

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

O.A./100/1/2013
With
O.A./100/549/2015
O.A./100/2120/2015
O.A./100/3054/2015
M.A./100/2008/2017
O.A./100/4122/2015
O.A./100/920/2014
O.A./100/1569/2014
O.A./100/2510/2014
M.A./100/3289/2015
O.A./100/3283/2014
O.A./100/3451/2014
O.A./100/1069/2013
O.A./100/1140/2013
O.A./100/3772/2013
O.A./100/4261/2013
M.A./100/1548/2015
M.A./100/2878/2016
O.A./100/2993/2012

New Delhi, this the 26th day of March, 2019

**Hon'ble Mr. Justice L. Narasimha Reddy, Chairman
Hon'ble Mr. Mohd. Jamshed, Member (A)**

O.A./100/1/2013

V.P. Garg
S/o Shri Risal Singh, aged 57 years
Working as Dy. Supdt. Central Jail,
And R/o B-15, Officers Residential Complex,
Central Jail Tihar,
New Delhi-110064

....Applicant

(Through Shri R.K. Jain for Shri Arun Bhardwaj, Advocate)

Versus

1. Lt. Gov. of Delhi
Rajniwas, Delhi-110054
2. Chief Secretary, GNCTD,
I.P. Estate, New Delhi-110002
3. DG (Prisons), Prisons Headquarters

Near Lajwanti Garden Chowk,
New Delhi-110064

4. Union of India through
Secretary (UTS-II Divison)
North Block, New Delhi
5. Shri S.C. Bhardwaj, DANICS
Ex. Supdt. Central Jail,
Presently posted in Andaman & Nicobar Islands
(To be served through Respondent No.4) ... Respondents

(Through Shri Vijay Pandita, for official respondents
Shri Sourabh Ahuja, for private respondent)

O.A./100/549/2015

Jitender Pal, Retd. Asstt. Supdt., Age 60 years
Son of Late Shri Dungar Singh
R/o House No. 881, New Jail Complex,
Vidya Marg, Tihar,
New Delhi-64

...Applicant

(None appeared)

Versus

1. Lt. Governor,
Govt. of NCT of Delhi
Rajniwas, Delhi
 2. Principal Secretary (Home)
Govt. of NCT of Delhi
Delhi Sachivalaya, I.P. Estate,
New Delhi-110002
 3. Director General of Prisons,
Prisons Headquarters
Near Lajwanti Garden Chowk,
Janak Puri, New Delhi-110064
- ... Respondents

(Through Shri Vijay Pandita, Advocate)

O.A./100/2120/2015

Ms. Ashwini Kumari, Age 55 years
D/o Shri Harbans Lal
R/o G & JU House No.8B, Pitam Pura
New Delhi-34

...Applicant

(None appeared)

Versus

1. Lt. Governor of Delhi
Raj Niwas, Delhi-7
2. Govt. of NCT of Delhi
Through Chief Secretary,
Delhi Sachivalaya, I.P. Estate,
New Delhi-110002
3. Director General of Prisons,
Prisons Headquarters
Near Lajwanti Garden Chowk,
Janak Puri, New Delhi-110064 ... Respondents

(Through Shri Vijay Pandita, Advocate)

O.A./100/3054/2015, M.A./100/2008/2017

Shri Surjeet Singh (Aged 46 years)
S/o Shri Amar Singh
Working as Warder No.738
(now under deemed suspension)
R/o A40, Dayanand Colony,
New Delhi-110024 ...Applicant

(Through Shri Sachin Chauhan, Advocate)

Versus

1. GNCTD through
Principal Secretary (Home),
Delhi Sectt.,
New Delhi-110002
2. Director General (Prisons),
Near Lajwanti Garden Chowk,
New Delhi-110064 ... Respondents

(Through Shri Vijay Pandita, Advocate)

O.A./100/4122/2015

Jagdish Singh, Age 54 years
S/o Shri Meva Ram
R/o C-11/36, Sector-3, Rohini,
Delhi ...Applicant

(None appeared)

Versus

1. Lt. Governor of Delhi
Raj Niwas, Delhi-7
 2. Govt. of NCT of Delhi
Through Chief Secretary
Delhi Sachivalaya, I.P. Estate,
New Delhi-110002
 3. Director General of Prisons,
Prisons Head Quarters,
Near Lajwanti Garden Chowk,
Janak Puri, New Delhi-110064
- ... Respondents

(Through Shri Vijay Pandita, Advocate)

