

CENTRAL ADMINISTRATIVE TRIBUNAL: PRINCIPAL BENCH

Original Application No.1436 of 1999

New Delhi, this the 15th day of December, 2000

HON'BLE MR. KULDIP SINGH, MEMBER (JUDL)

Shri R.D. Bohet s/o Bhoop Singh Bohet
 working as Dy. Suptd. Grade I in Central
 Jail Tihar and r/o B-5 Officers Colony
 Central Jail Tihar, New Delhi-64

-APPLICANT

(By Advocates: Sh. S. C. Luthra with Sh. O. P. Khokha)

Versus

1. Lt. Governor Delhi
Raj Niwas, Delhi-54
2. Govt. of NCT of Delhi
through Chief Secretary
5 Sham Nath Marg, Delhi-54
3. Inspector General of Prisons
Central Jail Tihar
Delhi-64
4. Shri Ajay Kumar
Suptd. of Jail No.5
Central Jail Tihar
New Delhi-64

-RESPONDENTS

(By Advocate: Shri Vijay Pandita)

O R D E R (ORAL)By Hon'ble Mr. Kuldip Singh, Member (Judl)

In this OA, applicant has assailed the order dated 31.5.99 whereby he has been awarded a minor penalty and his pay has been reduced by two stages in the time scale of pay of Rs.6500-10500 for a period of two years w.e.f. 1.6.99. He has also assailed order dated 20.8.99, whereby his appeal had been rejected.

2. Facts in brief are that applicant was issued a memo under Rule 16 of the CCS (CCA) Rules for minor penalty on the allegation that on 22.5.98, he deliberately kept himself away from supervising the mulakat of high security prisoner at mulakat jangle in

total disregard of the instructions issued by IG (Prisons) vide order dated 18.3.98.

3. In the grounds to challenge the impugned order, the applicant has submitted that vide his representations dated 15.2.99 and 26.2.99 (Annexure A-9), he had requested that the facts involved in the case required a regular departmental enquiry but the respondents did not accede to his request to hold a detailed enquiry. Applicant has submitted that on this ground alone, the impugned order deserves to be quashed. In support of his contention, he relied upon a judgement reported in 1980 AISLJ 382, Mansa Ram Vs. General Manager, Telecommunications, J&K Circle, Srinagar and ors. wherein the court held as under:-

"There can be no manner of doubt that where a minor punishment is sought to be imposed, the procedure for holding an enquiry need not be followed, unless otherwise desired by the disciplinary authority. But surely it does not mean that the enquiry is barred or that it is entirely subject to the pleasure of the disciplinary authority. The latter must apply its mind to the facts and circumstances of the case as disclosed in the representation of the employee and other available material and give a reasoned finding whether an enquiry is or is not necessary. In the absence of such finding, an order imposing the penalty would be invalid and of no legal consequence unless, of course, it can show that the omission has not resulted in any material prejudice to the employee."

4. Replying upon this, the learned counsel for the applicant submitted that the order of disciplinary authority does not show if he has applied his mind or not to the request of applicant for holding regular enquiry.

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There is no indication if this request was considered at all or not. Hence the impugned order is liable to be quashed.

5. Learned counsel for the applicant also submitted that perusal of the impugned order shows that the disciplinary authority had relied upon the statements of certain persons such as S/Shri Rishi Kumar, Assistant Supdt., Shiva Nand, PRO and Bundu Khan, Warder, Central Jail, Tihar, whose statements had been recorded at the back of the applicant and no opportunity was given to him to cross-examine those material witnesses. Statements recorded at the back of the applicant was in utter violation of principles of natural justice and the same could not have been relied upon by the disciplinary authority. To support his contention, Shri Luthra relied upon a judgement in the case of S. Govindarasu vs. Superintendent of Posts, Nagapattinam and ors., (1989) 10 ATC 86, wherein the Madras Bench of the Tribunal held as under:-

Departmental enquiry - Natural justice - Hearing - Minor penalty- When must be preceded by oral enquiry - Where imposition of a minor penalty was based, through not exclusively, on past statement of certain persons, held, prior opportunity of cross-examination ought to have been given - CCS (CC&A) Rules, 1965, Rules 16, 14 and 12."

6. Applying the law laid down in the above two cases, I find that the disciplinary authority while imposing the penalty, had violated the principles of natural justice and, therefore, the impugned order cannot

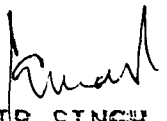
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be sustained in the eyes of law. I, therefore, allow the O.A. and quash the impugned orders passed by the disciplinary authority and appellate authority.

(1) The respondents shall restore the pay of applicant.

(2) Further, respondents may if they so like, proceed afresh against the applicant from the stage of serving of memo on the applicant as per law.

No order as to costs.


(KULDIP SINGH)
MEMBER (JUDL)

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