# IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW DELHI

O.A. No. 1126/88
~~TA. No.~~ 199

DATE OF DECISION 3.4.91.

SHRI HIMMAT SINGH AND ANOTHER — Petitioner

SHRI H.M. SINGH — Advocate for the Petitioner(s)

Versus

UNION OF INDIA AND OTHERS — Respondent

SHRI P.P. KHURANA — Advocate for the Respondent(s)

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The Hon'ble Mr. P.C. Jain, Administrative Member.

The Hon'ble Mr. J.P. Sharma, Judicial Member.

1. Whether Reporters of local papers may be allowed to see the Judgement ? Yes
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ? Yes
4. Whether it needs to be circulated to other Benches of the Tribunal ?

## JUDGEMENT

(DELIVERED BY SHRI J.P. SHARMA, MEMBER (J)

The Applicants Himmat Singh and Jaswant Singh were Heavy Vehicle Drivers in Delhi Milk Scheme. They have assailed the order of termination of services by the Respondents dated 16/19th May, 1988 passed on revision by order and in the name of the President of India; the order dated 24.5.1982 passed by the General Manager, DMS, Appellate Authority and the order dated 16.2.1982 passed by the Disciplinary Authority.

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In this application, under Section 19 of the Administrative Tribunals Act, 1985, the Applicants in their joint application have prayed for the following reliefs :-

(i) to quash the orders mentioned above.

(ii) to direct the re-instatement of the Applicants with full back wages as Heavy Vehicle Drivers with DMS.

2. The brief facts of the case are that on 9th September, 1981, the Applicants are alleged to have had altercation with some people in Patel Nagar at 10.00 P.M. and on a complaint made to the local police, they were detained on that day and produced before the Metropolitan Magistrate where on 10.9.1981 they were convicted under Sections 92/93 of the Delhi Police Act and were fined Rs.50/- each. The order of the Magistrate is, "Disposed vide Summary trial Register Entry No.406 dt.10.9.81 and Fine Rs.50/-" (Annexure-A

3. Sections 92, 93 and 97 of the Delhi Police Act are reproduced below :-

SECTION-92

Obstructing or annoying passengers in the street.

No person shall wilfully push, press, hustle or obstruct any passenger in a street or public place or by violent movements, menacing gestures, wanton personal annoyance, screaming, shouting wilfully, frightening horses or cattle or otherwise disturb the public peace or order.

SECTION-93

Misbehaviour with intent to provoke a breach of the peace

No person shall use in any street or public place any threatening, abusive or insulting words or behaviour with

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intent to provoke breach of peace or whereby a breach of the peace may be occasioned.

SECTION-97

Penalties for offences under Sections 80 to 96.

Any person who contraven any of the provisions of Section 80 to 96 (both inclusive) shall, on conviction be punished with fine which may extend to 100 rupees, or, in default of payment of fine, with imprisonment for a term not exceeding 8 days.

4. The Applicants after depositing fine were set at liberty and on the next day, i.e. on 11.9.1981, they gave the information of the said conviction under the relevant sections of Delhi Police Act to Deputy General Manager, Administration. On 30.1.1982, Joint Commissioner, the Disciplinary Authority, served a memo on the Applicants to show cause within 15 days why both of them be not removed/ dismissed from service in exercise of the powers conferred by Rule 19(i) of the C.C.S.(C.C.A.) Rules, 1965. The Applicant, Jaswant Singh made a representation in reply to the said memo (Annexure-D) dated 11.2.1982. Similar representation was also made by the Applicant, Himmat Singh. It is stated in the said representations that they were not on official duty at the time of the alleged incident and were at their residence and in order to have vindictive mind against the Applicants, the residence of the Applicants have been linked with office. On 16th February, 1982, the

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(Annexure-E)
impugned order had been passed by Joint Commissioner (Disciplinary Authority) purported to be under Rule 19(i) of the CCS(CCA) Rules, 1965 and the penalty of removal from services was imposed on both the Applicants. The removal order of Himmat Singh has been filed. Both the Applicants separately appealed against this order of Disciplinary Authority to General Manager, DMS and the appeal filed by Himmat Singh is dated 17.3.1982 (Annexure-F). The Appellate Authority by the order dated 24.5.1982 (Annexure-G) dismissed the appeal holding that, "I have gone through the entire records pertaining to the disciplinary proceedings, examined the case and perused the report received from the police. I find that the procedure adopted by the Disciplinary Authority is not in violation of the laid down rules. I also find that the delinquent official has not brought out any fresh ground which may warrant interference with the orders passed by the Disciplinary Authority." The Applicant filed a revision under Rule 29 of the CCS (CCA) Rules, 1965 which was also rejected by the President by the order dated 16/19th May, 1988 (Annexure-H). In the body of the said order, it is written, "Their unruly conduct and behaviour with intention to provoke the breach of peace has been fully proved by conviction in the court of law."

