

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

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O.A.No 44/1993 with OA 45/1993

Date of Decision 21.7.2003

Sh. Harpal Singh (OA 44/93) Applicant
Sh. Charan Singh (45/93)

Shri S.M. Garg ... Advocate for the Applicant

VERSUS

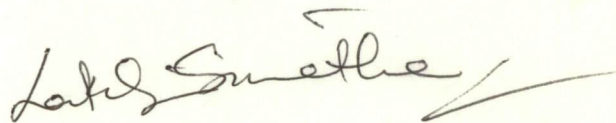
UOI & Ors ... Respondents

Sh. B. K. Berera Advocates for the Respondents

Coram:-

Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman (J)
Hon'ble Shri S.K. Naik, Member (A)

1. To be referred to the Reporter or not ? Yes
2. Whether it needs to be circulated to other Benches of the Tribunal? No



(Smt. Lakshmi Swaminathan)
Vice Chairman (J)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA No. 44/1993
with
OA 45/1993

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New Delhi this the 21st day of July, 2003

Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman (J)
Hon'ble Shri S.K.Naik, Member (A)

OA 44/1993

Shri Harpal Singh
S/O Shri Baljeet Singh,
R/O B-90, Zeevan Park,
Uttam Nagar, New Delhi-59
Last employed as Mate in
Delhi Milk Scheme, New Delhi.

..Applicant

(By Advocate Shri S.M.Garg)

VERSUS

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

2. The General Manager,
Delhi Milk Scheme,
East Patel Nagar, New Delhi.

..Respondents

(By Advocate Shri B.K.Berera)

OA 45/1993

Shri Charan Singh,
S/ O Shri Beg Ram,
R/O Vill.& P.O.Tateri,
Tehsil, Baghpat, Distt.Meerut(UP)
Last employed as Mate in
Delhi Milk Scheme, New Delhi.

..Applicant

(By Advocate Shri S.M.Garg)

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1. Union of India, through its
Secretary,
Ministry of Agriculture,
Deptt.of Agriculture and Coop.,
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..Respondents

(By Advocate Shri B.K.Berera)

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O R D E R (ORAL)

(Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman (J))

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Heard both the learned counsel for the parties in OA 44/1993 and OA 45/1993.

2. The aforesaid Original Applications (OA 44/1993 and OA 45/1993) were disposed of by Tribunal's order dated 4.5.1999. By that order, the OAs were dismissed as it was found that there was no legal infirmity either in the disciplinary enquiry proceedings or in the findings recorded by the enquiry officer which was accepted by the disciplinary authority as well as the appellate authority. The disciplinary authority, by his order dated 3.9.1990, held that there were sufficient reasons to impose a penalty of compulsory retirement on the applicants in the aforesaid two applications, which punishment order was upheld by the appellate authority by order dated 2.12.1991. Both the OAs have been disposed ^{of} by a common order dated 4.5.1999, as it was observed that they were arising out of the same cause of action and were dealt with together. Against the aforesaid order of the Tribunal, the applicants in the aforesaid two OAs had filed Writ Petition 545/2001 before the Hon'ble Delhi High Court. The High Court by its order dated 5.3.2002 has remitted the case to the Tribunal for fresh consideration, making the following observations:-

"One of the questions raised before the Tribunal was confessional statement of Krishan Pal. According to the petitioner effect of such confession in the absence of charge of connivance was to receive due consideration at the hands of the inquiry officer. It appears that the Tribunal did not appreciate the importance of this question despite the fact that submission was noted in para 9 of the judgement. We are of the opinion that the

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matter should be considered afresh. The order is set aside and the matter is remitted to the Tribunal for fresh consideration".

(31)

(emphasis added)

3. In pursuance of the aforesaid order of the Hon'ble Delhi High Court, we have heard Shri S.M.Garg, learned counsel for the applicants at length on the issue specifically referred to in the High Court's order. We have also seen Paragraph 9 of the aforesaid Tribunal's order which reads as follows:-

The learned counsel for the applicant has sought to make much capital out of the confessional statement allegedly made by one of the co-accused, namely, Shri Krishan Pal, Mate that he had committed the alleged act of misconduct. Learned counsel would argue that in view of the above fact the other co-accused were entitled to be exonerated. We are afraid this contention cannot be accepted, for the simple reason that the applicants in these OAs were admittedly part of the Crew and even if Krishan Pal, Mate might have been the main culprit the applicants could not have been held to be innocent spectators. There is not even a faint suggestion that the applicants had taken any steps to prevent the act being committed by the said Krishan Pal, Mate".

