

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH  
NEW DELHI

O.A. NO. 2297 /1996

8

DATE OF DECISION : 21.03.2000

HON'BLE SHRI JUSTICE ASHOK AGARWAL, CHAIRMAN

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

Jai Narain

... Applicant(s)

-Versus-

Govt. of N.C.T. of Delhi & Ors. ... Respondent(s)

Advocates : Applicant in person

Mr./Ms. xxxxx None present for Respondents  
for Applicant(s)

Mr./Ms. xxxxx for Respondent(s)

1. Whether to be referred to Reporter? Yes
2. Whether to be circulated to other Benches? No
3. Whether to be released to Press ? Yes

*ASHOK AGARWAL*  
( ASHOK AGARWAL )  
CHAIRMAN

*V. Majotra*

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH

O.A. NO. 2297/1996

New Delhi this the 21st day of March, 2000.

HON'BLE SHRI JUSTICE ASHOK AGARWAL, CHAIRMAN

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

Jai Narain S/O Ram Krishan,  
Ex-Warden, Central Jain Tihar,,  
New Delhi-110064.

... Applicant

( In person )

-Versus-

1. Govt. of N.C.T. of Delhi  
through its Home Secretary,  
5, sham Nath Marg,  
Delhi-110054.

2. Shri R. S. Gupta,  
Inspector General (Prisons),  
Central Jail, Tihar,  
New Delhi-110064.

3. Shri Sunil Kumar Gupta,  
Dy. S.P.II, I.O. C/o I.G. (Prisons),  
Central Jail, tihar,  
New Delhi-110064.

... Respondents

( None present )

O R D E R (ORAL)

Shri Justice Ashok Agarwal:

In para 4.3 of the O.A. applicant has averred  
as under :

"4.3 That the I.G.(Prisons) before imposition  
of penalty neither supplied the  
applicant, a copy of the Inquiry report  
nor asked the applicant to give his  
representation. The copy of the Inquiry  
report was also not supplied with the  
order of penalty. Even till this day,  
the Inquiry report has not been supplied  
and thus this has greatly prejudiced the  
case of the applicant."

In reply to the aforesaid averment/assertion this is  
what has been stated in the counter :

"In reply to this para it is submitted that  
the applicant was given brief of disciplinary

enquiry proceedings proving the charge. The applicant has accepted the charge before the I.O. that four bundles of bidi were recovered from his possession which were kept by him in his socks and pockets. (The applicant was free to make a representation at any time to the Competent Authority)."

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2. A perusal of the proceedings shows that the enquiry officer has forwarded a report prepared by the presenting officer Shri Pradeep Sharma. The enquiry officer himself does not appear to have prepared his report. He has merely forwarded the report prepared by the presenting officer.

3. Role of an enquiry officer and that of presenting officer is entirely different and distinct. Enquiry officer plays the role of a judge. He has to conduct the disciplinary proceedings by recording evidence both of the prosecution as also defence. He has to assess evidence and give his findings either in favour or against the delinquent. As is the position of a judge, he is expected to be neutral and impartial. He cannot be partisan either to the department or the delinquent. Function and duty to scribe the report is that of the enquiry officer and none else.

4. The role of presenting officer is distinct. His role is akin to that of a prosecutor in a criminal trial. He leads evidence on behalf of the prosecution, he cross-examines defence witnesses and he renders the requisite assistance to the enquiry officer in arriving at a just and proper finding based on evidence on record. Findings in the enquiry have to be that of enquiry officer himself and none else. It is his findings which are to be contained in the

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enquiry report and none else. Presenting officer has and can have no role to play in the decision making process of the enquiry officer.

5. What appears to have happened in the present case is that the enquiry report has been written and also signed by the presenting officer. The same has merely been forwarded by the disciplinary authority to the applicant for his comments. enquiry officer has not prepared his own enquiry report. He has rest content by relying on the report of the presenting officer. Said report not being that of the enquiry officer is no report in the eyes of law. In the absence of a report of the enquiry officer all further proceedings are non est.

6. Aforesaid inaction on the part of the enquiry officer, in our view, is fatal and is a serious lacuna in the conduct of the present proceedings conducted against the applicant which will vitiate the entire disciplinary proceedings.

