

Central Administrative Tribunal
Principal Bench

O.A. 2692/96

New Delhi this the 27th day of January, 2000

Hon'ble Smt. Lakshmi Swaminathan, Member(J).
Hon'ble Smt. Shanta Shastry, Member(A).

Shri Bhopal Giri,
working as Ex-Warden,
Central Jail, Tihar,
A-51, Central Jail, Tihar,
New Delhi-110 064.

... Applicant.

By Advocate Shri S.C. Luthra.

Versus

1. Govt. of NCT of Delhi,
through Secretary (Home),
5, Shamnath Marg, Delhi-54.

2. Inspector General of Prisons Delhi,
Central Jail, Tihar,
New Delhi-110 064.

... Respondents.

By Advocate Shri Rajinder Pandita.

O R D E R

Hon'ble Smt. Lakshmi Swaminathan, Member(J).

The applicant is aggrieved by the order passed by the respondents dated 3.1.1996 dismissing him from service and rejection of his appeal conveyed to him by letter dated 16.8.1996. These orders were followed by cancellation of allotment of the Government quarter to him by order dated 6.11.1996. He had also been suspended for the offence by order dated 17.4.1995. These orders have also been challenged in this O.A.

2. The applicant was working as a permanent Warden in Central Jail, Tihar when the aforesaid orders had been issued by the respondents. The applicant had been given a Memorandum of charge on 4.10.1995 together with imputation of misconduct in support of articles of charge. In the statement it was

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alleged that the applicant, while performing his duties in Jail No. 4 in the intervening night of 29/30.3.1995 was found under the influence of alcohol. The applicant was placed under suspension by order dated 17.4.1995. He gave a reply to the charge memo on 26.12.1995 (Annexure A-6), (English translation of which has also been placed on record). Shri S.C. Luthra, learned counsel, has submitted that the respondents have misconstrued the reply given by the applicant as an admission and have acted on the assumption that he had admitted to consuming^{ing} alcohol and then passed the impugned penalty order of dismissal. He has relied on the definition of "Confession" in Black's Dictionary, copy placed on record. He has very vehemently submitted that the reply given by the applicant to the Memorandum of charges that he, under pressure of his relations, had consumed "very little alcohol" but he was in no way intoxicated on the date cannot be taken as a "Confession" that he had admitted ~~to~~ the charge. The charge was that while performing his duties on the night of 29/30.3.1995, he was found under the influence of alcohol. He has also submitted that while he might be smelling a little and had stated that he would never give any other chance for complaint, that again does not amount to "Confession" of guilt to the charge. He has also submitted that the circumstances in which the applicant has stated that he had consumed a little alcohol may be considered that he had to participate in the birth day of ^{his son} brother's son in the afternoon of 29.3.1995. He has relied on the judgement of the Tribunal in Udaiveer Singh Vs. Union of India & Ors. (ATR 1987 (1) CAT 49). He has submitted that the disciplinary authority could not have passed his finding on the reply and the report of the Medical Officer was neither proved nor copies of the same were

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supplied to him nor a proper inquiry has been held thereby causing him prejudice. He has also submitted that the appellate authority's order which has been conveyed to him by the letter dated 16.8.1996 is laconic and non-speaking, which again is against the principles of natural justice and, therefore, bad in law. For these reasons, the learned counsel has submitted that the impugned penalty orders and suspension order may be quashed and set aside with consequential benefits, treating him on duty for the intervening period.

3. The respondents have filed ^{their} reply in which they have controverted the averments made by the applicant. Shri Rajinder Pandita, learned counsel, has submitted that the applicant had submitted his reply to the charge-sheet which is an admission of the charges. He has, therefore, submitted that the disciplinary authority, after considering these facts came to the conclusion that he had attended duties under the influence of alcohol, which is an act in violation of the conduct rules and Jail Manuals and absolutely unbecoming of a Government servant. He has submitted that an inquiry would have been mandatory if the charge would not have been accepted by the applicant, which is not the case here as the applicant had admitted the charge. He has also submitted that the appellate authority has considered the appeal submitted by the applicant together with the relevant records and rejected the same. Learned counsel has also submitted the relevant records for our perusal. He has, therefore, submitted that in the facts and circumstances of the case, the O.A. may be dismissed.

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4. We have carefully considered the pleadings and the submissions made by the learned counsel for the parties.