O.A./100/920/2014

Vinod Kumar,
S/o Shri Nathu Ram,
R/o CD-59E, DDA Flats,
Hari Nagar, New Delhi-110064

...Applicant

(Through Shri R.K. Jain, Advocate)

Versus

1. The Govt. of NCT of Delhi
Through its Chief Secretary
Players Building,
I.P. Estate, New Delhi
 2. The Principal Secretary (Home)
Govt. of NCT of Delhi, Delhi Secretariat,
I.P. Estate, New Delhi
 3. The Director General (Prisons),
Prisons Head Quarters,
Near Lajwanti Garden Chowk,
Janak Puri, New Delhi-110064
- ... Respondents

(Through Shri Vijay Pandita, Advocate)

O.A./100/1569/2014

V.P. Garg
S/o Late Shri Rishal Singh
R/o B-15, Officers Colony,
Tihar Jail, New Delhi

...Applicant

(Through Shri R.K. Jain, Advocate)

Versus

1. The Govt. of NCT of Delhi
Through its Chief Secretary
Delhi Sachivalaya, I.P. Estate,
New Delhi-110002
 2. The D.G. (Prisons),
Prison Head Quarters,
Near Lajwanti Chowk,
New Delhi-110064
 3. Shri S.C. Bhardwaj,
The then Superintendent, Central Jail 5,
To be served through
Secretary, MHA, UTS-II Division,
North Block, New Delhi
- ... Respondents

(Through Shri Vijay Pandita, Advocate)

O.A./100/2510/2014, M.A./100/3289/2015

Shri Jagdish Singh, Dy. Supdt., Age 53 years
S/o Late Shri Meva Ram
R/o C-11/36, Sector-3,
Rohini, New Delhi

...Applicant

(None appeared)

Versus

1. Govt. of NCT of Delhi
Through the Lt. Governor
Raj Niwas, Delhi
 2. Chief Secretary,
Delhi Sachivalaya, I.P. Estate,
New Delhi-110002
 3. Director General of Prisons
Prisons Headquarters,
Near Lajwanti Garden Chowk,
Janakpuri, New Delhi-64
- ... Respondents

(Through Shri Vijay Pandita, Advocate)

O.A./100/3283/2014

Rajesh Kumar, Head Warder, Age 39 Yrs.
Son of Shri Mange Ram
R/o K-34/17, Sanjay Colony, Gali No.10
Saboli Road, Narela,
Delhi-40

...Applicant

(None appeared)

Versus

1. Principal Secretary (Home)
Govt. of NCT of Delhi
Delhi Sachivalaya, I.P. Estate,
New Delhi-110002
2. Director General of Prisons
Prisons Headquarters,
Near Lajwanti Garden Chowk,
Janakpuri, New Delhi-64

... Respondents

(Through Shri Vijay Pandita, Advocate)

O.A./100/3451/2014

Vikas Panwar, Warder, Age 27 years
Son of Shri Chanderpal Singh,
V & P Kakripur, Distt. Baghpat,
Uttar Pradesh-250623

...Applicant

(None appeared)

Versus

1. Principal Secretary (Home)
Govt. of NCT of Delhi
Delhi Sachivalaya, I.P. Estate,
New Delhi-110002
2. Director General of Prisons
Prisons Head Quarters,
Near Lajwanti Garden Chowk,
Janakpuri, New Delhi-64

... Respondents

(Through Shri Vijay Pandita, Advocate)

O.A./100/1069/2013

Pushpender Choudhary
S/o Shri Harpal Singh
Aged about 32 years, Ex-Warder
Central Jail Tihar & New Delhi
R/o A-44, Central Jail, Tihar
New Delhi-110064

...Applicant

(Through Shri K.K. Patel, Advocate)

Versus

1. Govt. of NCT of Delhi
Through the Chief Secretary,
Delhi Secretariat,
New Delhi-2

2. Director General (Prisons)
Prisons Head Quarters,
Near Lajwanti Chowk,
New Delhi-64

... Respondents

(Through Shri Vijay Pandita, Advocate)

O.A./100/1140/2013

Vinod Kumar
S/o Shri Bhagwan
Aged about 38 years
R/o Village & P.O. : Daulatabad
Gurgaon, Haryana-122 001

...Applicant

(Through Shri K.K. Patel, Advocate)

Versus

1. Govt. of NCT of Delhi
Through the Chief Secretary
5th Level, A-Wing
Delhi Sectt., I.P. Estate,
New Delhi-110002

2. Director General
Prisons H.Q.,
Near Lajwanti Garden Chowk,
Central Jail Tihar,
New Delhi-110062

... Respondents

(Through Shri Vijay Pandita, Advocate)

