

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 1140/87 198
T.A. No.

DATE OF DECISION 25/7/1988

Maha Singh

Applicant (s)

Shri K.L. Bhatia

Advocate for the Applicant (s)

Versus

UOI & Ors.

Respondent (s)

Shri M.L. Verma

Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. P. Srinivasan, Member (A)

The Hon'ble Mr. T.S. Oberoi, Member (J)

1. Whether Reporters of local papers may be allowed to see the Judgement ? Yes
2. To be referred to the Reporter or not ? Yes
3. Whether their Lordships wish to see the fair copy of the Judgement ? No
4. To be circulated to all Benches of the Tribunal ? Yes

JUDGEMENT

(delivered by Hon'ble Mr. P.Srinivasan, Member).

The applicant, who is an employee of the Delhi Milk Scheme has, in this application, challenged an order dated 24.7.1987 issued by the Ministry of Agriculture of the Government of India, in response to his (applicant's) review petition under Rule 29 of the Central Civil Services (Classification, Control & Appeal) Rules, 1965, addressed to the President of India. In his review petition, the earlier applicant had challenged an order dated 11.12.1982 passed by the Joint Commissioner (D.D.) by which the penalty of termination ~~from~~ service was imposed on the applicant. In the aforesaid order dated 24.7.1987, it was observed that termination ~~from~~ service was not a penalty prescribed in the CCS (CCA) Rules and therefore, an order imposing the penalty of termination ~~from~~ service was invalid. In view of this, a direction was issued to the disciplinary authority, namely, the Chairman, Delhi Milk Scheme, to

hold a fresh enquiry into the charges in respect of which the earlier invalid order of 11.12.1982 had been issued. The applicant contends that by virtue of the subsequent order dated 24.7.1987, the earlier order had become non est and had been cancelled on that ground as ab initio void. That being so, the applicant should have been reinstated immediately and given pay and allowances and arrears from the date his services were illegally terminated. The applicant also contends that, the earlier order of penalty having been quashed, the Ministry of Agriculture should not have ordered a fresh enquiry in its letter dated 24.7.1987. The last prayer in the application is that the period of absence from duty till 14.3.1983 should be regularised in accordance with Rules.

2. We may now set out the facts giving rise to this application. The applicant joined service with the Delhi Milk Scheme on 1.6.1961 as a Mate. He was promoted to the post of Driver on 13.8.1971 and appointed to a permanent post of Heavy Vehicle Driver with effect from 29.12.1978. According to the applicant, he proceeded on leave on 10.4.1981 with permission to leave station. He had applied for one day's casual leave to go to village Gochhi. He was obliged to extend his stay in the village due to unforeseen circumstances. He, therefore, sent an application for extension of leave upto 9.6.1981. The said letter applying for leave is reported to have been sent under certificate of posting. A photocopy of the receipt said to have been issued by the Post Office is attached to the application in support of this contention. While the applicant suffered serious injuries on his head and face and became incapacitated and remained under coma for several days and when he regained consciousness, he had lost his memory completely.

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Immediately after he had regained his memory, he sent another application to the authorities for further extension of leave and in support of this claim also, a photocopy of the receipt said to have been issued by the postal authorities, is attached to the application. The application for extension of leave, it is stated, was accompanied by a medical certificate. The applicant again applied for extension of leave on 14.4.1982 and 12.10.1982 for six months on each occasion, under posting certificate attaching medical certificate thereto, and this is also sought to be supported by photocopies of receipts said to have been issued by the postal authorities. The respondents deny having received any of these applications. On complete recovery from his ailment, the applicant reported for duty at the Delhi Milk Scheme on 14.3.1983 only to be told that his services had been terminated by an order dated 11.12.1982, passed by the disciplinary authority. The applicant asked for a copy of this order which, it is stated, was supplied to him on 18.5.1983.

3. At this stage, we may refer to what the respondents say.. Since the applicant did not report for duty from 10.4.1982 and since he did not apply for leave, the respondents issued several memos. addressed to him, one on 19.5.1981 and another on 18.6.1981, directing him to report for duty immediately. These memos. were addressed to him by registered post acknowledgement due at his last known address, which was village and P.O. Karala, Police Station Nangloi in Delhi. In spite of this, the applicant did not report for duty. The second mentioned memo. was returned undelivered with the postal remark that the addressee was not available at his residence in spite of repeated visits. At this stage, the respondents addressed a letter dated 15.2.1982 by registered post/AD to the Station House Officer,

