

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH.

NEW DELHI.

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Registration O.N. No. 1196 of 1987

Shri Ram Singh Applicant.

Versus

Chairmen, Delhi Milk Scheme Respondent.

Hon'ble Mr. Justice U.C. Srivastava, V.C.
Hon'ble Ms. Usha Savara, Member (A)

(By Hon. Mr. Justice U.C. Srivastava, V.C.)

The applicant was appointed as badli worker on the post of Mate on 28.10.1969 under certified standing orders framed under Industrial Employment Act. On 12.8.1971, the applicant was brought to regular establishment of the Delhi Milk Scheme on the post of Mate. On 7.2.1986, he was served with a charge-sheet by Dy. General Manager in the capacity of the disciplinary authority. The charge against the applicant was that while performing his duties as Mate on route No. 31(M) on van No. 148 on 10.12.1985 alongwith other Van crew tried to pilfer 3 x 1/2^{litre} milk filled bottles. The applicant filed a written statement denying the charges levelled against him and has stated that the charge-sheet has been issued arbitrarily and without application of judicial mind. An enquiry officer was appointed and the enquiry officer conducted the enquiry and thereafter submitted his report and acting on the basis of the enquiry report, the disciplinary authority passed a punishment order retiring the applicant compulsorily from service. The appeal filed against the said order was also dismissed. Thereafter, he has approached to Tribunal.

Contd.

2. The learned counsel for the applicant contended that although the main charge against the applicant was not proved at all and merely the existence of extra bottles were found, and he drew our attention to the enquiry officer's report on the basis of which the said punishment order was passed. The enquiry officer after taking into consideration the relevant pleas of the parties shorted out two points for determination;

(i) whether he has pilfered 3x1/2 litre milk filled bottles;

(ii) whether four empty pockets were found in the stock loaded by the Van staff;.

The enquiry officer ~~dictated~~ only on the second point and took into consideration the statement ^{of witnesses} examined by the department as well as the defence witnesses. ^{in this behalf} The enquiry officer took into consideration the acceptance of the applicant in his General Examination that three filled milk bottles ^{were} recovered over and above the route schedule quantity from the loaded stock in his presence. So long as the main charge against the applicant was not proved, the applicant could not have been punished on the basis of subsidiary charge arising out of the main charge.

3. Accordingly, this application is allowed and the order dated 5.5.1986 and order dated 28.2.1987 are quashed, and the applicant will be deemed to be continuing in service and in view of the fact that the applicant is also partly responsible for what has happened, he will not be entitled for any wages from the date of compulsory retirement upto this date. However, it is open for the department to hold a fresh enquiry against the applicant

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but the same shall be done in accordance with law.

The application is disposed of with the above terms.

No order as to the costs.

J. Lavare

Member (A)

Dated: 24.12.1992

(n.l.)

[Signature]

Vice-Chairman