

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
O.A.NO.3580 OF 2015**

New Delhi, this the 17th day of March, 2017

CORAM:

**HON'BLE SHRI SHEKHAR AGARWAL, ADMINISTRATIVE MEMBER
&
HON'BLE SHRI RAJ VIR SHARMA, JUDICIAL MEMBER**

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Vinay Prakash,
Ex-Asstt. Supdt.,
Central Jail, Tihar,
Aged 51 years,
s/o late Shri Jowa Kim,
R/o Quarter No. 706, Type-II, Vidya Marg,
New Residential Jail Complex,
Tihar, New Delhi 110064 í í Applicant

(By Advocate: Ms. Soumyashree Mishra)

Vs.

1. Director General, Prisons,
Govt. of NCT of Delhi,
Prisons Headquarters,
Near Lajwanti Chowk,
New Delhi 110064

2. Chief Secretary,
Govt. of NCT of Delhi,
5th Level, Delhi Secretariat, I.P.Estate,
New Delhi.

3. Principal Secretary (Home),
Govt. of NCT of Delhi,
Delhi Secretariat,
I.P.Estate,
New Delhi í í í .. Respondents

(By Advocate: Mr. N.K. Singh)

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ORDER

Per Raj Vir Sharma, Member(J):

The applicant has filed this Original Application under Section 19 of the Administrative Tribunals Act, 1985, praying for quashing of the order, dated 7.9.2015, passed by the Director General(Prisons), Delhi (respondent no.1), dismissing him from service with immediate effect. The said order is reproduced below:

GOVT. OF N.C.T. OF DELHI

OFFICE OF THE DIRECTOR GENERAL (PRISONS)

PRISONS HEADQUARTERS: NEAR LAJWANTI GARDEN CHOWK

JANAKPURI: NEW DELHI 110064

(VIGILANCE BRANCH)

No.F.11/3/579/CJ/VIG/2015/2397 Dated 07.09.15

ORDER

On the intervening night of 01/02.09.2015 two incidents of throwing at 23:46:39 hrs and 01:16:24 hrs, were captured by the CCTV camera installed at the main entrance of Central Jail No.8/9. Some articles were seen thrown towards Mulakat Jangla of CJ-09 from outside the main gate. On 02.09.2015 at 8.45 a.m. a special search was conducted at mulakat/interview waiting stand of CJ-8/9. During the course of search a packet covered with socks was found in which five mobile phones (Samsung DUOS without SIM) were found. Details of recovered mobile phones are as under:

1. IMEI No.357686/06 /483328/3, IMEI No.357687/ 06/483328/1, S/N: RZ1G72QD18L, Model: SM-B360E, SSN-B360EGSHN, SSN:B360EGSHN, S/N: BD1G708VS/4-B.
2. IMEI No: 352971/07/780267/2, IMEI NO:352972/07/ 780267/0, S/n: RZ1G81VE66K, MODEL: SM-B313E1D without battery.
3. IMEI No.352971/07/512883/1, IMEI No:352972/07/512883 /9, S/N- RZ1G800GY7M, MODEL: SM-B313E/D, SSN: B-313E/D GSMH, Battery: AB463651BN, S/N: BDIG70925/4-B.
4. IMEI NO:352971/07/237830/6, IMEI NO:352972/07/ 237830 /4, S/N: RZ1G71MREL, MODEL: SM-B313E/DGSMH, Battery: AB463651BN, S/N: AA1G627ES/4-B.
5. IMEI NO: 352971/07/780262/3, IMEI NO: 352972/07/780262/1, S/N: RZ1G81VE61N, MODEL: SM: B313/DGSMH without battery.

Further, five improvised mobile charges and six packets of tobacco (Swagat Brand) were also found in the contraband.

And whereas, as per CCTV footage and other relevant records, it has also come into notice that during first incident of throwing which happened at 23:46:39 hrs on 01.09.2015, jail staff Sh.Ajay, Warder-1261, Sh.Raju Pandey, W-1255, and Sh.Vinay Prakash, A.S. were outside the

deodhy and it is very much evident that these officials were involved in the said incident of throwing of prohibited articles. Further, Sh.Vinay Prakash, Asstt. Supdt. also could not control the unauthorized ingress and egress of these officials in deodhy.

