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

Date of decision: February 27, 2013

+ **WP(C) 2380/2003**

KARTAR SINGH Petitioner
Represented by: Mr.Anil Hooda and Mr.Prashant Kumar,
Advocates.

versus

GNCT OF DELHI & ANR. Respondents
Represented by: Ms.Megha Bharara, Advocate for
Ms.Ruchi Sindhwani, Advocate.

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MS. JUSTICE PRATIBHA RANI

PRADEEP NANDRAJOG, J.(Oral)

1. Learned counsel for the petitioner states that he restricts submissions to the proportionality of the penalty.
2. Serving as a Warder in Tihar Jail, at a departmental inquiry, the petitioner has been found guilty of trying to smuggle a bag containing 27 bundles of 'Newla Brand Tobacco' containing 140 tobacco pouches. He has been dismissed from service as per order dated August 10, 1999. Departmental appeal was rejected on June 09, 2000. Challenge before the Central Administrative Tribunal has failed.
3. Relevant for the subject of proportionality would be two decisions dated October 20, 2010 disposing of WP(C) 13978/2009 and 14169/2009 in which penalty of dismissal from service upon Warders, trying to smuggle

tobacco into the precincts of the Tihar Jail Complex, were held to be excessive as also information obtained by the writ petitioner relating to 75 Warders, Barbers etc. to whom penalties were levied for smuggling tobacco into the precincts of Tihar Jail Complex. Put in a tabulated form the penalties would be as under:-

Sl.No.	Name & Designation of official	Misconduct	Decision
1.	Gyan Singh Rawat, W-438	Carrying Prohibited articles in Jail (Bidi-Bundle)	Penalty of stoppage of increment for two years vide order dated 31.01.96
2.	Azad Singh, W-318	Carrying Prohibited articles in Jail (Bidi-Bundle)	Penalty of stoppage of two increments of two years vide order dated 10.06.96
3.	Teja Singh, W-442	Carrying Prohibited articles in Jail (Bidi-Bundle)	Penalty of stoppage of two increments for two years vide order dated 20.09.96
4.	Mukesh, Sweeper	Recovery of tobacco packet	Penalty of stoppage of one increment for one year vide order dated 31.01.96
5.	Jai Narain-II, W-224	Recovery of Biri Bundles	Dismissed vide order dated 08.05.96 (reinstated by CAT vide order dated 07.07.2000).
6.	Bhopal Giri, W-446	Influence of Liquor	Dismissed vide order dated 31.1.96, later reinstated in service.
7.	Ram Kashyap, W-220	Influence of Liquor	Penalty of stoppage of one increment for two years vide order dated 08.05.96.
8.	Gaye Singh, W-366	Influence of Liquor	Penalty of stoppage of 4 increment for three years 12.08.97
9.	Dharam Singh, W-267	Recovery of 23 Biris and 22	Penalty of stoppage of four increments for 04

		match sticks	years vide order dated 12.05.98
10.	Ram Chander, W-336	Recovery of 04 packets tobacco	Penalty of stoppage of 03 increment for 02 years without cumulative effect vide order dated 30.07.97
11.	Rajinder Singh, W-298	Recovery of 04 packets and 06 packets of tobacco	Penalty of stoppage of 03 increments for 01 year vide order dated 20.05.98
12.	Jai Bhagwan, W-276	Throwing of 15 pkt tobacco inside jail	Penalty of reduction by 05 steps for 05 years vide order dated 21.05.99
13.	Karan Singh, W-611	Carrying prohibited articles (One Biri Bundle)	Penalty of stoppage of 05 increments for 05 years without cumulative effect vide order dated 29.06.99
14.	Kamal Singh, W-424	Influence of alcohol	Penalty of reduction of pay by four stages vide order dated 20.10.97
15.	Jagdish, N.O.	Recovery of 04 pkts tobacco and 06 Biris loose	Penalty of stoppage of two increments vide order dated 03.10.2001.
16.	Bhoop Singh, W-369	Carrying two pkts of tobacco and 13 biris	Penalty of stoppage of 03 increments for 03 years vide order dated 27.10.98
17.	Charan Dass, Peon	Carrying 40 pkts tobacco	Penalty of reduction by two stages for two years with increments without future effect vide order dated 28.05.99
18.	Hargovind Meena, W-547	Carrying 07 Biri bundles	Penalty of stoppage of 04 increments for 04 years vide order dated 09.3.98
19.	Pratap Singh, W-341	Carrying 04 pkts tobacco	Penalty of compulsory retirement with full pension and gratuity vide order dated 07.08.98
20.	Kartar Singh, W-	Carrying 04 pkts	Penalty of stoppage of 05

