

12

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH, NEW DELHI.

OA.1401/87

Date of Decision: 30.4.93

Rajbir Singh

Applicant

Versus

Union of India & Ors. Respondents

Shri Umesh Mishra

Counsel for the applicant

Shri P.P. Khurana

Counsel for the respondents

CORAM: The Hon. Mr. N.V. KRISHNAN, Vice Chairman(A)

The Hon. Mr. C.J. ROY, Member(J)

JUDGEMENT(Oral)

(delivered by Hon.Vice Chairman Shri N.V. KRISHNAN)

The applicant was a mate engaged by the second respondent- Delhi Milk Scheme, in connection with the distribution of milk. His duties were inside the milk van, arranging the bottles etc.

2. Disciplinary proceedings were initiated against him on a charge of pilfering 7 bottles of milk, which culminated in the order dated 27.9.86 (Annexure 'A'), by which, the disciplinary authority, the Deputy General Manager, imposed the penalty of compulsory retirement on him. The applicant preferred an appeal against this order to the Chairman, Delhi Milk Scheme, the 2nd respondent. This appeal was dismissed by the impugned order dated 26.2.87 of the appellate authority (Annexure 'B') and the penalty

16

13

-2-

imposed was confirmed. It is in these circumstances that the applicant has approached us seeking a direction to quash these orders Annexures 'A' and 'B' on various grounds.

3. A reply has been filed by the respondents denying the allegations and contending that the application has no merit.

4. When the case came up for hearing, the learned counsel for the applicant enumerated the various grounds on which the impugned orders have been assailed. He has drawn our attention to the order of the appellate authority dated 26.2.87. The memorandum appeal dated 27.10.86 running into 10 pages, is at Annexure 'D'. The applicant had raised as many as 8 grounds in this appellate memorandum. The appellate order which follows the introductory para, is reproduced below:-

"Seeing the various evidences recorded and the responsibilities of the Mates and the HVD's and the recovery documents of 7x1/2 bottles of filled milk bearing the signature of the van crew including the charged official and the other evidence, the charge against the accused is conclusively proved. He has tried to defraud the very organisation from where he draws his livelihood with a view to make pecuniary gains for himself. Misappropriation of what legitimately belongs to Government is a serious offence and it would have been totally unsafe to keep a man of this character on official duties. He has proved that he is totally unfit to hold a Government job. However, the Disciplinary Authority took a lenient view in imposing only a punishment of Compulsory Retirement on him. The undersigned is satisfied that principles of natural justice has been fully observed and he has not brought out any grounds which may warrant interference with the orders passed by disciplinary authority."

5. The learned counsel contended that though the applicant has raised many grounds in his memorandum of appeal, none of them has been considered by the appellate authority, and therefore, this order deserves to be quashed.

6. We have heard the learned counsel for the respondents also.

7. The substantive part of the order of the appellate authority has already been reproduced. We notice that in the appellate memorandum, the applicant had taken almost all the grounds that have been raised in this original application. The duties of the appellate authority have been set out in Rule 27<sup>(2)</sup> of the CCS(CCA) Rules, 1965 and considering the manner in which the appeal has been disposed of, it needs reproduction to impress upon the 2nd respondent about his duties. Hence, we reproduce the relevant extracts for his benefit.

"(2) In the case of an appeal against an order imposing any of the penalties specified in rule 11 or enhancing any penalty imposed under the said rules, the appellate authority shall

(a) whether the procedure laid down in these rules has been complied with and if not, whether such non-compliance has resulted in the violation of any provisions of the Constitution of India or in the failure of justice;

(b) whether the findings of the disciplinary authority are warranted by the evidence on the record; and

(c) whether the penalty or the enhanced penalty imposed is adequate, inadequate or severe;"

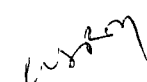
12


15

8. Needless to say, the appellate authority has failed to discharge the duties expected of him, and therefore, the appellate order is liable to be quashed.

9. In this view of the matter, we do not wish to consider the merits of the order of the disciplinary authority or the other grounds raised in this OA, and we dispose of this application by quashing the Annexure 'B' order dated 26.2.87 of the appellate authority and direct the said authority to reconsider and dispose of the applicant's appeal in accordance with the provisions of law and in the light of the observations made herein, within 3 months from the date of receipt of this order.

10. The OA is disposed of accordingly.

  
(C.J. ROY)  
MEMBER(J)  
30.4.93

  
(N.V. KRISHNAN)  
VICE CHAIRMAN(A)  
30.4.93

kam300493