Therefore, culpability on the part of all these jail staff is well established. As far as, the second incident of throwing is concerned, which happened at 01:16:24 hrs on 02.09.2015, only Warder Ajay (Roll No.1261) went outside the deodhy and remained outside from 01:10 hrs to 01: 17 hrs. Further, at the time of second throwing, Ohdedar Sh. Rakesh, W-1207 kept the main gate of deodhy open from 01:15 hrs to 01:17 hrs and during this time Warder Ajay came inside at 01:17 hrs. Even at this time, Sh.Rakesh, Warder-1207 and Sh.Vinay Prakash, Asstt. Supdt. could not control the ingress and egress of Sh.Ajay, Warder-1261 in deodhy. Accordingly, misconduct of throwing of prohibited articles on the part of Sh.Ajay, Warder-1261 as well as Sh.Rakesh Warder-1207 are established.

And whereas, the misconduct on the part of Sh.Vinay Prakash, Asstt. Supdt. is in gross violation of the provisions of Delhi Jail Manual Section 108, Prisons (Inspection, Meetings and Duties of Officers)Rules as well as Standing Order No.31 dated 14.03.2012.

Further, as per Sub Rule (1) of Rule 3 of the CC S(Conduct) Rules:
oEvery Government servant shall at all time:

- (i) Maintain absolute integrity,
- (ii) Maintain devotion to duty,
- (iii) Do nothing which is unbecoming of a Government servant.

And whereas, in Tihar Jail there are a wide variety of prisoners housed, many of them are under trials, convicts involved in murder/rape and other heinous offences, convicts involved in offences under the Arms Act, Explosive Act as also the NDPS Act and further dangerous criminals/terrorists arrested under MCOCA, TADA and POTA. In these circumstances, the propensity, of above mentioned officials, to smuggle prohibited articles inside the jail could be of serious consequence which may damage/jeopardize the security set up of Tihar Jails. Mobile phones in the hands of said dreaded criminal may be a threat to the safety and security of the citizens and the State. The officials involved in such an act of misconduct can be instrumental in doing anything, ranging from fostering disaffection among prisoners facilitating their escape, even facilitating attacks on the prison from external sources. Under nexus of above misconduct, it is not uncommon on part of such incorrigible officials to indulge in any type of malpractice. Being of doubtful integrity, these officials, if remain in service, would be a direct threat not only to the security of inmates and the prisons but also to all the citizens.

And whereas, in view of above, it is imperative to invoke the provisions of section 311(2) of the Constitution of India read with Rule 19 of CCS (CCA) Rules and dismiss Sh.Vinay Prakash, Asstt. Supdt. from the service immediately.

Therefore, in view of the above narrated facts and keeping in view the overall circumstances of the case and taking into account the facts, as reported and confirmed by Superintendent CJ-8/9, the undersigned is satisfied that in the interest of the security of citizens and State, it is not expedient to hold inquiry in the matter. And hence, in exercise of the powers conferred by clause (c) of Article 311 (2) of the Constitution of India read with Rule 19 of CCS (CCA) Rules, 1965, the undersigned hereby orders that Sh. Vinay Prakash, Asstt. Supdt., shall stand dismissed from service with immediate effect.

Sd/

ALOK KUMAR VERMA
DIRECTOR GENERAL PRISONS
DELHI

2. Referring to the provisions of Article 311(2) of the Constitution of India and Rule 19 of the CCS (CCA) Rules, 1965, and relying on the decisions of the Hon'ble Supreme Court reported in (1985) 3 SCC 398, **Union of India and another, etc. Vs. Tulsiram Patel, etc.**, and in (2006) 13 SCC 581, **Tarsem Singh Vs. State of Punjab & others**, the applicant has contended that the power under clause (c) of the second proviso to Article 311(2) of the Constitution of India is vested in the President or the Governor (as the case may be), and the power under Rule 19(iii) of the CCS (CCA) Rules, 1965, is vested in the President. Thus, respondent no.1 has acted without authority of law in exercising the power under clause (c) of the second proviso to Article 311(2) of the Constitution of India and Rule 19(iii) of the CCS (CCA) Rules, 1965, while passing the impugned order against him. It has also been contended by the applicant that no formal enquiry in terms of the first proviso to Article 311(2) was held by respondent no.1 before passing the impugned order against him. In view of all the above, the applicant has submitted that the impugned order of dismissal from service

passed against him by respondent no.1 is bad, illegal and liable to be quashed.

3. The respondents have resisted the O.A not only on the ground of its maintainability, but also on merits. It has been stated by the respondents that instead of making an appeal to the Appellate Authority against the impugned order passed by the Disciplinary Authority, the applicant has filed the present O.A. Therefore, the applicant not having availed of the remedy of appeal available to him for redressal of his grievance (if any), the O.A. filed by him is liable to be rejected as being not maintainable. It has also been asserted by the respondents that considering the facts and circumstances of the case, the Disciplinary Authority rightly invoked the provisions of Article 311(2) of the Constitution of India read with Rule 19 of the CCS (CCA) Rules, 1965, and passed the impugned order dismissing the applicant from service with immediate effect. The impugned order does not suffer from any infirmity or illegality, and, therefore, the same remains unassailable.