	466	tobacco	increments for 05 years without cumulative effect vide order dated 16.07.99
21.	Hawa Singh, W-465	Carrying 08 pkts of tobacco	Penalty of stoppage of 01 increment for 01 year without cumulative effect vide order dated 11.09.98
22.	Suresh Bal, W-412	Carrying 36 Biri and one match box	Penalty of reduction to lower stage from ₹3100/- to ₹2750/- for three years without increment during this period without future effect vide order dated 25.08.99
23.	Devender Kumar, W-471	Carrying 11 pkts of tobacco	Penalty of reduction by three stages for three years without earning increments thereafter will not have effect of postponing his future increments vide order dated 05.10.99.
24.	Ranbir Singh, W-602	Recovery of tobacco	Penalty of reduction of pay by one stage for one year vide order dated 12.05.99
25.	Rambir Singh, W-376	Recovery of tobacco	Removed from service vide order dated 20.07.98. Further, he was reinstated in service by the order of CAT dt.31.5.2000 and awarded penalty of reduction of two stages for two years vide order dated 21.1.2003.
26.	Ashwani Kumar, A.S.	Smuggling of 11 big pkts of tobacco and one bir bundle	Penalty of stoppage of 03 increments without cumulative effect vide order dated 01.11.99. Warned by the Appellate

			Authority vide order dated 5.6.2000.
27.	Kuldeep Kr.W-724	Recovery of Biri	Penalty of reduction to initial stage from ₹3200/- to ₹3050/- for 05 years without increments vide order dated 09.08.99
28.	Maha Singh, HW-191	Misbehaviour/influence of alcohol	Rank reduce to lower post of warder for 2 years thereafter resorted vide order dated 24.03.2000
29.	Virender, Driver	Recovery of tobacco	Dismissed vide order dated 30.07.02. Later on reinstated in service.
30.	Ajit Singh, HW-270	Recovery of 16 biris	Penalty of reduction of pay by 03 stages for 03 years without increments and without future effect vide order dated 22.02.01.
31.	Sandeep Sharma, W-691	Recovery of biris	Penalty of reduction by 01 stage for 01 year without increment and without future effect vide order dated 14.03.01
32.	Surender Kumar, W-580	Recovery of tobacco	Penalty of reduction of pay by 02 stages for 03 years vide order dated 14.07.01.
33.	Dilbag Singh, W-510	Recovery of Biris	Penalty of reduction of pay by two stages for two years without increments without future effect vide order dated 09.08.02.
34.	Om Prakash, W-434	Recovery of Biris	Penalty of stoppage of two increments vide order dated 16.10.01.
35.	Kartar Singh, W-466	Recovery of Biris	Penalty of reduction of pay at lowest for 03 years without increments

			without future effect vide order dated 17.06.02.
36.	Shiv Raj Singh, W-227	Recovery of Biris	Reduction of pay by one stage for one year vide order dated 01.08.02
37.	Trilok Chand, N.O.	Recovery of tobacco	Reduction of pay by one stage for three years without cumulative effect vide order dated 30.09.02.
38.	Surender Kumar, W-755	Recovery of tobacco and unauthorized absence	Reduction to lowest pay for 05 years without increments and without future effect vide order dated 25.07.02.
39.	Prahlad Singh, W-411	Recovery of Biris	Reduction of pay by two stages for two years without increments and without future effect vide order dated 23.09.02.
40.	Mukesh Kumar, S.B.	Recovery of tobacco	Reduction of pay by one stage for one year without increments and without future effect vide order dated 26.07.02.
41.	Ishwar Singh, N.O.	Supply of tobacco	Reduction of pay by one stage for three years without cumulative effect vide order dated 30.09.02.
42.	Rambir Singh, W-376	Recovery of tobacco	Reduction of two lower stages for two years and he will not give any increment during the period vide order dated 21.01.03.
43.	Bhopal Giri, W-446	Influence of alcohol	Reduction of pay by one stage for one year vide order dated 10.12.2003.
44.	Anuj Kumar, W-775	Influence of alcohol	Reduction of pay by three stages for three years without increments and without future

