

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 938 of 1986
T.A. No.

DATE OF DECISION 2.3.1990

Shri I.M. Dang Petitioner

Shri R. Venkataramani, Advocate for the Petitioner(s)

Versus

Delhi Administration & Others Respondent

Mrs. Avnish Ahlawat, Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. Justice Amitav Banerji, Chairman.

The Hon'ble Mr. B.C. Mathur, Vice-Chairman.

1. Whether Reporters of local papers may be allowed to see the Judgement ? ✓
2. To be referred to the Reporter or not ? ✓
3. Whether their Lordships wish to see the fair copy of the Judgement ? ✗



(B.C. Mathur)
Vice-Chairman



(Amitav Banerji)
Chairman

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, DELHI.

Regn. No. OA 933 of 1986

Date of decision: 2.3.1990

Shri I.M. Dang

...

Applicant

Vs.

Delhi Administration & Others ...

Respondents

PRESENT

Shri R. Venkataramani, counsel for the applicant.

Mrs. Avnish Ahlawat, counsel for the respondents.

CORAM

Hon'ble Shri Justice Amitav Banerji, Chairman.

Hon'ble Shri B.C. Mathur, Vice-Chairman.

(Judgement of the Bench delivered by Hon'ble
Shri B.C. Mathur, Vice-Chairman)

This is an application under Section 19 of the Administrative Tribunals Act, 1985, filed by Shri I.M. Dang against order No. F.7(13)/84-Fin(G) dated 15.11.1985 of Joint Secretary (Finance), Delhi Administration, rejecting the Review Memorial/Petition of the applicant made against the order dated 27.2.1984 passed by the Commissioner of Sales Tax, Delhi, removing the applicant from service, which order has merged in the order dated 15.11.1985.

2. Brief facts of the case, as stated by the applicant, are that he was posted as U.D.C. in Ward No. 46 of the Sales Tax Department in July, 1977. The Sales Tax Officer was the overall incharge of the Ward. The applicant at that time was entrusted with the work of amendment relating to certificates of registration of the dealers on their application for addition of item, change in consultation and change of place by dealers. On 6.11.78, Shri Ved Prakash, the A.S.T.O. of Ward No. 46, then officiating as S.T.O. of the Ward, himself received the Bank guarantee given by M/s. Sushil Kumar and Co. (The respondents throughout the proceedings against the applicant referred to it as Surety Bond but which is actually a bank guarantee according to the applicant and which is reconstructable.) The S.T.O. was the officer who

was entrusted with the duty to keep the bank guarantee in his personal and safe custody vide instructions issued in memorandum dated 24.10.1973 (Copy at Annexure I to the application). In view of these instructions, the practice in the department/section was to handover such documents to the Ward Officers as and when received who would keep them in his personal custody. Shri Ved Prakash, instead of keeping the said bank guarantee in his personal and safe custody, marked it to Shri S.L. Singhal, then Head Clerk posted in Ward No. 46. The Head Clerk had no authority to keep the Bank guarantee in his custody, but he seems to have kept ^{it} in his custody for fifteen days. The applicant had no knowledge about the receipt of the said document in the section, nor did any person inform him in this regard. There was thus no occasion for him to demand the said document from the Head Clerk. On 22.11.78, the Head Clerk passed the Bank guarantee to the applicant, who also had no authority to keep it in his custody, and took a written acknowledgement from him for the same. The applicant received the Bank guarantee under the impression that it pertained to him as it was passed on to him by his senior officer alongwith the routine dak for the purpose of diarising it. The next day, i.e. on 23.11.78, when the applicant realised that it did not pertain to him, ^{he} returned the same to the officiating S.T.O. without obtaining his acknowledgement in writing.

