

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

OA NO. 2607/2000

New Delhi, this the 22nd day of November, 2001

HON'BLE SH. V.K.MAJOTRA, MEMBER (A)
HON'BLE SH. KULDIP SINGH, MEMBER (J)

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: Sh. Ajay Veer Singh)

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

(By Advocate: Sh. Ajesh Luthra)

O R D E R

By Sh. Kuldip Singh, Member (J)

The applicant has filed this OA under Section 19 of the AT Act as he has impugned the order awarding him a penalty of compulsory retirement from service. According to the applicant, this order has been passed in malafide and malicious manner by the IG (Prisons) who is the statutory appellate authority and the order is based on the report of the enquiry officer dated 31.5.91 which had already been disagreed to, and was not accepted by the disciplinary authority, the DIG of Prisons who had remitted the case back to the enquiry officer. The DIG (Prisons) vide his order dated 30.8.91 had asked the enquiry officer to conduct a

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further enquiry as per Rule 15 (1) of the CCS (Conduct) Rules. Thus, the order passed by the IG (Prisons) without taking into consideration the subsequent enquiry report is stated to be illegal.

2. In the grounds to challenge the impugned order the applicant has also stated that IG (Prisons) who had passed the impugned order was not a competent authority as IG (Prisons) is the appellate authority. The applicant has also stated that the evidence on record do not suggest any evidence sufficient to hold the applicant guilty for the alleged misconduct as it is submitted that none of 3 PWs made even a slightest mention of the applicant who is contributory/responsible for either acting as a messenger carrying letters between under trial Mukherjee and his wife nor any one has said that he delivered or carried the letter/smack at any time.

3. Charges against the applicant were that the applicant was working as a Warden in the Central Jail, Tihar and he was found indulging in the business of trafficking of smack by bringing the same from the residence of one under trial K.D.Mukherjee who was locked in the district jail and it was also alleged against him that he was having undue intimacy with the criminals and acted in a manner unbecoming of a Government servant. Enquiry was held, PWs were examined and thereafter the enquiry officer submitted his report but vide order Annexure-3 the DIG (Prisons) who was the then disciplinary authority in exercise of his powers under Rule 15(1) of the CCS (CCA) Rules directed that further enquiry be held keeping in view the stand taken by the applicant to



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examine Bhoop Singh. And thereafter another enquiry report was submitted and one opportunity was given to the applicant to produce Bhoop Singh but Bhoop Singh could not be produced and another enquiry report was submitted and based on that the IG (Prisons) have passed the impugned order. The respondents who were contesting the OA submitted that while holding enquiry all the rules and regulations for conducting such enquiry was observed while holding CCS (CCA) Rules. Applicant was given due opportunity to contest the proceedings and PW has deposed before the enquiry officer that one prisoner Bhoop Singh was the uncle of the applicant and on his insistance the applicant took a letter from under trial Mukherjee to bring smack for under trial Mukherjee. On that basis he had been held guilty and the applicant has been rightly awarded the punishment.

4. We have heard the learned counsel for the parties and give an authentic consideration.

5. The main point taken by the applicant was that IG (Prisons) was not a competent authority to pass the impugned order of punishment imposing a punishment of compulsory retirement upon the applicant as IG (Prisons) was a higher authority than that of disciplinary authority. However, we find that this contention of the applciant has no merits because under Article 311 of the Constitution of India there is a prohibition to pass such like orders by a authority subordinate to that of disciplinary authority and there is no prohibition if a higher authority than that of disciplinary authority passes the order of the nature of the impugned order. Admittedly, IG (Prisons) is the higher authority than that of disciplinary authority as submitted by the applicant

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and was fully competent to pass such like order. Even otherwise no prejudice has been caused to the applicant if the order has been passed by a higher authority.

6. However, besides that, the respondents also submitted that earlier the Warder was a Group 'D' post and was under the disciplinary jurisdiction of DIG (Prisons) but this post has been upgraded and declared as Group 'C' and IG (Prisons) have become the disciplinary authority in respect of Warder so the IG (Prisons) is now a disciplinary authority and is competent to pass such like orders. Be that as it may, since there is no complaint that order has been passed by the subordinate authority to the disciplinary authority so we find that this contention of the applicant cannot stand and has no merits at all.

7. The next contention raised by the applicant is that the impugned order passed by the IG (Prisons) is based on enquiry report dated 31.5.99 which had not been accepted by the DIG (Prisons) who had asked the enquiry officer to consider the insistence of applicant to examine Bhoop Singh. Thus, the enquiry report submitted by the enquiry officer had not been accepted by the DIG and on the basis of the same enquiry report, the IG (Prisons) could not have passed the order and order stands vitiated on that aspect to. In reply to this Sh. Ajesh Luthra appearing for the department submitted that after the order dated 30.8.91 was passed by the DIG (Prisons), a further enquiry was conducted and copy of the said report was also supplied to the applicant. And he had produced the departmental file to show that the copy of the subsequent report had also been supplied to the applicant. Though the applicant denied in court about the receipt of the said copy.

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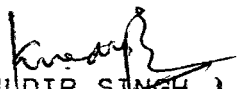
However, he was asked to give specimen signatures in court itself which we have compared that the signatures appearing on the copy of the report in token of receipt of the copy and we find that subsequent enquiry report had also been supplied to the applicant so this contention also has not merits.

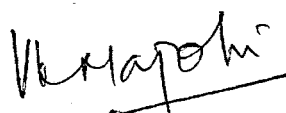
8. On this very aspect the applicant has also submitted that the IG (Prisons) has also not considered the second report and has passed his order on the basis of the previous report. But on going through the impugned order passed by the IG (Prisons) we find that the IG (Prisons) in her order did mention about the order dated 30.8.91 vide which the enquiry officer was asked to consider the statement of applicant for examination of Bhoop Singh. It is so mentioned in page 2 of the impugned order. It is also stated that the enquiry officer has discussed in the enquiry report that the charged official was asked to produce Bhoop Singh who was from his native village, but in spite of that the charged official did not produce Bhoop Singh as his defence witness. Thus, we find that the subsequent development to the orders of 30.8.91 has also been taken note by the IG (Prisons) in her imposing the penalty of compulsory retirement on the applicant. The impugned order also shows that full opportunity was given to the applicant to contest the departmental enquiry and does not point out as to how principles of natural justice, if any, have been violated. Thus, we find that this contention of non-supply of the second report and non-examination of defence witnesses are also not available to the applicant since the record also show that the applicant was given dasti summons to produce said witnesses Bhoop Singh in Annexure A-18 filed by the applicant himself.

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On examining the case applicant from all angles we find that applicant has no right to assail the impugned order. No inteference is call^{=sd} for. OA is dismissed. No costs.


(KULDIP SINGH)
Member (J) 22/11


(V.K. MAJOTRA)
Member (A)

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