

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

O.A.NO.1005/86

DATE OF DECISION: 3rd JANUARY, 1992

(33)

SH. GAJENDRA PAL SHARMA

APPLICANT

VERUS

UNION OF INDIA & ANOTHER

RESPONDENTS

CORAM:-

THE HON'BLE MR. D.K. CHAKRAVORTY, MEMBER(A)

THE HON'BLE MR. T.S. OBEROI, MEMBER(J)

COUNSEL FOR THE APPLICANT : S/SH.K.L. BHATIA, G.B.SINGH AND GURMEET SINGH;

COUNSEL FOR THE RESPONDENTS : SH. M.L. VERMA

JUDGEMENT

(of the Bench delivered by Hon'ble Mr. T.S. Oberoi, Member(J)).

In this O.A., filed under Section 19 of the Administrative Tribunal Act, 1985, the applicant, who was serving as an Assistant Manager, in Delhi Milk Scheme, and who was dismissed from service, vide order dt. 6.2.1986 (Annexure A-I) has prayed for the following reliefs:-

(i) to set aside and quash the impugned order of dismissal of service No.1-1/81-Vig. (Vol.II) dt.

6.2.1986, passed by General Manager, Delhi Milk Scheme, New Delhi;

(ii) to direct the re-instatement of the applicant in service with full back wages, continuity of service and all other attending benefits;

(iii) to allow the cost of present proceedings; and

(iv) to pass such orders, appropriate in this case, as deemed fit in the interest of justice, in favour

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of the applicant.

2. The facts of the case briefly are that on 20.2.1978, when the applicant was posted as Assistant Manager, Milk Collection and Chilling Centre, Muradnagar, a team of officers from the office of the Respondent No.2, made a surprise visit and asked the applicant to produce the preserved samples of the supplies as well as the milk despatched through the milk tankers, to the Milk Scheme, Delhi. No sample of the milk supplied by milk suppliers relating to the milk at the Collection Centre, Muradnagar, on the 19th evening as well as 20th morning, was available at the centre. The applicant explained that Shri Fakir Chand, J.P.O., attached to the Milk Collection and Chilling Centre, who was on duty, slipped on floor and the preserved milk spilt on the floor and some bottles were also broken. Milk from the remaining bottles also spilled away and as such no sample was available. This was somewhat contradicted by Sh. Fakir Chand, when examined by the Team of officers, as he stated that only two bottles had broken and he did not know as to what happened remaining with the six bottles. On physical verification of the bottles, the account of bottles could not stand the version given by the applicant and no shortage of the sample bottles was found as per the stock register and thus, the team of officers came to the conclusion that a wrong version was concocted by the applicant, with some ulterior ends, and the prescribed procedure, for preserving the milk samples was not being followed in the centre. The officers of the committee also

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observed that the fat account was also not posted in the register meant for the purpose, upto the date, and the last entry was filled in that upto 16.2.1978, with opening balance carried to 17.2.1988 (forenoon). No entries relating to previous despatch from 17.2.1988 onwards had been made in the said register, though the last tanker containing milk supplied from the centre was despatched from Muradnagar on 20.2.1978 at 6.00 P.M.i.e. an hour prior to the visit of the team of officers. There was difference in the quantity of milk found with the centre at that point of time. As per books it was 2.28 quintals, as against 8.62 quintals, as actually found, and thus, there was apprehension that water was being added, with dishonest designs. The applicant's explanation that in order to keep the milk cool/preserved, addition of ice, had accounted for the increased quantity, was belied, on verification, as no ice was purchased for the purpose. Some other irregularities were also noticed by the team of officers, which all went to show that all was not well with the affairs of the Milk Collection and Chilling Centre, with malafide as well as dishonest intentions.

3. The services of the applicant, who was still a temporary hand in the department, were terminated with effect from 20.9.1979, under sub-rule 1 of Rule 5 of the Central Civil Services (Temporary Services Rules, 1965). However, on his representation against the said termination of his services, the applicant was reinstated, vide order dated 12.5.1981 (Appendix XXXVI to the OA P.103 of the paper-book).

However, against Sh. J.S. Verma who was posted as Manager in the said Milk Collection and Chilling Centre, enquiry was ordered to be proceeded with, in which Sh. K.C. Dubey, Commissioner for departmental enquiries, was appointed as the enquiry officer. The enquiry against Sh. Verma was completed but Sh. Dubey did not submit the report, and in the meantime, after the reinstatement of the applicant, vide order dated 12.5.1981, Sh. K.C. Dubey was also appointed as enquiry officer, to hold the enquiry against the applicant as well, vide order dated 28.4.1982. The enquiry officer vide his order dated 6.11.1982 (Appendix IV-P.39 of the paper-book) chalked out the programme for proceeding with the enquiry against the applicant, and a copy of the order sent to the applicant for his information and compliance, as the applicant did not happen to be present on the said date. On 10.11.1982, the applicant appeared in the office of the enquiry officer, and carried out the inspection of the available documents, when he was informed about the non-availability of the document at Sr.No.4 of the list of documents, relied upon by the Presenting Officer. A certificate about the non-availability of document at Sr.No.4, besides some others, was also furnished to him (Appendix VIII P.44). On 17.11.1982, when the applicant was supposed to give the list of his defence witnesses, because of certain documents having not been furnished to him, as mentioned above, he prayed for some more time, but this was declined by the enquiry officer, directing the applicant to do the needful, by the same evening (Appendix VI & VII to the OA). As per the programme of the enquiry chalked out, regular

