

CENTRAL ADMINISTRATIVE TRIBUNAL,
PRINCIPAL BENCH

OA No. 1178/2003

New Delhi, this the 8th day of December, 2003

Hon'ble Shri Justice V.S. Aggarwal, Chairman
Hon'ble Shri S.K. Naik, Member (A)

Sh. Mangla Singh,
working as Head Warder,
Central Jail,
Tihar,
New Delhi- 110 064.

...Applicant

(By Advocate: Shri S.C. Luthra)

Versus

1. Govt. of N.C.T. of Delhi through
Principal Secretary (Home)
Delhi Secretariat,
I.P. Estate,
New Delhi - 110 002.

2. D.G. cum Inspector General of Prisons,
Central Jail,
Tihar,
New Delhi - 110 064.

...Respondents

(By Advocate: Shri Vijay Pandita)

ORDER (ORAL)

Justice V.S. Aggarwal, Chairman -

Applicant (Mangla Singh) is a Head Warder in the Central Jail, Tihar. He faced disciplinary proceedings and article of charges read:

Article-I

That Shri Mangla Singh, Head Warder No. 210 while attending to his duty as Head Warder in Jail No. 4 on 4.4.1997 at about 5.50 a.m. committed a misconduct to the extent that he was found carrying four packets of tobacco into the premises of Jail No. 4 with an ulterior motive and in violation of instructions issued from time to time. The above act on the part of Shri Mangla Singh, H.W. is highly objectionable and unbecoming of a Government Servant, which lacks absolute integrity & devotion to duty.

VS Ag

Thus, Shri Mangla Singh Head Warder has violated rule 3 of CCS (Conduct) Rules, 1964.

Annexure-II

Statement of imputation or misconduct or misbehaviour in support of articles of charge framed against Shri Mangla Singh, Head Warder.

Article-Ill

That it has been reported that Shri Mangla Singh, Head Warder No. 210 while attending to his duty on 4.4.1997 at about 5.50 a.m. in Jail No. 4 was searched by Shri P.P. Sharma, H.C., CISF in the presence of Shri Ranvir Singh, A.S. and four packets of tobacco were recovered from his possession, which were hidden inside his shoes (2 packets each of both legs). This act on the part of Shri Mangla Singh, H.W. indicates that he was involved in bringing tobacco inside the Jail premises with an ulterior motive, which has been banned by the I.G. (Prisons) vide order No. PA/IG(P)/94/4630-37 dated 30.03.1994. Thus, Shri Mangla Singh, Head Warder exhibited a conduct of unbecoming of a Government Servant in violation of Rule 3 of CCS(Conduct) Rules, 1964."

2. The disciplinary authority acting on the report of the Enquiry Officer held that the applicant misconducted himself while he was carrying four packets of Navela Brand tobacco. A penalty of stoppage of four increments for four years without cumulative effect had been imposed on the applicant. His appeal had been dismissed. The applicant preferred O.A. No. 1350/99. This Tribunal on 29.10.2001 had set aside the order passed by the appellate authority and remitted the case back to the appellate authority to pass a speaking order.



3. In pursuance of the order passed by this Tribunal, the appellate authority [Principal Secretary(Home)] passed a speaking order and dismissed the appeal.

4. By virtue of the present application, the applicant assails the order passed by the disciplinary as well as appellate authority.

5. Learned counsel for the applicant had raised the following to pertinent arguments:

- i) it was a case of 'No Evidence :
- ii) the statement of the applicant in terms of Rule 14 (18) of C.C.S. (CCA) Rules had not been recorded: and
- iii) Even as per the instructions dated 30.3.1994 if the staff carries tobacco, it is not a dereliction of duty or a misconduct.

6. Needless to state that in the reply filed, the plea has been controverted. According to the respondents counsel, the applicant was carrying intoxicants and, therefore, under Rule 33 of Delhi Prisons (Discipline, Daily Routine, Offences Punishment) Rules, 1988, it is a misconduct and in any case it was insisted that instructions of 30.03.1994 prohibit the staff from carrying tobacco.



7. For purposes of the present petition, it is unnecessary for us to deal with contentions nos. (ii) and (iii). This is for the reasons that the present petition is liable to succeed on the first plea of the learned counsel. which we have mentioned above.

8. In the article of charges. it has been mentioned that the search had been conducted by one Shri P.P. Sharma. Head Constable, Central Industrial Security Force in absence of Ranbir Singh. The said P.P. Sharma has not been cited as a witness nor produced during the enquiry. Learned counsel had read to us the statements made by two witnesses who had been cited and produced, namely, Jagat Singh and Ranvir Singh. Both the persons stated that in their presence the tobacco was not recovered and they only came to know or heard that the same had been recovered from the applicant.

9. We do not dispute that in a departmental enquiry, the proof required is not like in a criminal trial. It has not to be proved beyond reasonable doubt. The disciplinary authority on preponderance of probabilities can come to a conclusion. However, preponderance of probabilities does not mean total conjectures and basic findings where there is no evidence at all on the record.

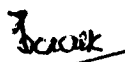
10. The position in the present case, which we have referred to above, is that the two witnesses did not




support the case of the department pertaining to recovery of the alleged tobacco packets from the possession of the applicant. The best evidence, which could be produced, has been withheld for reasons best known to the respondents. We are being informed that the said witness had been transferred to Jaipur. This makes us to observe that even if it was so in the present proceedings he could be called to establish the charge.

11. Reliance on behalf of the respondents was placed on the alleged recovery Memo, which is stated to have been signed by the applicant. From the record, we do not find that the applicant had admitted his signatures or had admitted the said recovery. The net result, therefore, would be that there was no evidence against the applicant to establish the charge and, therefore, the impugned orders cannot be sustained.

12. For the reasons given above, we quash the impugned orders and allow the present application.


(S.K. Naik)
Member (A)

/na/


(V.S. Aggarwal)
Chairman