

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 1289/91 and 199
T.A. No. 1490/91

DATE OF DECISION 27.10.92.

Dhan Ram and Vijay Pal Singh Petitioner

Advocate for the Petitioner(s)

Versus
Union of India & Ors. Respondent

Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. Justice Ram Pal Singh, Vice Chairman (J).

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

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ? Yes.
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?

Ram Pal Singh
(RAM PAL SINGH)
VICE CHAIRMAN (J)

(19)

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI.**

REGN. NO. O.A. 1289/91.

DATE OF DECISION: 27.10.92.

Dhan Ram.

.... Applicant.

Versus

Union of India,
through the Secretary,
Department of Agriculture
and Cooperation and Ors.

.... Respondents.

REGN. NO. O.A. 1490/91.

Vijay Pal Singh.

.... Applicant.

Versus

Union of India
through the Secretary,
Department of Animal Husbandry,
and Ors.

.... Respondents.

CORAM:

THE HON'BLE MR. JUSTICE RAM PAL SINGH, VICE CHAIRMAN(J).
THE HON'BLE MR. I.P. GUPTA, MEMBER(A).

For the Applicants.

.... Shri R. Venkataramani
with Shri K.L. Bhatia,
Counsel.

For the Respondents.

.... Shri P.P. Khurana,
Counsel.

JUDGEMENT

(Delivered by Hon'ble Mr. Justice
Ram Pal Singh, Vice-Chairman(J))

This judgement shall also govern the disposal of
O.A. No. 1490/91 (Vijay Pal Singh Vs. Union of India & Ors.)
because common questions of fact and law arise in both the
cases.

2. The applicant, Dhan Ram, was at the relevant time
employed with the respondents as Heavy Vehicle Driver/Van
Checker and applicant, Shri Vijay Pal Singh, was employed as
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Transport Mate, in the office of the Delhi Milk Scheme (hereinafter referred to as 'D.M.S.'). Applicant, Dhan Ram, is a Trade Union leader and was formerly the General Secretary of the D.M.S. Employees Union.

3. Delhi Milk Scheme distributes the milk in Delhi and supplies also to the institutions including the hospitals etc.

The General Manager, Delhi Milk Scheme, decided to increase the number of milk containers to be loaded in the vehicles, which, according to the staff employed on the distribution duty, was not possible. They represented against the implementation of the new orders. On the night of 5th and 6th December, 1989, there was a lightning strike by about 300 workers, resulting in disruption of supply of milk to the public at large in Delhi. The allegations by the respondents against the applicants pertain to their role in the alleged lightning strike. In a departmental inquiry the allegations against the applicant were that:-

(i) They indulged in the acts of gross indiscipline and misconduct on the night of 5th and 6th December, 1989 in the premises of D.M.S. which is a public utility service under the Industrial Disputes Act, 1947;

(ii) They also instigated their fellow workers to desist from their normal duty and created a situation in which the work of D.M.S. was disrupted, thereby resulting in breakdown of the

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supply of milk to the consumers of Delhi in the forenoon of 6th December, 1989. This act was subversive of discipline;

- (iii) Their continued association with the D.M.S. will be prejudicial to the maintenance of supply of milk;
- (iv) They threatened and intimidated the witnesses who are likely to give evidence against them;
- (v) The misconduct and act of gross indiscipline amount to failure to maintain absolute integrity, devotion to duty, and also amounts to an act which is unbecoming of a Government servant under Rule 3 of the CCS(Conduct) Rules, 1964;
- (vi) Such conduct was an act of gross indiscipline, apart from causing hardship to the D.M.S. Consumers and bringing bad name to the institution.

4. On these allegations, the inquiry was to be held against the applicants and others by the disciplinary authority. But the disciplinary authority maintained that the circumstances of the case are such that it is not reasonably possible to hold any inquiry in the matter as provided under Rule 14 of the CCS(CCA) Rules, 1965 (hereinafter referred to as 'Rules'). This order was passed in exercise of powers vested under Rule 2(i) of Rule 10 of the Rules. A report, was submitted to the disciplinary authority, dated 11.12.1989.

