

**Central Administrative Tribunal
Principal Bench
New Delhi**

OA No.4076/2012

Order Reserved on:23.09.2016

Pronounced on:30.09.2016

**Hon'ble Dr. Brahm Avtar Agrawal, Member (J)
Hon'ble Mr. K.N. Shrivastava, Member (A)**

B.S. Yadav,
S/o Sh. Roop Chand,
R/o Vill & P.O. Khera Dabar,
Najafgarh,
New Delhi-110073.

-Applicant

(By Advocate Shri O.P. Gehlot)

-Versus-

1. Union of India through
Joint Secretary, (UT, Delhi),
Ministry of Home Affairs,
Govt. of India,
North Block,
Central Secretariat,
New Delhi.
2. Govt. of NCT of Delhi
Through its Chief Secretary,
Govt. of NCT Delhi Secretariat,
I.P. Estate,
New Delhi-110002.

-Respondents

(By Advocates Shri R.N. Singh and Smt. Alka Sharma)

ORDER

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

This Original Application (OA) has been filed by the applicant under Section 19 of the Administrative Tribunals Act, 1985, praying for the following main reliefs:

“(a) Set aside the impugned order dated 16.7.2012 read with its corrigendum dated 17.7.2012 by which impugned order’s dated has been changed to 16.7.2012.

(b) Set aside the disciplinary proceedings in its entirety.

(c) order payment of gratuity, leave encashment, commutation of pension immediately with interest @18% w.e.f. the date of penalty order dated 16.7.2012 on which they become due,”

2. The brief facts of this case are as under:

2.1 The applicant is a DANICS officer. He was posted as Superintendent, Jail No.1, Tihar, New Delhi during the year 2003-2004. One Under Trial Prisoner (UTP), namely Shri Sher Singh Rana was lodged in the judicial custody in the Central Jail No.1 in FIR No.253/2001 under Section 303/307/201/120B/34 IPC, PS Parliament Street, New Delhi. He was also facing trial in some outstations cases pending against him in Uttrakhand.

2.2 On 17.02.2014, an imposter carrying handcuff and in police uniform with the name ‘Constable Arvind Kumar’, Belt No.4882 DAP, 3rd Battalion reported at the main gate of Central Jail No.1 for taking custody of said UTP for

producing him before the Court at Haridwar. The prisoner was handed over to the imposter, which resulted into the escape of the prisoner from the Central Jail No.1.

2.3 Annexure A-2 charge-sheet dated 09.07.2005 was issued to the applicant by the Disciplinary Authority (DA), i.e., Chief Secretary, GNCTD containing the following article of charge:

“That the said Sh. B.S. Yadav, Entry Grade DANICS Officer while functioning as Superintendent, Central Jail No.1, Tihar, New Delhi during the year 2003-2004 exhibited lack of commitment in the discharge of his duties as Head of Central Jail No.1 resulting in the escape of an under trial prisoner namely Sher Singh Rana @ Sher @ Pankaj S/o Sh. Surender Singh Rana accused in the murder of Smt. Phoolan Devi, Member of Parliament from Central Jail No.1 on 17.2.2004/

Thus the said Sh. B.S. Yadav, Entry Grade DANICS Officer failed to maintain devotion to duty and exhibited conduct unbecoming of a Government servant thereby violating the provisions of Rule 3 of the CCS (Conduct) Rules, 1964.”

2.4 Pursuant to the said charge-sheet, Disciplinary Enquiry (DE) proceedings were started against the applicant by appointing Shri S.S. Ghonkrokta, a DANICS officer as Enquiry Officer (EO). The EO initially submitted his report on 22.06.2007. The DA by its Annexure A-3 order dated 25.07.2007 found some inherent contradictions in the body of the enquiry report and hence ordered further enquiry from the stage of evidence by the same EO. The Annexure A-3 order of DA reads as under:

“Where Shri S.S.Ghonkrokta, DANICS Officer was appointed as Inquiring Authority under sub-rule 2 of Rule 14 of the CCS (CCA) Rules, 1965 by the competent authority to inquire into the charges against Shri B.S. Yadav, Supdt. Central Jail vide order No.F.7(17)2004/DOV/4791-96 dated 13.07.05, who furnished his inquiry report dated 22.06.2007.

