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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH : NEW DELHI

0..A No. 2069/88

New Delhi this 7th day of January 1994

HON'BLE MR. J.P. SHARMA, MEMBER (J)

HON'BLE MR. B.K. SINGH, MEMBER (A)

Shri Baikha,
J-853 Mangolpuri,
New Delhi-110 083.

Shri Mukat Lal,
Mat,
Delhi Milk Scheme,
West Patel Nagar,
New Delhi.

... Applicants

(By Advocate Shri Rishi Kesh)

Vs.

Union of India

Delhi Milk Scheme,
West Patel Nagar,
New Delhi-110 008

(By Advocate Shri P.P. Khurana) ... Respondents

O R D E R

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

The applicants were employed as mates in Delhi Milk Scheme. They were posted on milk distribution duty along with one Shri Shiv Din, HVD in van No. 196 on Route No-6(M) on 3.10.1986. A surprise check was made by the raiding party on that date. The aforesaid mates were found carrying 16x1 lit poly pack milk over and above the quantity as shown in the route schedule. They were issued a charge sheet under Rule 14 CCS (CCA) Rules 1965 dated 26.11.1986.

Shri R.L. Luthra was appointed as enquiry officer who submitted his report dated 19.3.1987. The disciplinary authority, Chairman, Delhi Milk Scheme agreeing with the report of the enquiry officer and in exercise of the powers

under Rule 11 of the CCS (CCA) Rules 1965 passed the punishment of compulsory retirement by the order dated 2.4.1987 on both the applicants. Both the applicants preferred an appeal to the Secretary, Ministry of Food and Agriculture and the appeal was rejected by the order dated 20.6.1988 affirming the findings of the enquiry officer and upholding the punishment awarded by the disciplinary authority.

2. Aggrieved by the aforesaid orders of punishment the applicants jointly filed the application on 5.10.1988 praying for quashing of the order of punishment dated 2.4.1987 and 28.6.1988. He has further prayed that the applicants be reinstated in service alongwith salary and allowances.

3. A notice was issued to the respondents who contested the application and the grant of the relief and filed the reply stating that the applicants had committed a serious offence of pilferage of milk and the disciplinary authority and appellate authority have passed the punishment order on the basis of the findings of the enquiry conducted under CCS(CCA) Rules 1965 wherein an adequate opportunity was given to the applicants and the principle of natural justice were fully observed. On the date of the preliminary hearing on 3.2.1987 the photocopies of the listed documents were supplied to the applicants. The applicants were also given an opportunity to give the name of the defence counsel as well as the additional documents, if any, required by 9.2.1987. The applicants did not make any request for inspection of any of the documents. Thus, according to the respondents, the applicants have no case.

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4. We heard the learned counsel for the applicant as well as for the respondents.

5. The contention of the applicant's counsel that the charge framed against the applicant was of pilferage of milk which has not been at all established. The Driver Shri Shiv Din has been exonerated in the enquiry though he was equally responsible, if at all, for the alleged misconduct. In fact the charge against the applicants has been that the ~~mates~~ were found carrying 16 x 1 lit. poly pack milk over and above the quantity after distribution at a particular point. The charge is that they ~~admitted~~ admitted the pilferage of the aforesaid milk filled in the poly packs in connivance with other staff of the aforesaid van with malafide intention with illegal gains which amounting to lack of integrity and is grossly unbecoming of government servant and violation of Rule 3 CCS(CCA) Conduct Rules, 1964. The charge, therefore, is primarily attempt to pilferage after retaining excess 16 x 1 lit milk filled poly pack. The charge, therefore, is not vague and it is evident from the ^{common} written statement filed on record by Mukat Lal, the applicant. The applicants have fully understood the accusations against them and in their defence statement tried to explain the evidence led during the course of the enquiry.

6. The next contention of the learned counsel is that copies of certain documents were not supplied to the applicants. The applicants during the course of the enquiry did not complain regarding non supply of any of the listed documents alongwith the imputation of the misconduct. The learned counsel referred to an application of Mukat Lal dated 3.12.1986 (Annexure F) where he has stated that he be provided with the copies of the documents hearing relied upon. The preliminary took place on 3.2.1987 and on that date the applicants did not make a request for

supply of any further documents or that any documents listed to be relied upon against them has not been given to them. However, it appears that on 20.2.1987 a request was made to the enquiry officer to provide with the correspondence made with 505 Army Base Workshop regarding short receipt of 16 x 1 lit of milk. This request was rightly not considered by the enquiry officer as no details had been furnished. The applicants have been provided with the copies of the route schedule dated 3.10.1986.