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5. The main grievance of the Applicants is that the Appellate Authority did not apply its mind at all and dismissed the appeal in the mechanical manner and in violation of Government of India's instruction (3) below Rule-27 of CCS (CCA) Rules, 1965-need for thorough examination of appeal and speaking order. Further, it is contended that the offences under Section-92/93 of Delhi Police Act are not offences within the fold of moral turpitude and further these offences were not committed in the course of employment and cannot amount to misconduct. A domestic quarrel has nothing to do with the employment of the Government servants and cannot be a misconduct. It is further stated that the punishment awarded to the Applicants is excessive and was not commensurate at all with the alleged misconduct for which the Applicants were convicted only under Section 92 and 93 of the Delhi Police Act. Such punishment is violative of Article 311 ( 2.) of the Constitution of India and can be looked into by the Tribunal in view of the latest decision in Union of India Vs. Perma Nanda reported in AIR 1989 P-1185 at p-3. In the aforesaid judgement, the Lordship has also referred to case of Tulsiram Patel Vs. Union of India, AIR 1985 S.C.p-1416.

6. The Respondents contested the application and filed the reply stating therein that the Applicants entered the fenced area,

Delhi Milk Scheme forcibly in drunken condition and started quarelling with Shri Om Prakash, Van Checker on duty and manhandled the staff on duty. The officer on duty had to seek the help of the Flying Squad and the case was registered under Section 92/93 of the Delhi Police Act. It is further stated that after taking into consideration the gravity of the offence committed by both the officials and keeping in view the summary trial, it was proposed to remove or dismiss their services vide order dated 30.1.1982 and both of them were afforded opportunity to submit their representation against the proposed penalty. The criminal charge used in proviso (a) to Clause (2) of Article 311 of the Constitution of India includes conviction under any law which provides for the punishment for a criminal offence, whether by fine or by imprisonment. The question of punishment to be inflicted on the offenders is a matter to be determined by the competent authority on merits of the case with reference to relevant facts and circumstances of the case. The competent authority rightly exercised its powers. Rule 19 (2) of CCS (CCA) is not relevant to this case. The Disciplinary Authority has applied its mind, so also the Appellate Authority. The application, therefore, be dismissed.

7. We have heard the learned counsel for the parties at length and have gone through the record of the case.

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8. As regards the power to interfere in the punishment awarded to the Applicants by the Disciplinary Authority, the authority cited by the Applicants : Union of India Vs. Perma Nanda (Supra) lays down the law. Para 29 is as follows :-

> We may however, carve out one exception to this proposition. There may be cases where the penalty is imposed under clause (a) of the second proviso to Article 311(2) of the Constitution. Where the person, without enquiry is dismissed, removed or reduced in rank solely on the basis of conviction by a criminal court, the Tribunal may examine the adequacy of the penalty imposed in the light of the conviction and sentence inflicted on the person. If the penalty imposed is apparently unreasonable or uncalled for, having regard to the nature of the criminal charge, the Tribunal may step in to render substantial justice. The Tribunal may remit the matter to the competent authority for reconsideration or by itself substitute one of the penalties provided under clause (a). This power has been conceded to the court in Union of India Vs. Tulsiram Patel, (1985) 3 SCC 398 : (AIR 1985 SC 1416) where Madon.J., observed (at 501-502) (of SCC) : (at pp. 1477-78 of AIR) :-
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> "Where a disciplinary authority comes to know that a government servant has been convicted on a criminal charge, it must consider whether his conduct which has led to his conviction was such as warrants the imposition of a penalty and, if so, what that penalty should be..... The disciplinary authority must, however, bear in mind that a conviction on a criminal

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charge does not automatically entail dismissal, removal or reduction in rank of the concerned government servant. Having decided which of these three penalties is required to be imposed, he has to pass the requisite order. A government servant who is aggrieved by the penalty imposed can agitate in appeal, revision or review, as the case may be, that the penalty was too severe or excessive and not warranted by the facts and circumstances of the case. If it is his case that he is not the government servant who has been in fact convicted, he can also agitate this question in appeal, revision or review. If he fails in the departmental remedies and still wants to pursue the matter, he can invoke the court's power of judicial review subject to the court permitting it. If the court finds that he was not in fact the person convicted, it will strike down the impugned order and order him to be reinstated in service. Where the court finds that the penalty imposed by the impugned order is arbitrary or grossly excessive or out of all proportion to the offence committed or not warranted by the facts and circumstances of the case or the requirements of that particular government service, the court will also strike down the impugned order. Thus, in Shankar Dass Vs. Union of India (AIR 1985 SC 772) this Court set aside the impugned order of penalty on the ground that the penalty of dismissal from service imposed upon the appellant was whimsical and ordered his reinstatement in service with full back wages. It is, however, not necessary that the court should always order reinstatement. The court can instead substitute a penalty which in its opinion would be just and proper in the circumstances of the case."

