

FORM NO. 2
CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
Report on the Scrutiny of Application

C.A. No. 1/1900

SB/DB

Presented by: *B. S. Jain and co.* Diary No. *2640*
Applicant(s): *Bir Singh* Date of Presentation:
Respondent(s): *G.G. Prisons and others* Group: *X CH*
Nature of grievance: *Compulsory retirement*
No. of Applicants: *One* No. of Respondents:

CLASSIFICATION

Subject: *Disciplinary (G)* Department: *NCT* (No. *1*)
* If S.B.

1. Is the application in the proper form?
(three complete sets in paper book form in
two compilations).

(PROFORMA/COMPILATION)

Whether name, description and address of all
the parties been furnished in the cause
title?

Yes

- (a) Had the application been duly signed and
verified?

(SIGNED/VERIFIED)

- (b) Have the copies been duly signed? *Yes*

- (c) Have sufficient number of copies of the
application been filed? *Yes*

4. Whether all the necessary parties are impleaded? *Yes*

5. Whether English translation of documents in a
language other than English or Hindi been filed? *Yes*

6. (a) Is the application in time?
(See Section 21) *Yes*

- (b) Is MA for condonation of delay filed? *MA*

7. Has the Vakalatnama/Memo of appearance/DO
authorisation been filed? *Yes*

8. Is the application maintainable?
(U/s 2, 14, 18 or U/R 6 etc.)

U/s 2, U/s 14, U/s 18
U/R 6, PT U/s, 25 file

9. Is the application accompanied by IPO/DD
for Rs.50/-? *Yes*

10. Has the impugned orders original/duly
attested legible copy been filed?

LEGIBLE/ATTESTED

11. Have legible copies of the annexure duly
attested been filed?

LEGIBLE/ATTESTED

12. Has the index of documents been filed and pagination done properly?

FILED/PAGINATION

13. Has the applicant exhausted all available remedies? *Yes*

14. Have the declaration as required by item 7 of Form-I been made? *Yes*

15. Have required number of envelopes (file size) bearing full address of the respondents been filed? *Yes*

16. (a) Whether the reliefs sought for, arise out of single cause of action? *Yes*

(b) Whether any interim relief is prayed for? *Yes*

17. In case an MA for condonation of delay is filed, is it supported by an affidavit of applicant? *MA*

18. Whether this case can be heard by Single Bench? *No*

19. Any other point?

20. Result of the scrutiny with initial of the Scrutiny Clerk.

The application is in order and may be registered and listed before the Court for admission/orders on :

- (a) ~~MA for joining - U/R 4(5)(a)/4(5)(b)~~
- (b) ~~MA U/R 6 of CAT Procedure Rules, 1987~~
- (c) ~~PT u/s 25 under At ACT~~
- (d) ~~MA for condonation of Delay~~

OR

The application has not been found in order in respect at item No(s) mentioned below:

- (a) Item Nos.
- (b) Application is not on prescribed size of paper.
- (c) MA U/R 4(5)(a)/4(5)(b) has not been filed.
- (d) Application/counsel has not signed each page of the application/documents.
- (e) MA U/R 6 has not been filed.

The application might be returned to the applicant for rectification of the defects within 7 days.

SCRUTINY CLERK

SECTION OFFICER

JOINT REGISTRAR

COURT NO. *1311*

DATE *12/12/2010*

13112

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL PRINCIPAL BENCH ,
NEW DELHI.

O.A.NO. 2607 OF 2000.

IN THE MATTER OF

Bir Singh

Applicant

Versus

Inspector General of Prisons & Anr.

Respondents

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NEW DELHI
DATED 12.12.2000

FILED BY *[Signature]*

प्रसाद न्यायपीठ/CAT (PB)
आज दाखिल किया
Filed Today
26/12 DEC 2000
आजिल नो/Filing No
न्यायविह्वार/Dy.Registrar

AJAY VEER SINGH
(B.S. JAIN & CO.)
ADVOCATES
218, New Chamber Block
Supreme Court of India
New Delhi.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI

O. A. NO. 2607 OF 2000

IN THE MATTER OF

Bir Singh
S/o Shri Prabhu Singh,
Ex.Warder, (Roll No. 384)
Central Jail, Tihar,
New Delhi.

RESIDENTIAL ADDRESS

Bir Singh
D-10, Staff Quarters,
Central Jail Complex
Tihar, New Delhi.

.....APPLICANT

VERSUS

1. Inspector General of Prisons
Central Jail, Tihar,
New Delhi.

2. Government of NCT
Through the Secretary
(Home), 5, Sham Nath Marg
Delhi.

.....RESPONDENTS

DETAILS OF THE APPLICATION

PARTICULARS OF THE ORDER AGAINST WHICH THIS
APPLICATION IS FILED:

1. Order No.F.52 (CJ-I)/Vig./90/386 dated 12.5.94 (A-1)
issued by the Inspector General (Prisons), Central Jail.
Tihar, New Delhi, whereby the Applicant has been awarded
a penalty of compulsory retirement from service with
immediate effect in most arbitrary, malafide and malicious



manner by the Inspector General Prisons, who is the statutory Appellate Authority founding the impugned orders on the report of the Enquiry Officer dated 31.5.1991 (A-2), which has already been disagreed to , and not accepted by the Disciplinary Authority, the Dy. Inspector General of Prisons, who remitted the case back to the Enquiry Officer, recording the reasons of his disagreement, directing him to hold the inquiry under Rule 15(1), taking into consideration the points mentioned therein and examining the related aspects and then submit his report afresh, vide orders No. F.52(CJ-I)/Vig./90 dated 30.8.91(A-3), which renders the impugned orders void ab-initio and non-est in the eyes of law. And also against the order of the Principal Secretary home dated 15th November, 2000 rejecting the appeal of the applicant.

2. JURISDICTION OF THE TRIBUNAL

The Applicant declares that the subject matter of the order against which he wants redressal is within the jurisdiction of this Hon'ble Tribunal.

3. LIMITATION

The Applicant further declares that the application is within the limitation prescribed under section 21 of the Administrative Tribunal Act, 1985.

Bu

4. FACTS OF THE CASE

- 4.1 That the Applicant is Bawaria by Caste which is included amongst the Scheduled Castes communities and belongs to a down-trodden poor family.
- 4.2 That the Applicant is an Ex-servicemen and was appointed as a Warder on 7.11.1984 in grade Rs. 825-1240, under the respondents, after going through formal process of selection. Ever since his appointment, the Applicant is holding the post of a Warder in grade Rs.825-1240 without any break of regular basis. The post held by the Applicant is a Civil post under the Union of India/Govt. of N.C.T., as such, the Applicant is entitled to the protection of the provisions of Articles 14,16 and 311 (2) of the Constitution of India.
- 4.3 That the job performance of the Applicant has been of the desired level, which has been appreciated by his superiors. No material punishment has ever been awarded to the Applicant during the long period of his service. No Disciplinary proceedings have been pending, except the one in issue.
- 4.4 That no adverse entries have ever been communicated to the Applicant and his service record has been without any stigma and has been untarnished and unblemished.



- 4.5 That the applicant all of a sudden was put under suspension vide Respondents Order dated 11.1.88, hereto marked and annexed as **Annexure-A/4**. No reasons were assigned except a cryptic mention that disciplinary proceedings are contemplated. The applicant continued to be under suspension for a number of months and neither any charge -sheet was issued nor any Disciplinary proceedings initiated against the applicant and he continued to suffer. He represented repeatedly that because it is three months statutory period within which the charge sheet has to be issued or else the suspension orders should be reviewed and unless it is very essential, in cases like tempering with the evidence, the delinquent should be allowed to join his duties.
- 4.6 That it was after over a period of six months that a charge sheet was served on the applicant on 26.7.1988, hereto marked and annexed as **Annexure-A/5**. Two Articles of Charge were framed against the applicant alleging, (i) that the applicant went to the residence of one U.T. Prisoner Mukherjee and brought smack for him from his wife and (ii) he indulged in bringing prohibited articles smack for use by one under trial lodged in the District Jail.



- 4.7 That the Article of Charges though stated as two; in fact, it is only one charge. The charges are most vague, generic, unclear, unspecific and do not make any mention of either the date, place, Jail No. etc. and, as such, the Charge sheet is badly vitiated and is non-est in the eyes of law.
- 4.8 That the Respondents issued the Charge sheet after over six months lapse of time against the laid down policy of the Government and the provisions of the statutory rules.
- 4.9 That the applicant submitted his defence against the aforesaid charges on 11.8.88, hereto marked and annexed as **Annexure-A/6**. He brought to the notice of the Disciplinary Authority that the copies of the statement of witnesses have not been supplied and he has been placed in a disadvantageous position. He also stated that neither the letter nor any smack has been recovered from the person of the applicant and that the whole story is concocted and fabricated. It is humbly pointed out that on the relevant date, he was posted on Santri duty outside the main gate and he had no access to the prisoners inside nor could he leave his place of duty. The under trial Shri Mukherjee has been nursing a grudge against the applicant and bore enmity towards him because only few days back the applicant recovered on 24.11.87 one gram smack and an



amount of Rs. 100/- which was duly reported to Shri D' Souza, the then Superintendent, resulting in punishment of 45 days confinement in punishment cell was awarded to the aforesaid under trial and his interviews were also stopped by the Superintendent.

4.10 That as the under trial was confined to the punishment cell and the applicant was posted on the Santri duty on the Main Gate, it could not be presumed that the applicant would come in personal contact of any prisoner inside the punishment cell.

4.11 That the applicant has been discharging his duties most sincerely and used to discourage incoherence of any illegal activities in the Jail and because he would at once report any such thing to his superiors, some interested, disgruntled elements amongst the Jail staff felt uneasy, because the sincere and faithful discharge of duties by the applicant, the interested elements could not continue with their illegal activities. They had a conspiracy and roped in the applicant in a false case as aforesaid. The prisoner also was hostile towards the applicant as he had been earlier punished by the Superintendent Jail on the basis of the report made by the applicant on 24.11.87 on which date the



applicant recovered one gram smack from the same prisoner.

- 4.12 That the respondents appointed Shri Subhash Sharma, a Deputy Superintendent of the Jail as Enquiry officer to conduct the Disciplinary proceedings against the applicant vide order dated 19.9.88, hereto marked and annexed as **Annexure-A/7.**
- 4.13 That the applicant denied the charges and expressed his innocence and that a conspiracy has been hatched against him and he has been falsely implicated.
- 4.14 That the applicant nominated Shri Nand Lal Singh, a Food supply Officer as his Defence Helper and intimated the respondents about the same. The Enquiry Officer addressed letter dated 19.11.88 hereto marked and annexed as **Annexure-A/8** , whereby he requested the Head of the Department of the Defence Helper to spare the aforesaid employee to act as a Defence helper of the applicant.
- 4.15 That the aforesaid Enquiry Officer Shri Subhash Sharma recorded the statement of prosecution witnesses, under trial Shri K.D. Mukherjee, Shri S.P. Sethi, Assistant Superintendent and Shri Shriniwas, Warder/Driver on 25.1.1989. The statements of three PWs so recorded are marked and annexed herewith as **Annexure-A/9.**



- 4.16 That an appreciation and assessment of the deposition of the witnesses was not recorded according to the law Evidence and nothing has been mentioned that the deposition was without any pressure, influence, threat or duress or that the same was voluntary. The legal mention in the start of the evidence as required by the Law of Evidence has not been recorded by the Enquiry officer. Thus the prosecution evidence has no evidentiary worth and cannot be relied upon. Further that PW-1 has categorically deposed that one gram smack was delivered to him one by Shri Bhoop Singh and other under trial in the same wing/Jail. In the cross examination, he admitted that on the day of incidence, he had named one Shri Mohinder Singh and also that he had no dealings with the applicant (Bir Singh).
- 4.17 That PW-2 Shir S.P.Sethi, the Assistant Spurt. Of another Jail deposed that on 6.1.88 he alongwith Warder Srinivas went to the residence of the under trial Shri Mukherjee and he sent the said Shri Srinivas to the wife of the U.t. He had not himself gone to the residence of Shri Mukherjee. In the cross examination he had admitted that he had no talk with the wife of Shri Mukherjee which renders his evidence as hearsay evidence which looses the worth of evidence.



4.18 That the PW-3 Srinivas deposed that the wife of Shri Mukerjee had given him medicines alongwith a letter and he did not know the name of the medicines. In the cross examination he has admitted that the wife of the Shri Mukherjee did not tell him as to who brought the letter to her from Shri Mukherjee.

4.19 That one of the PWs categorically stated or even made a slightest mention which is incriminatory or against the applicant. None of them named the letter from the U.T. to his wife but on the other hand PW-3 clearly stated that the wife of Shri Mukherjee gave him some medicines alongwith the desired letter, that clearly speaks volumes of innocence of the applicant but because of animosity he was wrongly roped in by way of fetching a conspiracy.

4.20 That the respondents cited our witnesses in the list of witnesses but the important and material witness, Shri Mohinder Singh also a prisoner lodged in the Jail against whom PW-1, Mukherjee had deposed and in his statement on the day of incident, had named him as the person who had brought the medicines to him. This caused a serious prejudice to the applicant and despite repeated protests, no steps were taken to examine him at all. There was no request either from the P.O. to give up the P.W.



4.21 That the P.O. submitted his written arguments on 31.3.1989, hereto marked and annexed as **Annexure-A/10.** wherein he pleaded his case placing reliance on the statement of PW-1 on the alleged deposition that he gave the unofficial/unauthorised/unlawful communication written in German language through another under trial Bhoop Singh alleged to be a relation of the applicant. He has also lauded the illegal action of Shri S.P.Sethi and Srinivas who recovered the alleged letter from the wife of Shri Mukherjee. Nowhere they have shown that they cannot out the same under orders from any higher authority. His arguments are in fact an appreciation letter for Shri Sethi and Shri Srinivas.