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by the Security Officer Shri P.B. Gurung of the D.M.S. together with the statements of 7 employees, and this was the material which constituted the basis for the disciplinary authority to pass that order. Thereupon, the disciplinary authority proceeded to impose the penalty of removal from service upon the applicants on 11.12.1989 which was challenged by the applicants and others before the Tribunal in O.A. No. 2515/89, 2516/89 and 2517/89. A Bench of this Tribunal on 22.2.1990 issued the following directions against the respondents. Those directions are reproduced for convenience:

- (i) We hold that the exercise of the power that it was not reasonably practicable to hold the enquiry was bona fide and for relevant and germane reasons and we uphold the same. We do not, however, wish to express any opinion on the correctness of the respective versions regarding the participation or involvement of the applicants in the strike of the workers of the D.M.S. held on 5/6.12.1989.
- (ii) The applicants may prefer appeals to the competent authorities within a period of three weeks from the date of communication of this order. The appellate authority shall condone the delay, if any, in filing the appeal and hold an inquiry itself or direct that such inquiry be held in accordance with the provisions of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 on the question of the participation and instigating and inciting other workers of the D.M.S. to go on strike on 5/6.12.1989 by the applicants.

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- (iii) The appellate authorities are directed to conduct the inquiry and conclude the same as expeditiously as possible but in no event later than four months from the date of receipt of appeals preferred by the applicants and pass such orders as they deem fit.
- (iv) The applicants are directed to fully cooperate in the conduct of such an inquiry when it is initiated.
- (v) In case the applicants feel aggrieved by the decision of the appellate authority, they will be at liberty to file fresh applications in accordance with law, if so advised.
- (vi) In the interest of justice, we direct that the applicants should be paid every month an amount equal to their salary and allowances from 11.12.1989 till the proceedings are completed as directed above for their subsistence and of their families.
- (vii) The interim orders passed on 10.1.1990 on MP 82/90 in OA-2516/89 to the effect that the respondents are directed not to dispossess the applicant from the Government accommodation in his occupation subject to his payment of licence fee, etc., in accordance with the relevant rules, shall continue till the proceedings are completed as directed above.*

5. In consequence of these directions, the appellate authority on 2.5.1990 (Anx. VIII) found on due consideration of the appeal preferred by the applicants that the delinquents should be given an opportunity to vindicate their innocence

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in a regular enquiry. It therefore directed an inquiry to be held under Rule 14 of the Rules. The appellate authority also directed the report of the enquiry to be submitted to it for taking a final decision on the report. Upon this the enquiry proceeded against the delinquents. For convenience the operating part of the appellate order is reproduced, "It further directs that a regular inquiry be held by the General Manager, DMS under Rule 14 of C.C.S(CCA) Rules on the question of his participation and instigating and inciting other workers of D.M.S. to go on strike on 5/6th December, 1989, as expeditiously as possible and inquiry report be provided to the appellate authority so that final decision could be taken by the appellate authority well within a period of four months from the date of appeal preferred....."

S.V.Giri
Add. Secretary
Ministry of Agriculture
Dept. of Agri & Coopn.
Krishi Bhawan.

On 9.11.1990, the Inquiry Officer submitted his report holding that the charges levelled against the applicant are totally proved (Annex.XXIII). On 12.11.90, the applicants submitted a brief statement of defence and on 5.12.90 they sent their detailed statements to the reply to the notice to the Disciplinary authority. By order dated 11/15.4.1991 the appellate authority communicated its decision of reducing the penalty of removal from service imposed on the applicants to that of the compulsory retirement from service with eligible benefits, and at the same time concluded that the charges of instigating and

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inciting other workers of the D.M.S. to go on strike on 5/6.12.1989 have been established on the basis of the preponderance of probability. It was also held that the charge of participation in the strike has not been proved. The applicants have, therefore, challenged this impugned order in these O.A.s and have prayed for quashing the order dated 11/15.4.1991. They have also prayed for the consequential reliefs.