O.A./100/3772/2013

Shri V.P. Garg
S/o Shri Risal Singh, aged 57 years
Working as Dy. Supdt., Central Jail
And R/o B-15, Officers Residential Complex,
Central Jail Tihar,
New Delhi-110064

...Applicant

(Through Shri R.K. Jain, Advocate)

Versus

1. Lt. Governor of Delhi
Raj Niwas, Delhi-110054
 2. Chief Secretary, GNCTD
I.P. Estate, New Delhi-10002
 3. DG (Prisons)
Prisons Headquarters,
Near Lajwanti Garden Chowk,
New Delhi-64
- ... Respondents

(Through Shri Vijay Pandita, Advocate)

**O.A./100/4261/2013, M.A./100/1548/2015,
M.A./100/2878/2016**

Shri B.S. Jarial
S/o Late Shri G.S. Jarial
Working as Dy. Supdt., Grade-I
In Central Jail, Tihar & R/O 696,
Type-V, New Residential Complex,
Central Jail, Tihar,
New Delhi-110064

...Applicant

(Through Shri Piyush Sharma, Advocate)

Versus

1. Govt. of NCT of Delhi
Through the Chief Secretary
Govt. of NCT of Delhi
Delhi Secretariat, I.P. Estate
New Delhi-110002
 2. The Director General of Prisons, Delhi
Prisons Headquarters,
Near Lajwanti Garden Chowk,
Janakpuri, New Delhi-64
- ... Respondents

(Through Ms. Ritika Chawla, Advocate)

O.A./100/2993/2012

Shri Dinesh Kumar Papnay
S/o Shri Ganga Dutta
Aged about 36 years,
Ex-Warder Central Jail,
R/o H.No.521/26, Gali No.5
Vijay Park, Maujpur,
Delhi-110053

...Applicant

(Through Shri K.K. Patel, Advocate)

Versus

1. Govt. of NCT of Delhi
Through the Chief Secretary
'A' Wing, 5th Level,
Delhi Secretariat, I.P. Estate,
New Delhi-110002
 2. Director General (Prisons)
Prisons Head Quarters,
Near Lajwanti Chowk,
New Delhi-110064
- ... Respondents

(None appeared)

ORDER (Oral)

Justice L. Narasimha Reddy, Chairman

In this batch of OAs, the question that arose for consideration is as to whether the CCS (CCA) Rules (for short "the rules") apply to the employees of the Prisons Department of Delhi, in general and employees working in Tihar Jail, in particular.

2. There is chequered history that precedes the present hearing.

3. The applicant in OA 4261/2013 is a Deputy Superintendent working in Central Jail, Tihar. He was issued a charge memorandum dated 22.10.2013 by the Chief Secretary, Delhi in exercise of power under Rule 14 of the CCS (CCA) Rules (for short, the CCA Rules). Four Articles of Charge were incorporated in the memorandum, alleging the acts of misconduct. The statement of imputation was also

enclosed. The applicant filed OA challenging the memorandum of charge mainly on the ground of lack of substance in the charges. During the pendency of the OA, he filed an MA raising the issue pertaining to jurisdiction of the Chief Secretary in issuing the Memorandum of Charge. The OA was heard at length. The judgment of the Hon'ble Supreme Court in **Anant R. Kulkarni Vs. Y.P. Education Society and others**, (2013) 6 SCC 515, wherein it was held that the Courts and Tribunals should not generally set aside the departmental inquiry and quash the charge sheet, was taken note of.

4. On the point that the Chief Secretary does not have jurisdiction in relation to the members of the Prisons Service, the applicant placed reliance on the judgment of the Tribunal in OA No.778/2006, **R.D. Bohet Vs. Lt. Governor of Delhi and ors**. It was observed in para 36 of the judgment in OA 4261/2013 that the question pertaining to the applicability of the CCA Rules to the members of the Prisons Service was not dealt with in detail in R.D. Bohet's case and at any rate, it was not specifically affirmed by the High Court in the Writ Petition which arose out of it and that the SLP was also dismissed in limine. Accordingly, the OA was dismissed on 28.08.2015 mostly on merits and the objection as to jurisdiction of the Chief Secretary was not dealt with, in detail.

