

Akhtari Khatun's case (supra), the appellant was claiming special family pension for the reason that her husband died because of injury attributable or aggravated by military service.

(20) In view of the judgment of Hon'ble Supreme Court in Madan Singh Shekhawat's case (*supra*), Balbir Singh's case (*supra*) and that of Full Bench judgment of this court in Khushbhash Singh's case (*supra*), we find that the injuries suffered by the petitioner when on casual leave entitles the petitioner for a disability pension as the injury would be deemed to have been attributed to military service. Consequently, the writ petition is allowed.

(21) The petitioner shall be entitled to arrears for a period of 3 years prior to filing of original application before the Tribunal in terms of earlier judgment in CWP No.7277 of 2013 titled as '*Umed Singh versus Union of India and others*', decided on 14.05.2014.

(22) The order passed by the Tribunal is set aside while allowing the writ petition, the respondents are directed to pay arrears of pension within three months from today.

V. Suri

Before K. Kannan, J

M/S PAL FILLING STATION — *Petitioner*

versus

UNION OF INDIA AND OTHERS — *Respondents*

CWP No.5334 of 2014

December 4, 2014

Constitution of India, 1950 — Art. 226 — Marketing Discipline Guidelines — Para 5.1.2 and 8.2 – Petitioner's grievance is that guidelines are vague and do not admit of proper examination of a complaint where there is alleged short delivery of products and where a "sealing wire" is broken — On same day 2 reports prepared during inspection — First report recorded that there were no error noticed — Inspector returned again and noticed that seals affixed on the inner part of totaliser are broken- the Sales Officer prepared second report that totaliser seal on the MS unit had been found broken — Impugned Clauses not liable to be struck down but cancellation made was erroneous — Impugned order quashed — Petition allowed.

Held, that understandably, the strict action for cancellation is only on account of the fact that the sealing wire lies embedded within the steel casing and it cannot be broken easily unless deliberately done. When a party was pleading for an exceptional situation of the water seepage and the fact that it was already rusted, the decision of the authority could not have been made without reference to a scientific explanation offered through a technical person well versed in metrology. The impugned order makes no reference at all to the report of the Assistant Controller of the Legal Metrology (Annexure P22). The case has been disposed of against the petitioner merely making reference to the critical irregularity pointed out in 8.2 that the seal of the metering unit was found tampered. I will not find any reason to quash the clause, for; there is nothing inherently wrong about it. It is only a wrong reading of the clause that has resulted in the decision taken by the authority.

(Para 4)

Further held, that by this clause, I would only understand that the burden of proof is placed on the person who holds custody of the facilities to explain as to how the breakage had taken place. Such a loaded presumption against a dealer is again appropriate and I would find nothing wrong about such a clause. It is here that the authority failed to examine an explanation given by the dealer that in the first inspection made on the same day, no mistake was seen. At the second time, the checking staff opened the steel casing and seeing the seal to be rusted, pulled the wire to test its integrity, when the seal got broken. It is probalized by the fact that the Assistant Controller of the Department of Metrology also gave a report that it did not seem to be deliberately broken and that the breakage must have resulted only due to natural causes. If there was any examination of this report or when there was even a response to the petitioner's defence to a show cause notice, I would have the satisfaction that the authority took note of all the circumstances and passed the orders. I find that the impugned order has been passed without examining the defence and the vital support which he was trying to secure through a technical assessment as well.

(Para 5)

Anil Malhotra, Advocate, *for the petitioner.*

Brijeshwar Singh Kanwar, Advocate,
for respondent No.1-Union of India.

Raman Sharma, Advocate, for respondents 2 and 3.

K.KANNAN, J.

(1) The petitioner, who is a proprietor of M/s Pal Singh Filling Station and dealer of petroleum products, is aggrieved at the cancellation of licence on the application of Para 5.1.2 and 8.2 of the Marketing Discipline Guidelines. The petitioner's grievance is that the guidelines are vague and do not admit of a proper examination of a complaint where there is an issue of alleged short delivery of products and where a "sealing wire" is broken. According to the petitioner, he has lost out his dealership which he held for more than 25 years in having been issued with the letter of intent originally on 27.02.1985 and having continued the business without any complaint on an untenable ground. The examination of the provisions and the facts giving rise to the cancellation would therefore require to be seen.

