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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O. A. NO. 2132/90

New Delhi this the 19th day of October, 1994

THE HON'BLE SHRI JUSTICE S. C. MATHUR, CHAIRMAN
THE HON'BLE SHRI P. T. THIRUVENGADAM, MEMBER (A)

Shri Pritam Singh S/O Shri Ghelu Ram,
employed as Mate in Delhi Milk
Scheme, New Delhi.
R/O 3/14, Andrews Ganj,
New Delhi - 110049.

... Applicant

By Advocate Shri S. N. Shukla

Versus

1. Union of India through
Secretary, Ministry of
Agriculture, Department of
Agriculture & Cooperation,
Krishi Bhawan, New Delhi.

2. The General Manager,
Delhi Milk Scheme,
West Patel Nagar,
New Delhi-110008.

... Respondents

None appeared for the Respondents

ORDER (ORAL)

Shri Justice S. C. Mathur -

The applicant who was employed as Mate in the Delhi Milk Scheme, New Delhi, is aggrieved by the punishment awarded to him in disciplinary proceedings.

2. The applicant was charged with loading of 40 poly packs of one litre capacity milk in excess of the quantity reflected in the route schedule in the Van which was to carry the said poly packs, in connivance with the other Van staff. The applicant submitted his reply denying the charges and alleging that the counting of poly packs was not a part of his duty. At the trial only one witness was examined,

namely, the Security Supervisor, who had detected the excess poly packs. No other evidence was produced on behalf of the Administration. The applicant was given opportunity to adduce his evidence but he did not produce any witness nor examined himself. On a consideration of the evidence brought on record the inquiry officer found the applicant guilty of the charge levelled against him. The disciplinary authority accordingly passed order dated 15.2.1988 observing therein that it was a part of duty of the applicant to see that only the scheduled quantity of poly packs were loaded in the Van. The finding is expressed in these terms :-

"....पुनः जांच प्रीतम लिंग ने अवैध
की होती क्षमोक्ति यह उनके कर्तव्य
पालन में निरुद्ध है....."

Against the order of the disciplinary authority, appeal was preferred by the applicant in which again he raised the plea that the counting of the poly packs was not a part of his duty. The appellate authority upheld the findings of fact recorded by the disciplinary authority. He has, however, interfered with the quantum of punishment, namely, compulsory retirement on ground of parity. The appellate authority noticed that the co-accused had been dealt with leniently. Accordingly, setting aside the order of compulsory retirement, the appellate authority provided reduction of his pay to the minimum of his pay scale for a period of seven years. It was further provided in the order that the applicant would not earn increment

of pay during this period of reduction and that on the expiry of this period, the reduction will not have the effect of postponing his future increments. In the penultimate paragraph, it has been provided that the period between the date of compulsory retirement and his resumption of duty will be treated as dies non.

3. The learned counsel for the applicant has challenged the order on a number of grounds. His first argument is that the misconduct did not form part of the applicant's duties and, therefore, he could not be proceeded against. This plea was raised by the applicant before the disciplinary authority which has negatived the same. The learned counsel for the applicant has not produced before us the relevant rules or orders relating to duties assigned to various persons including the applicant. Accordingly, we are unable to uphold the submission of the learned counsel.

4. The next submission of the learned counsel is that the finding that the misconduct alleged was included in the duties of the applicant is not based on evidence on record. The applicant has not placed on record a copy of the deposition made by the Security Supervisor. Accordingly, we are unable to uphold the submission of the learned counsel in this behalf.

5. The last submission of the learned counsel is that the applicant's pay and allowances could not be forfeited without giving him an opportunity of hearing,

and accordingly, the order of dies non is illegal. For this proposition he has relied upon F.R. 54 of the Civil Service Regulations. F.R. 54 provides :-

"(1) When a Government servant who has been dismissed, removed or compulsorily retired is reinstated as a result of appeal or review or would have been so reinstated but for his retirement on superannuation while under suspension or not, the authority competent to order reinstatement shall consider and make a specific order —

(a) xxx xxx

(b) whether or not the said period shall be treated as a period spent on duty.

(2) xxx xxx

(3) xxx xxx

(4) In case other than those covered by sub-rule (2) (including cases where the order of dismissal, removal or compulsory retirement from service is set aside by the appellate or reviewing authority solely on the ground of non-compliance with the requirements of clause (1) or clause (2) of Article 311 of the Constitution and no further inquiry is proposed to be held) the Government servant shall, subject to the provisions of sub-rules (5) and (7), be paid such amount (not being the whole) of the pay and allowances to which he would have been entitled, had he not been dismissed, removed or compulsorily retired or suspended prior to such dismissal, removal or compulsory retirement, as the case may be, as the competent authority may determine, after giving notice to the Government servant of the quantum proposed and after considering the representation, if any, submitted by him in that connection within such period (which in no case shall exceed sixty days from the date on which the notice has been served) as may be specified in the notice." (Emphasis supplied).

6. The effect of the order of dies non is that the entire period during which the applicant did not perform duty on account of the punishment imposed upon him is being treated as non-existent and the applicant is not being paid salary and allowances for the said period.

7. In view of the emphasised portion in clause (4) of F.R. 54, as extracted above, we are of the opinion that a notice was required to be given to the applicant before his salary and allowances were forfeited. Since the respondents are not making payment of salary and allowances to the applicant in view of the order of dies non passed by the appellate authority, we are of the opinion that the order of dies non is liable to be set aside, and a direction deserves to be issued to the respondents to pass fresh orders in respect of the period the applicant did not discharge duties on account of the order of punishment.

8. In view of the above, the application is partly allowed. The punishment imposed upon the applicant by the appellate authority is not interfered with. Only the direction contained in paragraph 6 of the appellate order is hereby quashed. The appellate authority shall pass fresh orders in accordance with law in respect of pay and allowances of the applicant for the period he remained out of duty after giving him an opportunity of hearing. This shall be done within a period of four months from the date of communication of this order. There shall be no orders as to costs.

P. T. Thiruengadam

(P. T. Thiruengadam)
Member (A)

S. C. Mathur
(S. C. Mathur)
Chairman

/as/