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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. 2701/2003

New Delhi this the 5 th day of May, 2004

Hon'ble Mr. Justice V.S. Aggarwal, Chairman.
Hon'ble Mr. R.K. Upadhyaya, Member (A).

Azad Singh,
ex-Warder 318,
Central Jail, Tihar,
Janakpuri,
New Delhi-110 064. ... Applicant.

(By Advocate Shri S.C. Luthra)

Versus

Government of NCT of Delhi, through

1. Principal Secretary (Home),
Department of Home,
Delhi Secretariat,
Players' Building, I.P. Estate,
New Delhi-110 002.

2. Director-General-cum-Inspector
General (Prisons),
Govt. of NCT of Delhi,
Prisons Headquarters,
Central Jail, Janakpuri,
New Delhi-110 064. ... Respondents.

(None for respondents)

O R D E R

Hon'ble Shri R.K. Upadhyaya, Member (A).

This application under Section 19 of the Administrative Tribunals Act, 1985 has been filed by the applicant seeking a direction to quash Annexures A-1, A-2 and A-3 with further directions to the respondents to reinstate the applicant in service with consequential reliefs. By order dated 23.12.2002 (Annexure A-1), the disciplinary authority imposed penalty of removal from service. Order dated 3.10.2003 (Annexure A-2) is the order of the appellate authority dismissing the appeal filed by the applicant. By order dated 12.7.1999 (Annexure A-3), the applicant was placed under suspension

under Rule 10 (2) of the CCS (CCA) Rules, 1965 as he remained detained in custody for a period exceeding 48 hours.

2. The applicant was working as Warder in Central Jail, Tihar. He was on night duty between the night of 30.6.1999 and 1.7.1999. It is stated by the applicant that while he was performing his duty in Jail No. 2 in the night "he was searched by frishking party and 10 Bidis and 2 small packets of polythene containing the smack like powder were recovered from him". The applicant was suspended as per order dated 12.7.1999 (Annexure A-3). A case under Section 21 of the NDPS Act was also registered. The applicant claims that he was acquitted by the learned Addl. Sessions Judge, Delhi as per order dated 3.11.2000 (Annexure A-4). It is further stated by the applicant that subsequently, he was issued a memo of article of charge on 28.5.2001 (Annexure A-5) which contained the following article of charge:

> "That it has been reported that on 30.06.99 Sh. Azad Singh, Warder-318 while going inside the jail for performing his duty in Jail No.2 at about 12.00 Night was searched by TSP frishking party and prohibited items ten biris and two polythene packet of smack like powder were recovered from his possession.
>
> The above act on the part of Sh. Azad Singh Warder-318 is highly objectionable and unbecoming of a Govt. servant which lacks absolute integrity and devotion towards his duty. Thus, Sh. Azad Singh Warder has violated rule 3 of CCS (Conduct) Rules, 1964".

The applicant denied the charges and the Inquiry Officer was appointed. the Inquiry Officer held the

charges proved against the applicant and the disciplinary authority has passed the order of punishment of removal from service on 23.12.2002 (Annexure A-1).

3. The applicant states that the entire disciplinary proceedings are bad in law. The Inquiry Officer did not follow the procedure. In any case, this is a case of no evidence and the order of disciplinary authority should be quashed on that account alone. The learned counsel of the applicant at the time of hearing urged that there is nothing on record to suggest that any smack was recovered from the applicant. He placed heavy reliance on the decision of the Hon'ble Supreme Court in the case of Ministry of Finance and Anr. Vs. S.B. Ramesh (JT 1998 (1) SC 319). The Hon'ble Supreme Court in this case has held that the departmental inquiry conducted was totally unsatisfactory and without observing the minimum required procedure for proving the charge. Therefore, the Central Administrative Tribunal was justified in setting aside the order of the disciplinary authority. The learned counsel stated that similar is the case before this Court. The applicant was acquitted by the learned Addl. Sessions Judge, Delhi. The charges as per charge-sheet were not proved even though the Inquiry Officer has held that the same are proved. He, therefore, urged that the applicant should be granted the reliefs as claimed.