(2) After the letter of intent was issued on 27.02.1985, the petrol pump was started for a period of 15 years on 25.03.1987 and renewed again w.e.f. 25.03.2002. During all this period, there has been not a single incident of any tampering with the meter or illegal actions after all checking and inspections. On 09.07.2013, one Mr. Achint Bhavasar, Deputy Manager Engineering of the office of the 3rd respondent inspected the outlet and prepared a report and recorded the fact that there were no error noticed. The Inspector returned again, he opened the locked portion of three dispensing units to check the seals affixed on the inner part of the totaliser and assembly units. The seals were intact but when Mr. Bhavasar pulled it with considerable force, it broke. After breaking the wire, Mr. Bhavasar telephonically contacted the Sales Officer and Assistant Territory Manager. The Sales Officer prepared a report that the totaliser seal on the MS Unit had been found broken. He also observed that the diesel (HSD) assembly seals were very loose and they have to be redone. A second report was prepared therefore on the same day, namely, on 09.07.2013, where the following was recorded:-

“(1) W&M Z line MS (Sr. No.KRLNT2986) totalizer seal found broken.

(2) HSD units assembly seals (W&M) very loose.”

No variation of stocks of MS or HSD in the underground tanks were found. On the other hand, the daily sale of petrol was only about 300 litres and there was not even a scope for any manipulation. Upon

using a 5 litre measuring check on 09.07.2013, the Sales Officer did not find any shortage of petroleum products. The Sales Officer also took sample of petrol and diesel for sending them to BPCL Laboratory for checking and testing. Normally, the lab tests would indicate change in density and if there was adulteration, the sample would fail. No such report was also made against the petitioner. On the basis of the inspection carried out on 09.07.2013, an order suspending the sales from petrol (MS) dispensing unit was ordered. A notice was issued on 25.07.2013 pointing out to the following irregularities:-

- “1. Dispensing Unit bearing Srl. No. KRLNT 2986 Motor Spirit (MS) was found with Weights & Measures Z Line MS Totalizer seal broken
2. It was further observed by Mr. Sanjeev Daukia that both HSD units assembly seals (W&M) were very loose.
3. The above observations prima facie establishes that tampering/interference has been made with the working parts of the pump or other equipments provided by the company.
4. As per the company policy/guidelines sales from the concerned unit was suspended and the said DU was sealed.”

(3) The petitioner had replied contending that there was no defect but the impugned order was passed on 13.03.2014 discarding even the recommendations of the Assistant Controller, Legal Metrology, Ambala that no one had deliberately broken the seals and that the seals were corroded, as no cover, like canopy, was used for the protection of the dispensing pump units. The order merely reproduced the clauses which are impugned in the writ petition and holding that the dealership was, therefore, cancelled irrespective of the fact whether any short supply was noticed or not. The narration of facts would reveal that there was nothing seriously amiss and if the cancelation was taking place, it was only on pure reliance on the recitals in the guidelines stipulated. The relevant clauses which are put in challenge are reproduced:-

“5.1.2 Short Delivery of Products

a) With Weights & Measures Department Seals intact

Sales through the concerned dispensing unit to be suspended forthwith and recalibration and re-stamping to be done before recommencement of sales.

b) With Weights & Measures department Seals tampered

W&M department seals are put on Metering unit and Totaliser unit with the help of a sealing wire and a lead seal which is embossed by W&M inspector.

The seal would be deemed tampered in the following cases also:

1. Seal itself is missing
2. Different seal has been put other than embossed by W& M inspector.
3. Sealing wire is broken and not in one piece.

In addition other situations which can lead to manipulation of delivery/quantity/totaliser may also be treated as tampering.

Penal action to be taken even if the delivery is found to be correct or excess.

In case of this irregularity sales from the concerned dispensing unit to be suspended, DU sealed. Samples to be drawn of all the products and sent to lab for testing.”