3. According to the applicant, on 17.12.81 he was asked to appear before the Sales Tax Officer, Ward-46. The applicant appeared before him on 21.12.81 who asked him about the whereabouts of the Bank guarantee. The applicant expressed his helplessness in recollecting anything about the same as the matter was three years old. The STO showed him his acknowledgement on diary register receiving the Bank guarantee and asked him to put in writing about receiving the Bank guarantee which he did by letter dated 21.12.81 (copy at Annexure III to the application). On 9.3.82 the applicant was issued a Memo, wherein he was called upon by the S.T.O. of Ward No. 46 to explain the whereabouts of the said Bank guarantee. At that time the applicant was posted in Ward No. 44. Vide his reply dated 27.3.82,

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the applicant expressed his helplessness in recollecting the said document (copy of the reply is at Annexure V). By order dated 27.3.1982, the Commissioner of Sales Tax, the Disciplinary Authority, placed the applicant under suspension (Annexure VI to the application). On 12.5.82, the Commissioner of Sales Tax sent a Memo for proposed enquiry against the applicant. The charge against the applicant was:-

"That while working in Ward No. 46, Shri I.M. Dang, had received the security bond of M/s. Sushil Kumar and Co. on 22.11.1978. He failed to account this document and intimate its whereabouts to the S.T.O., when it was required for production before the Court of Law in connection with a Civil Suit filed by the dealer against recovery action taken by the Assessing Authority".

The applicant was also asked in this Memo to put his written defence within 10 days of receipt of the Memo. By application dated 21.5.82, the applicant applied to the Commissioner Sales Tax for providing him the relevant documents and for permitting him to inspect the relevant records which were never provided to him. On 22.6.82, the application filed an explanation and denied the charge (Annexure IX to the application) and also reminded the Commissioner requesting him to provide the relevant documents as per his request dated 21.5.82. On 30.6.82, the Deputy Commissioner (Admn.) Sales Tax invited the attention of the applicant to Rule 14(4) of the CCS (CCA) Rules, 1965 and replied to him that the rule did not provide for inspection of documents by the accused official for submission of his written statement. Vide letter dated 6.7.82 to the Commissioner of Sales Tax, the applicant put his defence against the charges framed against him. (Annexure XII). Vide order dated 6.8.82, the Commissioner of Sales Tax revoked the order of suspension of services of the applicant and reinstated him pending enquiry. On 7.8.82 Shri R.B.S. Tyagi was appointed as the Inquiry Officer and on 6.10.82, the inquiry proceedings commenced. On 18.11.82, Shri M.L. Mirg, UDC, who was working in Ward No. 46 in November, 1980 was examined and his statement was recorded in the presence of the applicant. He stated that he was handed over the charge of Amendment Desk of Ward No. 46 from the applicant but he was not handed over any sum of Money

Oriental Bank of Commerce, Wazirpur, Delhi. SHRI Mirg did not depose to the effect to which it was stated in the list of witnesses that he would depose that the Bank guarantee in question was required to be produced in the court. There was no evidence by the respondents on the enquiry to this effect that the said Bank guarantee was required to be produced in the court and nonproduction of the same has adversely affected the recovery of the revenue.

4. On 18.11.82, Shri P.L. Singhal, Head Clerk in Ward No. 46, was examined and he admitted of receiving the Bank guarantee from the officiating S.T.O. He stated that he kept the same in his custody for 15 days but after a few days while checking his papers he found that the Bank guarantee did not pertain to him. He said that he enquired from Shri Dang who told him that it pertained to him and accordingly he gave the Bank Guarantee to Shri Dang. He also stated that he had no knowledge as Head Clerk as to whose function it was to dispose of the Bank Guarantee though the Bank Guarantee was normally kept by the S.T.O. He was not sure as to whom it pertained ^{did} nor he know the purpose for which the B/G was transferred to Ward No. 46.

5. On 13.12.82, Shri Ved Prakash, A.S.T.O., whose name was not included in the list of witnesses supplied to the applicant, was examined. He admitted of receiving the marking of the Bank Guarantee to Head Clerk but expressed his ignorance about the entering of it in the Surety Bond Register. He further stated that there was no question of asking Shri Dang, as regards the Bank Guarantee, who in any case was not connected with this work.

