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**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

O.A. NO. 517/2001

New Delhi, this the 1st day of November, 2002.

HON'BLE SMT. LAKSHMI SWAMINATHAN, VICE-CHAIRMAN (J)

HON'BLE SHRI V. K. MAJOTRA, MEMBER (A)

Jasbir Singh,
Ex Caretaker,
H.No.1806, Block 'D',
Jahangirpuri, Delhi.

... Applicant

(By Shri V.S.R.Krishna, Advocate)

-versus-

1. Government of Delhi through
Lt. Governor, govt. of NCT of Delhi,
Shyam Nath Marg, Delhi.

2. Secretary,
Department of Social Welfare,
Govt. of NCT of Delhi,
Kasturba Gandhi Marg,
New Delhi.

3. Director,
Department of Social Welfare,
Govt. of NCT of Delhi,
Kasturba Gandhi Marg,
New Delhi.

... Respondents

(By Shri Ajesh Luthra, Advocate)

ORDER

Hon'ble Shri V.K.Majotra, Member (A) :

Through this OA, applicant has assailed the punishment of
removal from service with immediate effect.

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2. Applicant was working as a Caretaker with respondents.

He was charge sheeted vide memorandum dated 8.1.1996 as follows :

“3. Shri Jasbir Singh, Care Taker

Shri Jasbir singh, Care Taker while on caretaking duty in RCC Kingsway Camp, Delhi failed to take Bapi Shankar an ailing inmate of the RCC, Kingsway Camp to Bara Hindurao Hospital emergency on the advice of Resident Medical Officer, Poor House Hospital on 30.9.95 and left the Institution without even bothering to pass on message to any other official about the ill health/deteriorating condition of the inmate Bapi Shankar which resulted in the death of the inmate on 1.10.95 and as a consequence thereof 88 inmates of the institution managed to escape.”

Two supervisory officers and four more caretakers were also chargesheeted by the same memorandum. A joint inquiry was held by respondents into the charges against the officials. It is stated that the disciplinary authority disagreed with the findings of the enquiry officer. However, copy of the disagreement note was not supplied to him. Appeal against the orders of the disciplinary authority was rejected without application of mind and without considering the points raised in the appeal. Review petition filed by applicant against the impugned orders was returned with the remark that the review petition could only be entertained by the President of India. Later on, applicant sent the review petition to the President which was not disposed of.

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3. The learned counsel of applicant has contended as follows :

- (1) Whereas the disciplinary authority relied upon the report of Shri K.K.Bhasin who had conducted a preliminary enquiry into the incident, copy thereof though supplied to the co-accused officials, was not supplied to applicant. The learned counsel stated that this is violative of principles of natural justice and renders the punishment order void *ab initio*.
- (2) Whereas the charged official is entitled to a copy of disagreement note of the disciplinary authority with the enquiry officer's findings, copy of the disagreement note has not been supplied to applicant which has prejudiced the defence of applicant.
- (3) Whereas the disciplinary authority had indeed come to the conclusion that applicant had informed his superior authorities about the incident on which basis the charge against the other officials was proved, the charge against applicant that he had not informed his superior officers would fall and applicant cannot be punished.
- (4) Whereas applicant should be exonerated from the charge, he has been discriminated against in the matter of punishment. Whereas co-charged officials have been let off with lighter

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punishments, applicant has been inflicted the severest punishment of removal from service.

(5) The appellate order dated 4.5.1998 is a non-speaking order.

4. At the very outset, the learned counsel of respondents stated that the instant application is barred by time. The learned counsel stated that applicant's review petition dated 22.7.1998 made to the Lt. Governor of Delhi was returned to him stating that as per provisions of Rule 29-A of Central Civil Services (Classification, Control and Appeal) Rules (CCA Rules), review petition can only be entertained by the President. Applicant is stated to have sent the review petition to the President on 23.10.1998. According to the learned counsel, the time limit for making the present OA after 23.10.1998 could be extended up to 23.4.2000 only under the law, but the present application was filed on 1.3.2001, i.e., causing a lot of delay. On the other hand, the learned counsel of applicant stated that applicant had filed an MA seeking condonation of delay in filing the OA. The learned counsel stated that after filing the review petition to the President on 23.10.1998, applicant sent a reminder on 28.5.1999 and has been waiting for a favourable response from the President in response to his review petition.