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Thus as regards the jurisdiction of the Tribunal in the matters of penalty imposed in a case covered by Clause (a) of Article 311(2) of the Constitution of India, the Tribunal can substitute another punishment, commensurate with the act for which the Applicants have been convicted by the criminal court.

9. The next question that arises is whether the present act of the Applicants amounts to misconduct or not. The learned counsel has laid great stress on the fact that the said act was not done in the course of employment. However, the fact remains that a Government servant is expected to conduct in such a manner while on duty (professionally) as also out of duty so that his act must not amount to a misconduct. It has also been argued by the learned counsel that the act of the Applicants for which they have been punished by the criminal court does not amount to an act of moral turpitude. The learned counsel has placed reliance on Shankar Dass Vs. Union of India and Another reported in AIR 1985 S.C. P-772. The Lordships of the Supreme Court have interpreted Clause (a) of the second proviso to Article 311(2) i.e. the power to dismiss a person

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from service on the ground of conduct which has led to his conviction on a criminal charge. In this reported case, the appellant was employed as a Cash Clerk by the Delhi Milk Supply Scheme Department. He was convicted by a Magistrate First Class Under Section 409, I.P.C., but given the benefit of Section 4 of the Probation of Offenders Act, 1958. As a result of the conviction, the appellant was dismissed from service summarily w.e.f. April 14th, 1964. The Lordship observed in para-7 at p-774 as follows :-

> "Surely, the Constitution does not contemplate that a Government servant who is convicted for parking his scooter in a no-parking area should be dismissed from service. He may perhaps not be entitled to be heard on the question of penalty since Cl.(a) of the second proviso to Art.311(2) makes the provisions of the article inapplicable when a penalty is to be imposed on a Government servant on the ground of conduct which has led to his conviction on a criminal charge. But the right to impose a penalty carries with it the duty to act justly. Considering the facts of the case, there can be no two opinions that the penalty of dismissal from service imposed upon the appellant is whimsical."

It is, therefore, evident that if there is a conviction, then the department is free to take action under Rule 19 Sub Clause 1 of the CCS (CCA) Rules, 1965 and without holding an enquiry, pass an order of penalty on such an employee.

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10. The learned counsel for the Applicants further argued that Rule 19 of the CCS (CCA) Rules cannot be invoked in the present case and reliance has been placed on a judgement of the Kerala High Court in Krishdan Kutty Vs. Sr. Superintendent of Post Office, reported in 1975 SLJ p-749. It has been observed in the said judgement at p-756 regarding the application of Rule 19 (i) of the CCS (CCA) Rules, 1965 which is reproduced below:-

> "Article 311(2) of the Constitution enshrines a valuable right to a Government servant. Rule 14 to 18 of the Rules which lay down the procedure for imposing penalties upon a Government servant are there because of the protection contained in Article 311(2) of the Constitution. Proviso (a) to Article 311(2) of the Constitution and the special procedure prescribed in rule 19 of the Rules are really exceptions. Rule 19(i) can be invoked only in cases where it is strictly applicable. A conduct not in the course of employment cannot be a misconduct. Similarly, a conduct which is not a misconduct as per the conduct rules also cannot be the subject matter of disciplinary action against a Government servant. In that case, the conviction on a criminal charge for a conduct which is not a misconduct as per the conduct rule cannot be a reason for taking action against a Government servant under rule 19 (i) of the Rules. A domestic quarrel which has nothing to do with the employment of the Government servant cannot be a misconduct. Moreover if the same occurs at a place far away from the place of employment, that cannot in any way be made the subject matter of a disciplinary

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action against the Government servant. In this case, a scuffle between the petitioner-Government servant and his step-brother at the place where they live resulted in the criminal charge and the conviction thereon. If the conduct of the petitioner cannot be the subject matter for taking disciplinary action against him under rules 14 to 18 of the Rules, the mere fact that he was convicted on a criminal charge on the ground of that conduct cannot be a reason for invoking rule 19 (i) of the Rules. Hence Ext. P-1 order of the 1st Respondent removing the petitioner from service is without jurisdiction. I quash Ext. P1. if Ext. P1 is an order without jurisdiction the fact that the petitioner did not file an appeal from it in time is immaterial. An order without jurisdiction is an order ab initio void and hence it is not necessary that the petitioner should appeal against that order. I, therefore, quash Ext. P-4 order also. The petitioner is entitled to continue in service without any interruption. The petitioner is to get all benefits of service including payment of arrears of salary from 1.5.1971 onwards."