4. There is no appearance on behalf of respondents. Therefore, we decided to proceed in terms of the provisions contained in Rule 16 (1) of the Central Administrative Tribunal (Procedure) Rules, 1987. We have perused the reply filed on behalf of the respondents. It has been stated in the reply filed that the applicant was acquitted in case FIR No. 471/99 under Section 21 of the NDPS Act only on technical grounds since the prosecution failed to comply with the provisions contained in Section 55 of the NDPS Act and also that there was an inordinate delay in sending the smack to FSL for testing. The respondents have stated that the stringent law under the NDPS Act requires numerous formal procedures. Departmental inquiry under the CCS (CCA) Rules is altogether a different proceeding and the same standard of proof is not required. It has further been pointed out that the Inquiry Officer handed over a copy of the Presenting Officer's brief to the charged official on 8.2.2002. On 19.2.2002, the charged official sought more time to submit his defence statement, which was allowed by the Inquiry Officer. On 26.2.2002, the charged official submitted his defence statement. After considering the defence statement, the Inquiry Officer submitted his report on 12.8.2002. It has, therefore, been stated by the respondents that the allegation of not allowing opportunities to the applicant is against the facts. The respondents have also stated that if a certain person has not been listed as witness, it does

not vitiate the proceedings. The witnesses examined have confirmed in their statements the recovery of smack like powder and bidis from the possession of the applicant. According to the respondents, the applicant was duty bound to maintain discipline inside the jail premises. However, he has been found indulging in trafficking of prohibited articles in the jail. Therefore, no leniency should be shown to such type of person.

5. In the rejoinder filed, the applicant has stated that the acquittal, whether honourable or on technical grounds, has no relevance. The departmental proceedings are to stand on its own legs. It is also stated in the rejoinder that since CFSL report is not a listed document nor has been proved, therefore, no inference can be drawn as such against the applicant.

6. We have perused the materials available on record and have heard the learned counsel of the applicant.

7. The object of criminal trial is to punish the guilty. The disciplinary proceedings are instituted to maintain discipline in the administration. Therefore, different yardsticks have to be followed for the criminal trial and disciplinary proceedings, as has been held by the Hon'ble Supreme Court in Capt. M.Paul Anthony Vs. Bharat Gold Mines Ltd. (JT 1999 (2) SC 456). In this

case, it has been held that the proceedings in a criminal case and the departmental proceedings can go on simultaneously where both are based on similar charges. In departmental proceedings, factors like enforcement of discipline are considered by the disciplinary authority. In departmental proceedings, the standard of proof is one of preponderance of probability. In a criminal case, the charge has to be proved beyond reasonable doubt. The learned counsel of the applicant has merely filed a copy of the order sheet dated 30.11.2000 of the learned Addl. Sessions Judge which reads as under:

> "...Vide separate judgement dictated and announced today he is acquitted of the charge u/s 21 of NDPS Act. File be consigned to record room...".

However, the learned counsel has not been able to place the copy of the detailed judgment at the time of arguments. Therefore, the plea of the respondents that the applicant has been acquitted by the NDPS Court on account of failure of the prosecution to comply with the provisions contained in Section 55 of the NDPS Act on technical grounds as well as on account of the delay in sending the smack to FSL for testing goes unquestioned. Even in the rejoinder filed, the applicant has merely stated that departmental proceedings are to stand on its own legs and the acquittal, whether honourable or on technical grounds, has no relevance. Therefore, it cannot be said that the applicant cannot be proceeded under the CCS (CCA) Rules, 1965 as per the charge-sheet issued to him.