4.22 That in the meanwhile the respondents changed the Enquiry Officer vide orders dated 22.5.1990, hereto marked and annexed as **Annexure-A/11** and substituted Shri B.S. Jarial, another Deputy Superintendent in place of Shri Subhash Sharma who had so far been functioning as Enquiry Officer and sufficient part of the Disciplinary proceedings had already been covered. No grounds were mentioned which necessitated the change in the Enquiry Officer.




4.23 That the applicant humbly submits that the change of an Enquiry Officer midway the proceedings without any valid and reasonable grounds is most illegal as held in :-

1. A.T.C. 1989 (9)- 141 Toby Nain Vs. U.O.I.
2. 1982 (3) SLR-145 Sayed Syfulla Vs. S.P.Police
3. AIR 1991-SC-1447 K.R.Deb Vs. Controller
4. 1980-SCC L&S -140 Anand Narayan Shukla Vs. State of Madhya Pradesh.

4.24 That despite the fact that the applicant had nominated Shri Nand Lal Singh as his Defence Helper (A-8), no arrangements were made for his attendance and the applicant could not get the legal assistance.

4.25 That the applicant also time and again requested for the examination of Shri Bhoop Singh and submitted repeated requests that he should be produced being a material witness but he was not examined all. Representation submitted by the applicant is marked and annexed as **Annexure-A/12.**

4.26 That the applicant was also not supplied the statements of these witnesses who were examined as PWs which has deprived the applicant of conducting a fair cross examination, resulting in serious prejudice to the applicant depriving him from meeting the case of the respondents.



- 4.27 That the wife of the U.T.Shri K.D.Mukherjee was a material witness but she was also examined, seriously effecting the right of the applicant of cross examining her in order to prove his innocence and establishes his cases.
- 4.28 That the materially important Defence witness was not examined although he is an important link in the chain and it has been alleged that he being an under trial with Shri K.D.Mukherjee and that the letter from Mukherjee to his wife and the smack was delivered through Bhoop Singh s a medium, allegedly being uncle (Mama) of the applicant.
- 4.29 That Shri Mukherjee in his evidence has clearly admitted that the smack was passed on to him by Shri Bhoop Singh. It is humbly submitted that the charge against the applicant is based on surmises and conjectures and on no evidence as neither any recovery has been made from the person of the applicant nor even any recovery has been made in his presence, nor there is any shred of evidence, naming him as either the main accused or even a collaborator.
- 4.30 That the alleged visit by Shri Sethi and Shri Sriniwas, Warder is a concocted story and there have no written orders from any body directing them to raid the house of Shri Mukherjee, nor the Jail official are empowered to raid any civil premises.



- 4.31 That the wife of Shri Mukherjee forms a vital link in the chain of evidence but she has been not examined and the applicant has been deprived of cross examination material witness who is the basis of the whole proceedings.
- 4.32 That it is admitted in evidence that one gram smack was brought in the Jail premises by under trial Shri Bhoop Singh from the wife of U.T. Shri Mukherjee. Despite this having come in evidence, no criminal proceedings under the law were initiated against either of the two and the law has been given a go-bye.
- 4.33 That the Disciplinary Authority vide orders dated 13.4.1992, hereto marked and annexed as **Annexure-A/13**, revoked the orders of suspension of the applicant and the applicant was allowed to join his duties as a Warder.
- 4.34 That consequent to the submission of the inquiry report dated 31.5.91 (A-2) by the Enquiry Officer, the applicant was served with a Show Cause Notice dated 6.6.1991 whereby while supplying the Inquiry Report, the Applicant was directed to submit his representation, if any. Accordingly, he submitted the same which is hereto marked and annexed as **Annexure-A/14**. He submitted that he was innocent and has been falsely implicated in the case. He annexed therewith a copy of his statement dated 29.2.1991 wherein



he had explained his position and had clearly brought out the fact that no PW has named the applicant as the person who brought the smack from the wife of Shri Mukherjee. He further stated that a conspiracy has been hatched by some Jail Officials who have been indulging in malpractice and had vested interests in the under trial, Shri Mukherjee , who was also nursing a grudge against the applicant because the applicant had earlier recovered some smack from his possession. The matter was reported against him and he was given punishment for confinement in punishment cell for 45 days and his interviews were also stopped.

- 4.35 That the respondents on receipt of the representation, issued letter dated 1.7.91, hereto marked and annexed as **Annexure-A/15**, whereby the applicant was given a personal hearing with the Disciplinary Authority and accordingly, the applicant appeared before the D.I.G. on 1.7.91 and explained the complete facts, various legal infirmities and the illegal manner in which the inquiry had been conducted pleading that he was not given a reasonable opportunity. Shri Bhoop Singh, a material witness was not examined and the Enquiry Officer failed to establish that the alleged letter was given to the applicant by either Shri



Mukherjee or Bhoop Singh and more important of all, admission on the part of Mukherjee that the smack was handed over to him by Shri Bhoop Singh and further cross examination of wife of Shri Mukherjee , a materially important witness etc. and all that has caused a serious prejudice to the applicant.

4.36 That the Disciplinary Authority on application of his mind to the report, representation and facts brought out in the personal hearing, issued orders dated 30.8.1991, hereto marked and annexed as **Annexure-A/3** and remitted the case under Rule 15(1) of the CCS (CCA) Rule to the Enquiry Officer, not being satisfied with the inquiry report and accepting the objections of the applicant. He gave specific directions to the Enquiry Officer mentioning the legal points, which he has to take into account with clear directions that he should submit the report at the earliest. Thus the earlier report dated 31.5.90 (A-2) stood overruled and became non-est in the eyes of law.

4.37 That complying with the aforesaid orders of remission the Enquiry Officer, restarted the proceedings and issued orders dated 22.10.92, hereto marked and annexed as **Annexure-A/16** , and while referring to the written statement of the applicant and non-examination of Shri Bhoop Singh and



directed the production of the aforesaid Shri Bhoop Singh and further said that since the aforesaid Shri Bhoop Singh is a resident of Applicant's native village and personally known to him, asked the applicant to submit a list of Defence Witnesses including Shri Bhoop Singh, if so desired. He was also directed to appear before the Enquiry Officer on 30.10.92. This is marked and annexed as **Annexure-A/17.** That the Enquiry Officer also addressed a letter to Shri Bhoop Singh on 15.3.93 asking him to attend the enquiry on 5.4.93 which is hereto marked and annexed as **Annexure-A/18.**

- 4.38 That the orders for remission of the case were passed on 30.8.1991 (A-3) and in compliance thereof the Enquiry officer conducted proceedings also as humbly submitted in the foregoing paras and the documents A-16, A-17, A-18 all show that in compliance of the remission orders, some proceedings were held and then the matter had been hanging fire to the knowledge of the applicant, no report has been submitted by the Enquiry Officer and at least no report after the remission orders, have been supplied nor any show cause issued enabling the applicant to submit his representation against the inquiry report.



4.39 That all of a sudden the Inspector General Prisons who is the highest Jail Officer, at the helm of the affairs, issued order dated 12.5.1994 (A-1), under the guise of competent Disciplinary Authority awarded a penalty of compulsorily retirement from service. A perusal of the same reveals that there is no mention of the remission of the case at all and the earlier report dated 31.5.91 (A-2), submitted by the Enquiry Officer which was overruled by remission orders dated 30.8.91 (A-3), thus was non-EST in the eyes of law, has been made the foundation for the impugned orders which is most illegal, arbitrary, malicious and full of hostile discrimination and above all, indicates the personal bias of Shrimati Kiran Bedi, the I.G. Prisons who has malafidely abused her powers in a coloured and painted manner motivated by her enthusiasm to revolutionise the Jail administration . She has been instigated by the vested interests in the Jail Administrative and since the applicant honestly and sincerely has been discharging his duties and had recovered smack from Shri K.D.Mukherjee on 24.11.87 which was not relied by some of the Jail Officers because of the status of Shri K.D.Mukherjee, now serving life imprisonment under N.D.P.s. Act. He is a known criminal indulging in drug trafficking , wielding undue influence on



some of the Jail Officials, thus deriving and enjoying undue privileges.

4.40 That the applicant submitted an appeal, hereto marked and annexed as **Annexure-A/19** , whereby he even approached the Home Secretary with his case and pleaded that the applicant was suspended on 11.1.1988, no charge sheet was served for at least six months, there is no evidence against the applicant, the Enquiry Officer acted in violation of the Rules. Shri Mukherjee, U.T. had categorically stated in his evidence that the smack was brought to him by another under trial Bhoop Singh, the charges have been framed against him due to personal bias and emosity of Shri Mukherjee . The E.O. was changed repeatedly against the Rules and that the alleged smack, described as medicine in the evidence by Shri Srinivas should have been got tested in order to establish the case which was not done.

4.41 That the applicant is in possession of a Govt. quarter D-10, Staff Quarters, Central Jail-1 Complex, Tihar by way of a valid allotment issued by the Respondents in favour of the applicant. The aforesaid quarter has been under the possession of the applicant and his family and the normal licence fee has been deducted from the monthly salary of the applicant. The wife of the applicant is a chronic patient, his



children are school going and an abrupt eviction would result in great personal hardship, which would disrupt the education of his school going children, and further deteriorate the health of his wife.

5. GROUND S

In view of the humble submissions made and facts and circumstances explained, the impugned orders of compulsory retirement of the applicant are arbitrary, malafide, malacious, void-ab-initio, bad in law, malacious and badly vitiated on the following amongst other grounds:-

- 5.1 That the impugned orders have been issued by the highest Authority in Jail Administration, she is not the competent authority, but is steps higher than the Disciplinary Authority who in the case of the applicant is the Dy. Inspector General of Prisons as is evident from the Charge Sheet (A-5), remission orders dated 30.8.91 (A-3), suspension and revocation orders (A-4) and other documents which all show that it is the Dy. Inspector General of Prisons who initiated the proceedings, considered the Inquiry Report dated 31.5.91 (A-2) and passed the remission orders dated 30.8.91 (A-3). This has deprived the applicant of an opportunity to prefer an appeal because the


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doors are shut before him as the impugned orders are issued by the highest authority.

5.2 Because the foundation of the impugned orders as is clear from the para 3 & 4 of the impugned orders, is the Inquiry Report dated 30.5.91 (A-2) which has been overruled by the Disciplinary Authority vide remission orders dated 30.8.91 (A-3). The same being non-est in the eyes of law, cannot be relied upon for awarding any punishment.

5.3 Because as of today, the legal position remains that Inquiry Report dated 31.5.91 (A-2) does not hold the field, and consequent to the remission orders dated 30.8.91 (A-3), there being no inquiry report submitted by the E.O., the proceedings against the applicant cannot be said to be alive and the case legally stands over and the impugned orders are void ab-initio lacking the foundation and the competency of the Authority.

5.4 Because a perusal of the impugned orders vividly reveal that it is the Inspector General , Ms. Kiran Bedi who clearly indicating in the impugned orders that she being the competent Disciplinary Authority, is empowered under the Rules to inflict the penalty, which is most coloured use of the executive powers motivated by the personal bias against



the applicant and her enthusiasm to revolutionise the Jail administration.

- 5.5 Because a perusal of the Prosecution Evidence reveals that the impugned orders are based on no evidence at all. PW-2 in the cross-examination has clearly stated that there has been no conversation between him and the wife of Shri Mukherjee. As such, the charge is based on hearsay evidence, which has no evidentiary value. PW-3 in his evidence has said that he gave the message/letter to the said lady who in turn made over some medicines and the letter to him. He has further said that the said lady did not tell him as to who brought the letter of her husband to her.
- 5.6 That Shri K.D.Kukherjee in his deposition has clearly named Shri Bhoop Singh, the person who brought the smack to him, as such, the applicant cannot be held guilty for that act.
- 5.7 Because none of the three PWs made even a slightest mention of the applicant who is contributory/responsible for either acting as a messenger carrying letters between Mukherjee and his wife nor any one has said that he delivered or carried the letter /smack at any time.
- 5.8 Because in the remission orders (A-3), the Disciplinary Authority considered the Inquiry Report and proper



assessment came to the conclusion that the applicant was not given the reasonable opportunity to defence, despite his insistence to examine Shri Bhoop Singh, it was not done and above all, the Enquiry Officer did not establish that the alleged letter was given to the applicant either by Bhoop Singh or Mukherjee or that the smack was passed to him by Bhoop Singh. The conclusion so reached by the Disciplinary Authority renders the report submitted by the Enquiry Officer as null and void.

5.9 Because with the jumping of the highest authority of the Jail Administration in the fray, the proceedings and the consequent impugned orders are rendered nullity because two authorities cannot at one and the same time act as Disciplinary Authority, one remitting the case to the Enquiry Officer and the other inflicting the penalty of compulsory retirement and the same there is not provided for under any rule of the law and is in grave violation of the principles of natural Justice.

5.10 Because the copies of the statements of the witnesses recorded by the Respondents in the preliminary fact facing inquiry, have not been supplied to the applicant who has been seriously aggrieved and could not effectively cross examine any one of them.



- 5.11 Because four witnesses are cited but Shri Mohinder Singh, prisoner has not been examined and no reasons have been given for the same nor any orders were passed for giving up the said P.W.
- 5.12 Because the Enquiry Officer appointed on 19.9.88 (A-7) was changed in an illegal manner without any reasons and when he could not delivered the goods according to the choice of the respondents, he was thrown out and another Enquiry Officer was appointed, which is against the provisions of the rules and also flagrant violation of the laid-down law in the cases cited by the applicant in earlier paras.
- 5.13 Because the earlier Enquiry Officer, Shri Subhash Sharma had accepted the Defence Helper Shri Nand Lal Singh vide letter dated 19.11.88 (A-8), but necessary arrangements for his participation were not made by the second Enquiry Officer and thus the applicant was deprived of an opportunity to have a assistance of a Defence Helper.
- 5.14 Because a bare perusal of the Articles of charges indicates that the same are most vague because neither any date nor time etc. has been mentioned and it cannot be made out as to which date the incident relates. The Supreme Court in case Swai Singh Vs. State of Rajasthan AIR 1971 SC 753 Surath Chandra Vs. State of W.B. that the charges must be



very clear and the date, time etc. should be clearly indicated so as to afford the reasonable opportunity to the delinquent to meet with the case.