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hearing was to commence on 27.12.1982. However, the applicant did not appear on that date, on the ground of his being under treatment in Dr. Ram Manohar Lohia Hospital, New Delhi, with effect from the afternoon of 26.12.1982. He is said to have intimated the enquiry officer, on telephone, on 27.12.1982 at 11.00 A.M., about his inability to attend, alongwith a telegraphic intimation, despatched at 6.00 P.M. on 27.12.1982 (Appendix IX). He also conveyed a postal copy of the telegramme through his brother, to the office of the enquiry officer, mention of which is found in the order sheet dated 28.12.1982 (Annexure XII). The evidence against the applicant was closed on that day itself, by examining certain witnesses, who also proved some documents, on record, and a copy of the order sheet dated 28.12.1982 was sent to the applicant, by registered post. The applicant did not participate in the enquiry, as he extended his leave on medical grounds, till 10.1.1983. The enquiry officer submitted his report (Appendix XVIII-P.62) on 21.1.1983. The applicant even before the start of the enquiry, vide his representation dated 23.12.1982 (Appendix X-P.46 to 48) had alleged partisan attitude on the part of Sh. K.C. Dubey, enquiry officer in the case, being favourably inclined towards Sh. J.S. Verma, Manager of the said centre, and had prayed for stay of the enquiry proceedings against him, being carried on by Sh. Dubey. He had also expressed grouse on such a senior officer being appointed as enquiry officer against him, though as per rules on the subject, he being not a gazetted officer, the enquiry, if at all, ought to

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have been carried out by some officer of the Delhi Milk Scheme. The applicant also attributed motives on the part of the enquiry officer, to implicate the applicant, by making him the scape goat in the case, in order to give a clean chit to the then Manager, Sh. J.S. Verma. He again sent a re-presentation dated 15.1.1983 (P.56 to 59-Appendix XVI), to the General Manager, Delhi Milk Scheme, by way of appeal, with regard to his earlier request for change of the enquiry officer. As per memo dated 30.5.1983 (Appendix XVII-P.61), acknowledgement to both the communications dated 23.12.1982 and 15.1.1983, was sent by the FA&CAO, Delhi Milk Scheme, intimating the applicant that his request was under active consideration. Thus, while on one hand the applicant was informed that his request for change of enquiry officer was being considered, the enquiry officer, in the meantime, completed his report on 21.1.1983, and presumably submitted the same to the disciplinary authority. No effective head-way, however, could be made on the same, for nearly three years, or so, as the disciplinary authority passed the impugned order on 6.2.1986. Thus, there was abnormal delay in passing orders on the report of the enquiry officer. The respondents have attributed this delay to there being no disciplinary authority in position, during this period. After passing of the impugned order, the applicant submitted his appeal on 12.3.1986, which too, has not so far been decided, as the respondents themselves, in their counter, have raised a preliminary objection that, pending decision of the appeal, the applicant could not have filed the present O.A. The

same, however, is not tenable, as the applicant, after submission of his appeal, had sent a number of representations/reminders (Pages 86, 88 to 94 of the paper-book), but without any response. The applicant had referred to a number of directives from the government including the one at page 87 of the paper-book, emphasising the desirability of expeditiously deciding the appeals, in such like matters.

4. From the above, it will be seen that the applicant has assailed the enquiry proceedings on various grounds such as having been held by a senior officer of the rank of Commissioner of departmental enquiries, though the applicant being a non-gazetted officer, the enquiry against him was not supposed to be held by such a high ranking officer; the enquiry officer being also the enquiry officer against Sh.J.S. Verma, the then Manager, and had almost finalised the enquiry proceedings against Sh. Verma, was biased against the present applicant, especially when inspite of request dt. 23.12.1982, earlier referred, he went ahead with the enquiry proceedings. According to the applicant, the bias on the part of the enquiry officer against the applicant, is also discernible from the fact that though the enquiry officer was appointed in this case on 28.4.1982, and thus, nearly 8 months had elapsed, he rushed through the enquiry proceedings and completed the same within two days i.e. on 27.12.1982 and 28.12.1982, without taking into consideration the applicant's version though he was advised bed rest, and was under treatment from Dr. Ram Manohar Lohia Hospital, New Delhi, a government hospital and, therefore, the medical certificate issued should have been ordinarily believed. The applicant also

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alleges over zealousness and bias on the part of the enquiry officer in asking the respondents to file caveat in the High Court, so as to be watchful if the applicant moves any petition against any possible action being taken in the enquiry proceedings against him.