			effects vide order dated 18.10.02.
45.	Devender Kumar, W-471	Recovery of tobacco	Reduction of pay by three stages for three years without increments and without future effects vide order dated 12.08.02.
46.	Bahadur Singh, Warder-395	Recovery of smack	Reduction of five increment for three years and he will not earn increment during the period. After three years he will give the benefit of three increment vide order dated 24.09.03.
47.	Ram Kumar Tyagi, W-715	Recovery of tobacco	Stoppage of one increment vide order dated 27.06.02
48.	Anil Kumar, W-634	Misbehaviour under influence of alcohol	Awarded a penalty of forfeiture of three increments vide order dated 16.05.2007
49.	Satbir Singh, W-334	Recovery of biri	Stopping of two increments for two years vide order dated 25.03.2004.
50.	Dinesh Kumar Papne, W-684	Recovery of tobacco	Dismissed from service vide order dated 22.11.06. Appellate Authority modified the penalty order and reinstated him in service and his basic pay be reduced to Rs.6790/- plus 1900 as grade pay in the time scale of pay of Rs.5200-20200 plus 1900 grade pay.
51.	Sanjay Kumar, W-823	Throwing/Smuggling of Tobacco inside the Jail.	Stoppage of two increments for three years vide order dated 10.03.04

52.	Vinod Kumar, W-852	Throwing/Smuggling of Tobacco inside the Jail	Stoppage of two increments for three years vide order dated 10.03.04
53.	Amarjit Singh, W-829	Throwing bundle of Tobacco	Reduction to lower stage of pay for the period of three years and he will not earn increments of pay and expiry of this period reduction will effect post paid the further increments of his pay vide order dated 17.08.05 Reduction to a lower stage of pay for 03 years and that during the period he will not earn increment at pay and on the expiry of period the reduction will effect further increment of his pay vide order 27.06.05
54.	Ramesh Kumar Yadav, W-731	Throwing bundle of Tobacco	Reduction to a lower stage in the time scale of pay for the period of three years without cumulative effect vide order dated 23.03.07
55.	Sumit Mohan, W-808	Smuggling of Tobacco	Reduction of three stages for three years vide order dated 10.12.03
56.	Ramesh Kumar, N.O.	Recovery of tobacco	Reduced for one lower stage for one year vide order dated 10.01.03
57.	Nathi Lal, HW-242	Recovery of tobacco	Reduction of pay to one stage in this time scale of pay for a period of three years with cumulative effect vide order dated 03.08.06.
58.	Dadan Choudhary, W-560	Smuggling of Liquor	Removal from service vide order dated 19.02.07. Reinstated in

			service, awarded penalty of reduction of pay by three stages for three years w.e.f. date of removal vide order dt. 27.05.08
59.	Prahlad Sharma, W-671	Recovery of Tobacco, Cigarette, Gutkha etc.	Penalty of reduction of pay to two stages in the time scale for the period of three years with cumulative effect. He will not earn any increment during said period vide order dated 29.08.06.
60.	Vinod Kumar, W-852	Recovery of tobacco	Penalty of stoppage of one increment for one year vide order dated 17.01.06
61.	Satpal Dahiya, W-726	Recovery of Tobacco and Gutkha	Reduction of pay by two stages for a period of three years with cumulative effect vide order dated 20.12.2010
62.	Sanjeev Kumar, W-693	Smuggling of Tobacco	Penalty of reduction to a lower stage in the time scale of pay for a period of two years without cumulative effect vide order dated 14.06.06
63.	Satbir Singh, W-982	Smuggling of Tobacco	Dismissed on 24.10.2007 and penalty modified to a reduction by 02 stages for 03 years with cumulative effect vide order dt. 20.12.2010
64.	Pushpender Singh, W-1093	Recovery of tobacco	Removed from service vide order dt.5.6.2007, penalty modified by appellate authority to a penalty of reduction of two increments in pay with cumulative effect

