

**Central Administrative Tribunal
Principal Bench
New Delhi**

OA No.396/1998

Order Reserved on: 06.09.2016

Pronounced on:22.09.2016.

Hon'ble Mr. V. Ajay Kumar, Member (J)
Hon'ble Mr. K.N. Shrivastava, Member (A)

Shri Sardara Singh (Deceased)
through Legal Heirs:

1. Smt. Kitab Kaur
W/o Late Shri Sardara Singh
2. Manoj Kumar
S/o Late Shri Sardara Singh
3. Sukhbir
S/o Late Shri Sardara Singh

All R/o Village Tipari, PS Khandwala
Distt. Gurgaon, Haryana

- Applicants

(By Advocate Shri N.K. Singh)

-Versus-

1. Govt. of NCT of Delhi through
Principal Secretary (Home)
Players Building, Near ITO,
New Delhi.
2. Director General (Prison),
Central Jail, Tihar,
New Delhi.
3. Lt. Governor,
Govt. of NCT of Delhi,
Raj Niwas Marg,
Delhi.

-Respondents

(By Advocate Shri Vijay Pandita)

ORDER

Mr. K.N. Shrivastava, Member (A)

This Original Application (OA) was filed by the applicant (now deceased) under Section 19 of the Administrative Tribunals Act, 1985. The main relief prayed for in the OA, reads as under:

“i) that the finding of the enquiry officer, the dismissal order dated 4.11.96, be set aside. Applicant be reinstated in service with all consequential benefits.”

2. The brief facts of the case are as under.

2.1 The applicant was working as a Warder in Central Jail (Tihar), New Delhi. On 03.01.1995, he was placed under suspension under Rule 10 (I) of CCS (CCA) Rules, 1965 vide Annexure ‘D’ order dated 03.01.1995 in contemplation of Disciplinary Enquiry (DE) against him.

2.2 Vide Annexure ‘E’ memorandum dated 17.04.1995, a major penalty charge-sheet was issued to him under Rule 14 of the CCS (CCA) Rules, 1965. The article of charge levelled against the deceased applicant reads as under:

“Sh. Sardara Singh, Warder while attending to his duties in Jail No.1 on 28.12.94 committed a misconduct to the extent that he was found carrying Biri-Bundles into the jail premises of Jail No.1 with an ulterior motive and in violation of the instructions issued from time to time. The above on the part of Sh. Sardar Singh, Warder is highly objectionable and unbecoming of a Govt. Servant, which lacks absolute integrity and devotion to the service. Thus Sh. Sardara Singh, Warder has violated Rule 3 of CCS (Conduct) Rules, 1964.”

2.3 The applicant was required to submit his written statement of defence within 10 days of the receipt of the Annexure 'E' memorandum.

2.4 The applicant vide his Annexure 'F' letter denied the charge of recovery of 08 bundles of biris from his possession. He also said that he was unaware of any Standing Orders against bringing biris inside the jail.

2.5 Not satisfied with the statement of defence of the applicant, the Disciplinary Authority (DA), i.e., Inspector General (Prisons) appointed Shri Nand Lal Singh, Deputy Superintendent Grade-I as Enquiry Officer (EO) and Shri Jatinder Bhargava, Assistant Superintendent as Presenting Officer (PO). The applicant participated in the enquiry. The EO submitted his report on 18.03.1996 stating therein that the charge levelled against the applicant is proved. A copy of the enquiry report was sent to the applicant for his representation/submission against the same. The applicant, vide his letter dated 14.05.1996, alleged that the attitude of the EO was prejudiced, malafide and arbitrary towards him. He wanted certain documents so as to submit his submission/representation effectively against the EO's report.

2.6 Acting on the EO's report and after considering the applicant's letter dated 14.05.1996, the DA vide the impugned order dated

04.11.1996 imposed the penalty of dismissal from service with immediate effect on the applicant.

2.7 Aggrieved by the order of the DA, the applicant preferred an appeal dated 10.12.1996 against the order of the DA before the departmental Appellate Authority (AA), i.e., Secretary (Home), Govt. of National Capital Territory of Delhi (GNCTD), which was dismissed on 12.06.1997.

2.8 Aggrieved by the impugned orders passed by DA and AA, the applicant filed the instant OA. This Tribunal was pleased to allow the OA vide order dated 12.02.2001, wherein the respondents were directed to reinstate the applicant.

2.9 The respondents went before the Hon'ble High Court of Delhi in Writ Petition (Civil) No.4796/2001, challenging the order of the Tribunal dated 12.02.2001. The Hon'ble High Court was pleased to allow the Writ Petition (Civil) and remanded the case to the Tribunal. The order of the Hon'ble High Court reads as under:

“1. If only the Tribunal had bothered to read the report of the Inquiry Officer and not be misled by its nomenclature and the language used, it would have dawned upon the Tribunal that the Inquiry Officer had used inappropriate expressions to describe himself as ‘Presenting Officer’ the result is the view taken by the Tribunal that the Inquiry Officer has abdicated his duty by copying the report of the Presenting Officer. The penalty levied against deceased respondent has been set aside.

