
(2010) 04 DEL CK 0070
In the Delhi High Court
Case No : WP (C) No. 2746 of 2010

Director General (Prison)

APPELLANT

Vs

Sh. Hari Shankar

RESPONDENT

Date of Decision : 26-04-2010

Acts Referred:

Administrative Tribunals Act, 1985 — Section 19
Constitution of India, 1950 — Article 226

Citation : (2010) 04 DEL CK 0070

Hon'ble Judges : Mool Chand Garg, J;Anil Kumar, J

Bench : Division Bench

Advocate : V.K. Tandon, for the Appellant; Nemo, for the Respondent

Final Decision : Dismissed

Judgement

Anil Kumar, J.—The petitioner, Director General (Prison) has impugned the order dated 9th September, 2009 passed by the Central Administrative Tribunal, Principal Bench, New Delhi in O.A. No. 523 of 2009, titled as "Sh. Hari Shankar v. Government of NCT of Delhi and Anr.", allowing the original application of the respondent and setting aside the penalty of reduction by three stages with cumulative effect for a period of three years imposed upon the respondent pursuant to an enquiry proceedings and setting aside the order dated 20th August, 2007 of the disciplinary authority and Appellate Order dated 20th February, 2008.

2. The respondent while working as a Warder was issued an imputation of misconduct alleging that on 17th February, 2004, he was posted in UT Office was found absent during the relevant time as he arrived in the Jail at 07.06 hours instead of 07.00 hours.

3. The petitioner contended that the respondent while performing duty in Central Jail No. 1 on 17th February, 2004 was supposed to reach at 7.00 hours. His responsibility was to hand over the UT Prisoners for local production and

outstation production but due to his late coming, his work was handled by other warders and due to his absence and negligence, one under trial prisoner Sher Singh Rana was handed over to some unauthorized person posing as Delhi Armed Police personnel.

4. Though the charge was that on account of his late coming, one under trial prisoner Sher Singh Rana was handed over to some other person posing as Delhi Armed Police personnel, however, in the enquiry, the respondent had been held guilty for the said charges of coming late, but also allowing the UTP Parvesh to have access over the sensitive documents and not obeying the superior officer and also not reporting regularly to the concerned officials.

5. Though the enquiry report exceeded the scope of charges framed against the respondent, the disciplinary authority imposed the punishment which was modified in appeal to reduction by three stages with cumulative effect for a period of three years which was challenged by the respondent by filing an application u/s 19 of Administrative Tribunal Act, 1985.

6. Before the Tribunal, the plea of the respondent was that he has been held guilty on the charges which were not alleged against him. In the circumstances, it was contended that he has not been offered an opportunity to defend himself and consequently, the enquiry and the action taken by the disciplinary authority and the appellate authority is vitiated. The respondent had also alleged that he has been punished on mere suspicion, surmises and without any misconduct.

7. The respondent also asserted that the prisoner was handed over to an imposter before 7.00 hours and as the duty hours of the respondent were to commence from 7.00 hours, on account of the respondent coming to the office 6 minutes late, it cannot be held that on account of negligence on the part of the respondent, the prisoner was handed over to an imposter. Regarding authorization of UTP Parvesh to hand over the UT prisoner, the respondent contended that the order dated 10th December, 2003 for UTP Parvesh to be sent to Deodhi for working in the UT Office for cleaning etc. was not authorized by him, and in any case he was not authorized to do any official act.

8. The pleas and contentions of the respondent were contested, inter-alia, on the ground that in judicial review re-appreciation of evidence is not sustainable and punishment imposed cannot be interfered. It was asserted that the alleged plea of innocence by the respondent is an afterthought.

9. The Tribunal noticed that a number of charges established by the enquiry officer were not framed against the respondent as they do not find mention in the charge sheet and consequently on extraneous charges the respondent had been held guilty without following due process of law and without affording a reasonable opportunity to him to rebut the charges and put up his defense. The reliance was also placed on M.B. Bijlani v. Union of India and Ors. 2006 (3) SLR 105. The Tribunal also held that the respondent coming late by six minutes cannot be construed to be such a misconduct which would entailed a major

punishment unless it was deliberate and a part of the conspiracy and in the circumstances, the enquiry proceeding against the respondent was unwarranted and unreasonable. The Tribunal also noted that the respondent came to Jail at 7.06 hours merely six minutes late, however, even before his coming, the prisoner was handed over to the imposter who had left the Jail before the respondent had reached the post of his duty and consequently, no act of commission or omission could be imputed to the respondent. Regarding Parvesh the Tribunal also inferred that he was not authorized by the respondent to deal with the documents and prisoners and in the circumstances, the findings of the petitioner are without any evidence and ex facie perverse and not sustainable and consequently set aside the penalty imposed upon the respondent.

10. Learned Counsel for the petitioner has not been able to refute that the findings by the disciplinary authority are much beyond the scope of articles of charges framed against the respondent. This is not disputed, and it cannot be disputed that no charges that the respondent had colluded with other officials in handing over of the under trial prisoner to an imposter and he deliberately came late was framed nor it has been established. This also has been admitted by the learned Counsel for the petitioner that no charges were framed that the respondent had authorized Parvesh to deal with the documents and to hand over the prisoner.

11. In the circumstances, the findings which are beyond the charges framed against the respondent, cannot be the basis for imposing punishment on the respondent as it would be in denial of principle of natural justice as the respondent had been deprived of his right to put up his defense. This is also borne out from the evidence laid before the enquiry officer and from the report of the enquiry officer that the respondent came merely late by six minutes and even before the respondent could reached his post, the under trial had been handed over to an imposter who had already left the Jail premises. The charge was not that the respondent deliberately came late with a view to felicitate handling over of the under trial prisoner to an imposter and the respondent had colluded with the Parvesh and the under trial prisoner.

12. Though the jurisdiction of the Tribunal in judicial review is limited, disciplinary proceedings, however, being quasi-criminal in nature, there should be some cogent and reliable evidence to prove the charge. Although the charges in a departmental proceeding are not required to be proved like a criminal trial i.e. beyond all reasonable doubt, but it cannot be lost sight of the fact that the enquiry officer performs a quasi-judicial function, who upon analysing the evidence and 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 make his own assumptions. 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.

13. In the circumstances, it is apparent that the penalty imposed upon the respondent is based on no evidence and is apparently perverse and not sustainable in law in the circumstances and consequently, the order of the Tribunal setting aside the penalty imposed upon the respondent, in the circumstances, cannot be faulted. The order of the Tribunal does not have any such illegality or irregularity or such perversity, which will necessitate interference by this Court in exercise of its extraordinary jurisdiction under Article 226 of the Constitution of India.

14. The writ petition, in the facts and circumstances, is without any merit, and it is, therefore, dismissed.