

(7) (8)

Central Administrative Tribunal, Principal Bench

Original Application No.790 of 2002

New Delhi, this the 7th day of November, 2002

Hon'ble Mr. Justice V.S. Aggarwal, Chairman
Hon'ble Mr. S.A.T. Rizvi, Member(A)

S.N. Yadav s/o Shri. H.N. Yadav,
21/238, Trilok Puri,
Delhi-91

....Applicant

(By Advocate: Shri Yogesh Sharma)

Versus

1. The NCT of Delhi through
The Chief Secretary,
New Secretariat
New Delhi.
2. The Lieutenant Governor,
Raj Niwas,
Delhi.
3. The Chief Secretary,
NCT of Delhi, New Secretariat,
New Delhi

....Respondents

(By Advocate: Shri Vijay Pandita)

O R D E R (ORAL)

By Justice V.S. Aggarwal, Chairman

The applicant (S.N. Yadav) has been working as Caretaker in the Observation Home for Boys II and Special Home for Boys, Magazine Road, Khyber Pass, Delhi. On 28.11.95, 72 inmates are alleged to have made good their escape from the said institution. A chargesheet for major penalty had been served on the applicant. The same reads :

"That the said Shri Satya Narain while working as Care Taker in Observation Home for Boys-II and Special Home for Boys, Magazine Road, Khyber Pass, Delhi remained absent w.e.f. 25.11.95 to 28.11.95 without intimation. During his absence, a mass scale escape of Juveniles of the Home took place on 28.11.95 between 7.00P.M. to 7.30P.M.

The above act of Shri Satya Narain, Caretaker, shows lack of devotion to duty and integrity thereby contravening Rule 3

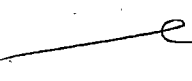
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of the CCS (Conduct) Rules, 1964."

2. The enquiry officer took into consideration the defence of the applicant and other factors and recorded a finding that charge against the applicant is not proved. However the disciplinary authority did not agree with the findings of the enquiry officer and recorded a brief note in this regard:

"It is observed that Inquiry Officer has given findings in respect of the Charged Officer without analysing the fact that Charged Officer submitted his leave application for three days compensatory leave on 22.11.95 but the DDO/HO did not mark the same in the Attendance Register. Moreover, it appears that the leave application has been submitted at later stage since it was addressed and sanctioned by DDO/HO Sh. Mahesh Kumar Sharma, who himself is involved in the case and was allegedly on leave from 23.11.95 onwards. Besides the said application is not diarised any where which supports the argument that it was an after thought. Further the compensatory leave is to be utilised within one month from the day extra duty was performed which is not relevant in the present context since compensatory leave was given for 25, 26 and 27.11.95 against extra duty performed on 21, 22 and 23.10.95. Thus it shows the connivance of the Charged Officer with DDO/HO and inmates which resulted in the escape of 72 Juveniles from the Home. Therefore the charge against Shri Satya Narain, Caretaker stands proved."

3. Thereupon a penalty of reduction to three lower stages in the time scale of pay for a period of three years with further direction that he will not earn increments during the period of such reduction and on the expiry of this period the reduction will have the effect of postponing his future increments of pay, had been imposed. Needless to state that appeal preferred by the applicant

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too was dismissed. Hence the present application.

4. Learned counsel for the applicant highlighted the fact that for 25, 26 and 27.11.95, applicant had applied for leave which was granted on the ground of marriage of his daughter and 28.11.95 was a weekly off day as per the duty roster and therefore the findings as such, cannot be sustained. The plea as such is being controverted.

5. We do not dispute the proposition that this Tribunal will not sit as a court of appeal over the findings of the enquiry/disciplinary authority as the case may be. In judicial review, the interference may only be called for in case there is no evidence on record in this regard or no reasonable person would come to such findings which can be described to be totally perverse.

6. On 5.11.2002, when the matter had been heard in part, we had directed the learned counsel for the respondents to produce the duty roster for our perusal. The reason was obvious. As per the applicant, on 28.11.95 as per the duty roster, he was on weekly off. Today the learned counsel for the respondents, on instructions, states that the duty roster has been made available and as per that roster, on 28.11.95, the applicant was on weekly off. In other words, it was not the duty of the applicant to attend to the office/duty on that date. The applicant is not even recorded present in the attendance register for that day. When such is the situation that the incident pertains to 28.11.95 and the applicant had due

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justification for his absence on that day, the only plausible conclusion would be that he cannot be held responsible for an incident that has taken place on the said day.

V 7. The other part of the charge was that the applicant was absent on 25, 26 and 27.11.95 without any leave application. The copy of the leave application dated 22.11.95 has been placed on record. It has been sanctioned by his immediate superior i.e. the Superintendent. Merely because if the Superintendent himself is also involved in the controversy, will not prompt us to conclude that it is a fake or forged document. The reasons for recording so are that the applicant had stated that his daughter's marriage is to be solemnised. This fact has not been denied in the counter. We cannot betray our commonsense in coming to a conclusion that on such an occasion, the applicant would have naturally applied for leave in advance. In other words, there is no material except total conjecture that the leave application has been procured subsequently.

8. The totality of facts indicate that it is a matter where there was no material to hold the applicant guilty of dereliction of duty as referred to above and mentioned in the charge. Necessarily, therefore, the impugned orders cannot be sustained.

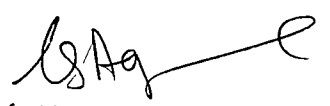
9. For these reasons, the O.A. is allowed. The

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impugned orders are quashed. The applicant would be entitled to the consequential benefits in accordance with the provisions of law.


(S.A.T. Rizvi)
Member(A)


(V.S. Aggarwal)
Chairman

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