

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.601/2000

New Delhi, this 28th day of March, 2001

Hon'ble Shri Kuldip Singh, Member(J)
Hon'ble Shri M.P.Singh, Member(A)

Omkar Singh
Warder, Roll No.372
Central Jail No.3
Tihar, New Delhi-110064

.. Applicant

(By Shri S.C.Luthra, Advocate)

versus

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

2. Additional Director General-cum-IG(P)
Prison Headquarters
New Delhi-64

.. Respondents

(By Mrs.Avnish Ahlawat, Advocate)

ORDER

By Shri M.P. Singh


Applicant has filed this OA under Section 19 of the Administrative Tribunals Act, 1985 challenging the order dated 19.4.99 (Annexure A-1) by which penalty of removal from service has been imposed on the applicant, order dated 4.12.99 (Annexure A-2) passed by the appellate authority and order dated 11.1.2000 (Annexure A-3).

2. Brief facts of the case are that the applicant while working as Warder under R-2 entered jail No.4 at 7.40 AM, after obtaining permission of Shri Prem Chand, Asstt. Supdt. who was on duty at that time, to get the thumb impression of one accused Rakesh, s/o Shri Kripal Singh on vakalatnama. A memo dated 20.4.97 was served on the applicant on 23.4.97 asking him to explain as to why he entered jail No.4 at 7.40 AM when he went directly to ward No.9 where he asked about the



undertrial Ram Kishan from Zile Singh on duty. Applicant submitted his reply to the same. Thereafter, he was charged under Rule 14 of CCS(CCA) Rules, 1965 for committing misconduct to the extent that he entered jail No.4 at 7.40 AM on 19.4.97 and provoked Zile Singh, Warder to beat the prisoner Ram Kishan, lodged in ward No.9 for his personal revenge. 13

3. Applicant denied the charge. The disciplinary authority (DA, for short) appointed an Inquiry Officer (IO, for short). Applicant requested the DA on 9.2.98 to change the IO. His request was not accepted by the DA. According to the applicant, the incident had occurred at around 11 O'clock whereas he had already left the jail No.4 at 8.17 AM. Hence it is a case of no evidence. The IO concluded his enquiry and a copy of the inquiry report was given to the applicant on 4.12.98 by the DA for his comments. Applicant submitted his reply on 30.12.98. The DA imposed penalty of removal from service on the applicant on 19.4.99. Thereafter, applicant preferred an appeal to R-1, who on 14.12.99 set aside the penalty of removal and instead awarded penalty of stoppage of two annual increments without cumulative effect. It was also ordered that the period for which the applicant remained under suspension and the period from the date of removal from service till the date of reinstatement shall be treated as dies non, not amounting to break-in-service and that the applicant shall not be entitled to any pay and allowances for that period. Aggrieved by this, applicant has filed this OA.



4. Respondents have contested the case and have stated that the applicant while posted with RMO, Jail Hospital, Jail No.3, committed a misconduct to the extent that he entered Jail No.4 at 7.40 AM on 19.4.97 and provoked Shri Zile Singh, Warder No.426 to beat prisoner Shri Ram Kishan, s/o Shri T.Yadav lodged in ward No.9 for his personal revenge. Ram Kishan was beaten up by Shri Zile Singh at the provocation of the applicant. An enquiry was conducted against the applicant and a copy of the enquiry report was served on him to submit his representation. The DA, after considering the representation and the records of enquiry, imposed the penalty of removal from service on the applicant vide order dated 19.4.99.

5. Applicant submitted his appeal to R-1, who, after considering all the relevant contentions, came to the conclusion that applicant has not been able to explain as to why he entered jail No.4 while he was posted in Jail No.3 and stated to the Durban and Duty Officer of Jail No.4 that he had Dak to be delivered in dispensary of Central Jail No.4. Applicant did not produce any evidence of such Dak nor he has given any reason for his entry in jail No.4. Jail being a sensitive and restricted area, any entry by any unauthorised person cannot be either overlooked or condoned. As such the appellate authority converted the penalty of removal from service to that of blockage of two annual increments without cumulative effect. In view of these submissions, the OA may be dismissed with costs.



6. Heard the learned counsel for both sides and perused the records.

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7. During the course of the arguments, the learned counsel for the applicant submitted that the prosecution has not been able to produce any evidence against the applicant and therefore it is a case of no evidence. Learned counsel also submitted that the order of the appellate authority treating the period of suspension and intervening period between his removal and reinstatement as dies non cannot sustain in the eyes of law, as in the first place no notice as envisaged in FR 54(4) was given to the applicant. On the other hand, the learned counsel for the respondents stated that during the course of the enquiry applicant had not been able to explain as to why he entered into jail No.4 while he was posted in jail No.3. He also submitted that the applicant has stated to durban and duty officer of jail No.4 that he had dak to be delivered in the dispensary of central jail No.4. But he did not produce any evidence of such Dak nor he has given any reason for his entry in jail No.4. Jail being a sensitive and restricted area, any entry by any unauthorised person cannot be either overlooked or condoned.

8. Learned counsel for the applicant admitted that the applicant was not able to explain as to why he entered jail No.4 and for that reason the applicant should have been charged ~~on~~ on that ground and not for the charge of provoking Zile Singh to beat prisoner Ram Kishan, which charge has not been proved.



9. After careful consideration of the records, we find that the appellate authority while considering the appeal of the applicant has come to the following conclusions:

(a) The charge to provoke some one to beat prisoner Ram Kishan has neither been properly made out nor established beyond doubt by the EO. The EO has erred in establishing beyond doubt the role played by the appellant in the act of provocation to beat the prisoner. The statement of the prisoner to the prosecution did not name the appellant as the person responsible for beating him. Nor any of the prosecution witness stated that the appellant wanted to settle his personal grudge and that the appellant provoked Zile Singh to beat the prisoner;

(b) The rejection of the request of appellant for test identification parade was also not in consonance with the principles of natural justice;

(c) The factum of personal revenge and provocation by the appellant to Zile Singh to beat the prisoner could not be proved. This appears to be purely presumptive and is not at all supported by any evidence on record;

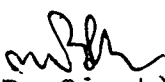
(d) It is also strange to note that the person who, as alleged, actually beat the prisoner has been awarded a penalty of reduction to lower stage for a period of three years whereas Omkar Singh, appellant who is alleged to have provoked Zile Singh, has been awarded more severe penalty of removal from service.

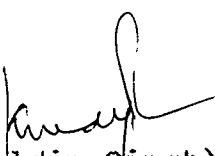
10. From the above findings of the appellate authority, it is amply clear that the charge against the applicant for provoking Zile Singh to beat the prisoner Ram Kishan has not been proved and therefore it is a case of no evidence. The appellate authority has modified the penalty to that of stoppage of two annual increments without cumulative effect on the ground that the applicant has not been able to explain as to why he entered into jail No.4 while he was posted in Central jail No.3. From the Articles of charge levelled against the applicant, we find that he was not charged for



wrongful entry into jail No.4 and for this reason the applicant cannot be punished by the appellate authority as no enquiry was held against this charge and the applicant was not given reasonable opportunity to defend his case on this ground. Therefore the penalty imposed upon the applicant for this charge, which has not been proved, is not sustainable in the eyes of law.

11. In view of the detailed discussions aforesaid, we allow the present OA and quash and set aside the impugned orders at Annexure A-1 to A-3. The applicant shall be eligible for all consequential benefits and the same should be finally settled within a period of three months from the date of receipt of a copy of this order. No costs.


(M.P. Singh)
Member(A)


(Kuldip Singh)
Member(J)

/gtv/