.. Petitioner

(By Advocate Shri K.L. Bujdhiraja)

Vs

Union of India,
through the Secretary,
Ministry of Agriculture,
New Delhi.

The Chairman,
Delhi Milk Supply Scheme,
West Patel Nagar,
New Delhi

.. Respondents

(By Advocate Shri P.P. Khurana)

O R D E R

Hon'ble Mr. J.P. Sharma, Member (J)

The applicant was engaged as Heavy Vehicle Driver in Delhi Milk Scheme since 3.6.1961. Between the night of 29/30.3.1982 he alongwith the van crew staff were deployed on Route No. 7 (M). The surprise raid was conducted by a team of officers at the delivery point of Air Force Canteen, Palam where the raiding team had collected 34 milk samples from the milk van. It was also detected that 25 litres loose milk was in excess of the scheduled quantity. On analysis of the milk samples, 15 samples were found adulterated and one seized milk cane was also found containing adulterated milk and the fats contents were less by .6%.

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The applicant was served with memo of chargesheet alongwith one Shri Sukhbir Singh, Mate on 26.4.1982. Shri P.N. Misra was appointed as enquiry officer and subsequently the enquiry was entrusted to Shri N.M. Mathur. The enquiry officer conducted the enquiry under CCS (CCA) Rules 1965. Four prosecution witnesses were examined. The applicant and Shri Sukhbir Singh who was also charged alongwith the applicant submitted their statements of defence. The enquiry officer after appreciating the evidence submitted his report dated 5.5.1984 holding that the charges framed against the applicant and Shri Sukhbir Singh stands proved. The disciplinary authority agreeing with the enquiry officer's report passed the order of punishment dated 7.1.1985 reducing the pay of the applicant from the stage of Rs. 400 to Rs. 382 for a period of two years in the scale of Rs. 320-400. The applicant preferred an appeal on 23.1.1985 and also filed a subsequent appeal by way of appeal/revision on 22.1.1986 after he was given the copy of the enquiry officer's report on 20.11.1985. The appellate authority issued a showcause notice on 30.9.1986 to the applicant as to why the punishment imposed by the disciplinary authority be not enhanced to compulsory retirement from service. The applicant submitted reply to the showcause notice on 16.10.1986. After considering the same the appellate authority rejected the appeal by the order dated 20.1.1987 holding that the charges against the applicant are fully established but the punishment awarded by the disciplinary authority is not commensurate with the misconduct proved against the applicant and he, therefore,

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passed the punishment reducing the pay of the applicant to the minimum level of grade of pay i.e. Rs. 320 for a period of 7 years and during this period the applicant not to earn any increments.

Aggrieved by the aforesaid order the present application has been filed on 19.1.1988 praying for the grant of the relief that the order of punishment be quashed and the respondents be directed to reinstate the applicant in service with full pay and allowances after quashing the disciplinary proceeding against him.

A notice was issued to the respondents who contested the application and stated that the applicant was given due opportunity in the enquiry proceedings and after considering the same the charge framed against the applicant has been established so also against the mate Shri Sukhbir Singh. The disciplinary authority imposed the punishment of reduction from the level of Rs. 400 to Rs. 382 in the scale of Rs. 320-400 but the appellate authority after giving a showcause notice of enhancement reduced the pay of the applicant to the minimum of the scale at Rs. 320 for seven years. The misconduct established against the applicant was of corruption which needed even more strict view and severe punishment than awarded by the appellate authority. The application has no merit is is liable to be dismissed.

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We have heard the learned counsel for the parties at length and Shri K.L. Budhiraja has also filed the written submission. The first contention of the counsel for the applicant is that the disciplinary proceedings have been initiated by authority not competent to take action against the applicant. Deputy General Manager (A) passed the order initiating the disciplinary proceedings and also appointed the enquiry officer. The stand of the respondents is that Deputy General Manager (A) is the competent authority in the case of the applicant. It is also stated that the applicant was confirmed in his appointment on 10.5.1968 by the order of Deputy General Manager (A). In the submissions made by the learned counsel for the applicant it has ^{not} been shown as to how the Deputy General Manager (A) is not the competent disciplinary authority. Thus this contention of the learned counsel has no force. 6

