

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

21A

DA No. 2638/91

Date of decision 14.2.1997

Sh. Phool Kumar Petitioner

Sh. B.T. Kaul Advocate for the Petitioner

Vs.

U.O.I. & Ors Respondents

Shri U.S.R. Krishna Advocate for the Respondents

CORAM

Hon'ble Smt. Lakshmi Swaminathan, Member (J)

Hon'ble Shri R.K. Ahooja, Member (A)

(1) To be referred to the Reporter or not? *yes*

(2) To be circulated to all Benches of the X
Tribunal ?

Lakshmi Swaminathan
(Smt. Lakshmi Swaminathan)
Member (J)

Central Administrative Tribunal
Principal Bench



O.A. 2638/91

Subj
New Delhi this the 14th day of February, 1997

Hon'ble Mrs. Lakshmi Swaminathan, Member(J).

Hon'ble Mr. R.K. Ahooja, Member(A).

Phool Kumar,
S/o Shri Ram Sarup,
Ex-Mate, Delhi Milk Scheme,
R/o WZ 562, Naraina Village,
New Delhi-28.

...Applicant.

By Advocate Shri B.T. Kaul.

Versus

1. Union of India through
the Secretary,
Ministry of Agriculture,
Krishi Bhawan,
New Delhi.
2. The General Manager,
Delhi Milk Scheme,
West Patel Nagar,
New Delhi.

...Respondents.

By Advocate Shri V.S.R. Krishna.

O R D E R

Hon'ble Smt. Lakshmi Swaminathan, Member(J).

The applicant, who was working as Mate with the Delhi Milk Scheme (DMS), had been proceeded against in a disciplinary proceeding and he was awarded the penalty of compulsory retirement from service by order dated 1.9.1986. On a revision petition being filed by the applicant, the President has dismissed the same confirming the disciplinary authority's order imposing the penalty of compulsory retirement by order dated 27.2.1989. A review petition filed by the applicant has also been rejected by order dated 5.7.1990. The

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applicant is aggrieved by these orders.

2. The applicant has filed this application on 6.11.1991 and has submitted petition for condonation of delay of about four months, in which he has submitted that as he was very poor, he was not in a position to engage a counsel to file the application and pursue the same. The grounds given for the condonation of delay do not appear to be sufficient to condone the delay of about four months and the application is, therefore, liable to be dismissed on this ground alone.

3. However, we proceed to deal with the case on merits also. The brief facts of the case are that on 31.3.1985, the applicant along with one Shri Hardwari Lal, Heavy Vehicle Driver (HVD) and another Mate Shri Banwari Lal and daily paid Mate Shri Sant Ram were put on duty at Milk Van No. 154 for supply of milk in Route No. 33(M). The HVD had taken delivery of the quantity of milk required for distribution, from the Supervisor of the Cold Storage and deputed the two Mates to carry out the crates filled with bottles and poly packs of the milk into the Van. Before the Van left the exit gate, the Security Supervisor carried out a check of the consignment and it was found that there was certain amount of excess poly packs and loose milk at the bottom of the crates for which a recovery memo was also prepared by the Security Supervisor.

4. The main ground taken by the applicant in the application is that while the HVD and the other two Mates were let off completely, he has been singled out and served with the chargesheet dated 7.11.1985. In the memo, the applicant was charged that he was caught carrying

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20 milk filled poly packs of half litres, 4 milk filled poly packs of one litre and 2 litres loose milk at the bottom of the crates, which was found in excess quantity and, thus was attempting to pilfer the aforesaid milk consignments with a view to have pecuniary gains and which act being dishonest/ was grossly unbecoming of a Government servant in violation of Rule 3 of the CCS(Conduct) Rules, 1964.

5. A departmental inquiry was held against the applicant. The applicant relies on the findings of the Inquiry Officer in the Inquiry Officer's report dated 12.6.1986 (English translation placed on record) that the other employees were also working with the applicant who have been let cff at the time of framing charge, and that the theft of such a big quantity of milk cannot be the handiwork of a single person as that person cannot sell the material all alone afterwards. The Inquiry Officer, therefore, had stated that in his opinion the charge has been proved against the applicant 'only on proportional basis'. Shri B.T. Kaul, learned counsel for the applicant, relies on the judgement of the Supreme Court in Sengara Singh Vs. State of Punjab (1983(4) SCC 225 and submits that the respondents cannot pick and choose as to whom they would charge and let off the other persons who were also present at the time of loading the milk in the Van. He has also submitted that the charge was that the extra quantity of milk was loaded in the Van and ~~the charge was~~ that of attempting to pilfer the milk consignments with a view to have pecuniary gains. He has further submitted that this is a case of no evidence. At the most, the applicant could have been charged with an act of negligence, but he submits that the respondents have failed to prove any attempt of pilferage which is the subject matter of charge and punishment. He has also referred to the evidence recorded on behalf of the prosecution by the Inquiry Officer and submits that the extra



milk was found inside the Van, but there was no evidence that there was an attempt to steal the same. The applicant has also submitted that the Inquiry Officer had referred to the circular dated 22.9.1984. The office order dated 22.9.1984 which was later submitted by the respondents for our perusal, is also placed on record. However, the applicant relying on the office order dated 2.11.1979 has submitted that since the loading of the milk in the Van has to be done in the presence of the HVD, such a large quantity of milk cannot be loaded by any one individual and he cannot, therefore, be singled out for inquiry and punishment. He relies on the Office Order dated 3.1.1986. This Officer Order, however, has been issued in supersession of the order dated 2.11.1979 and subsequent orders. The other grounds, like not being given reasonable opportunity of defence, or to engage defence assistant or postponement of the inquiry by the Inquiry Officer when he examined Shri Mithu Lal, prosecution witness, were not seriously pressed by the learned counsel at the time of arguments.