5. The respondents have contested applicant's case, and in the counter filed on their behalf have stated that since it was a case of co-accused, the enquiry by Sh. Dubey, who was earlier entrusted with the enquiry against Sh. Verma was justified, to avoid duplication and inconvenience to all concerned, and thus, the objection in this regard, put up by the applicant is not justified. As regards the allegations regarding uncalled for haste resorted to by the enquiry officer in the conduct of the enquiry proceedings against the applicant, it was averred that the whole matter has to be viewed in its proper context. By referring to applicant's representation dated 23.12.1982, seeking stay of the enquiry proceedings being conducted by Sh. Dubey, followed with his absence on the first day i.e. on 27.12.1982, it would make things abundantly clear that the absence of the applicant was pre-determined, and he was somehow trying to get the proceedings unduly delayed or deferred. In these circumstances, according to the respondents, the enquiry officer was justified in stalling any attempt on the part of the applicant, to cause any delay in the progress of the enquiry proceedings against him. It was further contended on behalf of the respondents that on 6.11.1982, the enquiry officer had chalked out a programme regarding the enquiry

proceedings, a copy of which was also sent to the applicant, in pursuance of the same, the applicant had appeared at the office of the enquiry officer on 10.1.1982, and on some dates subsequently as well, and therefore, his choosing not to attend on 27.12.1982, was deliberate, and an attempt to delay the progress of the enquiry proceedings and is, therefore, of no consequence viz-a-viz the allegations regarding the said proceedings being not properly held.

6. We have carefully perused the entire material on record, and have also given our careful consideration to the rival contentions, as briefly discussed above. To our mind, the applicant having expressed his grouse against the enquiry officer, it would have been proper if the enquiry officer had waited for the directions of the concerned authorities, as conveyed by them in their memo dated 30.5.1983 (Appendix XVII P.61). Even if the applicant, as per respondents' case, had despatched the telegram at 6.00 P.M. on 27.12.1982, and no intimation regarding his indisposition was conveyed at 11 A.M. on that date, before the start of enquiry, it is none-the-less admitted that applicant's brother or some one else, had brought a postal copy of the telegram, sent on earlier day, with the request to defer the enquiry proceedings, on account of applicant's indisposition and for being under treatment at Dr. Ram Manohar Lohia Hospital, New Delhi, the Enquiry Officer ought to have stayed the enquiry proceedings at least on 28.12.1982, and would have recalled the prosecution witnesses examined on 27.12.82. Instead, the enquiry

proceedings were completed on that very day, without even allowing the applicant to adduce his defence. Besides, certain documents, especially the document at Sr.No.4 of the list of documents, were not made available to the applicant, in order to enable him to produce his defence. Though, the anxiety on the part of the Enquiry Officer to expedite the proceedings is understandable, but when viewed with other relevant details that his appointment had taken place about eight months ago i.e. on 28.4.1982, and even after submission of his report on 21.1.1983, the Disciplinary Authority could pass its order, after the lapse of over three years i.e. on 6.2.1986, the contention of the applicant becomes significant, when viewed in this background. Further, his appeal filed against the impugned order dt. 6.2.1986, could fetch no order, till filing of this O.A., as mentioned earlier.

7. In the presence of this situation, we find force in the applicant's contention that there had been unnecessary haste in completing the enquiry proceedings against the applicant. Besides, the non-furnishing of certain documents to the applicant, for purposes of his defence, also cuts at the propriety of the enquiry proceedings held. A copy of the enquiry officer's report also does not seem to have been furnished to the applicant, before the Disciplinary Authority passed its order dt. 6.2.1986, so that the applicant could have represented to the Disciplinary Authority, against the proposed penalty, as has been held necessary, vide judgement

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of Hon'ble Supreme Court, in U.O.I. & Ors. Vs. Mohd. Ramzan Khan - Judgements Today 1990(4) SC 456. This has been held as essential, even in cases which await finalty at any stage, as held in Full Bench decision dt. 11.7.91(Administrative Tribunal Judgements, 1991(2) P.278 Sh. Balwant Singh Kumar Gohil Vs. The Union of India & Another). We accordingly quash the proceedings against the applicant, from the stage of enquiry proceedings, and subsequent orders, based on that report. The respondents shall, however, be not precluded from holding a fresh enquiry against the applicant, in accordance with the provisions of law. In the circumstances of the case, we make no order as to costs.

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(T.S. OBEROI)
MEMBER(J)

Deshbandhu 31/1/92
(D.K. CHAKRAVORTY)
MEMBER(A)

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