7. The incident which has led to the holding of the aforesaid disciplinary proceedings against the applicant relates to an incident which had taken place on 25.7.1994 at about 10.10 p.m. in Jail No.2 where the applicant was working as a Warder. Allegations leading to the initiation of the disciplinary proceedings can hardly be termed as serious. The same is apparent from the statement of imputations of misconduct framed against him. The same are as under:

"Annexure-II  
Statement of imputation of misconduct or misbehaviour in support of the articles of

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charge framed against Sh. Jai Narain-II,  
Warder, Roll No.224.

#### Article-I

That it has been reported by Sh. subhash sharma, D.S.-II, Jail No.2 that at 10.10 P.M. on 25.7.94 while passing the guard in and out, a thorough search was conducted. During search 4 Biri-bundles were recovered from the possession of Sh. Jai Narain-II, Warder, which were kept 2 bundles in socks and 2 bundles in the pockets of his shirt. Sh. Jai Narain-II at the time of recovery of Biris, informed to Sh. subhash Sharma, DS-II that he is chain smoker and he cannot live without Biri. Sh. Jai Narain-II, Warder was persued that he should keep the Biris outside the Jail and whenever he feels alike he should go out of the Jail for smoking. To this, he stated that he distributes some Biris free of charge to the convicts and undertaials of the Jail. Despite the fact that bringing of Biris in Jail have already been banned by order of the I.G.(Prisons) vide order No. PA/IG(P)/94/4630-37 dated 30.3.94. Thus, he exhibited a conduct unbecoming of Govt. Servant in violation of Rule 3 of CCS (Conduct) Rules, 1964."

Hence all that has been alleged is the finding of four bundles of bidis in possession of applicant, and for this paltry misconduct an extreme penalty of dismissal from service has been inflicted. Penalty of dismissal from service, disciplinary authorities should realise, is the severest of severe penalties. It amounts to economic death to the concerned employee. We have come across numerous cases where this penalty is imposed even for minor lapses. This penalty, in our view, should be imposed sparingly and only in cases where the misdemeanour is of a very grave nature. The mechanically and same should not be inflicted as a matter of course. The same can be resorted to only where his/her continuance in service is found totally undesirable. Penalties imposed by disciplinary authorities are very rarely interferred with by courts/tribunals. However, if such a penalty ~~is soon~~ <sup>ies are seen</sup> to have been imposed for minor lapses, as the one in the present case, that is,

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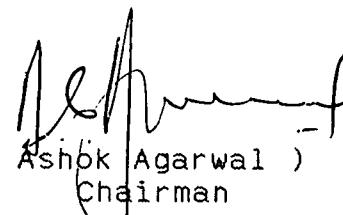
of mere possession of Biris, we would have no hesitation in interfering with the penalty imposed. In the circumstances, we wish and hope that disciplinary authorities will refrain from imposing extreme penalties mechanically even in cases of minor misdemeanour.

8. Based on the aforesaid misdemeanour applicant was placed under suspension on 29.7.1994. A charge-sheet containing the aforesaid statement of imputations was framed on 21.11.1995. On 7.12.1995 the enquiry officer and presenting officer were appointed. As already stated, the enquiry officer on 17.2.1996 forwarded the report of the presenting officer. On 8.5.1996 the disciplinary authority accepted the aforesaid report and proceeded to impose a penalty of dismissal from service. For a paltry charge of being in possession of 'Biris' the disciplinary authority has been persuaded to impose the severest penalty, namely, the penalty of dismissal from service. Applicant sought to impugn the aforesaid order by preferring an appeal. By a one-line order passed by the appellate authority on 28.8.1996, the appeal has been dismissed. No reasons are assigned and the appeal is summarily dismissed. the order does not indicate an application of mind to the appeal of the applicant.

9. If one has regard to the aforesaid facts, we have no hesitation in holding that the impugned order of dismissal from service is liable to be quashed and set aside. We order accordingly. Present O.A. is allowed. Applicant is directed to be reinstated in

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service. He will be entitled to the benefit of continuity of service. He will also be entitled to backwages. However, the backwages will be payable with effect only from 1st October, 1998. Present order be complied with expeditiously and within a period of four months from the date of service of this order on the respondents. There shall be no order as to costs.

  
( Ashok Agarwal )  
Chairman

  
( V. K. Majotra )  
Member (A)

/as/