5.15 Because the incident relates to January , 1988 when the applicant was put under suspension vide orders dated 11.1.1988 (A-4) but no effective steps were taken for starting the Disciplinary Proceedings for a very long time which lastly culminated in the submission of report on 31.5.1991 (A-2), passing of the remission orders dated 30.8.91 (A-3) and as on date to the knowledge of the applicant, there is no report submitted by the Enquiry Officer consequent to the remission orders. Thus, the proceedings and the hanging fate of the case are badly vitiated because of the inordinate long delay. The applicant places a reliance on the judgment in case 1980 (1) SLR 324 by the Gujarat High Court holding that "delay in initiating disciplinary proceedings by itself, therefore, will constitute denial of reasonable opportunity to show cause. This would amount to violation of principles of natural justice and the impugned orders must be struck down on this ground alone."

5.16 Because Delhi high Court in Case 1976 (1) SLR 133 has held as follows:-



“Elementary fairness to public servant would require that the sword of Damocles should not be allowed to hand over him longer than necessary, otherwise there is likelihood of degeneration into an engima of oppression.”

- 5.17 Because the impugned orders have been passed in a most unreasoned , non-speaking, malafide manners, without application either to the evidence or the fact that the case is the subject matter of the remission whereon the Inquiry Report is wanting.
- 5.18 Because the action of the respondents is against the principles of Equity, Justice and Good-conscience and violates the Article 14, 16 and 311 (2) of the Constitution of India.
- 5.19 Because the compulsory retirement of the applicant in addition to being void ab-initio lacking the Authority and evidence is a punitive action and no material is placed before the Disciplinary Authority for such orders.
- 5.20 Because the impugned orders have been passed on an isolated incidence which is most illegal and the respondents ought to have taking into account the previous service rendered by the applicant.

6. DETAILS OF THE REMEDIES EXHAUSTED:



The applicant declares that he has availed of all the remedies available to him under the relevant service rules etc. Chronologically the details of representations made and the outcome of such representations is given in Para-4. Because impugned orders have been passed by the highest of the authorities, that shuts all the doors of appeal before the applicant. Further, because the orders are void ab-initio in view of the fact that the case was remitted to the Inquiry Officer in important legal grounds by the Disciplinary Authority, there is no reasonability or justification for an appeal. The applicant respectfully prays for exemption for the rigid application of the provisions in this context.

7. MATTER NOT PREVIOUSLY FILED OR PENDING WITH ANY OTHER COURT.

That the applicant had filed a similar OA before this Hon'ble Tribunal vide OA No.1374/97 and this Hon'ble Tribunal was pleased to order the Respondent No. 2 to decide the matter. The Hon'ble Tribunal was further pleased to order that , "if the applicant is still aggrieved he will be at liberty to approach the tribunal." A photocopy of the order dated 22.7.99 is annexed as ANNEXURE A/20. That the Respondent No.2 was pleased to rejected the appeal of the



applicant on 15th November ,2000. A photocopy of the order dated 15.11.2000 is annexed as **ANNEXURE-A/21.**

8. RELIEF SOUGHT

In view of the humble submissions made, facts and circumstances explained, the applicant respectfully prays this Hon'ble Tribunal to be graciously pleased to :-

- i) Set-aside and quash the impugned orders No. F.52(CJ-1)/Vig./90/385 dated 12.5.1994 (A-4) inflicting the penalty of compulsory retirement from service being void-ab-initio and badly vitiated;
- ii) Set-aside and quash respondents orders dated 30.8.1991 (A-3) whereby the Enquiry Officer has been directed to further conduct the inquiry under Rule 15 (1) of the CCS (CCA) Rules being arbitrary and malafide on the grounds humbly submitted in the foregoing paras and above all, because of delay and latches on the part of the respondents in concluding the same.
- iii) Set aside the order of the Respondent No.2 dated 15.11.2000.
- iv) Direct/order /command the respondents to reinstate the application on the post of Warder immediately and deem

Am

him to be continued in service without any break and pay him the wages etc. with interest.

- v) Any other relief deemed fit and proper may also be granted in addition to the cost of the case.

9. INTERIM RELIF

- i) The applicant respectfully prays that in view of the serious magnitude of the case as humbly submitted in the foregoing paras, this Hon'ble Tribunal be pleased to direct/command the respondents to allow the applicant to function on the post of a Warder, failing which, the applicant would be put to an irreparable loss not possible to be compensated .
- ii) The respondents be further restrained from evicting the applicant from Quarter No. D-10, Staff Quarters, Jail Complex in view of his children's education and sickness of his wife, till the decision of the case.

10. The application is filed at the counter.

11. Bank Draft No. _____ Dated 12.12.2000
for Rs. 50/- is attached

12. List of Enclosures is attached at Index page.

APPLICANT

VERIFICATION

I, Bir Singh S/o Shri Prabhu Singh, Ex-Warder, Central Jail, R/o D-10, Staff Quarters, Central Jail Complex, Tihar, New Delhi, do hereby verify that the contents of Paras 1 to 7 and 10 to 12 are true and correct to my personal knowledge and Para 8 and believed to be true on legal advice and that I have not suppressed any material fact.

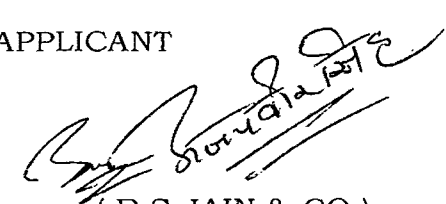
APPLICANT

THROUGH

COUNSEL

NEW DELHI

DATED


(B.S.JAIN & CO.)
ADVOCATES
218, NEW LAWYERS CHAMBERS
SUPREME COURT OF INDIA
NEW DELHI

Most UrgentOFFICE OF THE INSPECTOR GENERAL (PRISONS)
CENTRAL JAIL; TIHAR; NEW DELHI.

NO.F.52(CJ-I)/Vig./90/386

Dated : 12/5/94

O R D E R

Whereas Sh. Vir Singh, Warder, Roll No. 384 was issued a chargesheet for major penalty vide Memo No. CJ-2(65)/Vig./88/8865 dated 26.7.88 on the following charges :-

That the said Sh. Vir Singh, Warder was found indulging in the business of trafficking of smack by bringing the same from the residence of one U.T. Kishore Dev Mukharjee lodged in the Distt. Jail. Thus, the warder Vir Singh acted in a manner unbecoming of a Govt. servant and vehemently violated the provisions of CCS(Conduct) Rules, 1964.

II. That the said Warder Vir Singh, by bringing smack from the residence of one U.T. Kishore Dev Mukharjee showed undue intimacy with the criminals and thus acted in a manner unbecoming of a Govt. servant which is violative of all the norms of CCS(Conduct) Rules, 1964 in force.

2. Sh. Vir Singh, Warder, Roll No.384, the charged official denied the charges and therefore Sh. B.S.Jarial, DS-II was appointed as the Inquiry Officer and Sh. Phillip Thomas, AS was appointed as Presenting Officer.

3. The Inquiry Officer has submitted his Enquiry Report dated 31.5.91 proving the charges levelled against the charged official Sh. Bir Singh, Warder. The copy of the Inquiry Report dated 31.5.91 has been served to the charged official vide Memo. dt. 6.6.91 to make any representation or submission against the Inquiry Report.

4. The charged official submitted his representation vide letter dated 10.7.91 stating that :-

i. That the UT K.D.Mukharjee has ^{no where} ~~however~~ stated that he gave me the letter for bringing the smack.

ii. That the statement of UT Bhoop Singh was not recorded in spite of his insistance.

iii. No statement of the wife of Sh. K.D.Mukharjee was recorded to the effect that any letter was handed over to her by the charged official.

iv. That the statement of UT K.D.Mukharjee can not be relied

Contd.....2/-

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upon as he was a smack addict and had been punished on several occasions on this account.

The undersigned has carefully perused/examined the representation made by Sh. Bir Singh, Warder the charged official. The undersigned is not inclined to accept the assertions of the charged official on the following grounds:

The statement of UT K.D.Mukharjee, PW-I reveals that he had given a letter to Sh. Bhoop Singh and undertrial to deliver it at his residence. Sh. Bhoop Singh had informed Sh. K.D.Mukharjee that the warder Vir Singh who is a relative of Bhoop Singh shall go to his house to deliver the letter and to bring Rs. 200 and 1 Gm. of smack from his wife. Sh. Mukharjee also confirmed that his wife informed him at the time of interview that she gave 1 gm. of smack and the money to Sh. Vir Singh, Warder.

Therefore the statement by Sh. K.D.Mukharjee is a solid evidence to establish the guilt and the statement of his wife was not therefore thought necessary by the I.O.

Perusal of I.R. submitted by the I.O. also reveals that the Inquiry Officer gave full opportunities to the charged official to produce his defence witnesses including Bhoop Singh. Even the then DIG(P) persistently asked the I.O. to look into these aspects vide order dated 30.8.91. The I.O. has discussed in his inquiry report that the charged official was asked to produce Sh. Bhoop Singh who was from his native village, but in spite of that the charged official did not produce Sh. Bhoop Singh as his defence witness.

The charged official has also taken a plea that Sh. S.P.Sethi, AS and Sh. Sri Niwas, warder who were sent to the house of UT K.D.Mukharjee to recover the letter in question were not sent by the DS under any written orders. This plea of the charged official is not tenable as the Dy. Supdt. or the Supdt. were fully competent to depute any official of the jail to enquire into any serious incident even under verbal orders. The then Supdt. of the jail was also endorsed the action taken by the Dy. Supdt. to unearth the truth. The Supdt. of the Jail has also mentioned in his report that smack for UT K.D.Mukharjee was brought by Warder, Vir Singh and the letter delivered by Sh. Vir Singh, Warder at the residence of UT K.D.Mukharjee was recovered and placed on record. The report of SCJ-1 who is the Chief Custodian of the jail ~~can not~~ can not

Contd.../-

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be taken lightly and hence forms a ground against the charged official that he was instrumental in trafficking smack in the jail by keeping nexus with the prisoner.

Moreover the role of the official Sh. Sethi, AS and Sh. Sri Niwas, Warder was only to recover the letter from the residence of UT K.D. Mukharjee and not to depose that the letter in question was given to the wife of UT K.D. Mukharjee by Vir Singh, Warder.

Therefore the undersigned agrees with the Inquiry Report and after going through the entire facts/circumstances and records of the case is of the opinion that the said Warder Vir Singh indulged in trafficking of smack into the jail by having a nexus with the prisoner. As such, the said warder, Vir Singh is not a fit person to be retained in Govt. service in public interest as his further retention would no more be safe for the prison Deptt.

Now, therefore, the undersigned being the Competent Disciplinary Authority and empowered under rules hereby orders that a penalty of compulsory retirement from service be imposed upon Sh. Vir Singh, Warder, Roll No. 384.

Sh. Vir Singh, Warder is therefore retired compulsarily from service with immediate effect. He shall be entitled for full compensation, pension and gratuity as admissible to him.

Kiran Bedi
(KIRAN BEDI)
INSPECTOR GENERAL (PRISONS)
CENTRAL JAIL, TIHAR, DELHI.

✓ Sh. Vir Singh, Warder,
Roll No. 384. Through SCJ-3

Copy to :

1. D.S.-I (Estt.)
2. AAO (Accts.).
3. SCJ No.-3
4. Concerned file.

(JAYADEV SARANGI)
DY. INSPECTOR GENERAL (PRISONS)

Inquiry under Rule 14 of CCS(CCA) of 1965 against Shri Vir Singh, Warder Roll No.384 of Distt.Jail.

I was appointed Inquiry Officer in the above noted Inquiry vide order No.CJ-2(65)/Vig/88/8857 dt.22.5.90. & Sh.J.P.Bhatnagar, Asstt.Suptd. was appointed Presenting Officer in the said Inquiry.

As per the above said order the following article of charge was framed against Sh.Vir Singh, Warder.

That the said Sh.Vir Singh, Warder was found indulging in the business of trafficking of smack by bringing the same from the residence of one U.T.Kishore Dev Mukerjee lodged in Distt.Jail. Thus the Warder Vir Singh acted in a manner unbecoming of a Govt. servant & vehemently violated the provision of CCS(CCA) Rules 1964.

The following are the list of documents by which the articles of charges framed against warder Vir Singh, are proposed to be substantiated (Annexure-III).

1. Statement of U.T. K.D.Mukerjee.
2. Statement of Prisoner Mohinder Singh.
3. Letter of U.T.Prisoner Mukerjee written to his wife for handing over of smack to Vir Singh on 28.12.87.
4. Statement of Sh.S.P.Sethi, A.S.
5. Statement of Sh.Sri Niwas, Warder.

The list of witnesses by whom the articles of charge framed against warder Vir Singh are proposed to be substantiated.

1. Sh.K.D.Mukerjee (U.T.Prisoners)
2. Sh.Mohinder Singh, Prisoner.
3. Sh.S.P.Sethi, A.S.
4. Sh.Sri Niwas No.251, Warder.

On 9.8.90. I was informed by the Presenting Officer that all the records pertaining to this Inquiry is with Sh. Subash Sharma, Dy.Suptd., who was appointed Inquiry Officer in the said Inquiry previously, Accordingly a letter was written to Vigilance Officer on 9.8.90 vide No.F.CJ-2/88/90/262E-26 and reminder there to on 12.12.90. The record of the said Inquiry was received on 15.1.91 from the office S.I.C. Vig.