5. The applicant filed Writ Petition (C) No.10297/2015 before the Delhi High Court feeling aggrieved by the dismissal of the OA. The only contention that was addressed therein was about the applicability of the CCA Rules and reliance was placed on the judgment in R.D. Bohet's case. Both the parties in the Writ Petition agreed before the High Court that the matter be remanded to the Tribunal for deciding the question as to the competence of the Disciplinary Authority, who issued charge memo. Through its judgment dated 14.07.2016, the High Court remanded the matter to the Tribunal with a specific direction to record a finding whether the charge sheet has been issued by the competent authority or not. It was also observed that the High Court cannot be taken as having expressed any view, on merits. Accordingly, the matter is listed for hearing.

6. In the rest of the OAs, the charge sheets, issued to the respective applicants are challenged mainly on the ground of lack of jurisdiction of the concerned authority or the applicability of the CCA Rules.

7. The record discloses that at one stage, the OAs were adjourned sine die but in view of the fact that the interim order of stay is operating in many cases, we have taken up the OAs for hearing and the learned counsel for the parties have extended proper assistance.

8. On behalf of the applicants, it is pleaded that the services of the employees working in the Prisons Department at Delhi are governed by the Punjab Jail Department Executive Staff (Punishment & Appeal) Rules, 1943 (for short "Punjab Rules") and that the CCA Rules do not have any application at all. It is stated that this very question was dealt with by the Tribunal in R.D. Bohet's case and it was categorically held that the CCA Rules do not have any application to the cases of this nature. It is also stated that the judgment in R.D. Bohet's case was the subject matter of a Writ Petition and the judgment in the OA was upheld by the High Court and that the judgment of the High Court, in turn, was upheld by the Supreme Court. It is further contended that the Punjab Rules are referable to the Prisons Act 1894 and though that enactment, in its application to Delhi was repealed through the Delhi Prisons Act, 2000 the said Rules continue to be in force, since no Rules were framed under the new Act.

9. The respondents filed counter affidavits in the respective OAs. It is pleaded that the Punjab Rules do not apply to the persons in Delhi at all. According to them, the applicants herein were appointed and were extended periodical promotions by the authorities, who initiated proceedings against them and that it is not open to them to contend otherwise. The respondents further pleaded that the

Punjab Rules were framed in exercise of power under Section 241 of the Government of India Act, 1935 and they have no reference to the Prisons Act, 1894 and that the plea of the applicant to the contrary is totally untenable in law.

10. As regards the judgment in R.D. Bohet's case, it is stated that two points were urged in the OA namely that the dismissal of the applicant therein by invoking Article 311 (2) (b) of the Constitution of India was untenable in law and that the CCA Rules do not apply to the applicant therein, but the discussion in the entire judgment was mostly about the first aspect, and that the High Court also dealt only with that issue. The respondents submit that the observation made in R.D. Bohet's case that Punjab Rules were framed under the Prisons Act 1894 was factually incorrect and that had the correct position viz. that they were framed in exercise of power under Section 241 of the Government of India Act 1935, been brought to the notice of the Hon'ble Members of the Bench, which heard that case, the result would have certainly been different, altogether. They further submit that the applicants have been appointed and promoted by the authorities referable to CCA Rules and that they are estopped from pleading to the contrary.

11. The arguments on behalf of the applicants were addressed extensively by the learned counsel Shri Piyush Sharma and were adopted by the other learned counsel. On

behalf of the respondents, Shri Vijay Pandita, learned counsel addressed the arguments.

12. The Tribunal rendered a common judgment dismissing OA No.2884/2005 along with batch of OAs by observing that the charge sheets issued to the employees, cannot be interfered at this stage. A perusal of the judgment in the aforesaid OAs discloses that the plea as to applicability of Punjab Rules to the employees of the Jails in Delhi, was neither raised nor considered. The moot question was framed at the threshold of the judgment as under:

“Validity of the exercise of power conferred by clause (b) of the second proviso to Article 311 (2) of the Constitution of India read with Rule 19 of CCS (CCA) Rules, 1965 is the moot question raised in these applications.”

However, in R.D. Bohet’s case an attempt was made to treat the judgment in OA 2884/2005 as per incuriam. The discussion at the commencement of the judgment, upto para 10, was only on the principles concerning ‘sub silentio’ or ‘per incuriam’, and in para 11, it was observed as under:

“11. Having regard to the case-laws discussed above, what is permissible in law in the doctrine of precedent is not to follow a decision of the coordinate Bench which is an exception for which condition precedent is that the decision is per incuriam or sub silentio with assigning specific reasons therefor. If reasoning is recorded, there would be no offence to the doctrine of precedent as what is precedent in law is not of facts as every decision rendered on judicial side is basically on applicability of law in the facts and circumstances of each case. The aforesaid prelude is relevant in the factual matrix of the case to be highlighted.”

