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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

OA NO. 2142/99

New Delhi, this the 18th day of October, 2000

HON'BLE MR. JUSTICE V. RAJAGOPALA REDDY, VICE CHAIRMAN (J)
HON'BLE MR. GOVINDAN S. TAMPI, MEMBER (A)

In the matter of:

Sh. Sivaram Sharma,
S/o Sh. Bhure Lal Sharma,
Ex Warder, Central Jail,
R/o V & P.O. Gajawali,
Tehsil Atrauli, Distt. Aligarh. Applicant
(By Advocate: Sh. S.C.Luthra)

VS.

Govt. of NCT of Delhi through

1. Principal Secretary,
Home Department,
Govt. of NCT of Delhi,
5, Shamnath Marg,
Delhi-110054.
2. Inspector General of Prisons,
Central Jail, Tihar,
New Delhi-110064. Respondents
(By Advocate: Sh. Rajinder Pandita)

ORDER (ORAL)

By Mr. Govindan S. Tampi,

The order dated 12.5.94 passed by the respondent No.2 imposing a penalty of compulsory retirement and order dated 14.9.99 passed by respondent no.1 rejecting the appeal are under challenge in this case.

2. The applicant who was working as a Warder in Central Jail, Tihar, since 10.4.86, was given a charge-sheet on 2.4.91 containing three articles, (i) that he has been absenting from duty since 15.12.90 without intimation or without sanction, (ii) that while he was absent he had entered Jail no.4 with a T.V. for an undertrial prisoner and (iii) that he did not give reply to show cause notice. His, having denied the charges, a due enquiry was held and the enquiry officer found the charges proved. Accepting the enquiry officer's report,

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the Inspector General of Police (Prison) , the disciplinary authority passed the penalty of compulsory retirement on the applicant vide impugned order dated 12.5.94. The applicant carried it in appeal and the same was disposed of by the Principal Home Secretary who confirmed the penalty. The applicant came to this Tribunal in OA No. 972/97 which was disposed of by the Tribunal on 21.5.99 with the following direction:-

"In the result, we allow the OA partly with the following directions.

i) Annexures A-1 orders shall stand quashed.

ii) The matter shall stand remitted to the respondents to initiate further action afresh from the stage of appeal ~~(certain)~~ *The* applicant shall be informed of the decision within six weeks from the date of issue of this order. He will have the liberty to re-agitate the issue if he has any case thereafter." *as per law &*

2. Impugned order dated 14.9.99 was issued in pursuance of the Tribunal's order which confirmed the penalty of compulsory retirement. Hence this application.

3. Arguing for the applicant, Sh. S.C.Luthra, learned counsel for applicant, indicated that this is an order which is totally illegal on account of the fact that the respondents had acted against the interest of the applicant. He had left only after obtaining permission on 9.12.90 to attend his personal matters, but he was not permitted to rejoin duty when he came on 15.12.90 by the Deputy Superintendent Sh. Dahiya who had also assaulted the applicant. He had written a letter to DIG of Prisons indicating that he has not been permitted to rejoin duty. It is the claim of the applicant that he had also filed a few representations in this regard and finally in August 1991 ^{in which} he requested that he should be permitted to rejoin duty

which was replied on 30.10.91 directing him to rejoin the duty which he did on 12.11.91. Proceedings against him had been initiated in the meanwhile. Proceedings conducted before the enquiry officer were vitiated because he was not permitted to produce any evidence in support of his case. The order of the enquiry officer finding that the charges stands proved were wrong. He could not join duty only because he was not permitted to rejoin duty by the Deputy Superintendent Sh. Dahiya and he had wait till the order dated 30.10.91. Secondly, the TV as alleged was not taken or brought in the Jail by him. Further, he had declined to give reply to the notice only on the fact it was not signed or dated. Still the enquiry officer had held ~~the~~ the charges to have been proved and the same was mechanically accepted by the I.G. of Police (Prisons), the disciplinary authority and the Principal Home Secretary, appellate authority. Learned counsel also says that though the show cause notice was issued and the charge sheet was issued by the DIG the matter was disposed of by IG of Police without the file being routed through the DIG. Thus, the proceedings have been totally vitiated and warranted interference by the Tribunal. In the reply as on behalf of the respondents Sh. Rajinder Pandita, says that the matter is hit by res judicata as the matter has been already urged before the Tribunal and decided upon. He further stated that as the department had in the month of October 1991 directd him to join duties immediately but he had not done^{so}. He had also managed to enter the jail for bringing the TV. His action for not replying to the notice was also incorrect. In view of the above, it could not be considered that the charge levelled against him was incorrectly upheld. All the proceedings having been gone though correctly and decisions taken accordingly, the same have to be upheld, he urges.

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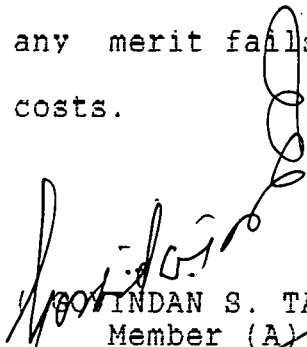
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4. We have carefully considered the rival contentions. Coming to the preliminary objections, we have to state that we are not at all convinced of the plea of res judicata raised by the learned counsel for respondents. It is true that the matter concerned in this proceedings was previously agitated by the applicant in OA No.972/97 which was disposed of by the Tribunal on 21.5.99 with the direction to the respondents to initiate further action again from the stage of appeal as per law and decide within six weeks. The application is against the appellate order issued in pursuance of the Tribunal's order. There is no question of res judicata entering in this matter. In respect of the other pleas, ^{we} we have no doubt that applicant does not have any case. It is a case of unauthorised long absence which is not justified by any reasons. The applicant says that on 15.12.90 when he returned to duty he was not allowed to join by the Deputy Superintendent. He writes a letter to DIG of Police who was not his immediate superior nor of the Deputy Superintendent who says, did not permit him to join. His grievance is that his letter of May 1991 was not answered but that of August 1991 was replied only in October 1991, in pursuance of which he joined in November 1991. There is no indication whatsoever that he made any attempt to join duty at any time between December 1990 and November 1991 or that he sent any communication justifying his absence. His is a case of long and unauthorised absence of nearly 10 months without any justification or sanction. The details about the second and third charges of his having brought in a TV to an undertrial prisoner and not having replied to the charge have also been brought out on records, which have made the Enquiry Officer ^{convinced} ~~record~~ that all the charges against him have been proved. The

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same has been duly accepted by the disciplinary authority, i.e., Inspector General of Prisons. The applicants plea that the report of the enquiry officer and the file have not been put up to the Inspector General though the D.I.G. has no merit as what was to be considered by the Inspector General was the Enquiry Report and not DIG's notings. Inspector General has correctly dealt with the report and passed the order as the disciplinary authority on 12.5.94, the appellate authority has also correctly acted and passed a speaking and reasoned order on 14.9.99, keeping in mind the directions of the Tribunal given on 21.5.99. That being the case we have no doubt that all the proceedings have been correctly gone through and the authorities have taken their decisions in accordance with law. The orders, in the circumstances are unassailable, and no case of interference by the Tribunal has been made by the applicant.

5. In the result, the application which is totally devoid of any merit fails and is accordingly dismissed. No order as to costs.


(INDAN S. TAMPI)
Member (A)


(V. RAJAGOPALA REDDY)
Vice Chairman (J)

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