6. On 16.12.82, the applicant submitted his ^{Bm} ~~return~~ reply before the Inquiry Officer, after the completion of examination of witnesses.

7. On 28.12.82, Shri P.L. Singhal, Head Clerk, was re-examined by the Inquiry Officer and his statement was recorded in the absence of the applicant. The applicant was neither informed before or after this reexamination about the same nor he

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ed the 'ipse dixit' of Shri P.L. Singhal and Shri Ved Prakash who were equally responsible for the safe custody of the document in question. There are fundamental contradictions between the two statements of Shri P.L. Singhal which go to the root of the matter:

(i) I enquired from Shri Dang, the Amendment Clerk, who was receiving the files from other wards of the dealers. He told me that it pertains to him.

(ii) On 22.11.78 Shri L.M. Dang, UDC demanded the surety bond from me and I getting written acknowledgement handed over the surety bond to Shri L.M. Dang.

10. The respondents in their reply have stated that the document in question in the instant case is in fact a surety bond in the shape of a bank guarantee for Rs. 1,00,000/- filed by M/s Sushil Kumar & Co. when the dealer got itself registered with the Sales Tax Department. There is no dispute regarding the receipt of the surety bond by Shri Ved Prakash, Officiating and it S.T.O. /passing on to the Head Clerk. However, it is incorrect to say that the Head Clerk has no authority to keep the surety bond in his custody. Being a supervisory official of the Ward, he can keep papers or documents on behalf of the S.T.O. Regarding the surety bond, the respondents have stated that as per practice prevailing in the Department, such a surety bond whenever received from any other dealer or due to the shifting of the business premises by a dealer to another Ward or filed by the dealer at the time of its registration, the Head Clerk normally used to handle the surety bond, get the entry in the surety register signed by the concerned S.T.O./Ward Officer and hand over the same to the concerned Ward Officer for its safe custody. As such, the Head Clerk is fully authorised to handle the surety bond in process before it is placed in the safe custody of the Ward Officer under lock and key. The respondents have admitted that the Head Clerk kept the surety bond in his custody during the period 7.11.78 to 21.11.78 who was fully authorised to receive and process the said surety bond in question. The surety bond was received by the applicant

an opportunity of making a representation on the penalty proposed. On 26.9.1983, the applicant submitted a detailed reply and denied the charge and conclusion which the Inquiry Officer arrived at. By order dated 27.2.1984, the Commissioner of Sales Tax, removed the applicant from the service. The order is a non-speaking order. On 3.3.1984, the applicant applied to the Commissioner of Sales Tax for supplying him the copies of statements recorded during the inquiry which was followed by a reminder on 29.3.84. On 12.4.84, the Asstt. Commissioner (Vig.) Sales Tax sent a Memo to the applicant wherein he was asked to indicate the specific provision under the CCS (CCA) Rules, 1964, under which the request of the applicant for supply of statement of witnesses was made and in the absence of which his request would stand rejected. The applicant filed an appeal before the Chief Secretary, Delhi, the Appellate Authority, against the order dated 27.2.84 of the Commissioner of Sales Tax which was rejected on 26.6.85. On 9.8.85, the applicant filed a Review Memorial/Petition before the Lt. Governor, Delhi, against the order of the Appellate Authority which has been rejected by the impugned order dated 15.11.1985 of the Joint Secretary (Finance) made on behalf of the Lt. Governor, Delhi. Thereafter the applicant filed a mercy appeal which was rejected on 28.2.86.