And whereas the undersigned being the competent authority has gone through the inquiry report and noted that Inquiring Authority has made the Statement of imputation of misconduct or misbehaviour in support of Article of charge as Article I and the actual article of charge as Article II. Rule 14(23)(i) of CCS(CCA) Rules, 1965 prescribes a particular format for the inquiry report. Article of charge and Statement of imputation of misconduct are separate parts of the charge sheet. Former is essence of the latter and emanates from it. Article of charge brings out the precise misconduct that is also contained in the Statement but with complete narration of events in a logical sequence and also the circumstances, which culminate in the misconduct. By referring to Statement of imputation of misconduct or misbehaviour as Article I and Statement of article of Charge as Article II in the inquiry Report and reporting contradictory findings thereon, a basic infirmity has crept in the report for which the inquiry needs to be remitted to the Inquiry needs to be remitted to the inquiring Authority for further inquiry.

In the interest of justice and fair play, the findings of the Inquiring Authority which suffer from such a infirmity cannot be accepted.

Now, therefore, the undersigned hereby remits this inquiring under sub-rule (1) of Rule 15 of the CCS(CCA) Rules, 1965 to the Inquiring Authority for holding further inquiry from the stage of evidence and proceed further after scrupulously following the procedure as laid down under Rule 14 of the CCS(CCA) Rules, 1965.”

2.5 The EO finally submitted his Annexure A-4 report dated 07.08.2008 in which he held that the charge against the applicant “is partially proved”.

2.6 A copy of the EO report was made available to the applicant seeking his representation against the same. The applicant submitted his representation on 18.01.2010

contorverting the finding of the EO in his report (Annexure A-8).

2.7 The EO's report was submitted by respondent no.2 to respondent no.1, who is the appointing authority for the applicant. The respondent no.1 solicited opinion of UPSC in the matter. The UPSC vide their Annexure A-9 letter dated 19.06.2012 furnished their opinion with the following recommendation:

“....The Commission are of the view that the charge established against the CO, constitutes grave misconduct on his part and consider that the ends of the justice would be met in this case if the penalty of “withholding of 20% (Twenty percent) of monthly pension otherwise admissible for a period of 5 (Five) years” is imposed on Shri B.S.Yadav, the CO. The gratuity admissible to him may be released unless required otherwise”.

2.8 The respondent no.1 vide impugned Annexure A-1 order dated 16.07.2011 imposed the following penalty on the applicant:

“And now therefore, the President after considering the evidence on record and facts and circumstances of the case, by virtue of power vested under Rule9 of CCS(Pension) Rules, 1972 has decided to accept the advice of UPSC and to impose the penalty of “withholding of 20% (Twenty percent) of monthly pension otherwise admissible for a period of 5 (Five) years” on the CO. Shri B.S.Yadav, the then Superintendent (since retired). Central Jail No.1, New Delhi and orders accordingly. The gratuity admissible to him may be released unless required otherwise.”

2.9. Since the impugned Annexure A-1 order is a Presidential order, as such there is no provision of appeal

against it. Aggrieved by the Annexure A-1 order, the applicant has filed the instant OA.

3. Pursuant to the notices issued the respondents entered appearance and filed their reply. The applicant thereafter filed his rejoinder. With the completion of the pleadings, the case was taken up for hearing the arguments of the parties on 23.09.2016.