After going through the record, it was revealed by predecessor Sh.Subash Sharma, Dy.Superintendent, had filed statement, of the prosecution witness U/T K.D.

7.2.2...

Mukerjee, Sh. S.P.Sethi A.S. & Sri Niwas, Warder. As per record statement of prisoner Mohinder Singh could not be taken as he had already been released from the Jail.

As per record Sh. Vir Singh, the delinquent official was given an opportunity to engage defence assistant. However on 19.12.88, he had given in writing that he does not want to engage any defence assistant & would present his case himself.

Statement of U/T K.D.Mukerjee

His statement was recorded on 25.1.89. He had stated that he had seen the letter which was written by him in German. The same was given to U/T Bhoop Singh for onward transmission to his wife. He further added that Bhoop Singh U/T who is maternal uncle of Sh. Vir Singh as was told by him. This letter was given so as to bring one gram of smack & probably Rs.200/-. This letter is exhibited at PWI/A. U.T. Bhoop Singh brought one gram smack & given to him. He further added that he had not received the money. This money was for the person who would brought the articles from the house.

Cross Examination

Sh. Vir Singh had told that U/T Bhoop Singh is his uncle. He further added that U/T Bhoop Singh U/T Mohinder Singh & himself were lodged in ward No.8. It is wrong to suggest that he had given the parcha to Mohinder Singh. Bhoop Singh had told that Sh. Vir Singh had to go to his house. The incident was of 6.1.88. He stated that he was informed by his wife that the articles were given to Sh. Vir Singh, warder as per content of the letter. This thing was told by his wife during the interview. He further added that he had seen his statement dt.6.1.88, which is exhibited at Ex-PW1/B. He further added that it is wrong to suggest that he had handed over the letter at the time of interview. It is wrong to suggest that warder Vir Singh had caught the smack. He had nothing against warder Vir Singh. He stated that at that time he had mentioned the name of Mohinder Singh. It is wrong to suggest that he had also mention the name of Dharmvir warder. It is wrong to suggest that on 1.1.88, he had signed on 25.1.89. statement of other witnesses namely Sh. S.P.Sethi A.S. & Sh. Sri Niwas, warder was also recorded.

Statement of Sh. S.P. Sethi, A.S.

He had stated that on 6.1.88. on the order of Dy. Supdt. he alongwith Sri Niwas Warder had gone to Karol Bagh at House No.17-A/WEA, house of U/T Mukerjee, where the wife of U/T Mukerjee met Sri Niwas. The letter which was brought by Sri Niwas is the same, which is exhibited at Ex-PWI/A. To bring this letter, I have gone on a Jeep. He had taken a letter from Mukerjee in the name of the wife of Mukerjee. Later the letter was handed over to the Dy.Supdt. He further added that he had seen his statement, which is exhibited at Ex-PW2/A & confirms his signatures.

Cross Examination:

He stated that he had no conversation with the wife of Mukerjee, about the same.

Statement of Sh.Sri Niwas, Warder.

He had stated that in Jan.88, he was working at Camp Jail as warder/Driver. He, on the orders of Dy.Supdt, along with Sh.Sethi went along with the letter, in a Jeep, to the house of Mukerjee at Karol Bagh. He was sent along with the letter to the house of Mukerjee by Sh.Sethi with the instruction to bring the letter which was brought by Jail warder. He had handed over the parcha & she had handed over the said letter. The letter is exhibited at Ex-PWI/A & the same is seen by him & it is the same letter. Alongwith the letter he was also given medicine, the name of which he do not remember. The statement exhibited at Ex-PW3/A was shown to him & he affirm the same.

Cross Examination:

He stated that his wife do not tell who had brought the letter nor he had asked about the same.

On 25.1.89, the presenting Officer had moved an applicant for that since the witness U/T Mohinder Singh is released from the Jail as informed by Sh.P.L.Chabbra A.S. UT, his statement could not be recorded. He further added that the statement dt. 6.1.88. of U/T Mohinder Singh be taken on record which was counter signed by the Supdt. The P.O. had requested for closer of prosecution evidence. The case was adjourned to 30.1.89. with the direction to the delinquent official to produce his defence witnesses.

However my predecessor had taken up the case on 30.1.89. & noted down that the delinquent official had

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stated that he does not want to produce any witness in his defence. But the same was not signed (on page 5/N) by him. There is also an application from P.O.'s side regarding the same & closing of defence evidence.

My predecessor vide letter No.394 dt. 9.2.89, had requested DIG(P) for examination of the complainant and for examination of the complaint. It was informed by D.I.C. vigilance, that the complainant in that case was Sh.R.T. L.D'souza, the then Supdt., Distt. Jail, D.I.C. vigilance vide letter No.194 dt. 11.5.89 supplied copy of the report of the complaint in this case (Placed at 17/c).

The P.O. had submitted his written brief on 31.1.89. The prosecution relied on the statement of the witnesses. particularly to that of U/T K.D. Mukerjee, who had given a letter written in code word through another U/T Bhooop Singh, who was stated to be close relative of warder, Vir Singh (mama) for bringing smack & Rs.200/-. This witness had affirmed his hand writing. This letter is exhibited at Ex.PW1/A. He further added in his brief that Sh.S.P. Sethi A.S. & Sri Niwas (W) was able to recover the letter from the wife of the U/T Mukerjee.

U/T K.D. Mukerjee had also identify his original statement dt. 6.1.88. P.O. has asserted that there was conspiracy with the prisoner.

The delinquent official in his written brief dated 20.2.91 had raised the following points in his defence.

1. That no where in the statement of U/T K.D. Mukherjee dt. 26.1.89. it was mentioned that the letter was given to him.
2. that delinquent official has denied his relation with U.T. Bhooop Singh & stated that his room was used for personal gain.
3. that no statement of U/T Bhooop Singh was given in despite of his insistence before D.I.C.
4. that the reason for implicating him by U/T K.D. Mukerjee is

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because he had recovered one Gm of smack from U/T K.D. Mukerjee on 24.11.87 & it can be verified from the record & the said U/T was punished for the said offence.

5. That the statement of U/T K.D. Mukerjee can not be relied upon as he is herdenad smack addict & had been punished on several occasion. His statement has been given due to vegenence at the provocation of other inmates who consider him tough man on duty.
6. No witnesses have disposed that the letter was given by me to the wife of U/T Mukerjee. Even no statement of the wife of K.D. Mukerjee was recorded to this effect.

The complaint of the Supdt. Distt. Jail dt. 8.1.88 & the statement of U/T K.D. Mukerjee are self contained. The delinquent official was contacted through U/T Mohinder Singh by U/T K.D. Mukerjee. & both confirmed that warder Vir Singh had gone to the wife of U/T K.D. Mukerjee at Karol Bagh & the said letter was collected by Sri Niwas (W) from the wife of U/T Mukerjee. However to clear the matter further, the said letter written in German by U/T K.D. Mukerjee to his wife was translated into English. In the said letter code words seems to have been used i.e. words like Long, Pol (for Police).

After taking into consideration all the statement of the witnesses, exhibits, written brief of the presenting officer written brief of the defence, complaint of the Supdt. dt. 8.1.88. & translation of Ex-FWI/A, points accusing finger towards the delinquent official. The requirement of the circumstantial evidence is sufficient to prove the charge of involvement of Shri Vir Singh Warder in the business of trafficking of smack by bring the same from the residence of U/T K.D. Mukerjee & thus showing undue intimacy with the criminals.

The charge framed against the delinquent official is proved.

Sd/-
(B.S. JARIAL)
Inquiry Officer.
31/5/81

CERTIFIED THIS IS THE TRUE COPY
OF THE ORIGINAL DOCUMENT.

ADVOCATE

OFFICE OF THE INSPECTOR GENERAL OF PRISONS
CENTRAL JAIL, TIHAR: N. DELHI

No.F.52(CJ-1)/Vig./90

Dated: ✓

ORDER

WHEREAS AS Sh.B.S.Jarail DS-II was appointed as Inquiry Officer in a Departmental enquiry against warder Veer Singh under Rule 14 of the CCS(CCA), Rules, 1965, vide this office order dated 22.5.90.

NOW, he has submitted the enquiry report and after considering the enquiry report and documents together it has been observed that the charged official was not given the reasonable opportunity of being heard. His insistence to examine Sh.Bhoop Singh was not agreed to. Inquiry Officer did not establish that the letter was given to Sh.Veer Singh either by Bhoop Singh or Mukherjee. Besides, it other points like Mukherjee admitted that smack was passed to him by Bhoop Singh, Bhoop Singh was also lodged in Ward No.8 of the Camp Jail with other inmates, no written order of Dy.Suptd. to visit house of Mukherjee by two witnesses, no statement of wife of Mukherjee has been recorded have been clarified in the enquiry Report.


Sh.B.S.Jarail, DS-II, I.D., therefore, is directed to hold the enquiry under rule (1) of Rule 15 of the CCS(CCA), Rules, 1965 and the points mentioned above alongwith other related aspects be examined and submit report at the earliest.

Sd/-
HANS RAJ)
DY.INSPECTOR GENERAL OF PRISONS
CENTRAL JAIL, TIHAR.

No.F.52(CJ-1)/Vig./90/269

Dated: 30.8.91.

CERTIFIED THIS IS THE TRUE COPY
OF THE ORIGINAL DOCUMENT.


ADVOCATE

OFFICE OF THE INSPECTOR GENERAL OF PRISONS: CENTRAL JAIL
NEW DELHI.

(VIGILANCE BRANCH)

No. C32(65)/Vig./88

Dated. 11-1-1988

O R D E R

Whereas a disciplinary proceedings against
Warder Vir Singh, are contemplated;

Now, therefore, the undersigned in exercise of
the powers conferred by the sub rule (1) of Rule 10 of
the Central Civil Services (Classification, Control and
Appeal) Rules, 1965 hereby places the said warder under
suspension with immediate effect;

It is, therefore, ordered that during the period
that this order shall remain in force, the Head Quarters
of Warder Vir Singh, should be Delhi and the said warder
Vir Singh shall not leave the Head Quarters without
obtaining prior permission of the undersigned.

Sd/-

(RAJIV KALE)
DEPUTY INSPECTOR GENERAL OF PRISONS
CENTRAL JAIL
New Delhi.

CJ2(65)/Vig/88/508

Dated: 11.1.1988

Copy for information and necessary action to:-

1. Official concerned, Warder Vir Singh, Jail No.4
2. D.S. Central Jail.
3. DDO, Central Jail.

Sd/-

(RAJIV KALE)
DEPUTY INSPECTOR GENERAL OF PRISONS
CENTRAL JAIL
NEW DELHI.

CERTIFIED THIS THE TRUE COPY
OF THE ORIGINAL DOCUMENT.


ADVOCATE

ANNEXURE A- 5OFFICE OF THE I.G.(PRISON):CENTRAL JAIL
(VIGILANCE BRANCH) NEW DELHI.

No.CJ-2(65)/Vig/88/8885

Dated:26.7.88

M E M O R A N D U M

The undersigned proposed to hold an enquiry against Shri Vir Singh, Warder under Rule 14 of the Central Civil Services(Classification, Control & Appeal) Rules, 1965. The substance of the imputations of misconduct or misbehaviour in respect of which the enquiry proposed to be held is set out in the enclosed statement of Articles of charge(Annexure-I). A statement of the imputation of misconduct or misbehaviour in support of each article of charges is enclosed(Annexure-II). A list of documents of charge are proposed to be sustained are also enclosed (Annexure III & IV).

2. Shri Vir Singh, Warder is directed to submit within 10 days of the receipt of this memorandum a written statement of his defence and also to state whether he desired to be heard in person.
3. Shri Vir Singh, Warder is informed that an inquiry will be held only in respect of those article of charges as are not admitted. He should, therefore, specifically accept or deny each article of charge.
4. Shri Vir Singh, Warder is further informed that if he does not submit his written statement of defence on or before the date of specified in para 2 above, or does not appear in person before the inquiry authority or otherwise fails or refuses to comply with the provisions of Rule 14 of the Central Civil Services(Classification, Control & Appeal) Rules, 1965 or the orders/directions issued in pursuance of the said rule, the enquiring authority may hold the inquiry against him ex-parte.
5. Attention of Shri Vir Singh Warder is invited to Rule 29 of the Central Civil Services(Conduct) Rules 1964 under which no government servant shall bring or attempt to bring any political or outside influence to bear upon any superior authority to further his interests in respect of matters pertaining to his service under the Govt. If any representation is received on his behalf from another person in respect of any matter dealt with in these proceedings it will be presumed that Shri Vir

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Singh, Warder is aware of such a representation and that it has been made on his instance and action will be taken against him for violation of Rule 29 of the Central Civil Services (Conduct rules, 1964).

6. The receipt of this memorandum may be acknowledged.

Sd/-


(RAJIV KALE)

Dy. Inspector General of Prisons
CENTRAL JAIL, TIHAR: NEW DELHI.

Encl.....

Shri Vir Singh, Warder,
District Jail.

CERTIFIED THIS IS THE TRUE COPY
OF THE ORIGINAL DOCUMENT.


ADVOCATE

Statement of articles of charge framed against Warder
Vir Singh

Article -I

That the said Shri Vir Singh, Warder was found indulging in the business of trafficking of smack by bringing the same from the residence of one U.T.Kishore Dev-Mukherjee lodged in Distt.Jail. Thus the warder Vir Singh, acted in a manner unbecoming of a Govt.servant and vehemently violated the provisions of CCS(Conduct) Rules,19.4;

Article-II

That the said warder Vir Singh, by bringing smack from the residence of one U.T.Krishore Dev Mukherjee, showed undue intimacy with the criminals and thus acted in a manner unbecoming of a Govt.servant which is violative of all the norms of CCS(Conduct)Rules,1964 in force.

ANNEXURE II

Statement of imputation of misconduct or misbehaviour in support of the articles of charge framed against Shri Vir Singh, Warder.

