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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

Regn.No.1688/1990

Date of decision: 15.11.1991.

Shri Prem Chand

...Applicant

Vs.

Delhi Administration & Another

...Respondents

For the Applicant

...Shri S.C. Luthra,
Counsel

For the Respondents

...Mrs. Aynish Ahlawat,
Counsel

CORAM:

The Hon'ble Mr. P.K. Kartha, Vice Chairman(J)

The Hon'ble Mr. B.N. Dhoundiyal, Administrative Member

1. Whether Reporters of local papers may be allowed to see the Judgment? *yes*
2. To be referred to the Reporters or not? *yes*

JUDGMENT

(of the Bench delivered by Hon'ble Mr. P.K. Kartha,
Vice Chairman(J))

The applicant who has worked as a ex-Head
Warder of Central Jail, Tihar, Delhi, filed this
application under Section 19 of the Administrative
Tribunals Act, 1985, praying for the following reliefs:-

- (i) To quash the order of removal from service of
the applicant vide Annexure A-1 and A-2 being illegal, void
and untenable.
 - (ii) To quash the order of compulsory retirement passed
by respondent No.2 vide Annexure A-3 being illegal, void and
untenable.
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(iii) To award all consequential benefits like backwages, future increments and promotion etc.

2. The application was filed in the Tribunal on 21.8.1990. On 24.8.1990, the Tribunal passed an interim order directing the respondents to maintain status quo as regards the continuance of the applicant in Government accommodation at Quarter No.C-16, Jail Complex, Tihar, New Delhi subject to his liability to pay licence fee etc. in accordance with the rules. This interim order has been continued thereafter till the case was heard finally and judgment reserved thereon on 6.11.1991.

3. The facts of the case in brief are that on 21.5.1987, the applicant was on duty in Ward No.4/2 of the Central Jail. It is alleged that on that day at 6.30 P.M. when he was on duty, one Vasheer Syed, an under-trial tried to escape from Ward No.4/2 by hiding himself on the differential of the truck between the two wheels covering himself by the spare wheel of the truck. On account of this, the applicant was alleged to have performed his duties in a negligent manner. It was further alleged that he instructed one convict Ramesh Kumar to destroy the Amad Register meant for recording the entry of the under-trials.

4. The applicant was placed under suspension on 11.6.1987. On 21.7.1987, he was served the statement of Articles of Charges by a memo dated 21.7.1987. The Article

of Charge framed against him reads as follows:-

Article I.

That the Head Warder Prem Chand, while on duty at 6.30 on 21.5.1987 at Ward No.4 barrack No.2 was found performing his duty in a negligent manner which resulted in attempt at escape of one u/t Vasheer sayeed s/o Pappu Mian. Further more Head Warder Prem Chand instructed the convict Ramesh Kumar to destroy the Amad Register meant for recording the entry of the u/t in ward. Thus HW Prem Chand behaved in a manner unbecoming of a Government servant and vehemently violated both CCS(Conduct) Rules as well as Punjab Jail Manual."

5. After holding a departmental enquiry, the Inquiry Officer came to the conclusion that the negligence of the applicant has not been proved. He, therefore, acquitted him of the charge with all benefits. This is clear from the last para of the Inquiry Report submitted by him.

6. The applicant has stated that the disciplinary authority did not supply a copy of the Inquiry Report to him before imposition of the penalty and that he was denied reasonable opportunity to make submissions in this behalf.

7. The disciplinary authority disagreeing with the findings of the Inquiry Officer passed an order on 25.2.1988 imposing on the applicant the penalty of removal from Government service. The disciplinary authority did not give any reasons for his disagreement with the findings of the Inquiry Officer. He, however, observed that none of the defence witnesses could rebut the attempted escape on the part of the under-trial, Shri Vasheer Syed.