It is in this background, that the following observation was made in para 69 of the judgment in R.D. Bohet's case about the judgment in OA 2885/2005:

69. Another ground, which has not been raised or discussed in coordinate Bench decision, is jurisdiction of the Chief Secretary to pass an order as a disciplinary authority. Article 311 (2) (b) vests the jurisdiction to exercise power to dispense with the inquiry upon the appointing authority to take a decision. The Delhi Prisons Act, 2002 promulgated on 14.2.2002 does not lay down any separate procedure for holding an inquiry. In Sections 70 and 71 (xxiv) the Government has been empowered to make rules to carry out any provision of this act, including recruitment, punishment and as no rules have been framed repealed provisions under Section 73 notwithstanding the repeal act of 18 of 1994 regulations made under the Prisons Act of 1984 Section 73 Punjab Jail Department Executive Staff (Punishment & Appeal) Rules, 1943 define Government as Provincial Government under Section 73. Rule 15 empowers the Deputy Superintendent concerned, power of appointing authority insofar as removal or dismissal is concerned, has been entrusted to the Government and Government has been defined as per the Prisons Act of 2002 Government of NCT of Delhi and the competent authority being Lt. Governor. The decision in Bar Council of Delhi v. Surjeet Singh, 1980 (4) SCC 211 and Marathwada University v. Seshrao Balwant Rao Chavan, 1989 (3) SCC 132, confirms that it is Lt. Governor who is the Government for NCT for want of an independent State is competent authority to exercise jurisdiction. As the contention put-forth by respondents as to jurisdiction of the disciplinary authority to be amenable to the Schedule of CCS (CCA) Rules and the Punjab Police Rules applied to Punjab Jail is misconceived, as Rule 3 (e) of the CCS (CCA) Rules provides applicability of the Rules except to a person to whom a special provision is made under the law for the time being in force by an agreement after the commencement of the Rules. As we find special provision in existence by necessary implications even after Punjab Rules are repealed and Delhi Prisons Act has come into being, yet for want of any rules framed thereunder to govern such a situation the Rules of Punjab Jails would have applicability and would have applied and in such an event if the Lt. Governor is the competent authority to exercise jurisdiction in the matter of appointing authority to exercise in turn Article 311 (2)(b) of the Constitution then the order passed by the Chief Secretary cannot be sustained in law for want of jurisdiction and incompetence."

13. Learned counsel for the applicant laid much emphasis on the above observation and argued that the matter is no

longer res integra and that the present batch of OAs deserves to be allowed by following the judgment in R.D. Bohet's case. Alternative submission is that if the Bench is not convinced about the correctness of the observations in that case, the only course open is to refer the matter to a Full Bench.

14. We did consider this submission in all seriousness. The record discloses that a Full Bench in OA 2546/2006 and batch, through a judgment dated 31.08.2009, dealt with the circumstances under which the Article 311 (2) (b) can be invoked vis-à-vis the employees from the Delhi Government, some of whom incidentally belonged to the Prisons Department. Incidentally, the judgment in R.D. Bohet's case was also taken note of. On the limited question, namely invocation of Article 311 (2) (b), the view expressed in Bohet's case was upheld. The matter, however, does not rest at that.

15. After the OA No.4261/2013, the leading case in this batch was dismissed by this Tribunal, the applicant therein filed W.P. (C) No.10297/2015. The order passed by the High Court is very short and it reads as under:

"1. Present writ petition has been filed by petitioner under Articles 226/227 of the Constitution of India seeking a direction to quash the order dated 28.8.2015 passed by Central Administrative Tribunal in OA No.4261/2013.

2. It may be noticed that in the order dated 18.11.2015, it has been noticed by us that the only ground urged before us is that the charge sheet has been issued by a person who was not duly authorised.

3. Mr. Saini, learned counsel for the petitioner submits that for the alleged misconduct in the year 2003, the

charge sheet has been issued by an incompetent authority. It is the case of the petitioner that the competent disciplinary authority in the case of the petitioner is the Lt. Governor and not the Chief Secretary.

4. Mr. Saini further submits that the counsel, who had appeared before the Tribunal on behalf of the petitioner, had brought to the notice of the Tribunal a decision rendered by a Coordinate Bench of the Tribunal in O.A. No.778/2006 titled as **R.D.Bohet v. Lieutenant Governor of Delhi And Ors.** Mr. Saini further submits that the judgment rendered in **R.D. Bohet** (supra) was upheld by the High Court and the SLP filed has also been dismissed.

