

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH, NEW DELHI.

(5)

Regn.No. OA 736/1991

Date of decision: 17.5.1991.

with

CCP 99/1991

Shri Hukum Singh

... Applicant

Vs.

Development Commissioner,  
Delhi Admn. & Others

... Respondents

For the Applicant

... Shri M.M. Sudan,  
Counsel

For the Respondents

... Shri T.S. Kapoor,  
Counsel

CORAM:

THE HON'BLE MR. P.K. KARTHA, VICE CHAIRMAN(J)

THE HON'BLE MR. B.N. DHOUNDIYAL, ADMINISTRATIVE MEMBER

1. Whether Reporters of local papers may be allowed to see the Judgment? *yes*
2. To be referred to the Reporters or not? *yes*

JUDGMENT

(of the Bench delivered by Hon'ble Mr. P. K. Kartha, Vice Chairman(J))

The applicant, who has worked as a Farm Manager in the office of the Development Commissioner, Delhi Administration, filed this application under Section 19 of the Administrative Tribunals Act, 1985, seeking the following reliefs:-

- (i) To quash the impugned order dated 15/13-3-91 whereby he was awarded recordable earning and was sought to be reverted to the regular post of

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Horticulture Assistant; and

(ii) to declare the order of reversion to be illegal and violative of Article 311 of the Constitution.

2. The application was filed in the Tribunal on 25.3.1991. On 26.3.1991 while admitting the application, the Tribunal passed an interim order directing the respondents to maintain status quo as of that date in respect of the applicant in the post of Farm Manager held by him.

3. The facts of the case in brief are as follows. The applicant was appointed as Horticulture Assistant in January, 1983. He was promoted as Farm Manager on ad hoc basis by order dated 9.9.1987. He had continued to work as Farm Manager thereafter. On 29.11.1990, the Deputy Development Commissioner issued to him a show cause notice asking for his explanation as to why no care had been taken by him in the matter of maintenance of Mauz Rani Farm and the utter lack of supervision in his work relating to the said farm. The show cause notice further stated that the inspection by the Development Commissioner of the said farm on 14.11.1990 had

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revealed that it had not been maintained properly. During the inspection, the Development Commissioner had brought out the fact that the Farm Manager had absolutely no idea about the variety of fruits and other plants available in the said Farm. It was, therefore, stated that the applicant had failed to discharge his duty as Manager of the Farm.

4. The applicant gave his reply to the show cause notice wherein he stated that in the last 3 years when he was holding the charge of the said Farm, he had made substantial improvement and that he had been working to the best of his ability.

5. On 31.1.1991, the respondents issued to the applicant a memorandum proposing to hold an inquiry under Rule 14 of the CCS(CCA) Rules, 1965. The Article of Charge framed against him was the following:-

" During the inspection of the Farm by the Development Commissioner on 14.11.1990, the worthy Development Commissioner found the conditions of the Farm pitiable in all aspects. It was quite evident that no pains whatsoever were taken by the staff posted there during the past few years to maintain the farm properly. So much so, the Farm Manager did not even know the names of different varieties of Ber, Guava etc. planted there. Record note of inspection has also not been drafted by him correctly.

During the period while working as Manager and dealing with the Farm of Hauz Kani, Delhi exhibits lack of integrity, devotion to duty and act of unbecoming of Govt. servant in the part of said Sh. Hukam Singh. Thus he, thereby, violated the provision of Rule 3 of CCS(CCA) Conduct Rules, 1964".

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6. No documents by which the Article of Charge framed against the applicant were sought to be sustained, were annexed to the aforesaid memorandum. No witnesses were mentioned in the annexure to the memorandum.

7. The applicant, submitted his reply to the memorandum but no inquiry appears to have been held in accordance with the provisions of Rule 14 of the CCS (CCA) Rules, 1960. On 15/12-3-1991, the following impugned order was passed by the Development Commissioner:-

" ORDER

Whereas disciplinary proceedings under Rule 14 of CCS(CCA) Rules, 1965 were initiated against Shri Hukum Singh, Farm Manager vide Memorandum No.F.47(165)/90/Dev.HQ/909 dated 31.1.1991.

