

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 31/97

T.A.No.

195

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DATE OF DECISION 31.7.2000
1.8.2000

Sh.Kamlesh Kumar Sharma

....Petitioner

Sh.S.C.Luthra

....Advocate for the
Petitioner(s)

VERSUS

Govt.of NCT of Delhi & OrsRespondent

None present

....Advocate for the
Respondents

CORAM

The Hon'ble Smt.Lakshmi Swaminathan, Member (J)
The Hon'ble Sh.S.A.T. Rizvi, Member(A)

1. To be referred to the Reporter or not Yes
2. Whether it needs to be circulated to other
Benches of the Tribunal? No

Lakshmi Swaminathan
(Smt.Lakshmi Swaminathan
Member)

(13)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A.NO. 831/97

New Delhi this the day of 1st August, 2000

HON'BLE MRS. LAKSHMI SWAMINATHAN, MEMBER(J)
HON'BLE MR. S.A.T.RIZVI, MEMBER(A)

Sh. Kamlesh Kumar Sharma,
S/o Sh. P.L. Sharma,
working as Instructor (Weaving)
Central Jail,
New Delhi-110064

....Applicant

(By: Advocate Sh. S.C. Luthra)

Versus

1. Govt. of NCT of Delhi
through its Secretary,
5, Shamnath Marg,
New Delhi-110054
2. Inspector General of Prisons,
Central Jail, Tihar,
New Delhi-110064

....Respondents

(None present)

ORDER (Oral)

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

The applicant is aggrieved by the orders passed by the respondents, imposing on him a penalty of stoppage of one increment for one year by order dated 23.4.96 and rejection of his appeal by the Appellate Authority by order dated 29.11.96 (Annexures A-1 & A-2), which has been conveyed to him by letter dated 19.2.97

2. The aforesaid penalty orders have been issued to the applicant by the respondents after holding a disciplinary proceeding against him under the provisions of the CCS (CCA) Rules, 1965 (hereinafter referred to as 'the Rules').

3. The charges against the applicant read as follows:

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" That the said Sh. Kamlesh Kumar, Weaving Instructor while on duty on 28.3.1987, extended undue abetment in favour of H.W.. Raj Singh-1, as a sequel of which H.Warder Raj Singh successfully took out 64 logs of Shisham from the Jail No.2 outside in Temo No. DIL 8186 surreptitiously. Thus, Weaving Instructor Kamlesh Kumar was found to have been indulging in a manner unbecoming of a Govt. servant and rendered himself liable for disciplinary action as envisaged under the CCS(CCA) Rules, 1965."

4. The Inquiry Officer, who was appointed by order dated 16.7.92 submitted his report on 25.1.93. In the report he held the charges proved against the applicant on the basis of certain statements made by Sh. Harbhajan Singh, Asstt. Supervisor, Factory, that the applicant, "got issued Kacha Gate Pass from Sh. Om Prakash, Fitter Mistry who was not authorised to issue, whereas authorised person Sh. Harbhajan Singh, A.S.F. was present on duty". The disciplinary authority in his order dated 23.4.96, after perusing the relevant records, including the representation of the charged official, came to the conclusion that a penalty of stoppage of one increment for one year should be imposed on the applicant. The applicant had filed an appeal against the penalty order which has been disposed of by the appellate authority by order dated 21.11.96. Learned counsel for the applicant has submitted that this order is a non-speaking order and, therefore, it cannot be sustained in the eyes of law.

5. None has appeared for the respondents even on second call. This case was listed at Sl.No. 2 under

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regular matters in the cause list under the caption that the matters will be taken up serially and no adjournment will be granted. In the circumstances, we have perused the pleadings and heard Sh. S.C. Luthra, learned counsel for the applicant.

6. Learned counsel for the applicant has taken a number of grounds to impugn the aforesaid penalty orders passed by the respondents. He has also relied on the judgement of the Tribunal (PB) in Om Prakash Vs. Delhi Administration & Ors. (O.A. No. 245/91), decided on 13.4.92 (Annexure A-5). He has submitted that the charges against Sh. Om Prakash, applicant in that case, are connected with the charges issued to the applicant on 29.8.90, which is regarding the incidents which took place on 28.3.87, involving both him and Sh. Om Prakash. Learned counsel has submitted that the applicant had been charged, inter alia, that while on duty on 28.3.87 he extended undue abetment in favour of H.W. Raj Singh-I, as a sequel of which Head Warder Raj Singh successfully took out 64 logs of Shisham wood from Jail No. 2 outside in Tempo No.DIL-8186 surreptitiously. Learned counsel has pointed out that in the judgement of the Tribunal in Om Prakash's case (Supra), the Tribunal had come to the conclusion that there was no evidence to sustain the charge framed against him. He has submitted that the decision of the Tribunal has become final and binding. In this view of the matter, Sh. Luthra, learned counsel, has submitted that the applicant was only charged for extending abetment in favour of H.W. Raj Singh and since Sh. Om Prakash who was also charged with unauthorisedly

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issuing gate pass for 64 logs of Shisham wood in favour of Raj Singh has been left off, the present charges should also be quashed and set aside against the applicant.