5. The learned counsel of applicant stated that basically the reviewing powers under rule 29-A of CCA Rules in the present case vest with the Lt.Governor and that applicant's review petition was

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wrongly returned to him. Applicant has been an official under the Government of NCT of Delhi. The learned counsel of respondents has not shown the relevant rules/instructions to establish that the review petition of applicant would lie with the President. The judgments of the Supreme Court in **Naubat Ram Sharma v. Additional District Judge-II, Moradabad & Ors.**, AIR 1987 SC 1353; **Executive President, Pune Vidyarthi Griha, Pune & Ors. v. Bhaskar Bhagwat Yadav & Ors.**; and **Abdulsultan A. Manji & Ors. v. State of Gujarat**, are applicable to the facts of the present case. It has been held in the above cases that Courts have to adopt a liberal approach. When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay. Condonation of delay has to have "sufficient cause". Good case on merit cannot be dismissed on delay alone. In the present case, as stated above, respondents have not shown relevant rules/instructions to establish that review petition lies with the President. In any case, applicant made the review petition to the President as well which was not disposed of despite reminder. Whatever has transpired in respect of applicant's review petition, according to us, is a sufficient cause for delay in filing the present OA, and in the facts and circumstances, the case cannot be dismissed on the basis of delay alone. As such, the delay in filing the present OA is condoned.



6. Admittedly, copy of the preliminary enquiry has not been supplied by respondents to applicant. However, the same has been relied upon by the disciplinary authority in establishing the charge against applicant. Non-supply of a copy of the preliminary enquiry to applicant and reliance upon the same for establishing the guilt against him is clearly in violation of the principles of natural justice.

7. As regards disagreement note of the disciplinary authority with the findings of the enquiry officer, the disciplinary authority has stated, "The Inquiry Officer has vaguely disregarded the statement of Sh. Jasbir Singh about the sickness of Sh. Bapi Shankar." The disciplinary authority has not agreed with the contention of the enquiry officer that Shri Sanjay Behl had made efforts as a Government servant to perform his duties according to instructions laid down in the Manual. The disciplinary authority has rejected the report of the enquiry officer pertaining to Shri Sanjay Behl and held the charge against him as proved and also penalized him for his failure to perform his duties with devotion which resulted in the death of an inmate and subsequent escape of 88 beggars from the institute. Applicant had informed the enquiry officer in the preliminary enquiry that he had informed Shri Sanjay Behl. Based on this, the disciplinary authority held that Shri Sanjay Behl was guilty of the charge. Obviously, there was a disagreement between the disciplinary authority and the enquiry officer, which must have been conveyed to

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applicant as per the established law. However, the same has not been done in the present case.

8. In the enquiry report it has been stated that applicant had stated that he had informed the Deputy Superintendent and the Welfare Officer about the illness of Bapi Shankar. Such information has been denied by the Deputy Superintendent and the Welfare Officer. However, as discussed above, it has been held by the disciplinary authority that the enquiry officer had "vaguely disregarded" the statement of applicant that he had informed Shri Sanjay Behl about the illness of Bapi Shankar and the advice of the doctor to take him to the Bara Hindurao Hospital. The disciplinary authority has also stated that the enquiry officer accepted the statement of Shri Sanjay Behl that applicant had not informed him of the situation. The disciplinary authority rejected the contention of Shri Sanjay Behl and held him guilty of the charge, obviously on the evidence of applicant that he had informed him about the illness of Bapi Shankar and the advice of the doctor to take him to the hospital. In this view of the matter, it could not be held that applicant had not informed the higher authorities of the incident when, on the basis of his information, charge against other officials was held to be proved. In this light, the charge that applicant had left the institution without bothering to inform any official about the ill health of Bapi Shankar cannot be said to have been established in the enquiry.

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9. From the orders of the disciplinary authority, it is found that though co-charge officials were proceeded against in a joint enquiry for incidents leading to the death of an inmate, Bapi Shankar, and also escape of 88 inmates on 1.10.1995, different punishments have been awarded to them. It is found that the Deputy Superintendent and the Welfare Officer were let off with lesser punishments of reduction in rank, reduction in pay etc., and the Caretakers, other than applicant, were punished for stoppage of increments for one year. It is shocking that applicant has been awarded the severest punishment of removal from service when other co-charge officials have been let off lightly.

10. The appellate order reads as follows :

“The following officials preferred an appeal against the penalty orders No.F.3(13)/95DSW/Vig. dated 3.10.97 issued by the Director, Social Welfare :

1. Sh. Sanjay Behl, W.O.II
2. Sh. Jasbir Singh, Care Taker
3. Sh. G.P. Aggarwal, W.O.II

The Secretary, Social Welfare in his capacity as Appellate Authority has considered the appeal of the above said officials and has REJECTED the same.”

Non-application of mind is self-evident in this order which has not ascribed any reasons for rejection of the appeal of applicant. The points made in the appeal have not been touched at all. Such an order cannot be upheld.

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11. Having regard to the reasons stated and discussion made above, the impugned orders dated 3.10.1997 and 4.5.1998 imposing punishment of removal from service upon applicant are liable to be quashed and set aside. We order so accordingly. Respondents are directed to reinstate applicant in service within one month from the date of receipt of a copy of this order in accordance with law, relevant rules and instructions.

12. The OA is allowed in the above terms. No costs.

V.K.Majotra
(V. K. Majotra)
Member (A)

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

/as/