6. The respondents have filed their reply controverting the above arguments and we have also heard the learned counsel Shri V.S.R. Krishna. The respondents have submitted that the applicant was working inside the Van for stacking the milk and according to the Office Order dated 22.9.1984, the responsibility for any excess or shortage of milk packets in the poly pack crates is that of the Mate working inside the Van. They have submitted that certain quantity of milk was found in excess of the scheduled quantity when the Van was checked by the security staff, as detailed in the charge memo. They have further submitted that since the applicant was responsible for stacking the milk, hence the chargesheet under Rule 14 of the CCS(CCA) Rules, 1965 was issued only in respect of the applicant. They have also submitted that the Inquiry Officer had conducted the inquiry in accordance with the Rules and / had cross-examined the witnesses and he ~~applicant~~ was also allowed to produce defence witnesses if he chose to do so. They have, therefore, submitted that the chargesheet

and the inquiry conducted against the applicant was in accordance with the Rules and instructions. Shri Krishna, learned counsel, has submitted that the judgement in Sengara Singh's case(supra) would not be applicable to the facts in this case ~~as the applicant~~ as the applicant and the HVD or the other Mates/employees were not placed in identical circumstances. He submits that although the milk was required to be loaded in the presence of the HVD, but the number of milk poly packs loaded in the milk crates were the responsibility of the Mate working inside the Van for stacking of milk crates, as contained in the relevant Office Order of 22.9.1984. The learned counsel has further submitted that there was sufficient evidence before the disciplinary authority and the appellate authority to find the applicant guilty of the charges and it would not be within the jurisdiction of this Tribunal to reappraise that evidence or come to an independent conclusion. In the circumstances, the learned counsel has prayed that the application may be dismissed.

7. We have considered the pleadings and the arguments of the learned counsel for both the parties and for the reasons given below, we are of the view that this application is liable to be dismissed.

8. The applicant has relied on the Office Order dated 3.1.1986 to support his contention that the entire Van staff, i.e. the HVD and the Mates are jointly responsible for any excess or short loading of Bottles/Poly Packs/Cans and loose milk, if any, found detected in the Van on checking. His further contention was that loading in the Van has to be done in the presence of HVD, who was, therefore, responsible and the fact that the latter had not even been charge-sheeted shows that the applicant had been victimised. This argument cannot be accepted in the facts of this case as the inquiry held against the applicant was of an incident that occurred on 31.3.1985, i.e. prior to the date of the issue of the office order dated 3.1.1986. The relevant office order is dated 22.9.1984 which provides, inter alia, that -

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"(1) The HVD on duty on the day on poly pack van will supervise the loading of Van in his presence.

(3) The responsibility for any excess or shortage of packets in the poly pack crate will be of the Mate working inside the Van.

It has not been denied by the applicant that he was the Mate working inside the Van on 31.3.1985 when on checking by the security staff some quantity of milk was found in excess as detailed in the chargesheet. Therefore, in the facts of this case, the applicant cannot deny the responsibility with respect to the excess milk, including poly packs which was found inside the Van. The Inquiry Officer in his report has also come to the conclusion that Point No.2, namely, whether the applicant/was working inside the Van, can be held responsible for the irregularity, goes against the applicant. We also find that the applicant has not denied that the extra milk was, in fact, detected by the officers while on security check inside the Van. Based on the evidence before him, the Inquiry Officer has further noted that the witnesses before him had stated that the excess poly packs of the milk were kept under the crates or between the other crates and he has stated that it was, therefore, clear that the excess milk was deliberately loaded with the intention to steal the same. The disciplinary authority in his order dated 1.9.1986 has stated as follows:

"...As per orders existing at the time of occurrence of the aforesaid incident, the mate working inside is responsible for excess quantity of milk. In this case since he was working inside the Van, therefore, it was his responsibility for loading the quantity correctly as per the route schedule. In case of excess crates HVD would have been responsible.

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The undersigned agrees with the findings of E.O. to that extent".

The conclusion of the disciplinary authority agreeing with the Inquiry Officer with regard to his conclusion that the applicant was working actually inside the Van and, therefore, he was responsible as per the relevant instructions dated 22.9.1984 cannot, therefore, be held to be arbitrary or illegal which justifies any interference in the matter.

9. The disciplinary authority has also given his reasons for disagreeing with the observations of the Inquiry Officer in the last paragraph of the report based on the relevant instructions. This cannot also be faulted as the same has taken into account the facts of the case read with the relevant office order dated 22.9.1984 which fixes responsibility for any excess or shortage of packets in the poly pack crate on the Mate working inside the Van. Taking into account the facts, therefore, the disciplinary authority had passed the impugned order of compulsory retirement from service. It is settled law that this Tribunal cannot sit to reappraise the evidence adduced before the Inquiry Officer or to substitute its own conclusion to that of the disciplinary authority in such matters. The disciplinary authority has given a reasoned order based on the facts and evidence that had been brought on record. This is not a case of no evidence. We are, therefore, of the view that there is no ground justifying the quashing of the disciplinary authority's order nor do we find any infirmity in the orders passed by the Revision/Review authorities to interfere in the matter. We have also considered the other arguments advanced by the learned counsel for the applicant but find no merit in the same. In the circumstances, the O.A. is dismissed. No order as to costs.

R.K. Ahuja
(R.K. Ahuja)
Member(A)

'SRD'

Lakshmi Swaminathan
(Smt. Lakshmi Swaminathan)
Member(J)