4. In the rejoinder reply, besides reiterating more or less the same contentions as in his O.A., the applicant has stated that since no statutory inquiry has been held by the concerned authority, the remedy of appeal against the impugned order is not available to him.

5. We have perused the records, and have heard Ms.Soumyashree Mishra, the learned counsel appearing for the applicant, and Mr.N.K.Singh, the learned counsel appearing for the respondents.

6. On the question of maintainability of the O.A., Ms.Soumyashree Mishra, the learned counsel appearing for the applicant, submitted that clause (c) of the second proviso to Article 311(2) of the Constitution of India having been invoked by the Director General (Prisons), the impugned order partakes of the character of Presidential order, and since no appeal lies against any order made by the President, it cannot be said that remedy of appeal against the impugned order was available to the applicant and the O.A. filed by him without exhausting that remedy is not maintainable.

7. Mr.N.K.Singh, the learned counsel appearing for the respondents, on the other hand, submitted that the applicant was a Group -C δ employee and his appointing authority/Disciplinary Authority was the Director General (Prisons), Delhi. The impugned order was passed by the Director General (Prisons) under Rule 19 of the CCS (CCA) Rules, 1965 read with Article 311(2) of the Constitution of India. Therefore, the Principal Secretary (Home) is the Appellate Authority to whom the applicant ought to have made an appeal against the impugned order.

8. After having given our anxious consideration to the rival contentions, we have found no substance in the contention of Ms.Soumyashree Mishra, the learned counsel appearing applicant, on the question of maintainability of the OA. It is evident from the impugned order itself that the Director General (Prisons), Delhi, has passed the same. We do not find any mention therein that by order and in the name of the President,

the impugned order was issued by the Director General (Prisons), Delhi. Merely because a reference has been made to clause (c) of Article 311(2) of the Constitution of India in the impugned order, it cannot be said that the same has been issued by order and in the name of the President. The applicant has not placed before us any other material to show that the impugned order has been issued by order and in the name of the President. Therefore, we have no hesitation in holding that the impugned order was passed by the Disciplinary Authority, and the remedy of making an appeal to the Principal Secretary (Home), Government of NCT of Delhi, was available to the applicant.

9. Section 20(1) of the Administrative Tribunals Act, 1985, stipulates that Tribunal shall not ordinarily admit an application unless it is satisfied that the applicant had availed of all the remedies available to him/her under the relevant service rules as to redressal of grievances. In view of this, the applicant not having availed of the remedy of appeal against the order of the Disciplinary Authority cannot be allowed to maintain this O.A. before this Tribunal challenging the order passed by the Disciplinary Authority.

10. During the course of hearing, Ms.Soumyashree Mishra, the learned counsel appearing for the applicant, also filed a copy of the order dated 27.5.2016 passed by the Director General (Prisons), Delhi, in the case of one Sh.Raju Pandey, Ex-Warder-1255, who was allegedly involved in the same incident and was also dismissed from service by an order passed by the

Director General (Prisons) as Disciplinary Authority. The said Shri Raju Pandey made an appeal to the Principal Secretary (Home), Government of NCT of Delhi, against the order passed by the Director General (Prisons). The Principal Secretary (Home) disposed of the said appeal and remitted the case of Shri Raju Pandey to the Director General (Prisons) to review his order. Accordingly, the Director General (Prisons) reconsidered the matter and set aside the order of dismissal from service. Shri Raju Pandey was ordered to have been reinstated in service with effect from 7.9.2015, i.e., the date of dismissal from service. It was also ordered that an inquiry under Rule 16 of the CCS (CCA)Rules,1965, be initiated against the said Shri Raju Pandey and the period intervening the date of dismissal from service till the date of actual reinstatement be treated as spent on duty.

11. In the above view of the matter, we would like to observe that if the applicant files an appeal before the Principal Secretary (Home), Government of NCT of Delhi, against the impugned order, within a period of thirty days from today, the said authority would be well advised to condone the delay in filing of the appeal, and to consider and decide the appeal on merits by passing appropriate order as early as possible.

12. With the above observation, the O.A. is disposed of. No costs.

(RAJ VIR SHARMA)
JUDICIAL MEMBER

(SHEKHAR AGARWAL)
ADMINISTRATIVE MEMBER