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Police Station Nangloi, Delhi, asking for the whereabouts of the applicant. The SHO Nangloi, informed the respondents that the whereabouts of the applicant were not known. Thereupon, a memo. of charges dated 15.8.1982 was issued to the applicant and sent to his last known address, proposing to hold an enquiry into the charges. The envelope containing the memo. of charges sent to the applicant to his address at village Karala was duly received back with the postal endorsement that the addressee had left the village. Another attempt to have the memo. of charges served on the applicant by registered letter dated 22.9.1982 also failed and this time, the postal authorities wrote that the addressee had gone abroad. In view of this, the respondents came to the conclusion that it was not reasonably practicable to hold an enquiry and passed the order dated 11.12.1982, imposing the punishment of termination of services on the applicant. One more fact mentioned by the respondents is that on enquiry, it was found that the applicant had applied for a passport and had, by his letter dated 25.2.1981, addressed to the Deputy General Manager, Delhi Milk Scheme, intimated that the purpose of his visit abroad was to meet some of his friends. He sought, by the same letter, a no objection certificate for applying for a passport. He stated in the application that his expenses would be borne by his parents and from his personal savings. It is not known whether the no objection certificate was issued or whether the applicant obtained a passport.

4. Returning to the applicant's version of the story, when on reporting for duty on 14.3.1983, he was told that he was no more in service, he asked for a

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copy of the order by which he was removed from service. As already stated, he was supplied a copy of the order dated 11.12.1982 terminating his services, on 18.5.1983. He then filed a review petition purporting to be under Rule 29A of the CCS (CCA) Rules, addressed to the President of India and dated 22.12.1983. Since actions in the name of the President are taken actually by the Ministry concerned under the Rules of Business, the Ministry of Agriculture, which dealt with the review petition, issued the impugned letter dated 24.7.1987, to the Chairman, Delhi Milk Scheme, the contents of which have been briefly set out in an earlier paragraph. As already indicated, the Ministry came to the conclusion that the order of dated 11.12.1982, purporting to impose the penalty of termination of service was invalid. The letter says that this conclusion was arrived at after consulting the Department of Personnel and the Department of Legal Affairs. "As per the advice of both the Departments", the letter goes on "it has now been decided that a fresh enquiry on this case be instituted by the Disciplinary Authority and the enquiry report sent to the undersigned for taking a view on the review petition. The suggestion for an enquiry, which had earlier been dispensed with in terms of Rule 19(ii) of the CCS (CCA) Rules, 1965, is now found necessary, if the circumstances now warrant conducting of a fresh enquiry. In fact, the revisionary authority is now required to give an opportunity to the petitioner before deciding the question of amending or changing or confirming the earlier orders of penalty in order to make it a speaking order." The Ministry also suggested "that Shri Maha Singh may not be reinstated until a final view is taken by the revisionary authority". On receiving the said letter of the Ministry, the Disciplinary Authority, namely, the General Manager,

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Delhi Milk Scheme, issued a fresh memo. dated 24.12.1988, to the applicant enclosing articles of charges against him into which it was proposed to hold an enquiry. The charge narrated that the applicant had remained absent from duty unauthorisedly from 10.4.1981 onwards, without any intimation or prior permission of the competent authority, which resulted in the dislocation of Government work. "He is thus charged with absenting himself from the place of his duty quite unauthorisedly, thus dislocating Government work which acts of a Government servant are highly unbecoming subversive to discipline and in violation of the C.C.S. (Conduct) Rules, 1965." It may be mentioned at this stage that though the Ministry advised that the applicant may not be reinstated, a Bench of this Tribunal, while admitting the application, directed the respondents to allow the applicant to rejoin duty subject to the outcome of this application as an interim measure and in pursuance of that order, the applicant was taken back into service on a provisional basis, with effect from 28.8.1987. He is, therefore, working as a Heavy Vehicle Driver upto now, with the respondents.

5. Shri Bhatia, learned counsel for the applicant, challenged the first order dated 11.12.1982, on a number of grounds which it is not necessary to examine now because that order has, in effect, been set aside by the reviewing authority. The so-called penalty, said to have been imposed by that order, also stands cancelled because of the action of the reviewing authority and, as we have already indicated, the applicant has resumed duty, albeit on a provisional basis. Challenging the order of the reviewing authority, Shri Bhatia submitted that under Rule 29A of the CCS (CCA) Rules, the reviewing authority cannot order a de novo enquiry. Reading the rule, he

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submitted that the reviewing authority can only order a 'further enquiry' which means that an enquiry had already been held by the Disciplinary Authority. Since no enquiry was held by the Disciplinary Authority in this case, the question of holding a further enquiry does not arise. Further, unauthorised absence from duty does not amount to misconduct, but only wilful absence. There is a procedure prescribed to deal with cases of Government servants who absent themselves from duty without leave and that had not been followed. When such a Government servant reports back for duty, he should be asked why he absented himself from duty and only after ascertaining the facts, could an enquiry be ordered. Since according to the respondents, no leave had been granted to the applicant and, therefore, his absence has been treated as unauthorised absence, nothing can be achieved by an enquiry because the fact of unauthorised absence, meaning absence without leave, is already a concluded fact. Even if the review petition made by the applicant were to be treated as an application for revision under Rule 29 of the CCS (CCA) Rules, the revisional authority, like the reviewing authority, cannot order a fresh enquiry, since the provisions are, more or less, the same as in the case of a review. Once the order of the Disciplinary Authority was held to be an invalid order, all that the reviewing authority should have done was to reinstate the applicant in service with no further enquiry. Shri Bhatia referred to a number of judgments of courts and this Tribunal in support of his contentions.