4. Shri O.P. Gehlot, learned counsel for the applicant, reiterating the grounds mentioned in the OA, submitted the following important points during the course of his arguments:

- i) The action of respondents in starting DE proceedings and thereafter imposition of penalty on the applicant is discriminatory as the lower officials of the Jail who had verified the imposter's identity, signed the gate pass for letting the UTP go, issued challan and diet money have not been penalized.
- ii) The findings of the EO and the advice of the UPSC on the EO's report and thereafter the impugned Annexure A-1 penalty order passed by the DA are all based on presumptions and assumptions.

iii) In the EO's report no misconduct, much less any grave misconduct on the part of the applicant has been proved. The EO's report only states that the applicant being head of Central Jail No.1 was duty bound to ensure that the provisions of the Delhi Jail Manual are followed meticulously and that his indifferent and lackadaisical attitude contributed to the escape of the UTP from the jail and that he failed to maintain devotion to duty and conducted in a manner unbecoming of government servant.

iv) Under Rule-49 of the Delhi Jail Manual the Deputy Superintendent (DS) is the Chief Executive Officer (CEO) and is required to enforce all laws, rules and regulations. He is also required to reside in the prison compound. The applicant being Superintendent is only overall incharge of the jail but is not required to be involved in the routine conduct of the jail affairs.

v) The UPSC as well as the DA have only observed shortcomings on the part of the applicant. Even if the shortcoming is presumed, the penalty imposed is disproportionate and shocking to the conscience.

vi) A copy of the UPSC's advice was not supplied to the applicant before passing the impugned Annexure A-1 order

and thus the applicant had been denied a valuable right to refute the adverse recommendations contained therein. The law laid down by the Hon'ble Supreme Court in the case of **Union of India & Another v. S.K. Kapoor**, [(2011) 4 SCC 589] has not been followed.

vii) Some additional documents sought by the applicant during the course of enquiry, which could have facilitated him to cross-examine the Prosecution Witnesses (PWs), were not made available to him.

viii) The Chief Secretary, GNCTD was not competent to order further enquiry which led to re-recording of statement of witnesses and submission of second report by the EO.

ix) The PWs were ones who were involved in the escape of UTP and thus they were interested in saving themselves. Therefore, the evidence of such interested and biased witnesses could not have been relied upon.

x) The DS, Shri V.D. Pushkarna, one of the PWs, during his cross-examination has clearly stated that as per the practice, DS after opening and closing the jail does not inform in writing to his immediate senior officer. He has also stated that the DS is the CEO of the jail and the work of production of the prisoner is distributed by DS to the Assistant Superintendents. From his evidence, it is quite

clear that the applicant was in no way associated nor involved with the release of the UTP Sher Singh Rana for being produced before the court.

xi) This Hon'ble Tribunal in the case of **Som Nath Sharma v. Union of India & Others**, [(1994) 27 ASTC 771] quoting the judgment of the Hon'ble Supreme Court in the case of **K.R. Deb v. Collector of Central Excise, Shillong**, [(1971) 2 SCC 102] in para 13 of its judgment has observed as under:

“It seems to us that Rule 15, on the face of it, really provides for one inquiry but it may be possible if in a particular case there has been no proper enquiry because some serious defect has crept into the inquiry or some important witnesses were not available at the time of the inquiry or were not examined for some other reason, the Disciplinary Authority may ask the Inquiry Officer to record further evidence. But there is no provision in rule 15 for completely setting aside previous inquiries on the ground that the report- of, the Inquiring Officer or Officers does not appeal to the disciplinary, Authority-. The Disciplinary Authority has enough powers to reconsider the evidence itself and come to its own conclusion under Rule 9.”

xii) Further this Tribunal in the case of **S.P. Bansal v. Union of India and others**, [1986 ATC (CAT) 387] has observed as under:

“7. The inquiry is a quasi-judicial proceeding and if the respondents could not prove the charges before the Inquiry Officer due to laxity, the petitioner cannot be put to the double jeopardy of a second imposition when he had been exonerated by the Inquiry Officer. The petitioner has already retired on March 31, 1985 and has already undergone considerable protracted financial and mental hardship. He cannot be subjected to further torture through a second inquiry as in the circumstances discussed above. It was perhaps in this background that the Hon'ble High Court in

their order dated March 20, 1978 in this case stayed further proceedings before the Commissioner for Departmental Inquiries.”

xiii) In view of these judicial rulings the Chief Secretary, GNCTD was not justified to order another enquiry vide his Annexure A-3 order dated 25.07.2007.