ARTICLE-I

That the said warder Vir Singh, Being a Government in league with one U.T.prisoner Mukherjee, went to the residence of the later and brought smack for him from his wife residing at Karol Bagh. Thus the warder Vir Singh acted in a manner unbecoming of a Govt. servant and violated the CCS(Conduct)Rules, 19.4

ARTICLE-II

That the said warder Vir Singh, being a Government servant, indulged in bringing prohibited articles "Smack" for use by one U.T. K.D.Mukherjee, lodged in Distt.Jail and thereby showed undue intimacy with the criminals, which is punishable under the CCS(Conduct) Rules,1964.

21

....2....

ANNEXURE -III

List of documents by which the articles or charges framed against Warder Vir Singh, are proposed to be substantiated:


1. Statement of U.T.K.D.Mukherjee.
2. Statement of prisoner Rohinder Singh.
3. Letter of U.T.Prisoner Mukherjee written to his wife for handing over of smack to W.Vir Singh on 28.12.1987.
4. Statement of Shri S.P.Sethi, As
5. Statement of l.Shri Niwas.

List of witnesses by whom the articles of charge framed against Warder Vir Singh, are proposed to be substantiated.

1. Shri K.D.Mukherjee, U.T.Prisoner.
2. Shri Rohinder Singh, Prisoner.
3. Shri S.P.Sethi, AS.
4. Shri Sri Niwas, No.251,Warder.

.....

CERTIFIED THIS IS THE TRUE COPY
OF THE ORIGINAL DOCUMENT.


ADVOCATE

The D.I.G.(Prisons),
Central Jail, Tihar,
NEW DELHI.

44

Subject:- Memo : Reply.

Sir,

Kindly refer to your Memo.No.8885 dated 26.7.88 wherein certain allegations of traffic in smack by bringing the same from the residence of U.T. prisoner Kishore Dev Mukherjee lodged in District Jail have been made. In this connection, the Order No.CJ-2(65/Vig/88-508 dated 11.1.88 placing me under suspension is also referred as Memo is ^{sequel} ~~xxxx~~ to the order.

2. Before adverting to the allegations proper, I would like to raise strong objections for my continued suspension beyond three months without the charge. It was/is in violation of my rights as an accused under the CCS(CCA) Rules, 1965. If the Charge Sheet is not served within three months from the suspension orders, a report indicating the cause of delay is required to be forwarded to the Government. I was suspended on 11.1.88 but the Charge Sheet has been given after more than six months. The cause of the delay beyond three months has not been shown. Thus the suspension beyond three months has not been shown. Thus the suspension beyond three months is illegal and violative of the law of Natural Justice. I request the same be revoked without any further delay.

3. As regards the allegations, it is submitted that I have not been supplied with copies of the statements of witnesses which have been made the basis of the charges. Thus, I am placed at a disadvantage to effectively controvert the charge allegations so made against me. Even then I strongly deny the allegations as false, baseless, motivated. In support of my stand, I briefly state as under:-

- (a) The letter as alleged has not been recovered from me nor has any smack. I never went to the residence of the said prisoner for bring smack or otherwise at any time. I am not aware how the letter dated 28.12.87 as alleged was recovered, how it was recovered or who recovered it.
- (b) During the alleged period, I was posted at Santri duties outside the main gate and had not occasion to take the letter from the said prisoner for delivery at his residence.

(c) The said prisoner is a known smack addict. It is very pertinent to state that I have caught him carrying smack many a times. On 24.11.87 also I recovered from him one gram of smack and Rs.100/-. It was at my instance that he was produced before Shri R.T.L.D'Souza, the then Superintendent on a Peshi and awarded 45 days confinement in Punishment Cells. His inverties were also stopped for the same periods.

(d) It would be observed that the prisoner was harbouring a grudge and animosity against me. It is possible, he wrote the alleged letter and gave the same to his wife who met him on 1.1.88 with a view to "Teach me a lesson". The next very day, he made statement whereby the said letter was got recovered from his residence.

4. It is submitted that under the circumstances my involvement, when no letter or smack was recovered from me, and simply because the prisoner who was far known reasons hostile to me as mentioned my name in the letter, in the case, was a planned conspiracy. I further submit that I am totally innocent of the charge levelled against me. I, therefore, request that the charge be dropped and the matter of recover of letter and the circumstances under which it was recovered be inquired into afresh. If this reply be considered in adequate, I request to supply me with copies of statements of the witnesses so that I can give proper answers to the allegations in my defence.

Thanking you,

Yours faithfully,

Sd/-


(Bir Singh)

Warder, Roll No.384

District Jail, New Delhi.

Dated: 11.8.88.

CERTIFIED THIS THE TRUE COPY
OF THE ORIGINAL DOCUMENT.


ADVOCATE

OFFICE OF THE INSPECTOR GENERAL OF PRISONS: CENTRAL JAIL:
TIHAR (NEW DELHI)

F.No.CJ2(65)/Vig/87/

Dated

ORDER

Whereas an inquiry under Rule 14 of the Central Civil Services (Classification, Control & Appeal) Rules, 1965, is being held against Shri Vir Singh, Warder of Distt. Jail.

AND whereas the undersigned considers that an Inquiry Officer should be appointed to inquire into the charges framed against the said official Shri Vir Singh, Warder, Distt. Jail.

And whereas the undersigned considers that a Presenting Officer should also be appointed to present on behalf of the undersigned the case in support of the articles of charges.

Now, therefore, the undersigned, in exercise of the powers conferred by sub-rule (2), sub-rule 5 (a) of rule 14 appoints Shri Subash Sharma, DS-II as an Inquiry Officer to enquire into the charges framed against the said Vir Singh Warder and the ~~an~~ sub-rule (5) (a) of rule 14 of the said rules hereby appoints Shri J.P. Bhatnagar, AS as the Presenting Officer.

Sd/-

DY. INSPECTOR GENERAL OF PRISON
CENTRAL JAIL: TIHAR
NEW DELHI.

No. CJ2(65)/Vig/87/10973

Dated the, 19.9.88

Copy forwarded for information and necessary to:-

1. Shri Subash Sharma, DS-II as Inquiry Officer, Jail No.3
2. Shri J.P. Bhatnagar, AS as Presenting Officer, Jail No.3
(alongwith relevant documents)
3. Official concerned Shri Vir Singh Warder, Distt. Jail
Roll No.384.

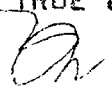
List of documents:

1. Copy of articles of charges.
2. Copy of written statement.
3. Copy of statement of witnesses.
4. Evidence of delivery of documents.
5. Copy of appointment of I.O/P.O.

Sd/-

DY. INSPECTOR GENERAL OF PRISONS
CENTRAL JAIL: TIHAR: NEW DELHI.

CERTIFIED THIS IS THE TRUE COPY OF THE
ORIGINAL DOCUMENT.



IMMEDIATE.

OFFICE OF THE INSPECTOR GENERAL OF PRISONS:DELHI.

No.SCJ-3/Inquiry/88/2733

Dt. Nov. 19th, 88

To

The Commissioner,
Food & Supplies,
Delhi Administration,
Delhi.

Sub: Departmental inquiry under Rule 14 of the
CCS(CCA) Rules, 1965 against Vir Singh, Warder.

.....

Sir,

In the above noted departmental Inquiry I have been appointed as Inquiry Officer by the worthy Dy. Inspector General of Prisons, Delhi to conduct inquiry into the allegations levelled against the said Warder of the jail. In this inquiry the delinquent official has moved an application before me stating that he wants to take the assistance of Sh. Nand Lal Singh, FSO, Circle No. 2, Sri Ram Nagar, Shahdara, Delhi as a defence assistant. Sh. Nand Lal Singh, FSO has also given in writing that he had no objection provided the permission is granted by the department.

In this regard it is submitted that Rule 14(8) of the CCS(CCA) Rules, 1965 provide that the delinquent official against whom disciplinary proceedings have been initiated may take the assistance of any other Government servant to present the case on his behalf but the Government servant who appears on behalf of the delinquent official should obtain the permission from his Controlling Authority to absent himself from office in order to assist the delinquent official.

.....2.....

The inquiry is now fixed for 1.12.88 at 12 noon.

You are, therefore, requested to kindly intimate Shri Nand Lal Singh, F.S.O., Circle No.2 Sri Ram Nagar, Shahdra, Delhi-32 to attend the said inquiry on 1.12.88 at 12 noon. However, in case for any compelling reasons, it is not practicable to relieve the Government servant, Shri Nand Lal Singh, FSO on the due date or dates to attend the inquiry, necessary intimation may kindly be sent to me before the next date of hearing positively.

Yours faithfully,

Sd/- 19/11/92

(Subhash Sharma)

Deputy Superintendent/
Inquiry Officer.

Sh. Bir Singh, Warder
through LO Distt. Jail.

CERTIFIED THIS IS THE TRUE COPY
OF THE ORIGINAL DOCUMENT.


ADVOCATE

PWI

Statement of K.D. Mukherji S/o late Sunder Lal
Mukherji, w/6, Camp Jail, New Delhi.

That I have seen the letter of green colour written in German which is in my handwriting. This letter was handed over by me to prisoner Bhup Singh for delivering the same to my wife. As he told me, he is the uncle (Mama) of the delinquent Shri Bir Singh. So far as I remembered I wrote this letter for fetching Rs.200/- and one gram smack. I have seen the letter Ex.PW1/A. The one gram smack was brought to me by Bhup Singh. But no money was received. The money was meant for fetching the aforesaid things from my house.

xxxxx Bir Singh had told me that Bhup Singh was his Mama. Myself, Bhup Singh and Mahender accused were lodged in Jail No.6. It is wrong that I gave the slip (Parcha/letter) to Mahender Singh. Bhup Singh told me that Bir Singh is to go to my house. This incidence relates to 6.1.88. My wife had told that according to the letter she had given the articles/things to Bir Singh. This she had told me in the interview. I have seen my Statement dated 6.1.88 which Ex.PW1/B, which is my statement. It is wrong that I gave this letter to her during my interview in the jail. This is wrong that delinquent, Bir Singh had recovered any smack. I had no dealing with Shri Bir Singh. At that time, I had named Mahender Singh. It is wrong that I ever named Warder Dharam Bir. It is wrong that I fell unconscious on 1.1.88.
ROAC

PW-2

Statement of Shri S.P. Sethi, AS Camp Jail.

It is stated that on 6.1.88, according to the orders of the Deputy Superintendent, I went to the resident of prisoner at his house No.17A/U.E.A. alongwith Warder, Sh. Shrinivas; where the wife of the prisoner Mukherjee met Sh. Shrinivas. Ex.PW1/A is the same letter which Shrinivas had brought. I have seen the same. We went by Govt. Jeep to bring this letter. We had also taken a letter from Mukherjee for his wife. Later on the same was made over to the Deputy Superintendent. I have seen Ex.PW2/A which is my statement and bears my signatures.
xxxxx In this regard, there was no conversation between me and Mukherji's wife.

ROAC

.....2....

PW 3 Statement of Shri Shrinivas, Warden/Driver,
Jail No.1

It is stated that in January, 1988 I was working as a Driver in Camp Jail. As ordered by the Deputy Superintendent, I went to Mukherji residence in Karol Bagh alongwith Mr. Sethi with the letter in the Jail Jeep. I was sent by Mr. Sethi with the letter to Mukherji's house and I was told to say that a Warden of the Jail has brought the letter who gave it to me. I handed over the Parcha alongwith the letter. Letter id Ex.PW1/A which I have seen. It is the same letter. Alongwith the letter I was given the medicines also. I do not know the name of the medicine. Ex.PW3/A, the statement seen by me, is my Statement.

xxxx It is stated that his wife did not tell me who brought the letter nor did I ask.

R.O. & A.C.

I.O.

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OF THE ORIGINAL DOCUMENT.


ADVOCATE

WRITTEN ARGUMENTS

51

Sir,

In case of Departmental inquiry against Warder Bir Singh, I was appointed as P.O. in the case, vide Competent Authority orders dated 19.9.88. As per statement of Article of Charges presumed against Warder Bir Singh, the prosecution evidence had been recorded on 25.1.89, and as per PU, K.D. Mukherji he had given unofficial/unauthorised/unlawful communication letter (in Code words in German language) through an other undertrial Bhup Singh who was stated in the close relation of warder Bir Singh (i.e. MAMA) for bring the Smack alongwith Rs.200/-, as he was lodged in his cell, The prosecution witness admit his handwriting, letter which was also Ex.PU1/A at the time of recording his statement. Itself shows the conspiracy through Warder Veer Singh with the prisoner direct or indirectly.

PU2, Shri S.P. Sethi, AS, who was working as L.D. has also stated in his statement that as per directions of D.S., he went to the house of prisoner Mukherjee alongwith warder, Shrinivas to recover the unlawful communication, which was done through warder Veer Singh. He play his good role in recovering the letter by way of executive officer, as to how without disclosing his identity the unauthorised letter had been recovered through Warder Shrinivas. He did not disclose as to how technic (through Shrinivas), he obtained the letter but it has been established that these was communication at the house of prisoner's house and jail through W. Veer Singh. The another letter through which he original one was recovered was also Ex. PU3/A and also verified the original letter marked as PU1/A. At the time of recovering his statement he has also indentify his original statement of dated 6.1.88 which was marked as PU2/A. Hence it has also be an addition the conspiracy with prisoner.

In prosecution witness PU3 Warder Shrinivas stated that he went at the residence of prisoner alongwith Shri Sethi, the then L.D. for recovering the unauthorised communication by way of his own manipulation, so that main object will be achieved. He did so and recovered the articles for which main case depends.

20 ...2...

Keeping of above, in view, the role of Warder Shrinivas, L.O. Sh. Sethi on the direction of DS of Distt. Jail seems fruitful and it has been established that Warder Bir Singh had played a vital role with the prisoner and communication medium for getting smacks money etc. from the house of prisoners.