7. In the defence statement filed by Mukat Lal also a request was also made to place certain documents on record and these documents are letter dated 7.10.1986 from 505 Army Base Workshop and that letter is on record (Annexure D) dated 7.10.1986. It goes to show that on 3.10.1986, 16 lit of milk were given less at the time of delivery. The other documents required to be placed on record regarding the duties and responsibilities of the Heavy Vehicle Driver and Mates i.e. Van Staff Crew. The 3rd document is the copy of route No. 6 (M) dated 3.10.1986. During the course of arguments also it has not been pointed out that which of the documents was to be required by the charged officials. In the application also the particulars of the documents not supplied to the applicants has not been mentioned. It is also not averred in the application that which of the documents the applicants were not supplied or that they wanted some other documents in support of their defence. Thus, the contention of the learned counsel has not force.

8. The learned counsel for the applicants argued that anproper opportunity for producing defence was not given. Firstly, the name of any such witness which the applicants

desired to be examined has not been mentioned in the application. There is no application on record to show that the applicants desired to call any particular person in defence of their case. The report of the enquiry officer shows that the applicants have given a joint written statement of their defence and requested to produce Shri Tej Pal, SSD and Major Amar Nath Duggal as their witnesses. The enquiry officer summoned both these witnesses but they did not turn up. It was written by the applicants that Major Amar Nath Duggal will not come because the enquiry officer is of lower rank than the witness. However, Major Amar Nath Duggal refused to come on that date because of some urgent work. The applicants themselves did not produce Shri Tej Pal, SSD in court nor made any further request for examining these witnesses. In any case the enquiry officer has considered the evidence produced before him and the witnesses have been fully cross examined by the defence assistant of Shri Shiv Dutt, HVD who was jointly tried in the enquiry along with the applicants. During the course of the arguments it is not revealed as to what fact was to be disposed by Shri Tej Pal, SSD. Whether the applicants have been prejudiced by non-examination of Shri Tej Pal is not evident from the record. In fact if a witness is not examined at the instance of the party, in that case it has to be shown that the case has gone by default and that defence could not be established. In the written statements furnished by the applicants there is no mention of Tej Pal witness. In view of this it cannot be said that Tej Pal was necessary defence witness and could have ^{been} supported the defence. The nature of the witness examined in defence is to be judged from

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the written statement filed in defence. In the defence statement it is admitted that 16 lit poly pack of filled milk of one litre were delivered short at 505 Army Base Workshop. The charge against the applicants is also the same that 16 x 1 lit filled milk poly pack were found in excess by the raiding party at the time of surprise check. In the defence statement it is written that the quantity was short supplied due to oversight at 505 Army Base Workshop. This is indirect admission of the accusation against the applicants. In the letter of 505 Army Base Workshop (Annexure 'D') there is a mention of short supply of milk of 16 x 1 lit milk filled poly pack on 30.10.1986. and they have made a request to make up the short supply good by the letter dated 7.10.1986. There is another factor also that one of the mats Jai Bhagwan has given another version to Shri Khanna at the time of incidence that he has purchased 12 poly pack of milk. Shri S.D. Khanna was AMD at that time. In view of these facts it cannot be said that the applicants have been prejudiced in their defence by non examining of the witnesses Tej Pal or Major Amar Nath Duggal.

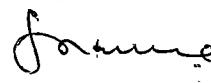
9. The learned counsel for the applicant also argued on the point of appreciation of evidence by the enquiry officer. The enquiry officer has discussed the whole evidence and gave the finding of guilt against the applicants. The driver was only engaged on that day and the vehicle was push start. The Driver Shiv Din was totally new on that route. The driver because of the hand brake not being in working order and the van was push start did not leave the vehicle and whole supply of

milk was done by the matesses because they were always on duty on that route. This fact is not denied by the applicants in their written statements as well as in the cross examination of the witnesses examined by the administration. The findings arrived by the enquiry officer, therefore, are fully justified.

10. The learned counsel has also argued on the quantum of punishment. The question of punishment has to be decided by the disciplinary authority himself and cannot be judicially reviewed in a case of present nature. We are fortified in our view by the authority of the Hon'ble Supreme Court in the case of *Union of India vs. Parmananid* AIR 1989 SC P. 1185.

The application is, therefore devoid of merit and dismissed.


(B.K. Singh)
Member(A)


(J.P. Sharma)
Member(J)

Mittal