6. Shri M.L. Verma, learned counsel for the respondents, raised a preliminary objection that the Delhi Milk Scheme being an industry, the applicant should have moved the machinery established under the

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Industrial Disputes Act, before coming to this Tribunal. He has, therefore, not exhausted all the remedies available to him and for that reason, this application should be dismissed. Moreover, all that has been done in this case is that a memo. containing charges has been served on the applicant. No order adverse to the applicant has actually been passed. The application is, therefore, premature, disclosing no specific cause of action. In the first instance, the Disciplinary Authority had issued a memo. of charges to the applicant but this could not be served and as the whereabouts of the applicant were not known, the Disciplinary Authority had no other course open than to hold that it was not reasonably practicable to hold an enquiry and to proceed with the matter under Rule 19(ii) of the CCS (CCA) Rules, which he did. He, therefore, passed what turned out to be an invalid order, by imposing a penalty which is not prescribed in the CCS (CCA) Rules. That is why, the order of the Disciplinary Authority had been set aside in review but since there was a prima facie case against the applicant, of remaining absent without leave, an enquiry had to be ordered into his conduct to ascertain the correct facts in which the applicant would be given every opportunity of presenting his case. In fact, the action of the reviewing authority was in accordance with the rules of natural justice. The reviewing authority has the power to order an enquiry where no such enquiry had been held earlier. Shri Verma also cited a number of authorities to support his contentions.

7. We have given the matter the most anxious consideration. As we have already observed, the order dated 11.12.1982 passed by the Disciplinary Authority is no longer the subject matter of controversy because it has been set aside by the reviewing authority. We

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need not go into the circumstances in which the said order was passed except to notice that no enquiry was held before it was passed. The reviewing authority held the order of the Disciplinary Authority to be bad because it had imposed a penalty which is not mentioned in the CCS (CCA) Rules. The effect of the order of the Disciplinary Authority is, as pointed out by Shri Bhatia, to render the original order dated 11.12.1982 non est. In other words, whatever proceedings were taken leading upto the order of the Disciplinary Authority, were set aside. Now, once that happened, was the reviewing authority right in ordering a fresh enquiry ? Ignoring the order of the disciplinary authority, the fact still remains that the applicant was absent from duty from 10.4.1981 to ^{doubt,} 14.3.1983. There is, no/difference between the parties as to whether the applicant had actually applied for extension of leave, but the fact of his absence from duty is not disputed. It is also not disputed that no leave was granted to him for this period. The net result is that the applicant was absent without leave and he has to explain to the authorities as to why he remained absent. Before starting an enquiry, the authorities could have made some preliminary enquiry to ascertain the facts, but this is not a statutory requirement. There is a prima facie case that the applicant had absented himself from duty for nearly two years, even though no leave was granted to him. We cannot fault ~~the~~ the reviewing authority, if in these circumstances, it felt it necessary to institute an enquiry under the CCS (CCA) Rules to ascertain the correct facts after giving the applicant an opportunity

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to present his case. It is now well settled by several decisions of the Supreme Court that if an enquiry had not been held by the Disciplinary Authority because it was considered impracticable to do so, the appellate or the reviewing authority can order an enquiry if conditions had improved by that time (see Union of India & Ors. Vs. Tulsi Ram Patel - AIR 1985 SC 1416). In this background, the words 'further enquiry' occurring in Rule 29 of the CCS (CCA) Rules cannot be given the narrow interpretation suggested by the learned counsel for the applicant. Moreover, in this case, the original proceedings having been set aside as invalid, the reviewing authority began with a clean slate, and in that situation, it was entitled to order an enquiry under the CCS (CCA) Rules if it appeared to it, prima facie, that such an enquiry was necessary. We are satisfied that there is a prima facie case and that the reviewing authority did not commit any illegality in ordering an enquiry under the Rules. After all, what has happened is that an enquiry has been ordered in which the applicant will have the opportunity of explaining his case. The applicant has been reinstated in service as a result of the interim order of this Tribunal. Till he is heard in the enquiry and an order is passed against him, it cannot be said that he has suffered any damage. Whatever grounds he may have against the charges levelled against him, he will have the full opportunity of stating them at the enquiry which is to be conducted against him in accordance with the principles of natural justice. For this reason also, we do not consider it proper to allow this application. We, however, feel that in the peculiar circumstances of this case, the reviewing authority, who is to pass the final order in the disciplinary proceedings after enquiry, should also

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