xiv) In the case of **K.M. Sharma v. Union of India**, (TA-683/1985, decided on 05.01.1987], this Tribunal has held that pension can be withheld only for grave misconduct. In the instant case, no grave misconduct has been proved on the part of the applicant.

xv) The Hon’ble Supreme Court in its judgment in the case of **Union of India v. K.A. Kittu and Others**, [JT 2000 (Suppl.3) SC 17] and so also in the case of **Laxmi Devi Sugar Mills Ltd. v. Nand Kishore Singh**, [AIR 1957 SC 7] has held that action cannot be justified on the grounds other than those mentioned in the charge-sheet. The reasons given in the impugned Annexure A-1 penalty order are different than the charge levied in the Annexure A-2 charge-memo.

xvi) There is no iota of any evidence against the applicant and he has been punished without any evidence. The Hon’ble Supreme Court in the case of **M.V. Bijlani v.**

Union of India and Others, [2006 (3) AISLJ 184] had held as under:

“It is true that the jurisdiction of the court in judicial review is limited. Disciplinary proceedings, however, being quasi-criminal in nature, there should be some evidences to prove the charge. Although the charges in a departmental proceedings are not required to be proved like a criminal trial, i.e., beyond all reasonable doubts, we cannot lose sight of the fact that the Enquiry Officer performs a quasi-judicial function, who upon analysing the documents must arrive at a conclusion that there had been a preponderance of probability to prove the charges on the basis of materials on record. While doing so, he cannot take into consideration any irrelevant fact. He cannot refuse to consider the relevant facts. He cannot shift the burden of proof. He cannot reject the relevant testimony of the witnesses only on the basis of surmises and conjectures. He cannot enquire into the allegations with which the delinquent officer had not been charged with.”

xvii) Further in the case of **Union of India and Others v. J. Ahmed**, [1979 AISLJ SC 308] the Hon’ble Apex Court

has held that *“deficiencies in personal character or personal ability like lack of efficiency, lack of foresight and indecisiveness would not constitute misconduct for the purpose of disciplinary proceedings.”*

Concluding his arguments, Shri Gehlot stated that no misconduct on the part of the applicant has been proved. No evidence has been adduced during the enquiry vis-a-vis the charge levelled against the applicant in the charge-memo and the applicant has been punished without any evidence. The Chief Secretary, GNCTD was not legally competent to order further enquiry. The

respondents have violated the principles and ratio of law laid down by the Hon'ble Supreme Court in the aforementioned judgments. For all these reasons, the reliefs claimed in the OA deserve to be allowed.

5. Per contra, Shri R.N. Singh, learned counsel for the respondents submitted as under:

- a) The applicant has only challenged the Annexure A-1 penalty order passed by the DA. The charge-sheet and the EO's report have not been challenged.
- b) The applicant despite the judgment of the Hon'ble Supreme Court in **S.K. Kapoor** (supra) decided to argue the case, and as such the said judgment would not come in the way of adjudicating this OA on merits. More so, the judgment of the Hon'ble Supreme Court in **S.K. Kapoor** (supra) was not in existence when the impugned Annexure A-1 order was passed by the DA.
- c) The EO in his report under the heading '**Assessment and Evaluation of Evidence**' has clearly held that the "CO (applicant) has failed to supervise the matters related to discipline, control and distribution of duties is partially substantiated.

d) The UPSC has only agreed with the punishment intended to be awarded by the DA in its reference made to it and as such it cannot be construed that the Annexure A-1 order is based on the UPSC advice.

e) The EO based on the available evidence has found that the charge against the applicant is proved. This Tribunal is only required to examine as to whether the enquiry has been conducted in accordance with the laid down procedure and is not required to re-appreciate the evidence, as held by the Hon'ble Apex Court in its judgment in the case of **Union of India v. P. Gunasekaran**, [2015] 2 SCC 610].

f) This Hon'ble Tribunal in the case of **Vishva Bandhu Gupta v. Union of India**, [TA No.14/2013, decided on 16.07.2016] has held that if the enquiry report or findings of the EO are not called in question in any manner, whatsoever, it is to be assumed that the charge has been proved and the only issue to be adjudicated is as to the quantum of punishment.

