

24

CENTRAL ADMINISTRATIVE TRIBUNAL PRINCIPAL BENCH

O.A.No 1209/87

New Delhi: this the 19th day of April, 1999.

HON'BLE MR. S. R. ADIGE, VICE CHAIRMAN (A)

HON'BLE MRS. LAKSHMI SWAMINATHAN, MEMBER (J)

Shri R.P. Tiwari, s/o Shri Ram Sagar
Tiwari, R/o Type B-112, (Near Satyawati College),
Sector IV, Timarpur,
Delhi-07.

..... Applicant.

(By Advocate: Shri G.D. Gupta)

Versus

1. Union of India through
the Secretary to the Govt. of India,
Ministry of Agriculture,
New Delhi.
2. Delhi Milk Scheme,
West Patel Nagar,
New Delhi through its Chairman,
3. Deputy General Manager (Admin.),
Delhi Milk Scheme, West Patel
Nagar, New Delhi -08

..... Respondents.

(By Advocate: Shri K.C.D. Gangwani)

ORDER

BY HON'BLE MR. S. R. ADIGE, VICE CHAIRMAN (A).

Applicant impugns the disciplinary authority order dated 11.7.86 (Annexure-2) compulsorily retiring him from service and the appellate order dated 24.1.87 (Annexure-8) rejecting the appeal.

2. Applicant was proceeded against departmentally on the charge that while functioning as Heavy Vehicle Driver in Delhi Milk Scheme and posted on Milk distribution duty at Route No. 109 on 10.9.84 he intentionally got loaded 3 filled bottles crates containing 60 filled milk bottles over and above the quantities mentioned on the route schedule in connivance with S/Shri Lakshmi Chand and Mool Chand Tally Clerk on duty.

25

3. The Enquiry Officer held the charge as proved. Accepting the EO's findings the Disciplinary Authority imposed the punishment of compulsory retirement vide impugned order dated 11.7.86 (Annexure-A).

4. We have heard applicant's counsel Shri G. D. Gupta and respondents' counsel Shri K.C.D. Gangwani.

5. Shri Gupta has challenged the impugned order of the Disciplinary Authority as well as the appellate order on legal grounds as well as on merits.

6. The first ground taken by him is that applicant was appointed by the Chairman, DMS vide order dated 22.4.61 (Annexure-C) but has been compulsorily retired vide impugned order dated 11.7.86 by the Dy.G.M. (Admn) who is subordinate to the appointing authority and thus there has been a violation of Article 311 (1) of the Constitution as well as Rule 11 (VII) read with Rule 12(4)(a) CCS(CCA) Rules.

7. Rule 11(VII) CCS(CCA) Rules lays down that the penalty of compulsory retirement is a major penalty. Rule 12(4)(a) CCS(CCA) Rules inter alia lays down that no penalty specified in Clauses (V) to (IX) of Rule 11 shall be imposed by any authority subordinate to the appointing authority. In the present case we find that the Dy.G.M. (Admn) Delhi Milk Scheme who passed the impugned order dated 11.7.86 is clearly subordinate to the authority who appointed applicant namely the Chairman, DMS.

8. It has been contended by respondents' counsel Shri K.C.D. Gangwani that it is applicant's substantive appointment as Mate that counts and in the present case he was substantially appointed as Mate by order

2

26

dated 26.12.64 (annexure-I to reply) by orders of the OSD, and as the Dy. G.M. (Admn) was not subordinate to him, there has been no violation of rules. Neither Article 311(1) of the Constitution, nor indeed Rule 12(4)(a) CCS(CCA) Rules lays down that their provisions would be attracted only if the appointment is a substantive one. Hence this contention of respondents fails.

9. It has also been contended by respondents' counsel that by gazette notification dated 7.7.84 (annexure-IV), in regard to all posts in General Central Services Groups 'C' & 'D', the Dy. GM (Admn) has been designated as the appointing authority and also the Disciplinary Authority in regard to penalties listed under Rule 11 CCS(CCA) Rules and hence there has been no violation of Rule 12 CCS(CCA) Rules in the present case. This argument may have had some merit, if applicant had been appointed after 7.7.84, but in the present case, we have noticed he was appointed by the Chairman, DMS as far back as 22.4.61 and that also by the orders of the Chairman, DMS. Hence this contention of respondents also fails.

10. Under the circumstance, we are satisfied that the Disciplinary Authority's order dated 11.7.86 which has been passed by an authority subordinate to the one who appointed applicant on 22.4.61 viz. the Chairman, DMS is violative of Rule 12(4)(a) CCS(CCA) Rules and hence it cannot legally be sustained. This defect in the ^{disciplinary} ~~disc~~ authority's order dated 11.7.86 is not cured by the fact that the Chairman, DMS acting as appellate authority rejected the appeal vide order dated 24.1.87 because the heading

27

of Rule 12 CCS(CCA) Rules is 'Disciplinary Authorities' which means that under Rule 12 (4) (a) CCS(CCA) Rules the words 'any authority subordinate to the appointing authority, has to be read to mean any Disc. authority subordinate to the appointing authority .

11. Various other grounds have also been taken by Shri G. D. Gupta, but in our view the aforesaid ground, namely that the Disc. Authority's order dated 11.7.86 has been passed by an authority subordinate to the appointing authority, & hence is violative of Rule 12(4)(a) CCS(CCA) Rules succeeds and is itself sufficient to warrant judicial interference in the OA. We therefore do not consider it necessary to discuss the other grounds.

12. The OA therefore succeeds and is allowed. The impugned orders dated 11.7.86 and 24.1.87 are quashed and set aside. Applicant shall be deemed to have been in service w.e.f. 11.7.86. In the facts and circumstances of this particular case and having regard to the fact that applicant in his verification has stated that he was aged about 49 years in August, 1987 itself, and would be on the very verge of retirement on superannuation, if he has not retired already, we do not think we would be justified in remanding the case back to the respondents for passing of a fresh order. Applicant shall be deemed to have been in service w.e.f. 11.7.86 till the date of retirement on superannuation. This intervening period should be regulated by respondents in accordance with rules and instructions and

28

such consequential benefits as flow therefrom
including payment of ^{pay and} normal retiral dues should be
released to applicant with 4 months from the date
of receipt of a copy of this order. No costs.

Lakshmi Swaminathan
(MRS. LAKSHMI SWAMINATHAN)
MEMBER(J)

S. R. Adige
(S. R. ADIGE)
VICE CHAIRMAN (A).

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