7. Another ground taken by the learned counsel is that the applicant in the present case was charged by the order dated 28.9.90, with regard to an incident which took place on 28.3.87, i.e. more than three years later. Further, he has submitted that in Om Prakash's case (Supra), the final order was issued by the disciplinary authority on 21.2.89, whereas in the present case, the respondents have inordinately delayed the departmental proceedings and passed the penalty order nearly nine years after the incident. He has submitted that on this ground alone the penalty orders are liable to be quashed and set aside.

8. The third ground is that the appellate authority's order being a cryptic order, that should also be quashed and set aside. He has also relied on the Govt. of India, DOP&T OM dated 3.12.85 reproduced in Swamy's Compilation of CCS (CCA) Rules (24th Edition pages 254-255). His contention is that as the disciplinary proceedings initiated against the applicant under Rule 14 of the Rules had resulted in imposition of only a minor penalty, the suspension period of the applicant from 10.4.87 to 27.6.88 is wholly unjustified in terms of FR-54. He has, therefore, prayed that the period of suspension of the applicant should also be treated as period spent on duty and he should be entitled for payment of full pay and allowances for this period.

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9. We have perused the reply filed by the respondents. They had taken a stand that Sh. Om Prakash, applicant in OA-245/91 was not authorised to issue gate pass and the gate pass was not issued as per practice. Sh. Raj Singh, HW, took out the wooden logs from the Jail on fake gate pass. This contention of the respondents cannot be accepted at this stage. The respondents have nowhere stated that they have filed any appeal against the Tribunal's order dated 13.4.1992 in O.A. 245/91, and, therefore, the judgement of the Tribunal has become final and binding. We as a co-ordinate Bench are bound by the relevant findings of the fact given by the Tribunal in that case. The incident enquired into in the present case was what happened on 28.3.87 regarding taking out 64 logs of shisham wood from the jail outside involving the same persons. Therefore, the contention of the respondents that the petitioner has tried to mislead the court on the facts, as he came out of the jail along with the wooden logs in the Tempo, will not assist the respondents in the facts and circumstances of the case.

10. It is also relevant to note that the charge against the applicant is regarding abetment of the offence in favour of HW, Raj Singh-I, as a sequel of which he had successfully taken out 64 logs of Shisham wood. Having regard to the findings of the Tribunal on facts regarding the same charge against Sh. Om Prakash in O.A. 245/91 involving the same transaction on 28.3.87, the application is entitled to succeed. We also agree with the contention of the learned counsel for the

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applicant that the appellate authority's order dated 29.11.96 is a cryptic order and is liable to be quashed and set aside on this ground alone.

11. Regarding the ground taken by the learned counsel for the applicant that the respondents have unduly delayed passing the penalty orders, we do not consider it necessary to deal with this matter at this stage in view of what has been stated above regarding Om Prakash's Case (Supra). In any case, it was also open to the applicant at the appropriate time earlier to file an application before the Tribunal for orders.

12. Having regard to the Govt. of India, DOP&T OM dated 3.12.85 (Supra), which is fully applicable to the facts of the present case, the applicant shall be entitled to full pay and allowances for the period of his suspension from 10.4.87 to 26.7.88 as he has been awarded only a minor penalty on the basis of major penalty proceedings initiated against him under the provisions of CCS (CCA) Rules, 1965.

13. In the result for the reasons given above, the OA succeeds and is allowed with the following directions:

- i) The impugned penalty orders dated 23.4.96 and 29.11.96 passed by the disciplinary authority and the appellate authority are quashed and set aside;
- ii) The competent authority shall grant full pay and allowances to the applicant for the period of his suspension in terms of the relevant rules and instructions mentioned above;

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- iii) Necessary action as above, shall be taken by the respondents within two months from the date of receipt of a copy of this order.

Parties to bear their own costs.

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(S.A.T.Rizvi)
Member (A)

Lakshmi Swaminathan
(Mrs. Lakshmi Swaminathan)
Member (J)

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