g) The applicant being the Superintendent of the jail was overall incharge of its affairs and he cannot absolve himself of his responsibility in the matter of escaping of the UTP from the jail.

h) The Chief Secretary, GNCTD has been authorized to exercise powers of DA in terms of Rule 13 (2) of the CCS (CCA) Rules, 1965 and he was well within his powers to order further enquiry vide his Annexure A-3 order dated 25.07.2007 when he noticed that there were some palpable contradictions in the body of the first enquiry report submitted by the EO on 22.06.2007.

Concluding his arguments, the learned counsel for the respondents submitted that for the charge proved against the applicant in the EO's report, the punishment of withholding of 20% monthly pension for a period of 05 years imposed on the applicant by the DA is fully justified and as such the OA deserves to be dismissed.

6. We have considered the arguments put-forth by the learned counsel for the parties and have perused the pleadings and documents annexed thereto. A plain reading of the Delhi Jail Manual would clearly indicate that the Superintendent of Jail is the Head of Office. His duty includes providing for the support, care and custody of, and control over, all prisoners at any time confined in the jail (Rule 9 (a)). As per Rule-22 of the Manual, Jail Superintendent is authorized to distribute the duties amongst his subordinate officers. Although Rule 49 (1)

states that the Deputy Superintendent is the CEO of the Jail but he too has to work under the overall supervision and control of the Jail Superintendent.

6.1 The EO in his report has observed as under:

“Supervision and systemic failure was there, for which every level i.e. A.S.D.S. and Suptd. Have to share the blame as one person in a link cannot be picked up in isolation for the same. Since the present inquiry does not have mandate to examine the role of the staff, Durban, Imdadi Durban, Duty Officer, A.S. (UT) or D.S. , no comments are being offered in this regard. However, in view of the above there was a supervision & systematic failure at each level, more importantly at the level of DS or Chief Executive Officer, the article is proved partially to the extent that control and discipline was lax and there was supervisory failure as well as on the part of C.O. who was superintendent & overall in charge of the Jail.”

7. Regarding the powers of the Chief Secretary, GNCTD, with regard to his Annexure A-3 order whereby further enquiry from the stage of evidence was ordered by him, suffice to state that the Chief Secretary, GNCTD has been delegated the powers of DA by the competent authority. The Annexure A-2 charge-memo was issued by the Chief Secretary in that capacity, and, therefore, he is also having powers to order fresh enquiry for valid reasons. In his Annexure A-3 order dated 25.07.2007, the Chief Secretary has given the reasons as could be seen in para 2.4 supra.

7.1 We, therefore, hold that no illegality has been committed by the Chief Secretary in ordering further enquiry.

8. We further observe that a copy of the UPSC's advice was not made available to the applicant before the impugned Annexure A-1 order was passed by the DA. Thus, the ratio of law laid down by the Hon'ble Apex Court in **S.K. Kapoor** (supra) has not been followed and thus the principles of natural justice have not been observed. For this reason, the matter is required to be remitted back to the DA for following the principles laid down by the Hon'ble Apex Court in **S.K. Kapoor** (supra).

9. In view of the discussions in the pre-paragraphs, and without commenting on the merits of this case, we pass the following order:

- i) The Annexure A-1 punishment order passed by respondent no.1 is quashed and the case is remitted to the DA.
- ii) The respondent no.1 shall make send a copy of the UPSC advice to the applicant within 04 weeks from the date of receipt of a certified copy of this order.

iii) The applicant shall submit his representation, if any, to respondent no.1 within 04 weeks thereafter.

iv) The respondent no.1 shall pass a fresh order under Rule-9 of the CCS (Pension) Rules, 1972 after giving due consideration to the representation of the applicant within 03 months thereafter.

10. The OA stands disposed of accordingly.

11. No order as to costs.

(K.N. Shrivastava)
Member (A)

(Dr. Brahm Avtar Agrawal)
Member (J)

‘San.’