5. Counsel for the respondent however, disputes the submission of the counsel for the petitioner. She submits that the charge sheet has been issued by a competent authority which is the Chief Secretary. She further submits that the Tribunal has considered the judgment in the case of **R.D. Bohet** (supra). Counsel for the parties, however, are in agreement that after noticing the submissions of the petitioner, no finding on this issued has been returned by the Tribunal. As jointly prayed, the impugned order is set aside. The matter is remanded back to the Tribunal. The Tribunal shall render a specific finding whether the charge sheet has been issued by a competent person or not. We make it clear that we have not expressed any opinion on the merits of the matter.

6. Parties to appear before the Tribunal on 17.08.2016, as prayed by the counsel for the petitioner.

7. Writ petition and the application stand disposed of."

16. From the perusal of para 5 quoted above, it is clear that though the judgment in R.D. Bohet's case rendered by the Tribunal was referred to and notwithstanding the fact that the very judgment was the subject matter of the Writ Petition before the High Court, the present OA was remanded with specific direction to record a finding whether the charge sheet has been issued by a competent person. The next observation that the High Court cannot be said to have expressed any opinion on merits of the matter, would make it clear that the issue is at large.

17. In OA 4527/2014, it was proceeded as though the observation made in R.D. Bohet's case on the applicability of CCA Rules to Prison Service of Delhi is final, no discussion was undertaken.

18. Though at one stage, we considered the feasibility of referring the matter to a Full Bench, lest it be commented at a later stage that a Bench of the Tribunal disagreed with the views expressed by a Coordinate Bench, the direction issued and the observation made by the High Court made us to proceed with the hearing of this batch by treating the question as open and not having attained finality.

19. First, it needs to be seen whether the applicants have been appointed under the Punjab Rules. The respondents have furnished the particulars of the appointment and promotion of the applicants in the respective OAs. They read as under:

S.No	Case No.	Name & Designation	Appointing Authority	Disciplinary Authority	Appellant Authority
1.	OA 4261/2013	B.S.Jarial DS-I (Retd.)	Chief Secretary, Delhi	Chief Secretary, Delhi	Lt. Governor, Delhi
2.	OA 549/2015	Jitender Pal A.S. (Retd.)	Director General (Prisons)	Director General (Prisons)	Pr. Secretary (Home)
3.	OA 2120/2015	Ashwani Kumari, DS- II	Chief Secretary, Delhi	Chief Secretary, Delhi	Lt. Governor, Delhi
4.	OA 4122/2015	Jagdish Singh DS-II	Chief Secretary, Delhi	Chief Secretary, Delhi	Lt. Governor, Delhi
5.	OA 920/2014	Vinod Kumar A.S.	Inspector/Director General (Prisons)	Director General (Prisons)	Pr. Secretary (Home)
6.	OA 1569/2014	V.P. Garg DS-II (Retd.)	Chief Secretary, Delhi	Chief Secretary, Delhi	Lt. Governor, Delhi

7.	OA 2510/2014	Jadgish Singh DS-II	Chief Secretary, Delhi	Chief Secretary, Delhi	Lt. Governor, Delhi
8.	OA 3283/2014	Rajesh Kumar-Head Warder	Director General (Prisons)	Director General (Prisons)	Pr. Secretary (Home)
9.	OA 3451/2014	Vikas Panwar - Warder	Director General (Prisons)	Director General (Prisons)	Pr. Secretary (Home)
10.	OA 1/2013	V P. Garg DS-II (Retd.)	Chief Secretary, Delhi	Chief Secretary, Delhi	Lt. Governor, Delhi
11.	OA 1069/2013	Pushpender Chaudhary Warder	Director General (Prisons)	Director General (Prisons)	Pr. Secretary (Home)
12.	OA 1140/2013	Vinod Kumar Ex-Warder	Director General (Prisons)	Director General (Prisons)	Pr. Secretary (Home)
13.	OA 3772/2013	V P Garg DS-II (Retd.)	Chief Secretary, Delhi	Chief Secretary, Delhi	Lt. Governor, Delhi
14.	OA 2993/2012	Dinesh Kumar Papnay - Head Warder	Director General Prisons	Director General (Prisons)	Pr. Secretary (Home)
15.	OA 4247/2015	Vikramjit - Head Warder	Director General (Prisons)	Director General (Prisons)	Pr. Secretary (Home)
16.	OA 3054/2015	Surjeet Singh Warder	Director General (Prisons)	Director General (Prisons)	Pr. Secretary (Home)