			for a period of five years vide order dt.21.01.2011
65.	Bhim Singh, W-518	Recovery of tobacco	Dismissed on 26.11.07, Penalty modified reinstated in service vide order dated 05.08.08
66.	Kulbir Singh Rana, W-1037	Recovery of charas	Removal from service vide order dt.21.12.06. Penalty modified by Appellate Authority and he was reinstated in service with all consequential benefits.
67.	Raj Kumari, Mali	Smuggling of Tobacco	Penalty of reduction to a lower stage for a period of three years without cumulative effect vide order dated 19.03.07
68.	Kusumlata, Mali	Smuggling of Tobacco	Penalty of reduction to a lower stage for a period of three years without cumulative effect vide order dated 31.01.07
69.	Raj Pal Tyagi, W-299	Recovery of Tobacco	Removed from service vide order dated 17.07.07, Penalty modified as compulsory retirement vide order dated 05.03.08.
70.	Jaibeer Singh, W-760	Recovery of Rajdarbar tobacco	Reinstated in service and penalty of reduction of pay for five stages for five years
71.	Savitri, Sweeper	Recovery of one packet tobacco	Penalty of reduction to lower stage in the time scale of pay by one stage for a period not exceeding one year without cumulative effect 24.05.07.
72.	Parbhushan Singh, W-863	Recovery of Tobacco	Stoppage of 5 increments for 5 years with C.E. Vide order dated

			07.08.09.
73.	Narender Kumar, W-1057	Throwing of tobacco bundle inside CJ-3	Reinstated in service & awarded the penalty of reduction of pay by two stages for a period of five years with C.E. Vide order dated 03.08.11.
74.	Gaurav Yadav, W-1147	Recovery of tobacco	Penalty of censure vide order dt. 09.11.2010
75.	Hawa Singh, W-465	Recovery of tobacco	Removal from service vide order dt.28.05.09. Removal order dt. 28.05.09 have been modified. Stoppage of 2 increment with C.E. Vide order dated 15.11.2010 passed by Appellate Authority

4. Suffice would it be to state that pertaining to some persons the number of packets of tobacco recovered have been noted and qua some the number of bundles has been stated. But one thing emerges : that none has been inflicted with the penalty of dismissal from service.

5. Under the circumstances we dispose of the writ petition setting aside the penalty order dated August 10, 1999 as also the appellate order dated June 09, 2000. Order dated May 29, 2002 passed by the Central Administrative Tribunal is also set aside. Noting that unfortunately the writ petition has remained pending in the Record Room of this Court we levy the penalty ourselves.

6. Keeping in view the number of pouches of tobacco which petitioner was trying to smuggle, we inflict upon him the penalty of stoppage of three increments without cumulative effect. The period during which petitioner remained suspended during inquiry would not be treated as entitling petitioner to wages. Suspension Allowance received would be

enough. We deny back wages to the petitioner for the period interregnum he being dismissed from service till today i.e. the day when we have substituted the penalty. Said period would not be counted for any service benefit save and except to compute pensionable service. Meaning thereby, for this period the petitioner would not be entitled to any wages, actual or on notional basis and he would not earn any notional increment. Upon reinstatement the petitioner would suffer the penalty of stoppage of three increments without cumulative effect.

7. The petitioner is directed to report to the Superintendent, Central Jail Tihar on March 08, 2013.

8. Copy of this order be supplied 'DASTI' to the petitioner as also to the respondent.

(PRADEEP NANDRAJOG)
JUDGE

(PRATIBHA RANI)
JUDGE

FEBRUARY 27, 2013

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