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SURENDER KUMAR

v.

UNION OF INDIA AND ORS.  
(Civil Appeal No. 3811 of 2005)

OCTOBER 21, 2009

B

**[V.S. SIRPURKAR AND DEEPAK VERMA, JJ.]**

C

*Service Law: Compulsory retirement – Delinquent officer, Assistant Supervisor in Military Farm – Material (Soda-bi-carbonate) entrusted to him for feeding the animals – Delinquent officer instead of feeding the material to the animals, stored it in a room exclusively in his possession – Three animals died as they were not fed with the said material – Order of compulsory retirement – Held: The delinquent*

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*officer failed to give explanation as to why huge quantity of 320 Kg. of Soda-bi-carbonate was kept in the premises which was exclusively in his possession – He was thus guilty of misappropriating the material and jeopardizing the health of animals – Punishment of compulsory retirement was not*

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*harsh considering the serious misconduct.*

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**Appellant was working as an Assistant Supervisor in Military Farm. He was served with chargesheet wherein it was alleged that he had misappropriated about 320 Kg. of Soda-bi-carbonate; that he had failed to feed the animals in his charge with the said Soda-bi-carbonate as a result of which he jeopardized the health of the animals and that he willfully disobeyed the lawful orders of his superior officer. After departmental inquiry, he was awarded the punishment of compulsory retirement.**

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**Appellate Authority, CAT and High Court upheld the order of compulsory retirement. Hence the present appeal.**

**Dismissing the appeal, the Court**

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**HELD: 1.** It is true that there is a factual error in the High Court's judgment inasmuch as the material was not found in the quarter of appellant but in the place of which he alone was in-charge. It is clear from the record that the concerned officer took this material on day-to-day basis to feed to the animals in the military farm and instead of feeding the material to the animals, he stored it in the UPI room which was exclusively in his possession and under his lock and key. This would certainly amount to misappropriation as the said material was meant for the consumption of the animals on the military farm on day-to-day basis and the animals were not given the said material for their consumption. There could be no explanation on the part of the delinquent officer why the huge quantity of 320 Kg. of Soda-bi-carbonate was kept in the premises which was exclusively in his possession. [Para 2] [315-B-E]

**1.2.** Soda-bi-carbonate was meant for the animals and those animals suffered because of the fact that the Soda-bi-carbonate was not fed to them and 3 animals are reported to have died. Hence the charge No. 2 also stood fully proved. There can be no dispute about third charge also which was rightly held established. If that is so, the punishment of compulsory retirement cannot be termed as "harsh" considering the serious misconduct. The departmental inquiry was conducted keeping in view the norms of the natural justice and the fair play. There is nothing on record to suggest that the appellant was refused any opportunity to represent himself effectively before the Inquiry Officer or the Appellate Authority. In fact the only scope in such cases is to examine the manner in which the departmental enquiry is conducted. [Para 3] [315-F-H;316-A-B]

A From the Judgment & Order dated 3.3.2004 of the High Court of Judicature at Bombay in Writ Petition No. 7570 of 2003.

P.N. Misra, Yash Pal Dhingra for the Appellant.

B Indira Jaisingh, ASG, Naresh Kaushik, Ashok K. Srivastava, Anil Katiyar for the Respondents.

The Judgment of the Court was delivered by

C **V.S. SIRPURKAR, J.** 1. This appeal is at the instance of an employee who was working as Assistant Supervisor, Military Farm. He was served with chargesheet wherein it was alleged firstly that he had misappropriated about 320 Kg. of Soda-bi-carbonate; secondly, that he had failed to feed the animals in his charge with the said Soda-bi-carbonate as a result of which he had jeopardized the health of the animals and thirdly, that he had willfully disobeyed the lawful orders of his superior officer. The Officer In-charge ordered him to hand over all the charge of cattle yard section to Mr. Birbal Sharma which he failed to do. Regular departmental inquiry was conducted wherein the delinquent officer was given all the opportunities to defend himself as also all the necessary documents were supplied to him and after hearing him in full, he was found guilty on all the three counts. He was awarded the punishment of compulsory retirement. An appeal was filed by the delinquent officer against the said penalty which was dismissed. Hence the delinquent officer moved the Central Administrative Tribunal. The Central Administrative Tribunal also agreed with the findings as also the punishment awarded by the department. Further a writ petition was filed before the Bombay High Court.  
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G However that writ petition was also dismissed.

2. Mr. P.N. Misra, learned senior counsel appearing on behalf of the delinquent officer firstly urged that there is some factual mistake in the judgment of the High Court inasmuch as it is mentioned that the aforementioned 320 Kg. of Soda-bi-  
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carbonate was found in his "quarter" whereas in fact the said material was not found in his quarter but was found in the UPI room. We have seen the orders of the High Court as well as the authorities below. It is true that there is a factual error in the High Court's judgment inasmuch as it is mentioned that the aforementioned material was found in his quarter. It is also true that the material was not found in his quarter but in the place of which he alone was In-charge. Learned counsel further argued that there was no question of any mis-appropriation inasmuch as the said material was actually not found in his quarter. Therefore, it could not be said that he misappropriated the material. It is clear from the record that the concerned officer took this material on day-today basis to feed to the animals on the military farm and instead of feeding the material to the animals, he stored it in the UPI room which was exclusively in his possession and under his lock and key as per the evidence. This would certainly amount to misappropriation as the said material was meant for the consumption of the animals on the military farm on day-today basis and the animals were not given the said material for their consumption. There could be no explanation on the part of the delinquent officer why the huge quantity of 320 Kg. of Soda-bi-carbonate was kept in the premises which was exclusively in his possession. Therefore, we are not impressed with the contention raised that there was no misappropriation.

3. Learned counsel further contended that it may amount to negligence on the part of the appellánt and therefore the punishment of compulsory retirement would be harsh punishment. Soda-bi-carbonate was meant for the poor animals and those animals suffered because of the fact that the Soda-bi-carbonate was not fed to them and 3 animals are reported to have died. Hence the charge No. 2 also stood fully proved. There can be no dispute about third charge also which was rightly held established. If that is so the punishment of compulsory retirement cannot be termed as "harsh" considering the serious misconduct. We are fully convinced that the

- A departmental inquiry was conducted keeping in view the norms of the natural justice and the fair play. There is nothing on record to suggest that the appellant herein was refused any opportunity to represent himself effectively before the Inquiry Officer or the Appellate Authority. In fact the only scope in such cases is to examine the manner in which the departmental enquiry is conducted. We are satisfied with the enquiry in this case.

We do not find any merit in this appeal, which is accordingly dismissed.

C D.G.

Appeal dismissed.