20. The applicant in OA 4261/2013 is working as a Deputy Superintendent. The office order whereby he was promoted, was issued by the Chief Secretary, Government of NCT of Delhi. It reads as under:

"The Chief Secretary, Government of National Capital Territory of Delhi is pleased to promote the following Deputy superintendents, Grade-II to the post of Deputy Superintendent Grade-I on regular basis in the pay scale of Rs.6,500-10,500 plus usual allowances as admissible under the rules w.e.f. the dates indicated against each :-

S. No.	Name	Date of regular promotion	Remarks
1.	Shri B.S. Jarial	23.12.1994	From the date of notification of RRs.
2.	Shri Mahavir	23.12.1994	-do-

	Singh (SC)		
3.	Shri V.D. Pushkarna	01.11.1997	Post fell vacant due to retirement of Shri M.S. Rittu on superannuation w.e.f.31.10.1997
4.	Shri B.S. Bhatia	09.11.1998	Date of creation of post.

The above promotions are subject to the following conditions.

1. The above promotions will be subject to the outcome for the O.A. No.866/2000- Shri V.S. Bhatti Vs. Govt. of NCT of Delhi.
2. The above promoted officer will not be entitled for the payment of arrears of pay and allowances for the period they have not actually worked on the post of Deputy Superintendent grade-I in the Central Jail, Tihar, New Delhi, as per rules."

The orders of appointment and promotion of other employees are issued either by the Chief Secretary or by the Director of Prisons, or the Chief Secretary depending upon the category of posts. At no point of time, the applicants have protested for having been appointed or promoted by an authority referable to CCA Rules. In addition to that, the applicant in OA 4261/2013 functioned as Inquiry Officer in the disciplinary proceedings against employees in the Prisons Department. He claimed honorarium for such assignment through letter dated 30.11.2011, which reads as under:

"It is to inform that I have submitted the following inquiry reports, assigned to the undersigned i.e.

1. Inquiry Report U/R 14 CCS (CCA) Rules, 1965 against Sh.Shiva Nand, Asstt. Supdt., submitted in February, 2010.
2. Inquiry Report U/R 14 CCS (CCA) Rules, 1965 against Sh.Daya Shankar, Warder-1096, submitted on 25.08.2011.

This is also informed that earlier on 25.08.2011 I have submitted the application for honorarium to DIG (Prison) but till date the fate of that application is not known (application enclosed).

In view of the above, you are requested to process the matter accordingly."

This only discloses that the applicant acted as Inquiry Officer under these very provisions. He cannot now turn back and question the applicability of these rules.

21. Heavy reliance is placed on the Punjab Rules. The preamble of these rules reads as under:

"No.2617.JI-43/29454 - Exemption having been granted in Punjab Government notification No.949-G-43/29452, dated 29th April, 1943, to the executive jail personnel from the operation of the Punjab Civil Service (Punishment and Appeal) Rules, the Governor of the Punjab is pleased in exercise of the powers conferred on him by clause (b) of sub section (2) of section 241 of the Government of India Act, 1935 to make the following rules to regulate the conduct and discipline of persons charged with the performance of executive duties in the Punjab Jails :-

1. (1) These rules may be called the Punjab Jails Department Executive Staff (Punishment and Appeal) Rules"

A perusal of this shows that the rules were framed in exercise of power under Section 241 (2) of the Government of India Act, 1935. 'Government' is mentioned as the authority to impose the punishment of removal or dismissal from service. Under Rule 2 (a) thereof, the word 'Government' is defined to mean the 'Provincial Government'. It is just unthinkable that the aforesaid provision would operate even after independence and reorganization of States, without there

being a notification or other provisions of law, adopting the same. The applicants are not able to place any material before us to show that the Punjab Rules of 1943 were made applicable to the service, even after the independence of the country.

22. An endeavor is made by the learned counsel for the applicant to inject an element of applicability to the Punjab Rules, by making reference to certain provisions of the Delhi Prisons Act, 2000. The Prisons Act, 1894 dealt with various aspects of management and superintendence of Prisons. Even after independence, that Act remained in force. Section 73 of the Delhi Prisons Act 2000 reads as under:

- “73. (1) The Prisons Act, 1894 (IX of 1894) in its application to Delhi, is hereby repealed.
- (2) Notwithstanding the repeal by this Act of the Prisons Act, 1894 referred to in sub-section (1) above, all rules, regulations, orders, directions, notifications relating to the prison administration in Delhi, made under the prisons act, 1894 and in force immediately before the commencement of this Act shall, except where and so far as they are inconsistent with or repugnant to the provisions of this Act, continue in force until altered, amended or repealed by rules made under this Act.”