6. The respondents appeared on notice and submitted their counter opposing the grounds and prayer in the O.A.s. The respondents have elaborately mentioned in their counter that the penalty imposed upon the applicants in the departmental inquiry was neither harsh nor illegal; that the inquiry held was in accordance with law as directed by the Tribunal and the applicants have not been prejudiced in their inquiry. They have also denied the allegations of the applicants in the O.A.s, made against the Inquiry Officer, and the disciplinary authority. They maintained that the disciplinary authority had shown the independence in passing the judgment and was in no way affected by the circumstances alleged by the applicants in their O.A.s. The applicants filed their rejoinder to the Counter.

7. The learned counsel for the applicant Shri R. Venkataramani who appeared with Shri K.L. Bhatia,

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counsel, made elaborate submissions at the bar commenting exhaustively and placing reliance on various judgments of this Tribunal, High Courts and that of the Supreme Court. The learned counsel for the applicants has in great details attacked the entire proceeding of the inquiry against the applicants and maintained that the prejudice was caused to the applicants during the inquiry which goes to the root of the matter and vitiates the entire proceeding. The applicants also argued on merits and evidence produced during the inquiry, contending that the appellate authority acted as a Disciplinary authority abdicating its function as an appellate authority. Shri P.P.Khurana, learned counsel for the respondents, has in great detail replied and rebutted the contentions of the counsel for the applicants.

8. Shri R. Venkataramani, learned counsel for the applicants, contended that by orders of this Tribunal the appellate authority was also conferred with the power to hold a departmental inquiry. He maintained that the appellate authority exercised the powers of the disciplinary authority and hence the applicants could not get an appellate avenue to challenge the order of punishment. This, according to them has resulted in prejudice to them. He also contended that the appellate authority after exercising of the power of an appellate

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authority at the first instance sent the inquiry to be conducted by the disciplinary authority. Thus, the disciplinary authority acted as an Inquiring Officer and submitted its report to the appellate authority.

Thus appellate authority acted as a disciplinary authority.

When the appellate authority passed the impugned order, according to him, the applicants have been prejudiced because no appellate avenues does not exist for them where they may challenge the order imposing penalty upon them.

9. The appellate authority, on directions of this Tribunal, heard the appeal filed by the applicants and allowed the appeal directing that a regular enquiry be held under Rule 14 of the Rules. In consequence an enquiry was held by the Inquiry Officer who submitted his report with recommendations before the appellate authority.

When the appellate authority itself imposed the punishment it did act as a disciplinary authority and not as an appellate authority. In absence of an appellate authority, the applicants challenged the impugned order of punishment before this Tribunal, in these O. As.

It is worth noting that the appellate authority while deciding the appeal directed the inquiry report to be provided to the appellate authority so that the final decision could be taken by it well within time. This clearly shows that after the inquiry was completed, the inquiry report was submitted to the appellate authority

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who abandoned its power as an appellate authority and acting as disciplinary authority imposed a penalty of compulsory retirement upon the applicants. The contention of applicants has to be sustained. It appears that the appellate authority has acted as a disciplinary authority after accepting the report from Inquiry Officer. Thus, the impugned order passed cannot be said to have been passed by the appellate authority but by the disciplinary authority. Powers of the disciplinary authority, as provided in the Rules, are to impose penalty if it agrees with the recommendations of enquiry report. If the delinquent is aggrieved by the order of the disciplinary authority, then it can file an appeal, according to the provisions of the Rules. Thus the provision of giving a right to file an appeal, is a statutory right of a delinquent. This right, if not available to the delinquent, then it is an infringement of the statutory rules, framed under Article 309 of the Constitution of India. Thus the right of appeal is a valuable constitutional right of a delinquent, which cannot be curtailed either by a judicial order or by the appellate authority itself. If this valuable right is taken away or infringed, then this right should be provided to delinquent. The Appx Court, has laid down the law that the right of appeal is a part and parcel of the principles of Natural Justice. The law is well settled