In additional to above, he has no witness in his defence too.


The charges as mentioned in the Charge Sheet has been established and accordingly be punished.

Dated: 31.1.89

Sd/-

P.O/AS

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OF THE ORIGINAL DOCUMENT.


ADVOCATE

OFFICE OF THE INSPECTOR GENERAL OF PRISONS:CENTRAL JAIL:
TIHAR: NEW DELHI.

F.No.CJ-2/(65)/Vig/88

Dated:

O R D E R

Whereas in inquiry under Rule 14 of the Central Civil Services(Classification,Control & Appeal)Rule,1965 is being hold against Shri Vir Singh,Warder R.No.384 of Distt.Jail.

And whereas the undersigned considers that an Inquiry Officer should be appointed to inquire into the charge framed against the said official Shri Vir Singh,W.Roll No.384,Distt.Jail.

And whereas the undersigned considers that Presenting Officer should also be appointed to present on behalf of the undersigned the case in support of the articles of charges.

Now, therefore, the undersigned in exercise of the powers conferred by sub-rule(2),Sub Rule 5(a) of Rule 14 appoints Shri B.S.Jarial,DS-II,Jail No.2 as an Inquiry Officer to enquire into the charges framed against the said Vir Singh,Warder Roll No.384 and sub-rule (5)(a) of rule 14 of the said rules hereby appoints Shri J.P.Bhatanagar,A.S. Jail No.3 as the Presenting Officer.

This issues in super-session of the previous orders even number 10971-73 dated 19.9.88.

Sd/-

INSPECTOR GENERAL OF PRISON
CENTRAL JAIL:TIHAR
NEW DELHI.

No.CJ-2(65)/Vig./88/8859

Dated, the 22.5.90

Copy forwarded for information and necessary action to:

1. Shri B.S.Jarial,DS-II,Jail No.2,as Inquiry Officer.
2. Shri J.P.Bhatnagar,A.S.Jail No.3 as Presenting Officer.
(alongwith relevant documents)
3. Official concerned Shri Vir Singh,Warder ,R.No.384, Distt.Jail.

List of documents:-

- 1-4
5. Copy of appointment of I.O./P.O.

Sd/- 21.5.90

INSPECTOR GENERAL OF PRISONS
CENTRAL JAIL,TIHAR:N.DELHI.

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OF THE ORIGINAL DOCUMENT.

ADVOCATE

ANNEXURE A-12

To

Shri B.S. JARIAL
Inquiry Officer,
Central Jail Tihar,
NEW DELHI.

Sir,

Ref. to your letter No. Nil dated 22.2.93

I am to state that permission may kindly be granted
to call Shri Bhoop Singh R/o H6, Lodi Colony, New
Delhi as my Defence Witness so that I may establish
my stand.

Thanking you,

Yours faithfully,

(VEER SINGH)

Dated:

Warder (R.No.384)

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OF THE ORIGINAL DOCUMENT.


ADVOCATE

CONFIDENTIALOFFICE OF THE INSPECTOR GENERAL OF PRISONS
CENTRAL JAIL:TIHAR: NEW DELHI.O R D E R

Whereas an order No.CJ-2(65)Vig./88/508-10 dated 11.1.88 placing Shri Veer Singh, Warder-384 Warder/Head Warder under suspension were made by this office order dated 11.1.88.

Now, therefore, the undersigned in exercise of powers conferred by clause (c) of sub rules (5) of Rule 10 of the Central Civil Services(Classification, Control and Appeal) Rules, 1965, hereby reinstate Sh.Veer Singh, Warder-384, Warder/Head Warder, with immediate effect without prejudice to any departmental action/criminal proceeding in vogue against him.

Sd/-

(HANS RAJ)

DY. INSPECTOR GENERAL OF PRISONS
NEW DELHI.

No.CJ-2(65)/Vig./88/580

Dated: 13.4.92

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OF THE ORIGINAL DOCUMENT.
ADVOCATE

The DIG(P)
Central Jail Complex,
Tihar, New Delhi.

Sir,

With reference to your Memo.No.F.52 (CJ-I)/
VIG/90/811 dated 6.6.91 directing me to submit comments
on enquiry report, it is respectfully submitted that I
am innocent and falsely implicated in this case. However,
my submission are enclosed for your kind persual and it
is earnestly hoped that I will be acquitted as charges
being innocent.

Yours faithfully,

Sd/-

Dated: 10/7/91

(Veer Singh)
Warder No.384

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ADVOCATE

WRITTEN STATEMENT OF VEER SINGH WARDER

I have been charge sheeted under rule 14 of the alleged offence against me is that I was found indulging in the business of trafficking of smack by bringing the same from the residence of one U.T.K.D. Mukherjee lodged in Distt. Jail . The Prosecution had examined three witnesses to establish charge that I had gone to the residence of U.T. K.D.Mukherjee and brought smack and Rs.200/-. Even the main factness U.T. K.D.Mukherjee has nowhere said that he gave me a letter for bringing the smack.He had stated in his statement dated 26.1.89 that the said letter was given to another U.T. Bhoop Singh who claimed that he is maternal uncle of me. In this connection I may clarify that I have no relation whatsoever with U.T. Bhoop Singh and he was just using my name for his personal gain, even no statement of Bhoop Singh was ever recorded inspite of my insistance before I.O. Only on this ground enquiry proceedings are initiated.

It is never claimed that the said letter was personally handed over to me and the sole reason for implication me in this case by U.T.K.D. Mukherjee is that I recovered one Gramme Smack from the custody of U.T.K.D.Mukherjee on 24.11.1987 and it can be verified from the Jail records U.T.Mukherjee was punished by the Supdt.Jail on my complaint U.T.K.D.Mukherjee is a hardnod smack addict and had been punished on several occasion on this account. His statement cannot be relied upon because it has been given due to the vengeance at the provocation of other inmates who consider me a tough man on duty specially when no prisoner can done to do any misconduct during my duty time.

72...2....

The rest of the PWS have nowhere deposed that I gave the letter to the wife of U.T. Mukherjee even no attempt of the wife of K.D. Mukherjee was recorded to the effect that any letter was handed over to her by me. This could have been most relevant witness.


On the basis of facts explained above it is respectfully submitted that I am innocent and I have been involved in this false case because of grudges held by the U.T. K.D. Mukherjee as I had recovered smack from him on previous occasion for which he was punished.

Sd/-

Dated: 29.2.91

(Veer Singh Warder)
Warder No.384
Under Suspension

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OF THE ORIGINAL DOCUMENT.


ADVOCATE

Urgent

OFFICE OF THE INSPECTOR GENERAL OF PRISONS
CENTRAL JAIL, TIHAR, NEW DELHI.

No.F.52(CJ-1)/Vig./90/950

Dated: 1/7/91


Reference his application dated 28.6.91,
regarding submission of representation to the
Inquiry report dated 31.5.91.

Shri Vir Singh, Warder Roll No.384 is hereby
directed to appear before the Dy. Inspector General
(Prisons) on 1.7.91 at 1 P.M.

Sd/-
For OFFICER INCHARGE (VIGILANCE)
CENTRAL JAIL, TIHAR, DELHI.

Shri Vir Singh, Warder
Roll No.384 (Under suspension)

CERTIFIED THIS IS THE TRUE COPY
OF THE ORIGINAL DOCUMENT.


ADVOCATE

OFFICE OF THE INSPECTOR GENERAL (PRISONS) DELHI:
CENTRAL JAIL: TIHAR: NEW DELHI.

No.F.52(1)CJ/Vig./90/92/1501

Dated: 22.10.92

N O T I C E

Subject:- Departmental Inquiry under Rule 14 of
CCS(CCA) Rules, 1965 against Sh.Veer
Singh, Warder.

I am the Inquiry Officer in the proceedings
against Shri Veer Singh, Warder. You are directed to
appear before the undersigned on 30th October, 1992
at 4.00 P.M.

Sd/-

(B.S. JARIAL)

DY. SUPDT./ENQUIRY OFFICER.

Sh.Veer Singh,
Warder(Under suspension)
Through L.O.Jail No.4.

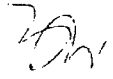
Copy to Sh.J.P.Bhatnagar, U.D.C. through
Administrative Officer, Dte. of Education, Delhi
Administration, Old Sectt., Delhi-54 with the request
to be present at the given date and time.

Sd/-

(B.S. JARIAL)

DY. SUPDT./INQUIRY OFFICER.

CERTIFIED THIS IS THE TRUE COPY
OF THE ORIGINAL DOCUMENT.


ADVOCATE

By Hand

Subject:- Inquiry Under Rule 14 of CCS(CCA) Rules, 1965
against Sh. Veer Singh, Warder.
.....

As per your written statement for defence, you have submitted that the statement of undertrial Bhoop Singh was not recorded inspite of your insistance by the Inquiry Officer. Undertrial K.D. Mukherjee in his statement dated 25.1.89 stated that the said letter was given to UT Bhoop Singh who claim to be your maternal uncle.

Since the undersigned vide order No.F.52(CJ-1)/ Vig./90/1270 dated 30.8.91 was appointed to hold the enquiry under rule 1 of 15 of CCS(CCA) Rules, 1965 and the point mentioned therein alongwith other aspects be examined. You are hereby directed to give in writing the name of the defence witnesses, if any, including Sh. Bhoop Singh (if so desires) who is not presently lodged in any of the jails, who as per your verbal submission before the undersigned that Sh. Bhoop Singh is staying at your native village and you know him personally. Your request must reach the undersigned within one week i.e. by 01st March, 1993 so that further necessary action can be taken in the matter.


Sd/- 22.2.92

(B.S. JARIAL)

INQUIRY OFFICER/DY.SUPDT.
CENTRAL JAIL:TIHAR:DELHI.

Sh. Veer Singh,
Warder (R.No.384)

CERTIFIED THIS IS THE TRUE COPY
OF THE ORIGINAL DOCUMENT.


ADVOCATE

OFFICE OF THE INSPECTOR GENERAL (PRISONS) DELHI:
CENTRAL JAIL: TIHAR: NEW DELHI

No.F.52(CJ-1)Vig./93/

Dated:

Subject:- Departmental Inquiry under Rule 14 of C.C.S.
(C.C.A.) Rules, 1965 against Sh.Veer Singh,
Warder.

In the above noted case, Shri Veer Singh, the Charged Official has given your name for his Defence Witness. You are hereby requested to attend the proceedings on 05th April, 1993 at 4.00 P.M., in case you desire to give the statement in defence of Sh.Veer Singh, Warder. The above case relates to Sh.Veer Singh Warder found indulging in the business of trafficking of smack by bringing the same from the residence of one U.T. Kishore Dev Mukherjee lodged in District Jail during the year 1988. At the relevant time, you were in judicial custody in Central Jail No.4 and your name is particularly mentioned by Sh.Veer Singh for his Defence Witness.

If no reply is received by 05th April, 1993 it will presume that you are not interested in giving your defence statement in support of the delinquent official Sh.Veer Singh.

Sd/- 15/3/93
(B.S. JARIAL)
INQUIRY OFFICER/DY. SUPDT.
CENTRAL JAIL: TIHAR: NEW DELHI.

Sh.Bhoop Singh,
R/o H-6, Lodhi Colony,
N.Delhi.

No.F.52(CJ-1)Vig./93/2024

Dated: 15/3/93

Copy to Sh; Veer Singh, Warder (R.No.384) with the direction to bring the above said Defence Witness on the given date and time without fail.

VERIFIED THIS IS THE TRUE COPY
OF THE ORIGINAL DOCUMENT.

ADVOCATE

Sd/- 15/3/93
(B.S. JARIAL)
INQUIRY OFFICER/DY.SUPDT.
CENTRAL JAIL, TIHAR: NEW DELHI.

To

The Home Secretary,
Govt. of N.C.T. of
Delhi.

Annexure-A 19

63

(THROUGH PROPER CHANNEL)

Sub:- Submission of appeal under Rule 22 of the CCS (CCA) Rules, 1965 against order No.F.52(CJ-I)/Vig./90/386 dated 12.5.94 whereby a penalty of compulsory retirement was imposed upon me.

Sir,

Against the said orders, I venture to submit the following facts for your kind perusal with the hope that your lordship shall be pleased to order for revocation.

1. That on flimsy grounds and coupled with concocted story I was placed under suspension vide order No. CJ-2(65)/Vig./88/508-18 dated 11.1.88.
2. And that when I started making representations for revocation I was served with a chargesheet under Rule 14 of the CCS (CCA) Rules, 1965 on 26.7.1988 and following charges were framed against me.
 - (i) It was alleged that I was found indulging in the business trafficking of smack by bringing the same from the residence of one U.T. Kishore Dev Mukherji lodged in District Jail.
 - (ii) And that it was further alleged that my alleged act of bringing smack from the residence of the aforesaid under trial showed undue intimacy with the criminal and thus violated the CCS (Conduct) Rules, 1964.
 - (iii) In support of these alleged allegations following witnesses were cited by quoting certain documents mentioned herein below:-
 - (a) Statement of U.T. K.D. Mukherji.
 - (b) Statement of Prisoner Mahinder Singh
 - (c) Statement of Asst. Supdt. S.P. Sethi
 - (d) Statement of Warder Sri Niwas.
 - ~~xxxx~~ (e) Alleged letter of Mukherji requesting his wife to hand over smack to ~~xxxx~~ the ~~xxxx~~ undersigned on 28.12.1987 - was also cited as an documentary evidence against me.
3. The Inquiry Officer vide his enquiry report dated 31.5.1991 appears to have acted in a manner like a rubber stamp and without caring too dig out the facts supported the allegations levelled against me by the under trials for the reasons/interest known to him

Contd.....2....

and as such the query reports suffers with the following infirmities.