4. During the hearing, Shri S.M.Garg, learned counsel for the applicants has submitted that the confessional statement of Shri Krishan Pal, Mate referred to in the aforesaid order of the Hon'ble Delhi High Court and the Tribunal has not been placed on record in the OAs. He has submitted that the applicants have received the copy of the Enquiry Officer's report dated 11.7.1990 and they were given ample opportunities to make representation on it. They have indeed made representations on the Enquiry Officer's report but have not taken any point on the aforesaid confessional statement made by one of the co-accused i.e. Shri Krishan

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Pal, Mate that he had committed the alleged act of misconduct. His main contention is that this fact was taken by the applicants in their appeal dated 18.9.1990/20.9.1990 submitted to the appellate authority. He has contended that the appellate authority, in his order dated 2.12.1991, has not considered the issue regarding confessional statement and in what manner it would dilute the guilt of the applicants who were co-accused in the Departmental proceedings. It is relevant to note that in the appeal submitted by the applicants on 18.9.1990/20.9.1990 they have stated that neither the disciplinary authority nor the enquiry officer has taken into consideration the confessional statement of Shri Krishan Pal, Mate who was stated to be working inside the van and was responsible for any irregularity in the loading of the crates, as per the relevant orders issued by the respondents.

5. If, as submitted by Shri S.M.Garg, learned counsel, the applicants themselves had never taken the issue of the confessional statement made by Shri Krishan Pal, Mate either before the inquiry officer or the disciplinary authority in the first instance, we see no merit in his submissions that those authorities had not dealt with this issue. Admittedly, even as per the version of the applicants, as submitted by their learned counsel, this issue was taken for the first time before the appellate authority and not earlier. In Paras 4.17 and 4.18 of the OA similar contentions have been raised but in view of the submissions

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of the learned counsel for the applicants himself, we are not persuaded to come to the conclusion that the orders of the inquiry officer or the disciplinary authority in this case on this ground are illegal or erroneous. In fact we may say that this point has been taken by the applicants apparently as an after thought only at the time of filing of the appeals before the appellate authority. That issue had been dealt with by the Tribunal in Para 9 of the earlier order dated 4.5.1999 quoted in para 3 above. In this regard it would also be relevant to quote a portion of the disciplinary authority's order dated 3.9.1990 which reads as follows:-

"And whereas, the case was entrusted to Shri R.L.Luthra to conduct departmental enquiry in this case who has submitted his report bearing No. 32-3/89 EO (L) dated 11.7.1990 wherein the charge against Shri Charan Singh, Mate has been proved. The enquiry report was sent to Shri Charan Singh, directing him to submit his reply/representation if any, within 15 days of the receipt of memo. of even number dated 24.7.1990 which he has duly acknowledged. The undersigned has carefully considered the joint representation dated 4.7.1990 submitted by S/Shri Harpal Singh and Charan Singh, Mates as well as the enquiry report, relevant records and circumstances of the case and agrees with the findings of the Enquiry Officer. In view of the fact that 16 poly pack milk of 1 litre were found hidden between the crates and 90 poly pack milk of 1 litre capacity were also found excess in 9 crates of poly pack when checked by the security staff from the aforesaid route by way of unloading the van at the unloading dock. The entire van staff could not be absolved of their responsibility and connivance in this nefarious activity. He is thus found guilty of the charge. The gravity of the offence is so serious as to render the integrity of the official doubtful and his further retention in Govt. service as unjustified".

(Emphasis added)

6. From the above order of the disciplinary authority dated 3.9.1990, even though no specific reference has been

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made to the confessional statement made by Shri Krishan Pal, Mate, who was one of the co-accused in the misconduct, as the applicants themselves have admittedly not made any reference to this point in their joint representation dated 4.7.1990, the disciplinary authority cannot be faulted as having not applied his mind to the relevant facts and circumstances of the case. He has clearly come to the conclusion that the entire staff could not be absolved of their responsibility and connivance in this nefarious activity. This reasoning has been upheld by the appellate authority who has stated that he does not consider it a fit case for interference with the findings of the disciplinary authority. The respondents in their reply affidavit filed to the OAs dated 27.4.1993 have referred to the Office Order dated 3.1.1986, under which they have submitted that the entire van staff shall be 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".

7. During the hearing, Shri B.K.Berera, learned counsel has submitted that the applicants have merely harped upon the confessional statement made by Shri Krishan Pal, Mate dated 5.10.1988, whereas the same person had later on re-tracked the statement on 10.6.1989, when the inquiry proceedings were still pending which have been initiated on 9.1.1989. However, he has submitted that the respondents have themselves not brought it on record before the Tribunal when the OAs were pending that such a statement had been made by Shri Krishan Pal, Mate, retracting his earlier

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confessional statement to the Administrative Officer of the Department when the Departmental proceedings were pending. He has submitted copies of the confessional statement as well as the re-traction statement of Shri Krishan Pal, Mate with copies to the learned counsel for the applicants (copies placed on record). Learned counsel for the respondents has also submitted a copy of the joint-representation submitted by the applicants to the inquiry officer after receipt of the copy of the inquiry Officer's report, in which they have not made any reference at all to the confessional statement made by Shri Krishan Pal, Mate. In the circumstances of the case, Shri B.K.Berera, learned counsel has submitted that as the applicants have nowhere referred to the confessional statement made by Shri Krishan Pal, Mate in their representation to the inquiry officer or the disciplinary authority, no illegality or infirmity has been committed by the disciplinary authority and therefore, the OAs may be dismissed.