5. The relevant portion of the reply submitted by the applicant to the Memorandum of charge-sheet reads as follows:

"The applicant submit in this regard that after the applicant's duty was over in the afternoon of 29.3.95, he had to participate in the birth day party of his brother's son. As the applicant's duty was from 9 p.m. to 12 midnight, he out of consideration for his brother and also due to pressure from the relatives consumed a very little alcohol but he was in no way intoxicated. It was to give me a bad name. I was smelling a little. The applicant is an ex-serviceman and he gets liquor on the card from the Army Canteen. Sorry to state that in spite of easy availability of alcohol, he has never performed duty with such complaints. I will never give any such chance. I, therefore, request your goodself to take a magmanatic (sic) and sympathetic view for which I shall ever remain grateful".

6. The disciplinary authority in the impugned order has stated that the applicant has admitted the charge levelled against him, which has been disputed by the applicant. He has further stated that consumption of alcohol by a Govt. servant and attending to his duties under its influence is certainly an act, violative of conduct rules and absolutely unbecoming of a Government servant. While this statement may be correct, we are unable to agree with the conclusions of the disciplinary authority that the applicant had admitted to attending his duties in Jail No. 4 on the night of 29/30.3.1995 under the influence of alcohol. The applicant has stated that he had consumed a very little alcohol, ^{but} he was in no way intoxicated. The judgement of the Tribunal in Udaiveer Singh's case (supra) is relevant to the facts in this case. In that case, the charges also related to the conduct of the applicant for coming to office in a state of intoxication. The Tribunal, while construing the statement made by the petitioner contained in his reply in that case, where he has

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stated that he had taken a few drops of brandy as a medicine and he had no mala fide intention to create indiscipline or injure the sentiments of his superiors in the office, came to the conclusion that it does not constitute an admission of the charges levelled against him. It was held:

"...Nowhere had he admitted that he had come to the office in a state of intoxication and created indiscipline by shouting loudly in the section. He merely admits that he had taken a bit of few drops of brandy as a medicine. He does not admit that he appeared in the Binding Section in a state of intoxication.....Shri Ghanshyam Singh counsel deputising for Shri K.C. Mittal, counsel for the respondents, placed much stress on the statement of the petitioner that "however, if anything happened, it was out of inadvertence and not deliberate. I feel sorry and request you to kindly excuse me taking into consideration my minor children. This again cannot be treated as an admission of the articles of charge; his request to be excused is prefaced by the words 'if anything happened', which means that he does not admit what is alleged against him. Admission of the guilt must be clear and unequivocal. The reply by the petitioner in answer to the charges does not constitute an admission of guilt..."

The observations of the Tribunal in the aforesaid case are fully applicable to the facts in the present case. From the reply given by the applicant dated 26.12.1995, it is seen that although he has admitted that he took a very little alcohol but he was in no way intoxicated. He had also requested the competent authority to take a magnanimous and sympathetic view and he would never give any such chance in future. We are in respectful agreement with the judgement of the Tribunal in **Udaiveer Sings case** (supra) which is fully applicable to the facts and circumstances of the present case. We also find merit in the submissions made by the learned counsel for the applicant that the order conveying the appellate authority's order is a non-speaking order. This is also confirmed from perusal of the relevant records. Therefore, this order is also liable to be set aside as it is

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in violation of the rules and principles of natural justice. During the hearing, learned counsel for the respondents has also stated that ~~the~~ report of the Medical Officer shows that he was under heavy influence of liquor, but admittedly neither the Doctor nor the document was produced in an inquiry, before the disciplinary authority passed the dismissal order. In the facts and circumstances of the case, as we are of the view that the applicant cannot be held to have admitted the charge levelled against him, it was obligatory on the part of the respondents to hold the inquiry in accordance with the provisions of the CCS(CCA) Rules, 1965. That has not been done in the present case.

7. In the result, O.A. succeeds and is allowed with the following directions:

(a) The impugned disciplinary authority's order dated 31.1.1996 and appellate authority's order conveyed by letter dated 16.8.1996 are quashed and set aside;

(b) The applicant shall be reinstated in service within one month from the date of receipt of a copy of this order. However, in view of the suspension order, he shall be deemed to ~~have~~ continued under suspension;

(c) The respondents may proceed with the disciplinary proceedings in accordance with the relevant rules and instructions after giving the applicant a reasonable opportunity of hearing;

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(d) On the conclusion of the disciplinary proceedings, as above, the competent authority shall pass orders to regulate the intervening period in accordance with the relevant rules and instructions.

Parties to bear their own costs.

Shanta I -

(Mrs. Shanta Shastry)
Member(A)

Lakshmi Swaminathan

(Mrs. Lakshmi Swaminathan)
Member(J)

'SRD'