- (1) That there is no evidence on the part on behalf of the wife of U.T. Mukherji that smack was handed over to Warder Vir Singh. It is further incorrect that the alleged U.T. Khooop Singh who has been cited as one of the witnesses with no logic support, is my uncle. The story has been concocted for the reason that on account of my nice performance at duty on 24.11.1987, I had recovered one gram of smack from the U.T. Mukherji and that time I was threatened by him that shortly he will hatch a conspiracy to interlase me in a false case in calboration with Jail Staff in order to teach me a lesson for having caught ~~them~~ him in smack trafficking and eventually he was succeeded. The enquiry report further looks to be unmaintainable for the obvious reason that the enquiry officer did not intentionally record the statement of another U.T. Mahinder Singh though he remained in Jail for a good time after his citation as preasegution witness. Not only this even if it is admitted for arguement say that Mrs. Mukherji did supply smack as alleged, to the under-signed then what action the Deptt. took against her did not find mentioned in the findings of the learned Inquiry Officer. The Inquiry Officer nearly concluded his findings after drawing and infrence to the version of the letter alleged to have been written in Gernon language which when got translated into English, the code words seems to have been used i.e. words like long, pol (for Police). Your honour will appreciate that these are only the infrences arroneous drawn by Inquiry Officer with no concrete evidence against me.

Points which merits consideration of appeals:

1. That I am interlased in this hatch conspiracy by Mukherji on account of my having caught him for supply-ing/insulging in trafficking of smack on 24.11.1987 and this alone is the background of this case. My aforesaid submission can be got verified from the Jail record as the said U.T. was punished for this serious offence. Not only this it is further on record that the said U.T. is an addict to smack and he has got a history against him to this effect.

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In view of this his statement should not be realised upon because such type of criminals always take remain from the duty bound sincere and honest Govt. servants who performance their duty in right earnest.

2. That the Department intentionally did not takes statement of another cited witness, U.T. Mahinder Singh though he had been in Jail for good time for the reasons that he will not fall prey to the motivated designs of the hard criminal like Mukherji.
3. That as alleged letter was handed over to Mrs. Mukherji for obtaining of smack further does not appear to hold water because she has no where quoted my name for supply of smack. Even if it is assumed that she had supplied smack to the undersigned then one plausible question will come in appearance - why the Deptt. did not take action or got registered A.F.I.R. against her for such alleged comitance of offence. This appears to have not been done for reason that she did not find indulge in such kind of anti social functioning. *The enquiry officer has been changed 3 times, mid-way, causing serious prejudice to me.*
4. It may be appreciated that Central Jail is a place where criminals are lodged and during their imprisonment they are treated and behaved like slaves and therefore, it is not expected from them to oppose the ill hatched conspiracy of hardened criminals especially when who is a feeder to the Govt. agency.
5. In view of this your lordship is requested to please consider my appeal sympathetically and set aside the impugned compulsory retirement order of the undersigned keeping in view my floatless carrier of service for which I shall be ever grateful to you.

Yours faithfully,

Vir Singh

(VIR SINGH)

Warder No. 384.

Copy forwarded for information & necessary action to :-

1. Inspector General of Prisons.
2. B.I.G. Prisons.

(5-3-78) ANNEXURE-A/2

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

Original Application No. 1376 of 1994

66

New Delhi, this the 22nd day of July, 1999

Hon'ble Mr. Justice D.W. Baruah, Vice Chairman
Hon'ble Mr. N. Sahu, Member (Administrative)

Bir Singh,
S/o Shri Prabhu Singh,
Ex. Warder, (Roll No. 384),
Central Jail,
TIHAR, New Delhi.

Residential Address

Bir Singh, D-10, Staff Quarters,
Central Jail Complex, TIHAR,
New Delhi.

-APPLICANT

(By Advocate- Shri G.D. Bhandari)

Versus

1. Inspector General of Prisons,
Central Jail, TIHAR, New Delhi.
2. Government of N.C.T. through the
Secretary (Home), 5, Sham Nath
Marg, Delhi-110054
3. Smt. Kiran Bedi, Inspector General
of Prisons, Central Jail, Tihar,
New Delhi

-RESPONDENTS

(By Advocate - None)

O R D E R (Oral)

By Baruah, J. -

This application has been filed against the order of compulsory retirement. The applicant was served with article of charges along with the statement of imputation asking him to show cause why the disciplinary action should not be taken against him. The applicant submitted his reply. However, the disciplinary authority not being satisfied with the reply directed to hold an enquiry and an enquiry officer was appointed. The enquiry officer found him guilty of the charges, and submitted his report. The disciplinary authority, however, was not satisfied with the report of the enquiry officer and, therefore, remitted the matter.

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back to the enquiry officer, to hold the enquiry under the provisions of Rule 15(1) of the Central Civil Services (Classification, Control & Appeal) Rules. Thereafter, the Inspector General of Prisons passed an order retiring the applicant compulsorily. Against that order the applicant preferred an appeal before the appellate authority, namely, Home Secretary, MCT of Delhi on or about July, 1994. We have gathered this information from the record produced by the respondents. In a letter dated 19.7.1994 it has been mentioned that the applicant had not given any date to ascertain as to whether the appeal was barred by limitation or not. If we take it it was submitted in July, 1994 and the present OA was filed on 5.7.1994, this itself shows that the applicant did not wait statutory period of six months from the date of filing of the appeal.

2. On perusal of the pleadings we find that the facts are disputed. In view of the above it is difficult for this Tribunal to decide the matter. We feel it expedient to direct the 2nd respondent to dispose of the appeal at an early date not less than one month from the date of receipt of a copy of this order, and if the applicant is still aggrieved he will be at liberty to approach the Tribunal. The learned counsel for the applicant, however, submits that the matter may be disposed of on merit, without sending it back. In the facts and circumstances of the case we are of the view that the appellate authority should respondent no. 2 to dispose of the appeal at an early date not less than one month from the date of receipt of a copy of this order. The O.A. is disposed of. No costs.

(N. S. Kumar)
Member (Adm.)

(D. N. Baruah)
Vice Chairman

rkv.

Tribunal

NO. F. 9/90/94-HOME (G)/
GOVERNMENT OF NCT OF DELHI
HOME GENERAL DEPARTMENT

(18)
ANNEXURE-A/21
188
5, SHAMNATH MARG,
DELHI - 110054.

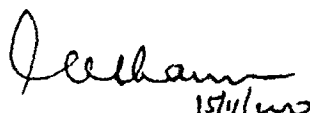
Dated the 15th November, 2000

ORDER

This is an appeal against the order No. F.52(CJ-1)/Vig./90/386 dated 12.05.94 vide which Shri Bir Singh, Roll No. 384 was accorded the penalty of compulsory retirement from Government service. The Ex-official was dealt with departmentally against the charge that he was found indulging in the business of trafficking of smack by bringing the same from the residence of one under-trial, Kishore Dev Mukharjee, lodged in Distt. Jail. This act on his part tantamounts to undue intimacy with the criminals and his conduct was unbecoming of a Government servant constituting flagrant violation of CCS (CCA) Rules, 1965.

The inquiry conducted against the ex-official proved the charges against him. After a careful examination of inquiry report and other relevant material, the Disciplinary authority found the official indulging in trafficking of smack in the jail premises with undue nexus with the prisoner. Thus, he was found not fit to be retained in Government service and his presence was found to be a security risk to prisoners in Delhi.

✓ I have gone through the appeal of the ex-warder, Shri Bir Singh (No. 384) and have also heard him personally on 30.10.2000. After carefully perusing the record, I find that the impugned order of the Disciplinary authority is based on merits and does not suffer from any flaw, and as such, it does not need to be interfered with. There is no force in the contentions of the appellant and his appeal is hereby rejected. The impugned order stands.


(S.R. SHARMA)
PRINCIPAL SECRETARY (HOME)
GOVT. OF NCT OF DELHI

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(69)
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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL;
PRINCIPAL BENCH: NEW DELHI

O.A. No.2607/2000

IN THE MATTER OF:

BIR SINGH
(BY, B.S. JAIN, Adv.)

...APPLICANT

VERSUS

I.G., Prisons & ors.
(by Sh. Ajesh Luthra, Adv.)

...Respondents

REPLY ON BEHALF OF RESPONDENTS
TO O.A. No. 2607/2000

RESPECTFULLY SHOWETH:

1. That the contents of para 1 of the O.A. are admitted to the extent they relate to the records. Rest of the averments are incorrect as stated, hence denied.

2. That the jurisdiction of this Hon'ble Tribunal is not disputed.

3. That the contents of para 3 of the O.A. need no comments.

4.1 That the contents of para No. 4.1 needs no comments.

4.2 That the contents of para No.4.2 are a matter of record.

4.3 That the contents of para No.4.3 are

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incorrect as stated, hence denied. There were three disciplinary cases against the applicant as under :-

(i) The applicant was censured vide order dated 26.03.1985 against charge sheet u/r 14 CCS (CCA) Rules, 1965 issued vide memo dated 23.02.1985 for the charge of reporting for duty in a badly drunken condition.

(ii) Charge sheet u/r 14 CCS (CCA) Rules, 1965 issued vide memo dated 12.08.1992 for the charges of (A) that while on Santry Duty on 12/12.07.1992 in Jail No. 4 from 9.00 pm to 12 night he was found under the influence of alcohol. (B) That he misbehaved, abused and threatened to kill the Duty Officer at that time as mentioned in charge ^{sheet} first, is kept suspended due to his compulsory retirement as a penalty in disciplinary case/chargesheet under rule 14.

(iii) Charge sheet under rule-14 issued vide memo dt. 26.07.1988 for his nexus with the prisoner i.e the present case in question for the major penalty.

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4.4 That the contents of para No.4.4 are incorrect as stated, hence denied. There were three disciplinary proceedings against him for major penalty as mentioned in para 4.3 above.

4.5 That in reply to para 4.5 of the O.A., it is submitted that the applicant maintained nexus with prisoner, by bringing smack from the house of prisoner K.D.Mukherjee. The applicant was kept under suspension from 11.01.1988 to 13.04.1992 by the Competent Disciplinary Authority. Chargesheet u/r 14 CCS (CCA) Rules, 1965 was issued on 26.07.1988 in this case.

4.6 That in reply to para 4.6 of the O.A. it is submitted that the charge sheet was served vide memo dated 26.07.1988 on the following two charges:-

(i) That the applicant was found indulging in the business of trafficking of smack by bringing the same from the residence of one UT K.D.Mukherjee lodged in Distt. Jail.

(ii) That the applicant by bringing smack from the residence of the UT prisoner K.D.Mukherjee, showed undue intimacy with criminals and as shown in Annexure A/5 but not as mentioned in corresponding para of the application.

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4.7 That the contents of para No.4.7 are incorrect as stated, hence denied. There are two charges against the applicant as stated in para 4.6 above, which are clear and specific.

4.8 That in reply to para 4.8 of teh O.A. it is submitted that the charge sheet has been issued on 26.07.1988 after taking into consideration evidences and all facts and circumstances of the case.

4.9 That the contents of para No.4.9 are incorrect as stated, hence denied. Considering the reply submitted by the applicant, the disciplinary authority appointed IO/PO giving opportunity to the applicant to defend himself during the course of enquiry proceedings after inspecting all the documents felt necessary.

Though the applicant was posted as Santry on that day, he went to the residence of UT prisoner K.D.Mukherjee and brought smack from the wife of the said prisoner. This very fact has been deposed by the PW/UT prisoner K.D.Mukherjee before the IO during the course of enquiry proceedings.

4.10 That the contents of para No.4.10 are wrong and denied in view of facts mentioned in para No.4.9 above. The point here is that he went to the residence of UT Prisoner and not that he met the prisoner in Jail.

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4.11 That the contents of para 4.11 of the O.A. are incorrect as stated, hence denied. The respondents crave leave to refer to the submissions made hereinabove.

4.12 That the contents of para 4.12 of the O.A. are a matter of record.

4.13 That in reply to para 4.13 of the O.A. it is submitted that IO/PO were appointed by the disciplinary authority in order to fetch the truth as well as to provide ample opportunities to the applicant to defend himself during the course of enquiry proceedings.

4.14 That the contents of para 4.14 of the O.A. are a matter of record.

4.15 That the contents of para 4.15 of the O.A. are a matter of record.

4.16 That the contents of para No.4.16 are incorrect as stated, hence denied. The statement of PW/UT prisoner K.D.Mukherjee has been recorded by the IO. The PW has deposed before the IO that the applicant has told that one prisoner Bhoop Singh was his mama (Uncle). Therefore, the PW/UT prisoner K.D.Mukherjee gave a slip/letter which was finally handed over by the applicant to the wife of UTP K.D.Mukherjee in order to bring smack. The PW has

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74 (66)

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confirmed that his wife had told him in an interview (Jail Mulakat) that she had given article to the applicant Sh. Bir Singh according to letter. Further, this PW has clarified to the extent by saying that it is wrong that he gave the slip to prisoner Mohinder Singh or named prisoner Mohinder Singh, or he gave the slip/letter in question to his wife during any jail mulakat or delinquent Bir Singh/applicant had recovered any smack or any dealing with the applicant (or say neither the applicant recovered any smack from the prisoner K.D.Mukherjee nor the applicant handed over smack to him).

4.17 That the contents of para No.4.17 are incorrect. Both the PWs have deposed before the IO that PW Sh. S.P.Sethi, AS, alongwith PW Sri Niwas warder went to the residence of UT prisoner K.D.Mukherjee. PW Sri Niwas went to the wife of UT prisoner and taken over the slip in question and handed over that slip to PW S.P.Sethi, AS. Both the PWs have deposed before the IO that the slip produced in the inquiry is the same slip that was taken to the wife of said UT prisoner.

4.18 That PW Sri Niwas, warder has deposed before the IO that the slip/letter in question was handed over to him by the wife of UT prisoner (though some medicine was also given alongwith the

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desired letter). On the other hand PW UT prisoner K.D.Mukherjee has deposed before the IO that his wife had told him that delinquent Bir Singh/the applicant handed over her the slip/letter in question and taken smack.

