

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH**

ORIGINAL APPLICATION NO 30 OF 2010

DISTRICT : PUNE

Shri Shankar Shivaji Kupse,)
Occ- Guard at Central Jail, Kalmba,)
Off Add: Kolhapur Central Jail,)
Kalmba, Kolhapur.)...**Applicant**

Versus

1. The Home Department,)
Through the Secretary,)
Prison Department, Mantralaya,)
Mumbai 400 032.)
2. The Inspector General of Prison,)
Maharashtra State,)
Old Centralized Bldg, 2nd floor,)
Pune-1.)...**Respondents**

Smt Kranti Kamble J Gaikwad, learned advocate for the Applicant.

Shri A.J. Chougule, learned Presenting Officer for the Respondents.

CORAM : Dr Justice S. Radhakrishnan (CHAIRMAN)
Shri Rajiv Agarwal (VICE-CHAIRMAN)

DATE : 25.06.2013

PER : Shri Rajiv Agarwal (VICE-CHAIRMAN)

ORDER

1. Heard Smt Kranti Kamble J Gaikwad, learned advocate for the Applicant and Shri A.J. Chougule, learned Presenting Officer for the Respondents.

2. The Applicant in the present Original Application is seeking quashing and setting aside of order passed by the Respondent No. 2 dated 11.11.2008 upholding the order of the Deputy Inspector General of Prisons, Western Region, Pune dated 4.2.2008.

3. The Applicant was working as a Prison Guard in Yervada Central Jail when he was caught trying to smuggle narcotic substance, viz brown sugar into the Jail premises, on 10.2.2001. He was suspended on the same

day and a criminal case was filed against him. In N.D.P.S S.C No 11/2011, learned Special Judge, (under N.D.P.S Act), Pune by order dated 30.10.2007 acquitted the Applicant. A Departmental Enquiry was also held against the Applicant and by order dated 4.2.2008, punishment of stoppage of one increment for three years was imposed. By another order dated 8.2.2008, the period of suspension from 10.2.2001 to 1.12.2007 was treated as such.

4. Learned Counsel for the Applicant argued that the Applicant was acquitted in the criminal case under N.D.P.S Act by the Learned Special Court. However, in the Departmental Enquiry against the Applicant, the Enquiry Officer has held that the charges were proved against the Applicant. This is in contradiction of the finding of the learned Special Judge, who has held that the charges that the Applicant was found in possession of brown sugar (Gard) weighing about 40 gms on 10.2.2011 at the main gate of Yervada Central Prison were not proved in the Case No 11/2001 decided on 30.10.2007. Learned Counsel for the Applicant further argued that the Enquiry Officer has not conducted the enquiry properly and the Enquiry was one sided. Learned Counsel for the Applicant prayed for quashing of the order confirming the order in D.E and the order filed in the Appeal.

5. Learned Presenting Officer Shri A.J. Chougule, argued that the order passed in the Departmental Enquiry against the Applicant is legal and proper. A detailed charge sheet was issued to the Applicant and he was given full opportunity to defend himself. There is no malafide on the part of the Respondent and the punishment imposed is not disproportionate, considering the nature of charges against the Applicant. Learned Presenting Officer cited judgment of the Hon. Apex court in Principal Secretary, Government of Andhra Pradesh and Another Vs. M. Adinarayan (2004) 12 SCC 579, where it has been that the Administrative Tribunal cannot sit as a Court of appeal over a decision based on the finding in the Disciplinary proceedings. Judicial review cannot extend to examination of correctness of the findings. He cited some other judgments also.

6. Law is well established that if there is some evidence in support of the charges in the D.E, and there is no malafide, the scope of interference by this Tribunal is very limited. We find that the Learned Special Judge in S.C No 11/2001 has adversely commented on non-examination of one Shri Nivrutti Raghoba Dhage, who had conducted the personal search of the Applicant on 10.2.2001 at the gate of Yervada Central Prison. We find that Shri Dhage was examined as a witness in the Departmental Enquiry against the Applicant. Shri Dhage had deposed that he found the Applicant in possession of

2 packets containing white substance, which later was proved to be brown sugar. The said Shri Dhage was cross-examined by the Applicant but could not be shaken. We find that there is material on record to support the finding in the Departmental Enquiry against the Applicant. The Applicant was given full opportunity to present his side. The Disciplinary Authority has passed a detailed and reasoned order. The Appellate Authority has upheld the order of the Disciplinary Authority by a reasoned order.

7. In view of the above facts and circumstances of the case, we do not find any reason to interfere with the order passed by the Respondent No. 2. The Original Application stands dismissed. There will be no order as to costs.

(Dr. S. Radhakrishnan.J)
Chairman

Place : Mumbai
Date : 25.06.2013
Typed by : A.K. Nair.

(Rajiv Agarwal)
Vice-Chairman.