8. It is for consideration whether the applicant's version as to his case being of no evidence can be accepted. The disciplinary authority following the Rules of procedure has appointed the Inquiry Officer who has examined the documents as well as recorded statements of witnesses. He has also afforded reasonable opportunity to the applicant to state his case after supply of Presenting Officer's brief. There is nothing on record to suggest that the applicant wanted certain witnesses to be examined by the Inquiry Officer. At least, no such request has been brought to the notice of this Court. It is also not the case of the applicant that he was not allowed opportunity to state his point of view before the inquiry Officer. Therefore, it cannot be stated that the inquiry report is based on no evidence and is against the Rules and without following proper prescribed procedure. A perusal of the order of disciplinary authority as well as appellate authority indicates that there has been proper appreciation of the facts as well as evidence available. The learned counsel of the applicant laid much stress on the fact that the contents of polythene packets have not been proved to be smack, as alleged. We find from the synopsis filed by the applicant that the punishment of removal of service has been stated to be very severe and not commensurate with the alleged misconduct of recovery of 10 bidis. During the course of arguments, learned counsel of the applicant had stressed that the applicant deserves no

punishment and in any case the punishment imposed was very harsh. We find from the papers filed by the applicant that certain witnesses in the presence of the applicant have deposed that two plastic packets containing the smack like powder were recovered in addition to 10 bidis. The applicant was given opportunity to cross-examine such witnesses. There is no cross-examination on behalf of the applicant to show that the recovery as stated was false. When the applicant has been found in possession of bidis and smacks like substance, it cannot be stated that the Inquiry Officer's report, the disciplinary authority's order and appellate authority's order are based on no evidence, particularly in the face of the statements recorded by the Inquiry Officer in the presence of the applicant. Now the question whether this Tribunal can reappraise the same evidence. There are several decisions of the Hon'ble Supreme Court that the orders of Inquiry Officer and disciplinary authority cannot be reappraised as if the Tribunal or the Court was sitting in appeal. In this regard, observations of the Hon'ble Supreme Court in the case of Govt. of Tamil Nadu & Ors. vs. S. Vel Raj (1997 (2) SLJ 32) are relevant. The reliance of the learned counsel of the applicant on the decision of the Hon'ble Supreme Court in the case of S.B. Ramesh (supra) also does not help the applicant. In that case before the Hon'ble Supreme Court, the inference drawn was based on suspicion. The Tribunal had held that there was no evidence to support the charge that the applicant was

living in a manner unbecoming of a Govt. servant or he had exhibited adulterous conduct by living with Smt. K.R. Aruna and begetting children. The Tribunal had allowed the application and the Hon'ble Supreme Court upheld the view taken by the Tribunal and dismissed the appeal filed by the Department. In this case, there is no inference drawn on suspicion or guess work. The recovery from the applicant is established. The recovery of bidis is even admitted. Whether the applicant was allowed to carry bidis with him and polythene packets containing smacks like substance has not been shown to us. Apparently, these were prohibited items. Therefore, the preponderance of probability has to be relied upon in such a case. What should be the quantum of penalty in such a case has already been examined by the disciplinary authority as well as the appellate authority. The appellate authority has observed that prohibited items like bidis and smacks like powder could not be taken in the jail premises. Therefore, exemplary penalty was called for. When the departmental authorities have already considered the aspect of quantum of punishment, it is not desirable that this Tribunal should re-examine the issue as if sitting in appeal against the administrative orders. In this connection, the observations of Hon'ble Supreme Court in the case of B.C. Chaturvedi Vs. Union of India & Anr. (1996 932) ATC 55) are relevant. The Hon'ble Supreme Court has held that where findings are based on same evidence, the Tribunal

cannot appraise and substitute its own findings. It is only in exceptional cases where the punishment shocks the conscience that the Courts and Tribunal may direct the authority to reconsider the quantum of punishment. We do not find that this is a case of such nature.

9. In the result, this application is dismissed without any order as to costs.

(R.K. Upadhyaya)
Member (A)

(V.S. Aggarwal)
Chairman

`SRD'