8. We have carefully considered the pleadings and the submissions made by the learned counsel for the parties with particular reference to the order of the Hon'ble Delhi High Court dated 5.3.2002.

9. As mentioned above, during the hearing, learned counsel for the applicants has fairly submitted that the applicants had never raised the question regarding the confessional statement made by Shri Krishan Pal, Mate either before the inquiry officer or the disciplinary

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authority and it was only for the first time that they raised it in their appeals dated 18.9.1990/20.9.1990. We have carefully read and re-read the Hon'ble Delhi High Court's order dated 5.3.2002. The Hon'ble High Court has observed that "according to the petitioner effect of such a confession, in the absence of a charge of connivance was to receive due consideration at the hands of the inquiry officer. It was further observed that it appears that the Tribunal did not appreciate the importance of this question, despite the fact that the submission was noted in para 9 of the judgement. Accordingly, the matter was remitted to the Tribunal for fresh consideration. It was in these circumstances that the Hon'ble High Court was of the opinion that the matter should be considered afresh by the Tribunal which we have done.

10. From the above facts and circumstances of the case, it cannot be held at this stage that either the inquiry officer or the disciplinary authority has not applied his mind and considered the facts and records of the case pertaining to the confessional statement of Krishan Pal, Mate as the same was not brought to their notice, in accordance with the relevant provisions of law, rules and instructions. In this view of the matter the contention of Shri S.M.Garg, learned counsel for the applicants that the matter should be further remitted to the inquiry officer or the disciplinary authority to consider the confessional statement of Shri Krishan Pal, Mate would not either appear to be reasonable or warranted as the applicants themselves

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have not cared to raise this point at the relevant time before these authorities.

11. In view of the submissions of the learned counsel for the applicants himself that at no point the confessional statement was ever raised before the Inquiry Officer or the disciplinary authority, after full consideration of the matter afresh as above, the documents on record and the settled law of judicial review in such matters held in a catena of judgements by the Hon'ble Supreme Court (See for example UOI Vs. T.R.Verma (AIR 1957 SC 882), UOI Vs. Parma Nanda (AIR 1989 SC 1185), Managing Director, ECIL Vs. B.Karunakar and Ors (JT 1993(6)SC1), Govt.of Tamil Nadu Vs. A.Rajapandian (AIR 1995 SC 561) and State Bank of Patiala Vs. S.K.Sharma (JT 1996(3) SC 722), there appears to be no justification to interfere in the matter. The question, remains whether as the applicants had raised the issue in the appeal submitted by them before the appellate authority, the matter should be remitted to the appellate authority at this stage, as contended by the learned counsel for the applicants. Having regard to the order of the Hon'ble Delhi High Court dated 5.3.2002 which was for consideration of this issue by the inquiry officer, we do not find that it would be necessary to do so in the facts of the present case. We say so because the applicants have been given ample opportunities to put-forward their case and the principles of natural justice have been complied with by the respondents. Even after admittedly, a copy of the inquiry officer's report was given to them and they had filed a

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joint representation to the disciplinary authority they had not taken this issue at any time. In the circumstances of the case, we are also unable to agree with the contentions of Shri S.M.Garg, learned counsel that the applicants were aware of the confessional statement made by Shri Krishan Pal, Mate dated 5.10.1988 only at the time when they filed the appeals dated 18.9.1990/20.9.1990 but at the same time, they were not aware that he had re-tracked from his earlier statement on 10.6.1989. He has also not stated how at the later stage the applicants became aware of the confessional statement. In the totality of the facts and circumstances of the case, we find no good grounds to allow the OAs.

12. Therefore, in terms of the Hon'ble Delhi High Court order dated 5.3.2002, we see no good ground to further remit the matter to the inquiry officer to consider the aforesaid issue, which was admittedly never raised before him or the disciplinary authority at the relevant period. Therefore, after re-considering the facts and circumstances of the case and keeping in view the aforesaid orders of the Hon'ble Delhi High Court, we see no merit in these applications. The OAs are accordingly dismissed. No order as to costs.

13. Let a copy of this order be kept in OA 45/1993.

S.K. Naik
(S.K.Naik)
Member (A)

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Lakshmi Swaminathan
(Smt.Lakshmi Swaminathan)
Vice Chairman (J)