9. In his ground, the applicant has urged that the report of the Inquiry Officer was vitiated due to bias of the Inquiry Officer who was not impartial and who was willing to favour the applicant for extraneous considerations and as such the report of the Inquiry Officer was not worth the paper/ on which it is contained. The Inquiry Officer was insincere in the conduct of the inquiry and the said proceedings were void, having been conducted in violation of the principles of natural justice. For example, the Inquiry Officer recorded the additional statement of Shri P.L. Singhal behind the back of the applicant on 28.12.82 after the inquiry proceedings were over, the Inquiry Officer heavily relied upon the said ex-parte statement in his report to ^{come to} ~~return~~ a finding of guilt against the applicant. The Inquiry Officer merely accept-

ed the 'ipse dixit' of Shri P.L. Singhal and Shri Ved Prakash who were equally responsible for the safe custody of the document in question. There are fundamental contradictions between the two statements of Shri P.L. Singhal which go to the root of the matter:

(i) I enquired from Shri Dang, the Amendment Clerk, who was receiving the files from other wards of the dealers. He told me that it pertains to him.

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from the Head Clerk after proper receipt in the register. If the surety bond did not pertain to the applicant, he could have simply refused to receive the same at the initial stage itself. They have denied the contention of the applicant that he returned the surety bond to the S.T.O. on the next date ^{which} / is an after-thought. Had he returned the same to the S.T.O., he should have made a note of the same in the diary register itself by recording a note to this effect. The respondents have denied the allegation of the applicant that Shri P.L. Singhal was re-examined by the Inquiry Officer and that his statement was recorded in the absence of the applicant and that he was not informed before or after this re-examination about the same nor he was afforded an opportunity to cross-examine Shri Singhal. As per the order sheet recorded by the Inquiry Officer, the Presenting Officer and Shri Singhal, Head Clerk, were present. A notice of the date of hearing for seeking certain clarifications from Shri P.L. Singhal regarding certain allegations raised by the applicant in his written arguments was issued to the witness Shri P.L. Singhal as well as the petitioner, but the petitioner did not appear before the Inquiry Officer. Shri P.L. Singhal, witness, had given only written clarification and no evidence on oath was recorded. The respondents have also denied that the Inquiry Officer relied upon the statement of Shri P.L. Singhal recorded behind the back of the applicant. Further, the order of the disciplinary authority imposing the penalty of removal was fully valid and justified. No principles of natural justice have been violated in passing the penalty order in question. From the evidence adduced before the inquiry proceedings, it is clear that the surety bond in question had been received by the applicant on 22.11.78 under a written acknowledgement in proof of having received the same. There is nothing on record to show that the applicant handed over the said surety bond to any other official of the department. It is, therefore, quite clear that the surety bond in question has been lost or misplaced from the custody of the applicant which adversely affected the recovery of tax revenue of Rs. 1 lakh on that account. As such, the disciplinary authority is quite justified in passing the penalty order in question. The allegations of bias against the inquiry officer are an after-

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thought which, in fact, are raised for the first time after the enquiry officer submitted his report and supplied the same to the applicant. Had there been any grievance against the enquiry officer, the applicant should have reported the same to the disciplinary authority or any other higher authorities. There is no violation of the principles of natural justice in conducting the enquiry proceedings. The witness, Shri P.L. Singhal, was called by the Inquiry Officer after issuing a notice to the applicant. The notice was serviced on the applicant, but he did not appear before the Inquiry Officer on the given date and time. The applicant cannot claim any benefit on this ground since he himself opted to keep himself away from the enquiry proceedings. All the relevant documents were made available for inspection to the applicant during the enquiry proceedings. Prior to these proceedings, the applicant had never contended that some or the other document had not been made available for inspection.

11. The main arguments advanced on behalf of the applicant are that he was in no way connected in keeping the bank guarantee and that according to the office procedure laid down in Memorandum No. F.7(4)/78-Advs./3530 dated 24.10.1973, it was the duty of the Sales Tax Officer who had received the bank guarantee to keep it with him. It has been stated that the Commissioner was required to maintain a complete account of the securities deposited, forfeited or refunded and that a separate register for the securities under the Central Act shall be maintained by each Ward Officer and entries made in chronological order. At the time of transfer of the Ward Officer, these have to be handed over to his successor. Securities are also to be verified by the Administrative Assistant Commissioners periodically.