8. The orders of the disciplinary authority dated 25.2.1988 were served on the applicant. Curiously enough, the same was recalled on 26.2.1988. The applicant has stated that he has kept with him a photocopy of the said order

before returning the original order to the disciplinary authority. Thereafter on 28.3.1988, the disciplinary authority again passed an order removing the applicant from service.

9. The applicant preferred an appeal to the appellate authority on 7.4.1988. The appellate authority by its order dated 4.5.1990 reduced the punishment from removal of service to compulsory retirement. A copy of this order was forwarded to the applicant along with the memorandum dated 31.7.1990.

10. The applicant has contended that there are several irregularities and infirmities in the enquiry which would vitiate the entire proceedings. The disciplinary authority did not supply a copy of the Inquiry Report to him before the imposition of the penalty. Shri D.D. Kathuria, who was the incharge of the ward was ^{not} examined as a prosecution witness though he was a material witness. It was incumbent on the disciplinary authority to issue a show cause notice to him as he had disagreed with the findings of the Inquiry Officer.

11. The respondents have stated in their counter-affidavit that the penalty of removal from service was imposed on the applicant for his dereliction of duties and for destroying the Government documents. The punishment was awarded after considering the pros and cons of the case.

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The appellate authority reduced the penalty of removal from service to compulsory retirement after considering the matter. They have, however, admitted that the Inquiry Report was given to the applicant only along with the order of removal from service.

12. We have carefully gone through the records of the case and have heard the learned counsel of both parties. In our opinion, in the event of disagreement with the report of the Inquiry Officer, it is obligatory on the part of the disciplinary authority to give an opportunity to the applicant to explain his case. In *Narayana Misra Vs. State of Orissa*, 1969, AIR 657, the Supreme Court has held if the punishing authority differed from the findings of the Inquiry Officer and held the official guilty of charges from which he was acquitted by the Inquiry Officer and no notice or opportunity was given to the delinquent official about the attitude of the punishing authority, the order would be against all principles of fair play and natural justice and would be liable to be set aside.

13. Another infirmity in the disciplinary proceedings is that the copy of the Inquiry Officer's Report was made available to the applicant only along with the impugned order of removal from service. The Supreme Court has held that a copy of the Inquiry Report must be made available to the Government servant concerned before imposing penalty and that he must be given an opportunity to make

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a representation to the disciplinary authority against the report in writing (vide Union of India Vs. E. Bashyan, AIR 1988 SC 1000; Union of India Vs. Mohammad Ramzan Khan, 1990(2) SCALE 1094). We also see force in the contention of the applicant that Shri Kathuria was a material witness and he should have been examined by the prosecution. This was not done. Non-examination of a material witness would vitiate disciplinary proceedings (vide U.P. Ware Housing Corporation Vs. V.N. Vajpaee, 1980(3) SCC 459; Mangal Singh Vs. Commissioner of H.P., 1975(1) SLR 500).

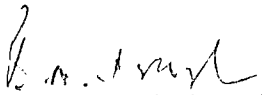
14. In the light of the foregoing discussion, we hold that the applicant is entitled to the relief sought in the present application. Accordingly, the impugned orders of removal from service passed by the disciplinary authority on 25.2.1988 and 28.3.1988 and the impugned appellate order dated 4.5.1990 passed by the appellate authority are set aside and quashed. The respondents are directed to reinstate the applicant within a period of one month from the date of communication of this order. The applicant would also be entitled to all consequential benefits including back wages from the date of passing of the impugned orders of removal from service to his reinstatement which shall be released to him within a period of 2 months from the date of communication of this order. In addition, he would be entitled to annual increments and promotion in accordance with the relevant rules.

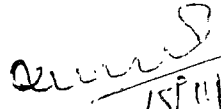
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The interim order passed on 24.8.1990 is hereby made absolute.

There will be no order as to costs.


(B.N. DHOUNDIYAL) 15/11/91
MEMBER (A)


15/11/91
(P.K. KORTHY)
VICE CHAIRMAN (J)