

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

O.A. No.980/2016

New Delhi this the 16th day of March, 2016

**HON'BLE MR. JUSTICE M.S. SULLAR, MEMBER (J)
HON'BLE MR. K.N. SHRIVASTAVA, MEMBER (A)**

Sh. Holi Singh,
Aged about 49 years
Mate, Delhi Milk Scheme (ID No. 13268)
S/o, Sh. Ram Singh,
R/o. A-159, Karampura,
New Delhi-110015.Applicant

(Argued by: Ms. Nisha Priya Bhatia, Advocate)

Versus

Union of India,
through

1. Secretary,
Ministry of Agriculture,
Department of Animal Husbandry
Dairying and Fisheries,
Krishi Bhawan
Rajpath Road Area,
Central Secretariat,
New Delhi-110001.

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

ORDER(ORAL)

Justice Mehinder Singh Sullar, Member (J)

Tersely, the facts which need a necessary mention for a limited purpose for deciding the core controversy of maintainability of this Original Application (OA) at this preliminary stage of enquiry and emanating from record is that applicant, Holi Singh was posted as a Mate in Delhi Milk Scheme Dispensary. According to respondents, he has

been unauthorizedly absenting himself from his place of duty since 22.03.2013. Consequently, impugned Memorandum along with Article of Charge was served to him which, in substance, is as under:-

"ANNEXURE-I"

STATEMENT OF ARTICLE OF CHARGE FRAMED AGAINST SHRI HOLI SINGH S/O SHRI RAM SINGH, MATE, DELHI MILK SCHEME

That the said Shri Holi Singh while functioning as Mater in Delhi Milk Scheme and posted in the DMS Dispensary has been unauthorizedly absenting himself from his place of duty since 22.03.2013. However, as per the biometric attendance for the period from March, 2013 to June, 2014 except for some days he had marked his attendance and he has not marked his attendance during the whole period except for two days in the month of July, 2014 to January, 2016. It is further alleged that he has manhandled and used unparliamentarily language with Shri Prem Singh, Compounder, DMS Dispensary.

He is thus charged of remaining unauthorizedly absenting from his place of duty w.e.f. 22.03.2013 and manhandled and used unparliamentarily language with Shri Prem Singh, Compounder which act of a govt. servant is subversive to office discipline and highly unbecoming of a Govt. servant and in contravention of Rule3 of CCS (Conduct) Rules, 1964.

"ANNEXURE-II"

STATEMENT OF IMPUTATION OF MISCONDUCT OR MISBEHAVIOUR ON THE BASIS OF WHICH ARTICLE OF CHARGE HAS BEEN FRAMED AGAINST SHRI HOLI SINGH S/O SHRI RAM SINGH, MATE DELHI MILK SCHEME

Shri Prem Singh, Compounder vide his letter dated 16.05.2013 and 22.05.2013 has informed that after marking his attendance at Time Office Machine, instead of reporting to his place of duty Shri Holi Singh, Mate somewhere else. If he is asked to be present on his duty, he threatens that "I will do as I wish, approach the court, not

concerned about whether they are sending his attendance or not, I will claim attendance on the basis of marking attendance on biometric machine etc. etc. The Incharge dispensary vide his note dated 13.08.2013 has informed that Shri Holi Singh was unauthroizedly absenting himself from duty since 22.02.2013. However, as per the biometric attendance for the period from March, 2013 to June, 2014 except for some days, he had marked his attendance and he has not marked his attendance during the whole period except for two days in the month July, 2014 to January, 2016. Incharge dispensary has observed on all the attendance sheets that Shri Holi Singh is absenting himself from his duties in dispensary. Shri Prem Singh, Compounder has also informed vide his letter dated 25.09.2013 that Shri Holi Singh, Mate has manhandled and used unparliamentarily language with him when he asked him that he is not reporting for duty, how his attendance could be sent. At that time Shri Kundan Singh, Halwai and Shri Rajender Kumar, Mate were also present there.

He is thus charged of remaining unauthorizedly absenting from his place of duty w.e.f. 22.03.2013 and manhandled and used unparliamentarily language with Shri Prem Singh, Compounder which act of a govt. servant is subversive to office discipline and highly unbecoming of a Govt. servant and in contravention of Rule3 of CCS (Conduct) Rules, 1964".

2. Instead of filing the reply to the charge-sheet and participating in the enquiry proceedings, the applicant has straightaway jumped to file the instant OA to challenge the impugned charge-sheet itself.

3. After hearing the learned counsel for the applicant, going through the record with her valuable help and considering the entire matter, to our mind, no ground to entertain this OA is made out at this stage.

4. Ex-facie, the arguments of the learned counsel that the impugned Memorandum is vindictive, revengeful

reaction of the respondents as the applicant has filed three OAs before the Tribunal and the absence of the applicant was not willful, are not at all tenable at this stage.

5. As to whether the indicated absence of the applicant is willful or otherwise and whether the initiation of departmental proceedings against the applicant is a result of vindictiveness and revengeful reaction of the respondents, are the matters to be decided after production of the evidence on record by the parties during the course of the enquiry proceedings.

6. Seequally, the question of non-payment of salary to the applicant by the respondents cannot at all be decided by this Bench at this stage in the absence of any evidence on record. The matter has to be decided by the competent authority at the first instance. Similarly, the pendency of other three OAs filed by the applicant, *ipso facto*, is not a cogent ground to directly entertain this OA.

7. Hence, all the arguments put forth by learned counsel for the applicant as well as those raised by the applicant in the present OA, would be the subject matter of disciplinary proceedings and cannot be decided without any evidence at this stage by the Tribunal. Thus, we are of the considered view that no ground, much less any cogent ground, to entertain this OA without availing the alternate remedies in the Department by the applicant, is made out as contemplated under Section 20 of the Administrative Tribunals Act, 1985.

8. In the light of the aforesaid reasons and without commenting further anything on merits, lest it may prejudice the case of either side in the main enquiry, the OA is hereby dismissed as premature.

Needless to mention that nothing observed herein above, would reflect in any manner on the merits of the case during the course of enquiry as the same has been so recorded for a limited purpose of deciding the present Original Application at this premature stage. No costs.

(K.N. SHRIVASTAVA)
MEMBER (A)

(JUSTICE M.S. SULLAR)
MEMBER (J)

Rakesh