12. The applicant acknowledges receipt of the bank guarantee which was given to him by the Head Clerk after keeping the same for 15 days and he was under the impression that it pertained to him, but since he was not supposed to keep it he handed over the same to the Ward Officer on the following

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day. When he was asked to account for the missing document, he expressed his helplessness as the matter was more than three years old. It is the case of the applicant that while it was the responsibility of the Ward Officer, he has been picked up for purposes of fixation of responsibility and punishment. He also said that Shri Ved Prakash, Assistant Sales Tax Officer, in his statement before the Inquiry Officer had clearly stated that he did not know whether the bank guarantee was entered in the Security Bond register or not and as the same was not immediately required, there was no question of asking the applicant, Shri Dang, who was in any case not concerned with this work to enquire regarding the security bond. The applicant has been held responsible on the only basis that his signatures exist in the diary register, there is no charge that he misplaced the same or that he destroyed or tampered with any document intentionally. The search of the surety bond started after the lapse of three years when the file would have been handled by many people. He, as a subordinate official, could not ask the Ward Officer to give written acknowledgement of the receipt of the document which he was supposed to keep. The learned counsel for the applicant also argued that it was wrong on the part of the Inquiry Officer to have recalled the Head Clerk and no opportunity was given to the applicant to cross-examine him. According to the Head Clerk, Shri P.L. Singh, in his re-examination, he said that the applicant demanded the surety bond from him and on getting a written acknowledgement, he handed over the bond to the applicant. Firstly, there was no question of the applicant demanding the bond from the Head Clerk when he was not concerned with the same. Besides, the Head Clerk admits ^{the statement of the applicant} that he had handed over the documents to Shri Ved Prakash, the Ward Officer.

13. We have gone through the pleadings as well as the arguments by the learned counsel on both sides. The charge against the applicant is that while working in Ward No. 46 of




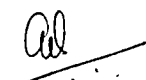
the Sales Tax Office on 22.11.78, he received a surety bond but failed to account this document and intimate its whereabouts when it was required for production in the court and hence he acted negligently in handling important Government record jeopardising the interest of revenue and causing avoidable embarrassment to the Department. The charge does not specify how the embarrassment was caused and whether there was any loss of revenue because of the non-production of this bank guarantee.

14. The learned counsel for the respondents has stated that although under the rules, the Ward Officer is required to keep important documents like the surety bond, in practice they were kept by the clerk concerned. The Inquiry Officer has come to the conclusion that as the applicant failed to produce the security bond when required, his responsibility in misplacing the surety bond is established and there are enough reasons to believe that he was instrumental in removing the surety bond and his statement that he handed over the same to Shri Ved Prakash causes heavy suspicion on the behaviour of the applicant. The Inquiry Officer apparently has gone beyond the charge as there was no charge that the applicant was instrumental in removing the surety bond. When the instructions were clear that the bond was to be kept by the Ward Officer, it appears somewhat peculiar that no questions were asked from the Ward Officer or the Head Clerk, but the blame was put on the applicant. Full opportunity should have been given to the applicant to cross-examine the Head Clerk when he was called the second time. Although a statement has been made that a notice was given to the applicant, the same has been denied by the applicant. The Chief Secretary, Delhi Administration, in his order confirming the punishment of removal of the applicant from service has also accepted that the applicant was not required to keep the surety bond in his custody as per the departmental instructions. It would be against the principles of natural justice to remove

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the applicant from Government service on his failure to produce a document which he was not supposed to keep under the rules and by making him alone responsible for the loss when the responsibility must be shared by others, including the Ward Officer, and further full opportunity should have been given to the applicant to cross-examine a vital witness before coming to any conclusion. In the circumstances, the inquiry appears to be vitiated and the impugned orders imposing the penalty of removal from service need to be quashed. We order accordingly and direct that the applicant should be reinstated in service with consequential benefits. There will be no orders as to cost.


(B. C. Mathur) 2.3.97
Vice-Chairman


(Amitav Banerji)
Chairman