However, in the present case, in the counter by the Respondents, it has been specifically stated in para 6 (c) that the Applicants entered the fenced area of Delhi Milk Scheme forcibly in drunken condition and started quarelling with Shri Om Prakash, Van Checker on duty and manhandled the staff on duty. In the order passed by the President rejecting the revision of the Applicants, there is a mention of the fact also of the perusal of the record that the Applicants entered into the security zone of Delhi Milk Scheme on 9th September, 1981 at about 9.45 P.M. They were so unruly that their colleagues were compelled to call

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police and the police registered the case against both of them under Sections 92 and 93 of the Delhi Police Act. The Metropolitan Magistrate, Delhi convicted them on their admitting the allegations of charge against them. The Applicants did not prefer any appeal against that conviction. In view of these facts, the act of the Applicants does fall in the category of misconduct.

11. The learned counsel for the Applicants relied on the D.G.P. & T.'s letter dated 3rd August, 1977 which is reproduced below :-

> "Rule 19 of the C.C.S. (C.C.A.) Rules only envisages that an order can be straightaway made by the disciplinary authority to impose a penalty without following the prescribed detailed procedure under Rules 14, 15 and 16 of the said Rules. It is, however, observed that the disciplinary authorities have, in a large number of cases, interpreted the provisions of this rule to mean that only one of the extreme penalties such as dismissal/removal/ compulsory retirement is to be imposed in such cases as a matter of course. This interpretation is not at all correct and the disciplinary authority is supposed to give proper consideration to the offence actually committed by the Government servant as a result of which he was convicted by the Court of law. It is only where the Government servant has been convicted on ground of moral turpitude that there is justification for holding the view that such Government official's retention in service is not desirable and one of the three extreme penalties mentioned above can be imposed in such a case. In all other cases, the disciplinary

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authorities should go through the judgement in its entirety and give proper consideration to the gravity of the offence committed by the convicted Government servant to decide whether any of the other penalties could be appropriately imposed in those cases. The Heads of Circles should personally ensure that the above guidelines are properly brought home to all the disciplinary authorities and any breach of the above guidelines should be viewed by them seriously."

12. In view of the above discussions and the law laid by the Hon'ble Supreme Court, the disciplinary authority as well as the appellate authority should have exercised its discretion in finding out whether the punishment imposed on the Applicants was justified in the circumstances of this particular case. Merely because the Applicants were convicted in a summary trial by the Metropolitan Magistrate and that too with a fine of Rs.50/-, and not in an offence where the substance of any charge against the Applicants would have been misbehaviour with intent to provoke a breach of the peace or obstructing or annoying passengers in the streets, and which cannot be said to be an offence of the nature involving moral turpitude, the dismissa of the Applicants and the termination of their services is not only harsh, but also the penalty is not commensurate with the

delinquent act for which conviction has been imposed. As held in the case of Union of India Vs. Perma Nanda (Supra by the Hon'ble Supreme Court, the Tribunal can very well interfere regarding the quantum of penalty imposed by the impugned order on the Applicants. We, therefore, hold that the penalty imposed by the impugned order is arbitrary, grossly excessive and out of all proportion to the offence committed and is not warranted by the facts and circumstances of the case. The Tribunal has the power and authority to substitute another adequate penalty in the circumstances of the case. In our opinion, a penalty of witholding 3 years without affecting future increments would be increments temporarily for a period of 1 quite adequate in the circumstances of the case.

13. The impugned orders passed on the Applicants dated 16.2.1982/24.5.1982/16/19.5.1988 are quashed. The Applicants shall be re-instated in the service as Motor Driver (Heavy Vehicle), Delhi Milk Scheme w.e.f. 16.2.1982. However, in the circumstances of the case, the penalty of witholding increments for three years without any future consequential loss is imposed on the Applicants, i.e. the next increment of the Applicants shall be due in 1985, exactly 3 years after his earlier increment which he had

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earned sometimes in 1982 or in the latter part of 1981. With this modification of the order, the Applicants shall be deemed to be continuous in service and shall be entitled to all back wages except withholding of increments temporarily for a period of 3 years without affecting future increments as said above. The Respondents are directed to comply with the order within a period of 3 months from the receipt of this order and pay all necessary outstanding emoluments considering the Applicants to be in continuous service. In the circumstances, the parties are left to bear their own costs.

(J.P. SHARMA) 3/4/91.
MEMBER (J)

3/4/1991
(P.C. JAIN)
MEMBER (A)