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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A.No.874/90

Date of Decision: 17.1.92

Shri Onkar Singh

Applicant

Shri S.C. Luthra

Counsel for the applicant

Vs.

Delhi Administration & Anr.

Respondents

Mrs. Meera Chhiber with

Counsel for the respondents

Mrs. Aynish Ahlawat

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

The Hon'ble Mr. B.N. Dhoundiyal, Member(A)

1. Whether Reporters of local papers may be
allowed to see the Judgement? *Yes*

2. To be referred to the Reporter or not? *Yes*

JUDGEMENT

(of the Bench delivered by Hon.Member Shri B.N. Dhoundiyal)

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

(i) To quash the impugned order of removal from service dated 25.2.88, issued by the Inspector General(Prisons), New Delhi

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(ii) To quash the order passed by the Appellate Authority on 3.5.90, whereby, the appeal preferred by him against the impugned order of dismissal was rejected.

2. On 11.5.90, the Tribunal passed an interim order directing the respondents not to dispossess the applicant from Quarter No.C-22, in the central Jail Complex, subject to his liability to pay licence fee etc. in accordance with the Rules.

3. According to the applicant, a false allegation was levelled against him that on 9.4.86, he requested Shri L.P.Nirmal, Assistant Superintendent Prisons to release one undertrial prisoner Ashok Kumar. Upon the refusal by Assistant Superintendent to do so on the ground that the release order was defective as there was some discrepancy in the Section mentioned therein, the applicant used unparliamentary language and threw two notes of hundred rupee each at the Assistant Superintendent. A Departmental Enquiry was initiated against him on the aforementioned allegations.

4. The applicant alleges that full opportunity to defend himself was not given to him and even though there was no evidence to prove the charge against him, the inquiry officer held him guilty which led to the passing of the impugned order dated 25.2.88.

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5. The applicant has raised the following main grounds:-

- (a) The Presenting Officer ^{by} ~~be~~ allowed to produce Shri G.S. Sharma as prosecution witness. His name was not listed in the list of witnesses accompanying the charge;
- (b) Hindi version of the written brief was not given to him
- (c) Crucial pieces of the evidence like the currency notes alleged to have been thrown or the release order of the under trial Ashok Kumar were not produced
- (d) No prosecution witness has supported the allegations
- (e) Inquiry report was not furnished to him before imposition of the penalty.

6. The respondents have contended that calling of an additional witness was permissible under rules, that the applicant himself was representing his case in English and request for supply of Hindi version of written brief was a lame excuse to delay the proceedings, that the available evidence was sufficient to prove the charge and if the applicant had requested for production of additional evidence, this would have been done and that the report of the Inquiry Officer was supplied to him with the order of removal.

7. We have gone through the records of the case and heard the contentions of the counsel for the rival parties. Admittedly, a copy of the Enquiry Report was not given to the applicant before passing the impugned order of removal.

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A Full Bench of this Tribunal, in Shri Prem Nath K. Sharma Vs. UOI & Ors. (1988(3) SLJ 449(CAT)), has held that non-supply of inquiry report would be tantamount to denial of reasonable opportunity within the meaning of article 311(2) of the Constitution. To the same effect are the decisions of the Supreme Court in Union of India Vs. Bheshyan, AIR 1988 SC 1000 and Union of India Vs. Mohammed Ramzan Khan, 1990 (2) SCALE 1094. The enquiry suffers from a number of other legal infirmities as well. For any additional witness or document to be produced, the enquiry officer has to give due notice to the delinquent employee. The complaint of Shri Nirmal or the report based thereon by the next senior officer were never produced during the enquiry. The prosecution did not produce during the enquiry the two currency notes of Rs.100 each alleged to have been thrown by the applicant towards Shri Nirmal. Rule 14(18) of the CCS(CCA) Rules, 1965 provides as follows:-

"The Inquiring authority may, after the Government servant closes his case, and shall, if the Government servant has not examined himself, generally question him on the circumstances appearing against him in the evidence for the purpose of enabling the Government servant to explain any circumstances appearing in the evidence against him."

This procedure was not complied with, in this case.

8. In the facts and circumstances of the case, we allow the application and dispose it of with the following orders and directions:-

(a) The impugned orders dated 25.2.88 and 3.5.90 are hereby set aside and quashed.

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(b) The respondents are directed to reinstate the applicant in service as Head Warder.

(c) The applicant shall be paid pay and allowance⁵ from 25.2.88 till the date of reinstatement.

(d) The interim order passed on 11.5.90 regarding the continued occupation of the quarter No.C-22 in the Central Jail Complex by the applicant is hereby made absolute.

(e) The respondents shall comply with these orders within a period of three months from the date of receipt of this order.

9. There will be no order as to costs.

B. N. Dhoundiyal
(B.N. DHOUNDIYAL) 17/1/92
MEMBER(A)

P. K. Kartha
(P.K. KARTHA) 17/1/92
VICE CHAIRMAN(J)

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