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in the case of Union of India & Ors. Vs. Tulsi Ram Patel (AIR 1985 SC 1416). The following observations of the Apex Court are reproduced below:

"102. In this connection, it must be remembered that a government servant is not wholly without any opportunity. Rules made under the proviso to Article 309 or under Acts referable to that Article generally provide for a right of appeal except in those cases where the order of dismissal, removal or reduction in rank is passed by the President or the Governor of a State because they being the highest Constitutional functionaries, there can be no higher authority to which an appeal can lie from an order passed by one of them. Thus, where the second proviso applies, though there is no proper opportunity to a government servant to defend himself against the charges made against him are not true. This would be a sufficient compliance with the requirements of natural justice."

This observation was made by the Apex Court while dealing with the scope of an appellate avenue when the order is passed by the disciplinary authority under Article 311 (2) proviso (2)(b) of the Constitution of India but they are golden and cannot be ignored. The necessity of the government servant defending himself, according to the Apex Court, is a part of the principles of natural justice even though the appellate avenue is not available to the delinquent while he is dealt with under the said provision of the Constitution. The Apex Court, by this judgment provided ^{the delinquent} an appellate avenue because if he is not provided

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with the appellate avenue then the requirements of the principles of natural justice would be infringed. These very principles are enshrined in the case of *Maneka Gandhi* (AIR 1978 SC 597) and the *Liberty Oil Mills* (AIR 1984 SC 1271). Their Lordships of the apex court provided this appellate avenue to the government servant though it was not provided in any statutory provision. Same view was also reiterated in the case of *Satvir Singh and Ors.* 1984 (4) SCC 252. The soul of *Tulsi Ram Patel* (*supra*) has provided an appellate remedy when no such remedy has been statutorily provided or no such avenue is available to the delinquent. If the opportunity of filing an appeal against the impugned order is not provided to the delinquent then they, as citizens of the country, shall be deprived of a valuable constitutional right of appeal which is part and parcel of the principles of natural justice. We are, therefore, of the view that one appellate avenue must be provided to these applicants wherein they can challenge the procedural irregularities, infringement of their statutory rights and the denial of opportunity of cross-examining and entire proceeding etc. etc. We are, therefore, of the view that this O.A. which has been filed under Section 19 of the Administrative Tribunals Act, 1985 is premature and the appellate avenue must be provided to these applicants otherwise their valuable right of appeal

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shall remain denied to them. (32)

10. Consequently, we make the following directions to the respondents:

- (1) This O.A. is dismissed as premature.
- (2) An appellate avenue has to be provided which is higher than the authority of Shri S.B. Giri, Additional Secretary, Ministry of Agriculture, Department of Agriculture and Cooperation, Krishi Bhawan, New Delhi.
- (3) An appeal shall be filed by the applicants before an authority higher than that of Additional Secretary, within a period of one month from the date of receipt of a copy of this order, raising all those grounds which have been raised in this O.A. and this appeal, then, shall be decided by the appellate authority within a period of three months after giving the applicants an opportunity of being heard.
- (4) Any delay in filing this appeal shall stand condoned by this judgment.
- (5) If the applicants are aggrieved by the order of that appellate authority, then these applicants shall have the liberty to file fresh O.A. raising all the grounds raised in this O.A., according to law.
- (6) The interim order passed in this case shall merge with this judgment.

11. Parties to bear their own costs.

12. This O.A. stands finally disposed of with these directions.

(I.P. GUPTA) 27/10/92
MEMBER (A)

(RAM PAL SINGH)
VICE CHAIRMAN (J)