The next contention of the learned counsel for the applicant that the copy of the enquiry officer's report was not supplied. This contention has no basis because in the case of Union of India Vs. Ramjan Khan reported in AIR 1991 (1) sc P.120 and in the case of S.P. Vishwanathan vs. Union of India reported in 1992 SCC (L&S) P.155 only after 23.11.1990 the copy of the enquiry officer's report is needed to be given to the delinquent. In the present case the order of the disciplinary authority is of 7.1.1985. This argument also therefore has no force. The learned counsel for the applicant has dealt at length about the appreciation of the evidence by the enquiry officer. The Tribunal has limited scope of

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judicial review. When the finding of guilt is given, in that case it is only open to be seen by the Tribunal or Court that there is some evidence to justify the finding, the finding arrived at is not perverse and that the Principle of Natural Justice have been followed. The Tribunal is not to re-appraise evidence to come to different finding. We are fortified in our view by the authority of Union of India Vs. Parmanand AIR 1989 SC P 1125, State of Uttar Pradesh Vs. Om Prakash Gupta AIR 1970, SC P 679, the State of Orissa Vs. Bidhya Kishan AIR 1963 SC P 779. Thus, the Tribunal ^{can not} ~~again~~ re-appreciated the evidence. There is evidence on record regarding the misconduct alleged against the applicant. In view of the fact that the appeal of the applicant has not been properly considered on the Principle laid down by the Hon'ble Supreme Court in the case of Ram Chander vs. Union of India AIR 1986 SC P 1173 we are not probing into the matter regarding the evidence adduced before the enquiry officer but we do ~~not~~ observe that the applicant was given due opportunity before the enquiry officer and the defence assistant ~~te~~ on 25.1.1984 gave a clear statement in writing that the applicant do not want to recall any of the witnesses examined by the administration for further cross examination and that no document is required by the applicant. Thereafter on 15.2.1984 the defence statement was filed by the applicant. Thus, the Principle of Natural Justice has been fully observed.

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Regarding the appeal against the punishment order the appellate authority did not agree with the quantum of punishment awarded by the disciplinary authority and therefore the showcause notice was issued to the applicant on 30.9.1986 when the punishment imposed upon him be not enhanced. The applicant has submitted a detailed reply on 16.10.1986. The appellate authority, however, by the order 20.1.1987 did not consider the points raised by the applicant in the memo of appeal as well as in reply to the showcause notice dated 30.9.1986. The appellate order is at Page 50 of the paper book (Annexure I). In the third para, the appellate authority only observed "that the charge levelled against Shri Kanwal Singh, Heavy Vehicle Driver have been fully proved. They are incontrovertible substantial evidence to prove the serious nature of misconduct of the ~~accused~~^{accused} of unauthorised pilferage and adulteration of milk. The raiding party had no malicious intentions against the ~~accused~~^{accused}, no enmity or malice. It would be totally incorrect that the findings are based on mere suspicion. The fact of the case against the ~~accused~~^{accused} & the evidences, therefore, leave no doubt that the ~~accused~~^{accused} is guilty of the charges laid down."

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The above order has disposed of the whole of the appeal running into several pages as well as the ^{reply to the} show cause notice running into six full scape pages. The appellate authority has to consider the points raised in the memo of appeal or in reply to the showcause notice and give a reason to discard the points raised in the appeal. In the present case it was all the more necessary when the punishment imposed by the disciplinary authority has been

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enhanced considerably which would also affect the pensionary benefits of the applicant. In the case of Ram Chander ^(Supra) the Hon'ble Supreme Court has held that the appellate authority should apply its mind and give a reasoned and speaking orders on the appeal against the punishment order and may also given personal hearing to the applicant.

The appellate order, therefore cannot be sustained.

The application is, therefore, partly allowed. The appellate order dated 20.1.1987 has modified by the order dated 30.1.1987 is quashed and set aside and the case is sent back to the appellate authority to decide the appeal filed by the applicant on 23.1.1985/22.1.1986 as well as consider the reply dated 16.10.1986 to the showcause notice dated 30.9.1986 and pass a speaking reasoned order within a period of four months from the date of the receipt of the copy of this order. The appellate authority will also pass necessary orders regarding any consequential relief to which the applicant may be entitled by virtue of the order so pass^{ed} in appeal by him. In the circumstances the parties to bear their own costs.

B.N. Dhaundiyal
(B.N. Dhaundiyal) 3/12/93
Member (A)

J.P. Sharma
(J.P. Sharma)
Member (J)