4.19 That the contents of para No.4.19 are wrong. PW/UT K.D.Mukherjee has clearly deposed before the IO that his wife in interview/mulakat has told that delinquent Sh. Bir Singh has handed over the letter in question and taken smack. Moreover, Sh.S.P.Sethi, AS and Sh. Shri Niwas, Warder both PWs have deposed before the IO that PW Sri Niwas, warder took back the letter in question from the wife of K.D.Mukherjee and handed over to PW S.P.Sethi, AS. Evenmore, PW UT prisoner K.D.Mukherjee has deposed and recognised the letter which has handed over to prisoner Bhoop Singh for finally fetching smack from his wife by the applicant. Not only this, his case stands fit for imposing penalty since he himself in his submission stated that he had visited the home of the prisoner to procure article (smack) for him. His conduct amounts to misconduct and falls under the provisions of sec. 7, 8, 9 of Prison Act, 1894.

4.20 That the contents of para No.4.20 are wrong and denied. PW UT prisoner K.D.Mukherjee has

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deposed before the IO that it is wrong to say that he gave letter to prisoner Mohender Singh or named prisoner Mohender Singh.

4.21 That it is correct that PO has explained the case in such a complete manner that the applicant in this para of his application has marked it as an appreciation work.

4.22-23 That the IO had to be changed due to compelling administrative reasons as the IO Sh. Subhash Sharma, DS-II had been placed under suspension by his disciplinary authority.

4.24 That the contents of para No.4.24 are incorrect as stated, hence denied. It is the duty of the delinquent official/applicant to assure the presence of his defence assistant on each hearing of enquiry and not of the department.

4.25 That in reply to para 4.25 of the OA it is submitted that Sh. Bhoop Singh not being a listed witness of the chargesheet, was not felt necessary to be examined by the IO. In case, Sh. Bhoop Singh was defence for the applicant, he could have produced the same as defence witness during enquiry proceedings.

4.26 That the contents of para No.4.26 are wrong and denied. The applicant has been given

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77 (69)

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ample opportunity to have full access to the listed documents and defend himself during the course of enquiry proceedings.

4.27 That the contents of para 4.27 of the O.A. are incorrect as stated, hence denied. Wife of UT prisoner K.D.Mukherjee being not a PW, was not examined by the IO.

4.28 That the contents of para 4.28 of the OA are incorrect and vague hence denied. The fact/allegation is that the applicant alongwith a letter written by UT prisoner K.D.Mukherjee reached to the house of the said prisoner, handed over that letter to the wife of said prisoner and taken smack from her. This fact has been deposed before the IO by the PW/UT prisoner K.D.Mukherjee to the extent that his wife during a mulakat/interview has told him that the applicant brought the letter to her and received smack in turn. In case Sh. Bhoop Singh might explain something in defence of the applicant, the applicant would have produced him or any other evidence in his defence.

4.29 That the contents of para 4.29 of the OA are incorrect as stated, hence denied. As per allegations, the applicant was found indulged in the activity of bringing of smack from the house of UT prisoner K.D.Mukherjee and by bringing the smack

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78 (76)

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from the house of said prisoner, the applicant showed undue intimacy with the criminals. The very fact have been confirmed by the said PW/UT prisoner K.D.Mukherjee when he deposed before the IO.

4.30 That in reply to para 4.30 of the OA it is submitted that the said letter was collected in order to prove the evidence of bringing smack from the house of a prisoner by a Govt. official/applicant and also for showing undue intimacy with the criminals. This allegation has been confirmed by the said PW/UT prisoner K.D.Mukherjee while deposing before the IO as stated in para 4.16 & 4.28 above. Further, this para is an attempt to distract the attention/gravity of the case.

4.31 That the contents of para 4.31 of the OA are incorrect as stated, hence denied. The respondents crave leave to refer to the submissions made hereinabove. Further in para 4.27 of the OA the applicant says that by examining the wife of K.D.Mukherjee, his case got seriously affected and now in para 4.31, he says that wife of K.D.Mukherjee was not examined which has seriously affected the department enquiry. Two contradictory statement are being made by the applicant in this O.A.

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79 (11)

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4.32 That in reply to para 4.32 of the OA it is submitted that Bhoop Singh is a prisoner. He cannot go to the house of K.D.Mukherjee. The smack was brought by the applicant and handed over to Bhoop Singh. Since Bhoop Singh was lodged in same ward where the prisoner K.D.Mukherjee is lodged. Applicant was on santry duty therefore, he could not go high risk ward and to cover his case he handed over the smack to prisoner Bhoop Singh since he is a relative to the applicant, so the same could be handed over to prisoner K.D.Mukherjee.


4.33 That the contents of para 4.33 of teh OA are a matter of record.

4.34 That in reply to para 4.34 of the OA it is submitted that as per provisions and in order to provide opportunity to submit his representation against the enquiry report, the applicant was given copy of Inquiry Report.

There is no evidence to show that UT prisoner K.D.Mukherjee was having any grudge against the applicant. The applicant never recovered smack from the said prisoner. On the other hand, PW/UT prisoner K.D.Mukherjee has deposed before the IO that his wife has told him in Mulakat that the applicant had brought the letter in question at home and she has given smack to the

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applicant.

4.35 That in reply to para 4.35 of teh OA it is submitted that it is incorrect to say that enquiry was conducted in a illegal manner or reasonable opportunity was not given to the applicant. All the PWs have been examined and PW/UT prisoner K.D.Mukherjee has deposed before the IO that the applicant went to the house of UT prisoner K.D.Mukherjee, handed over letter in question written by the said prisoner to his wife and took smack after showing the letter to her. Paras 4.16, 4.19 and 4.28 may also be seen.

4.36 That in reply to para 4.36 of the OA it is submitted that though the IO was directed to go through/examine some points raised by the applicant which were neither prosecution statement nor prosecution witnesses. Thereafter, the Disciplinary authority considering the enquiry report, all facts and circumstances of the case and finding no defence on the part of the applicant, felt that all the PWs have deposed before the IO proving that the applicant reached the house of the UT prisoner K.D.Mukherjee and taken smack from his wife and showed undue intimacy with the criminals. It is denied that the earlier report stood overruled or non-est as alleged.



Contd..13/-

81 (23)

-13-

4.37 That in reply to para 4.37 of the OA it is submitted that it is, of course, right that though Bhoop Singh being not a listed witness was not examine by the IO, the applicant was given full opportunity to defend himself to the extent that the IO has provided opportunity that the applicant may engage Bhoop Singh in question who was not lodged in jail at that time, as his defence asstt. and/or may produce him as defence witness if there is any clue relating to the defence on the part of the applicant.

4.38 That in reply to para 4.38 of teh OA it is submitted that against the disciplinary authority's order dated 30.8.91, some aspects of the case as pointed by the applicant were examined by the IO by reconducting enquiry proceedings as per provisions but nothing new came out and the IO submitted that "even after reconsideration of the matter as per order dated 30.8.91, nothing new comes in record which can change my entire stand in my enquiry report dated 31.5.91. The requirement of the circumstantial evidence is sufficient to prove the charge of involvement of Sh. Bir Singh, Warder in bringing smack from the house of UT prisoner K.D.Mukherjee and thus showing undue intimacy with the criminals." Therefore, the disciplinary authority considering all the aspects of the

Contd..14/-

disciplinary case, passed speaking and well reasoned order.

4.39 That the contents of para 4.39 of the OA are wrong and denied in view of paras 4.38, 4.37, 4.36 above, that all aspects of the case were heard and examined by remitting the enquiry on the points raised by the applicant. The points were examined by the IO during reconducting the enquiry proceedings, but on the other hand the applicant himself could not produce any defence even during reconsideration of the enquiry proceedings so remitted.

4.40 That the contents of para 4.40 of the OA are admitted to the extent they relate to the records. Rest of the averments are wrong and denied. Chargesheet for major penalty proceedings was drafted considering all the aspects of the case in which the applicant goes to the house of UT prisoner, handed over a letter to the wife of the prisoner and takes smack in turn, thus indulged in bringing smack from the house of UT prisoner showing undue intimacy with criminals, specially in case in which no recovery could be made (due to small quantity of smack i.e 1 mg). The IO had to be changed only due to circumstances submitted above. Sri Niwas who is PW in this case goes to the residence of UT prisoner K.D.Mukherjee only to

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-15-

collect the letter in question written by said UT prisoner to fetch smack from his house, in order to corroborate the evidence of alleged charge of showing undue intimacy with criminals by going to the house of UT prisoner. At that time only, wife of said UT prisoner while handing over the said letter to Sri Niwas, also handed over some medicine which (medicine) has no relevancy at all with this disciplinary case.

4.41 That in reply to para 4.41 of the OA it is submitted that after having been imposed a penalty of compulsory retirement upon the applicant and after striking off his name for pay roll of the department, neither he is getting any salary nor any deduction for quarter etc. Moreover, the applicant had filed an appeal under Sec.9 of the Public Premises Act, 1971 against the order of the order of the Estate Officer before the District Judge, Delhi wherein no injunction was granted in his favour.

5.1 That the contention raised by the applicant in para 5.1 of the OA is absolutely misconceived, hence denied. IG (P) is competent authority to order. It is submitted that pursuant to implementation of directions of this Hon'ble Tribunal in OA 80/87 wherein the pay scales of warders were changed in 1991, the warders came in

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-16-

class-III from class -IV due to which the disciplinary authority also changed from DIG to IG.

5.2 & 5.3 That the contentions raised by the applicant in para 5.2 and 5.3 of the OA are absolutely misconceived, hence denied. Inquiry report does not stand quashed as alleged. It was directed to once again consider the request of the applicant. Referring back does not make inquiry report non-est.

5.4 That the contention raised by the applicant in para 5.4 of the OA is absolutely misconceived, hence denied. IG(P) is competent disciplinary authority and is empowered to punish under the CCS (CCA) Rules.

5.5 That the contentions raised by the applicant in para 5.5 of the OA is absolutely misconceived, hence denied. K.D.Mukherjee deposed that his wife informed him that applicant was given smack by his wife for handing the same over to him.

5.6 That the contention raised by the applicant in para 5.6 of the OA is absolutely misconceived, hence denied. Prisoner Bhoop Singh was conduit between K.D.Mukherjee and applicant.

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5.7 That the contention raised by the applicant in para 5.7 of the OA is absolutely misconceived, hence denied. K.D.Mukherjee himself said that the applicant went to his home and brought smack for him.

5.8 That the contention raised by the applicant in para 5.8 of the OA is absolutely misconceived, hence denied. Even during re-inquiry stage, the applicant did not produce UT Prisoner Bhoop Singh as his defence witness. He was out of jail when the departmental enquiry was in progress.

5.9 That the contention raised by the applicant in para 5.9 of the OA is absolutely misconceived, hence denied. IG(P) is Competent Authority to take any action against the applicant.

5.10 That the contention raised by the applicant in para 5.10 of the OA is absolutely misconceived, hence denied. All opportunities have been extended to the applicant.

5.11 That the contention raised by the applicant in para 5.11 of the OA is absolutely misconceived, hence denied. The PO after conforming from the jail concerned, inform the IO that the prisoner Mohinder Singh has been released therefore could not be produced.

5.12 That the contention raised by the applicant in para 5.12 of the OA is absolutely misconceived, hence denied. The Enquiry Officer Sh. Subhash Sharma was placed under suspension, hence another Enquiry Officer was appointed.

5.13 That the contention raised by the applicant in para 5.13 of the OA is absolutely misconceived, hence denied. It is submitted that the arrangement to bring Defence Assistant is the duty of Charged official and not of his department.

5.14 That the contention raised by the applicant in para 5.14 of the OA is absolutely misconceived, hence denied. The charge was to show his nexus with prisoner Bhoop Singh.

5.15 That the contention raised by the applicant in para 5.15 of the OA is absolutely misconceived, hence denied. It is submitted that re-examining certain issues does not make entire Enquiry non-est in the eye of Law.

5.16 That the contents of para 5.16 of the O.A. need no comments.

5.17 -5.20 That the contentions raised by the applicant in para 5.17-20 of the OA are absolutely misconceived, hence denied. The respondents crave leave to refer to the submissions made hereinabove.

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6-7 That the contents of para 6-7 of the O.A. need no comments.

8. That the contents of para 8 of the OA are absolutely misconceived, hence denied. The applicant is not entitled to any relief, as prayed.

9. That the contents of para 9 of the OA are absolutely misconceived, hence denied. The applicant is not entitled to any interim relief, as prayed. The applicant has also filed an appeal under Public Premises Act against the order of the Estate Officer before the Hon'ble District Judge, Delhi and no injunction has been granted therealso. The applicant has been evicted after following due process of law.

10-12 That the contents of para 10-12 of the OA need no comments.

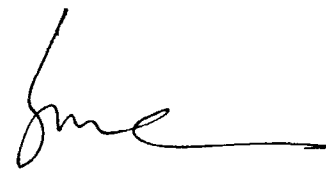
It is therefore, respectfully prayed that the OA under reply may kindly be dismissed.

DELHI

DATED: 25.5.2007

through

(
on behalf of respondents

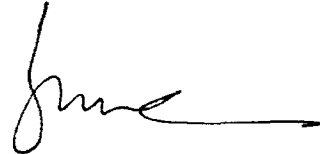

Ajesh Luthra
(Ajesh Luthra)
Govt. Counsel

88 (80)

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VERIFICATION:

Verified at Delhi on this 25th day of May, 2001 that the factual contents of the above reply are true to my personal knowledge derived from the official records and the legal submissions made hereinabove are true on information received and believed to be true. Last para is prayer to this Hon'ble Tribunal.



(
on behalf of respondents

S.S. SIDHU

DIG (Prossms)