2. We have looked into the original record of the department and would highlight that in view of the evidence led the Presenting Officer submitted written submissions which were considered by the Inquiry Officer. The report of the Inquiry Officer shows an independent application of mind. The two are distinct documents. Unfortunately, the Inquiry Officer's report captions the report as under:-

‘Detailed report of inquiry conducted by Sh. Nand Lal Singh, Deputy Superintendent, Grade-I and Presenting Officer Jatinder Bhargava.’

3. Suffice would it be to state that the report has been signed by Sh. Nand Lal.

4. The further error is when the Inquiry Officer records:-

‘I have been appointed as the Presenting Officer to present the case of warder Sardara Singh’.

5. But this is as per a stated inquiry report produced by the respondent.

6. The inquiry report in the record does not evidence the errors as aforesaid.

7. In that view of the matter the Tribunal ought to have looked into the record to find out whether the inquiry report relied upon by the respondent was the actual inquiry report or the one lying in the file.

8. Being a question of fact, we dispose of the writ petition setting aside the impugned order dated February 12, 2001; O.A.No.396/1998 is restored before the Tribunal for fresh adjudication.”

3. During the pendency of the Writ Petition before the Hon’ble High Court, the applicant had died. His legal heirs, namely, Smt. Kitab Kaur, wife, Shri Manoj Kumar and Shri Sukhbir, sons were brought on record.

4. The arguments of Shri N.K. Singh, learned counsel for the applicant and Shri Vijay Pandita, learned counsel for the respondents were heard on 06.09.2016.

5. Taking into consideration the observations made by the Hon’ble High Court in its order dated 22.01.2013, we have perused the original DE file of the respondents and found that the EO had submitted a proper report dated 18.03.1996, which was duly signed

by him. Regarding the allegation of the applicant that no seizure memo was drawn with regard to recovery of biris bundles from him, the EO report states that the PO had presented an envelope containing 09 bundles of biris inside it. The report further states that the applicant had never denied that these bundles of biris were not seized from him. The report also states that copies of all the listed documents were provided to him even before he had engaged his defence assistant.

6. After going through the original records, we are fully satisfied that the DE proceedings were conducted in accordance with the laid down procedure and the principles of natural justice have been followed at every stage of the conduct of the DE proceedings. The delinquency of late Shri Sardara Singh (original applicant) stood proved. We, however, feel that the punishment of dismissal meted out to him for the offence committed is highly disproportionate, calling for judicial intervention by this Tribunal. The Hon'ble Supreme Court laying down the principles for the proportionality of punishment, in the case of **Ranjit Thakur v. Union of India & Others**, [(1987) 4 SCC 611] has held as under:

"The question of the choice and quantum of punishment is within the jurisdiction and discretion of the Court-Martial. But the sentence has to suit the offence and the offender. It should not be vindictive or unduly harsh. It should not be so disproportionate to the offence as to shock the conscience and amount in itself to conclusive evidence of bias. The doctrine of proportionality, as part of the concept of judicial review, would ensure that even on an aspect which is, otherwise, within the exclusive province of the Court-Martial, if the decision of the Court even as to sentence is an outrageous

defiance of logic, then the sentence would not be immune from correction. Irrationality and perversity are recognised grounds of judicial review.”

7. In the instant case, the punishment of dismissal, for an offence of bringing 09 bundles of biris inside the jail, inflicted on the deceased applicant was indeed highly disproportionate.

8. The learned counsel for the applicant also brought to our notice two judgments of the Hon'ble High Court of Delhi in the case of **Kartar Singh v. GNCT of Delhi & Anr.**, [WP (C) no.2380/2003, decided on 27.02.2013] and another in the case of **Director General (Prison) v. Satbir Singh**, [W.P. (C) no.13978/2009, with **Director General v. Satpal Dahiya**, [W.P.(C) No.14169, decided on 20.10.2010], wherein it is indicated that the punishment inflicted on the delinquents were reduction of pay by one stage for one year for recovery of biris, reduction by three stages for recovery of 16 biris, stoppage of two increments for recovery of biris, reduction of pay by three years for recovery of four packets of Nevla tobacco and three biris etc. The punishment of dismissal has not been inflicted for such offences on the delinquents. Taking it into consideration, we are of the view that the ends of justice would meet by modifying the punishment of dismissal awarded to the applicant to just reduction of pay by two stages for a period of two years without cumulative effect.

9. In view of the discussions in the foregoing paras, we dispose of the OA by issuing the following order:

a) The punishment of dismissal inflicted on the deceased applicant (now deceased) is modified to imposition of penalty of reduction of pay by two stages for a period of two years without cumulative effect.

b) The legal heirs of the deceased applicant are entitled to receive all the consequential benefits arising out of this order.

c) The respondents shall release all consequential benefits to the legal heirs of the late applicant, within a period of three months from the date of receipt of a certified copy of this order.

10. No order as to costs.

11. The record submitted by the respondents be returned to the learned counsel for the respondents under proper receipt.

(K.N. Shrivastava)
Member (A)

(V. Ajay Kumar)
Member (J)

‘San.’