Had the Punjab Rules been made under the Prisons Act 1894, they would have been saved under Section 73 (2) of the Delhi Act 2000. It has already been mentioned that they were made in exercise of power under Section 241 of the Government of India Act 1935.

23. Section 71 of the Delhi Prisons Act provides for making of rules including those for recruitment relating to the officials of the prisons. It is argued that since the rules were not framed under the Delhi Prisons Act, Punjab Rules remained in force. This is fallacious. The reason is that the necessity to frame the rules contemplated under Section 71 (xxix) would arise if only, the field is left unoccupied.

24. The respondents categorically stated that when Delhi was a Union Territory, the services of the employees were governed by the provisions of the CCS (CCA) Rules and that the Department of Prisons was an integral part of the Union Territory as well as the State.

25. Coming to the question as to whether the judgment in R.D. Bohet's case can be treated as laying down a proposition of law that CCA Rules do not apply to the prisons in Delhi, a semblance of scrutiny is needed particularly when the High Court directed this Tribunal to decide that question specifically.

26. As observed earlier, Punjab Rules were framed in exercise of the power under 1935 Act and not under the Prisons Act. Those rules have to stand or fall on their own strength and Section 73 of the Delhi Prisons Act cannot offer any support to them. In R.D. Bohet's case, it was proceeded as though the Punjab Rules were framed under the Prison Act

1894 and that they are same and saved under Section 73 (2) of the Delhi Prison Act 2002. A clear factual inaccuracy has crept in. The discussion undertaken in that judgment, upto paragraph 11 becomes relevant.

27. Secondly, except making a reference to Section 73 of the aforesaid Rules, nowhere it was established that the Punjab Rules were in force, vis-à-vis the employees of the Prisons Department of Delhi, at any point of time, after independence of the country.

28. Thirdly, the judgment in R.D. Bohet's case was the subject matter of a batch of Writ Petitions before the High Court. The batch comprised of cases of the employees of Prisons Department as well as Sales Tax Department. The common feature between them was that all of them were dismissed from service by invoking Article 311 (2) (b). The Hon'ble High Court recorded a finding that there was no factual basis for invoking such a stringent provision and inquiry was required to be conducted. After recording such a finding, it was observed in para 45 as under:

"45. An enquiry can be held by issuing show cause notice and giving a copy of the telecast to the delinquent employees and give them an opportunity to explain before taking a final view as to whether it is a case where a regular department enquiry under Rule 14 of the CCS(CCA) Rules should be held or further enquiry be dispensed with. However this also has not been done by the petitioners in this case. The arguments submitted on behalf of learned counsel for the petitioners that during the course of hearing of the appeal the respondents have seen the recordings and, therefore, they are aware of their role in the episode

and none of them disputed their presence at the location or their appearance in the cassettes which were telecast is of no consequence as playing of such cassettes before the Appellate Authority would not meet the requirement of the principles of natural justice at the Enquiry Officer level.”

It is clear that their Lordships permitted the disciplinary proceedings to be conducted as regards the employees of the Prisons Department. In view of the directions issued by the High Court in the batch of Writ Petitions, even R.D. Bohet became liable to be proceeded under the CCA Rules, once the order of punishment passed against him by invoking Article 311 (2) of the Constitution of India, was set aside. That was, in fact done. With that direction, the observation made by the Tribunal that the CCA Rules are not applicable to the employees of the Prison Department, stood impliedly set aside. The inescapable conclusion is that the observation made by this Tribunal in R.D. Bohet’s case that CCA Rules do not apply to the employees of the Prisons Department cannot be treated as an authoritative pronouncement.

29. It has already been mentioned that the Prisons Department is the part of the Delhi Government and the services of its employees are governed by CCA Rules. The applicants are not able to satisfy us that they are governed by different set of rules. Even to invoke Rule 3 (b) of the CCA Rules, burden rests upon the applicants to show that they are governed by different set of rules so that they can be exempted from the CCA Rules. Except making reference to

Punjab Rules, the applicants are not able to convince us as to how they are not governed by CCA Rules.

30. We do not find any merit in the OAs. These are, therefore, dismissed. It is needless to mention that interim orders passed shall stand vacated.

31. We permit the applicants herein to raise all the pleas except the one, as to applicability of CCA Rules, before the Inquiry Officer or the Disciplinary Authority, as the case may be. There shall be no order as to costs.

(Mohd. Jamshed)
Member (A)

(Justice L. Narasimha Reddy)
Chairman

/dkm/