

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA No. 2050/2003

(2)

New Delhi this the 6th day of February, 2004

Hon'ble Shri Kuldip Singh, Member (J)
Hon'ble Shri S.K.Naik, Member (A)

Virender Kumar
S/O Shri Ram Kishan,
Ex-Driver, Central Jail,
Tihar, New Delhi.
H.ouse No. 1604,
Village Mamuri Pur,
Post Office Narela, Delhi.

..Applicant

(By Advocate Shri G.D.Bhandari)

VERSUS

Govt. of NCT, through

1. The Principal Secretary
(Home), 5th Level, 'A' Wing,
Delhi Sachivalya, I.P.Estate,
New Delhi.
2. The Director General of Prison,
Prisons Headquarters,
Near Lajwanti Garden Chowk,
Janak Puri, New Delhi.
3. Shri Mahavir Singh,
Dy. Superintendent -I,
Tihar Jail, New Delhi.

Respondents

(By Advocate Shri Vijay Pandita)

O R D E R (ORAL)

Hon'ble Shri Kuldip Singh, Member (J)

Applicant has filed this Original Application assailing the order dated 30.7.2002 (Annexure A-1) whereby the applicant has been dismissed from service. He has also assailed the order passed by the appellate authority rejecting his appeal vide order dated 7.4.2003 (Annexure A 3). Applicant who was working as Driver in the Central Jail under respondent No.2 had been proceeded departmentally, on the allegation that while performing his duty on ambulance DBL 9925 carrying bread on 29.5.1999 at 14.40 hours in CJ-4, he

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carried 200 packets of Newia Brand Tobacco hiddden under the driver's seat inside CJ-4 with ulterior motive in violation of the instructions issued from the office. The enquiry was conducted in which various witnesses were cross-examined and the enquiry officer returned his findings holding the applicant guilty. Thereupon, the disciplinary authority passed the order dated 30.7.2002 (Ann.A.1) dismissing the applicant from service. Against this, the applicant filed his appeal which has also been rejected by Annexure A-3 order. The applicant has taken a ground that the Enquiry Officer, namely, Shri Mahavir Singh was a biased officer. He was not expected to do the enquiry impartially because he was also a witness as he had prepared the seizure memo. Besides that, he had also conducted a preliminary enquiry. The applicant has stated that the Inquiry Officer was much more interested to see that the enquiry initiated against him by the Department succeeds so that the seizure memo prepared in his presence is believed and recovery of contrabond from applicant stands proved.

3. Learned counsel for the applicant has submitted, that beside that there are various ambiguities in the conduct of the enquiry and none of the PWs examined has given any evidence against him and the report is based on conjectures and surmises. On the contrary, Shri Vijay Pandita, appearing for the respondents has submitted that as regards the enquiry

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proceedings conducted by the enquiry officer, the same are in accordance with law. The witnesses have been examined and cross examined by the respective parties and after affording an opportunity of hearing to the applicant, the Enquiry officer came to the conclusion that the applicant is guilty of the charges.

4. However, as regards the appointment of the Enquiry Officer, namely, Mahavir Singh, learned counsel for the respondents has submitted that the Enquiry Officer had been appointed by the competent authority and no complaint was ever raised against his appointment by the applicant. So now the applicant cannot take this point at this stage. In our considered view, this contention of the learned counsel for the respondents has no merit. Admittedly, the Enquiry Officer was a witness to the seizure memo./recovery and overall enquiries were also made from the witnesses by Mahavir Singh as it was confirmed from Shri R.Jeeva prosecution witness as well as in the statement of other witnesses, the seizure memo. was also signed by Mahavir Singh. The statement of Shri R.N.Meena Asstt. Supdt also shows that Shri Mahavir Singh has conducted the preliminary enquiry and Shri R.N.Meena had made the statement on 29.5.1999 as per the directions of Shri Mahavir Singh. A copy of the statement has also been supplied to the charged official. Hence, this is established on record that Shri Mahavir Singh, E.O had also conducted

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preliminary enquiry and was also a witness to the seizure Memo. itself. If such a person is appointed as Enquiry Officer, it is fair to except that he would not act impartially because such a person will be more interested in the prosecution because he was also a witness to the seizure memo. Such an E.O. because a judge in his own cause. In the circumstances, we find that the principles of natural justice have been violated and hence the enquiry proceedings cannot be sustained. Accordingly, the OA is allowed with the following directions:-

(i) The impugned orders annexure A-1 and A-3 are quashed and set aside;

(ii) Respondents are directed to reinstate the applicant in service. However, liberty is granted to the respondents to conduct an enquiry afresh from the stage of appointment of Enquiry Officer and in case they do so, they may appoint any other person as E.O. and applicant may be kept under suspension or otherwise if they so like as per the law, rules and instructions on the subject. In case the department decides to proceed with enquiry, the same be completed in three months time. No order as to costs.

Naik
(S.K.Naik)

Member(A)

Kuldeep
(Kuldip Singh)

Member(J)

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