

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of Decision: 20th October, 2010*

+ **W.P.(C) 13978/2009**

DIRECTOR GENERAL(PRISON) Petitioner
Through: Mr.V.K. Tandon, Advocate

versus

SATBIR SINGH Respondent
Through: Mr.Kishore Kumar Patel,
Advocate

W.P.(C) 14169/2009

DIRECTOR GENERAL Petitioner
Through: Mr.V.K. Tandon, Advocate

versus

SATPAL DAHIYA Respondent
Through: Mr Kishore Kumar Patel,
Advocate

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MR. JUSTICE SIDDHARTH MRIDUL

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether the judgment should be reported in the Digest?

PRADEEP NANDRAJOG, J. (Oral)

1. The respondents in the two captioned writ petitions were working as warders at the Central Prison Tihar and have been indicted for the following misdemeanour:-

A. Respondent Satpal Dahiya was caught smuggling

into the prison cells of Tihar Jail, 8 pouches of Swagat Brand Tobacco and 3 packets of Shikhara Gutkha, which were hidden in his shoes.

B. Respondent Satbir Singh was caught smuggling into the prison cells of Tihar Jail, 10 pouches of Tobacco which were hidden in his shoes.

2. We need not note the evidence held incriminating against the respondents because learned counsel for the respondents admitted their guilt and even otherwise we may note that the respondents have accepted the finding rendered against them by the Tribunal that there is enough evidence to nail their guilt. The Original Applications filed by the respondents have succeeded only on the question of quantum of punishment. Vide orders impugned in the two writ petitions, the Tribunal has held that the penalty of dismissal from service imposed upon the respondents is disproportionate to the gravity of offence and as a result the penalty has been set aside with a direction to the Disciplinary Authority to pass a fresh penalty order keeping in view penalties imposed upon other persons who were found indulging in similar misdemeanours. As regards how the interregnum period i.e. the period between the dates they were dismissed from service till fresh order is passed should be treated has been left open, to be decided by the Disciplinary Authority.

3. We may reproduce in a tabular form the date of the incident, name of the offender, nature of the offence and the punishment awarded to other similar delinquent employees, in respect whereof the Tribunal has directed, punishment imposed upon them to be taken into account while leaving fresh penalty upon the respondents. The chart reads as under:-

Sl. No.	Date	Name	Attempt	Punishment Awarded
1.	20.09.02	Ishwar Singh (NO)	3 packets Rajdarbar Gutkha.	Reduction of pay by one stage for three years.
2.	1.10.02	Trilokchand (NO)	10 packets of Nevla Brand in shoes.	Reduction by one stage for three years.
3.	1.10.02	Jaikaran (NO)	2 packets of Nevla in underwear	Withholding one increment for two years with cumulative effect.
4.	3.8.06	Nathi Lal (Warder)	4 packets of Nevla Tobacco and 3 Biris	Reduction of pay for three years.
5.	28.8.06	Prahlad Sharma (Warder)	Entered in Deodhy with 10 Packets Swagat Brand Tobacco, 9 Packets Nevla Brand, 1 Packet Commando Cigarette, 6 Packets Rajnigandha, 6 Packets Tulsi Zarda	Reduction to two stages for period of three years with cumulative effect.
6.	20.10.06	Jaipal (Barber)	2 Packets of Swagat brand Tobacco	Withholding of two increments for two years without cumulative effect.
7.	31.10.06	Govind Thakur	One puriya containing crushed material probably pieces of Sim Cards	Reduction of pay in lower scale for five stages.
8.	24.5.07	Savitri (Sweeper)	1 packet Swagat Tobacco	Reduction of lower stage of pay by one stage for one year.
9.	27.5.08	Dadan Choudhary	11 bottles of Mc dowell No.1	Removal modified by

		(Warder)	whiskey	reduction by three stages for period of three year.
10.	1.2.09	Kalu Ram (Sweeper)	½ packet tobacco in underwear	Reduction by one stage for period of one year.

4. It may be noted that save and except Prahlad Sharma, Dadan Chaudhary and Nathi Lal who were warders, all others are much lower in status to warders and we highlight this to bring home the point that a warder commits a graver misconduct, for the same act vis-à-vis a sweeper or a barber, keeping in view that the job of a warder is to maintain discipline in the jail.

5. We note that Prahlad Sharma, a warder, was smuggling in much more offending material and was visited with the penalty of reduction of pay by 2 stages for a period of 3 years with cumulative effect. For attempting to smuggle lesser quantity of offending material, Nathi Lal, a warder was visited with the penalty of reduction of pay for 3 years, but without cumulative effect.

6. We also further note that it appears to be a case where lesser penalties are not having the desired effect.

7. We have noted the fact in paras 4, 5 and 6 above for the guidance of the Disciplinary Authority who needs to consider and give reasons for his decision, while choosing the appropriate penalty, while factoring the penalties imposed in the past for similar misdemeanour and the lack of impact thereof and thus the requirement to impose a stiff penalty, but which should not be of a kind where the respondents are out of job.

8. We concur with the reasoning of the Tribunal that keeping in view the penalties imposed in the past and even otherwise, for the misdemeanours alleged, the penalty of dismissal from service is disproportionate.

9. We dismiss both the writ petitions. At the remanded stage the Disciplinary Authority would pass an order imposing an adequate penalty and for quantum whereof reasons shall be given; the penalty would be any as would be found appropriate, but would not be of a kind where the respondents lose their job. The Disciplinary Authority would be guided by the instant decision while passing the order imposing penalty. Needless to state it is left for the Disciplinary Authority to decide as to how the interregnum period has to be accounted for.

10. The writ petitions are dismissed.

11. No costs.

PRADEEP NANDRAJOG, J.

SIDDHARTH MRIDUL, J.

OCTOBER 20, 2010
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