“8.2 Critical Irregularities: The following irregularities are classified as critical irregularities:

- i. Adulteration of MS/HSD (5.1.1)
- ii. Seals of the medtering unit found tampered in the dispensing pumps (5.1.2(b))
- iii. Totalizer seal of dispensing unit tampered or deliberately making the totalizer non functional or not reporting to the company if totalizer is not working (5.1.3 read with 5.1.2)
- iv. Additional/Unauthorized fittings and gears inside the dispensing units/tampering with dispensing units (5.1.4)
- v. Unauthorized storage facilities (5.1.5)
- vi. Unauthorized purchase/sales of products (5.1.6)
- vii. Tank lorry carrying unauthorized product found under decantation at the RO (5.1.7).”

The impugned order reads that in the reply given to the show cause notice, the petitioner had not originally stated that the inspecting team itself was responsible for breakage of the wire and, therefore, the action attributed to the respondents was an afterthought. I would find that it was lapse on the part of the petitioner in not clearly setting out that the respondents' inspection staff itself was responsible for the breakage of the sealing wire, but I will not take this to be a case of building up a new version later by virtue of the fact that on the same day on 09.07.2013, there are two reports. The first report in Annexure P7 clearly states that there were no defects found and it was duly inspected. It was only a subsequent report drawn on the same day that registered the fact of totalizer seal as having been broken and the HSD unit seals being very loose. Evidently, there was nothing missing at the first inspection. If the breakage of the seal was said to have been caused in a particular manner, it ought to have been examined in the context of the fact that the dispensing units had no cover as shelter over them, as the photographs supplied themselves show and the iron/steel equipments were exposed to water and air. The report of the Assistant Controller, Metrology was, therefore, surely relevant. If a party, therefore, pleads for the circumstances of how the seal was found broken, there needed to be an appraisal of whether it was deliberately done or not.

(4) Understandably, the strict action for cancellation is only on account of the fact that the sealing wire lies embedded within the steel casing and it cannot be broken easily unless deliberately done. When a party was pleading for an exceptional situation of the water seepage and the fact that it was already rusted, the decision of the authority could not have been made without reference to a scientific explanation offered through a technical person well versed in metrology. The impugned order makes no reference at all to the report of the Assistant Controller of the Legal Metrology (Annexure P22). The case has been disposed of against the petitioner merely making reference to the critical irregularity pointed out in 8.2 that the seal of the metering unit was found tampered. I will not find any reason to quash the clause, for, there is nothing inherently wrong about it. It is only a wrong reading of the clause that has resulted in the decision taken by the authority. A critical irregularity which Para 8.2 contemplates definitely contemplates a deliberate human intervention and not merely a corrosion or rusting by natural causes. The expression "tampering" itself must be understood as resultant to a human intervention. The critical irregularity can never be a sealing wire getting rusted and

broken. The expression “tampering” itself must be taken as sufficient to rule out any breakage resulting from the rusting or due to natural causes. It is not an oppressive clause to be interfered but it was surely a wrong inference that requires a court’s intervention.

(5) In the same way, the short delivery of products which Para 5.1.2 contemplates could arise in situation where the sealing wire was broken and not in one piece. There is a deeming provision which precedes three circumstances mentioned for deeming it to be tampered. Sealing wire broken and not in one place could be justifiably taken as deemed to be tampered, particularly in view of non-accessibility of the sealing wire and a non-exposure of the sealing wire by the fact that there is a steel casing made over the dispensing unit. By this clause, I would only understand that the burden of proof is placed on the person who holds custody of the facilities to explain as to how the breakage had taken place. Such a loaded presumption against a dealer is again appropriate and I would find nothing wrong about such a clause. It is here that the authority failed to examine an explanation given by the dealer that in the first inspection made on the same day, no mistake was seen. At the second time, the checking staff opened the steel casing and seeing the seal to be rusted, pulled the wire to test its integrity, when the seal got broken. It is probalized by the fact that the Assistant Controller of the Department of Metrology also gave a report that it did not seem to be deliberately broken and that the breakage must have resulted only due to natural causes. If there was any examination of this report or when there was even a response to the petitioner's defence to a show cause notice, I would have the satisfaction that the authority took note of all the circumstances and passed the orders. I find that the impugned order has been passed without examining the defence and the vital support which he was trying to secure through a technical assessment as well.

(6) Even while holding the impugned clauses are not liable to be struck down, I will hold that the cancellation made was erroneous, for, the inferences are perverse and blatantly against the materials brought before the authorities which he failed to examine.

(7) The impugned order is quashed and the writ petition is allowed to the above extent.

A. Aggr.