And whereas Shri Hukum Singh, Farm Manager has admitted the charges contained in the said Memorandum vide his reply dated 13.2.1991 which reads as under:-

"The discrepancies observed/advised by the worthy Development Commissioner admitted. But in this connection, I request to point out that due to non-cooperation of Labour caused delay in all further agriculture operation and proper maintenance of farm".

Now, therefore, I, Virendra Singh, Development Commissioner, Delhi Administration in exercise of the powers conferred by Rule 12 of of CCS(CCA) Rules, 1965, tend to take lenient view and hereby award a recordable warning to Shri Hukum Singh, Farm Manager.

Shri Hukum Singh's said reply is an admission on his part that he was not effective on his job. The undersigned do not find him fit to continue to hold the ad hoc post of Farm Manager. His ad hoc appointment of the post of Farm Manager was only administrative arrangement. Accordingly, he is reverted to his regular post namely Horticulture Assistant, in the Development Department. This is however not a punishment as it is discontinuing the

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administrative ad hoc arrangements.

Shri Hukum Singh, SCI, (Sd/ Virendra Singh)  
Seed Certification Office, Development  
Tis Hazari. Commissioner".

8. The applicant has called in question the validity of the aforesaid order passed by the respondents.

9. We have carefully gone through the records of the case and have heard the learned counsel of both parties. In our view, there is no justification to interfere with the award of recordable warning to the applicant on the receipt of his reply to the memorandum dated 31.1.1991. Recordable warning amounts to censure which is one of the minor penalties enumerated in Rule 11 of the CCS (CCA) Rules, 1965. It is open to the disciplinary authority to initiate an inquiry for imposition of major penalty under Rule 14 of the CCS(CCA) Rules, 1965. In such a case on the receipt of the written statement of defence from the Government servant concerned, the disciplinary authority may decide **not** to proceed with the inquiry for major penalty and to convert the proceeding into a proceeding for minor penalty. That was done in the instant case. We do not see any reason to interfere with the penalty of recordable warning imposed on the applicant in the instant case.

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10. As regards the reversion of the applicant from the ad hoc post of Farm Manager to his substantive post of Horticulture Assistant, the position is different. The order of reversion is also contained in the impugned order dated 15/18-3-1991 whereby the penalty of recordable warning was awarded to the applicant. The reversion is on the basis of an admission made by the applicant in reply to the memorandum dated 31.1.1991 whereby it was proposed to initiate inquiry under Rule 14 of the CCS(CCA) Rules, 1965 against the applicant. Though the order dated 15/18-3-1991 states that the reversion is not a punishment, the facts and circumstances of the case clearly indicate that the reversion is by way of penalty. In Dr. Mrs. Sumeti Shere Vs. Union of India & Others, 1989(11) ATC 127, the Supreme Court has observed that in the relationship of master and servant, there is a moral obligation to act fairly. The employee should be made aware of the defect in his work and deficiency in his performance. The Supreme Court observed that "defects or deficiencies; indifference or indiscretion may be with the employee by inadvertance and not by incapacity to work. Timely communication of the assessment of work in such cases may put the

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employee on the right track. Without any such communication, in our opinion, it would be arbitrary to give a movement order to the employee on the ground of unsuitability".

11. In other words, the employee should have been told in advance that his work and performance are not upto the mark. In the instant case, the applicant has produced before us the notings from the file indicating that he had made improvements in the work entrusted to him as Farm Manager. There had been good crop of Jawar which had fetched reasonably handsome return to the Government.

12. In the facts and circumstances of the case it would appear that misconduct is the very foundation of the impugned order of reversion and that it is not grounded on general unsuitability. Accordingly, that part of the impugned order dated 15/12-3-1991 dealing with the order of reversion of the applicant is not legally sustainable and is hereby set aside and quashed. The respondents are directed to continue the applicant in the ad hoc post of Farm Manager so long as persons junior to the applicant have been retained as Farm Managers or in xx equivalent posts. The respondents are directed to comply with the <sup>above</sup> directions immediately on the

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receipt of a copy of this order.

13. The interim order passed on 26.3.1991 and continued thereafter is hereby made absolute.

14. We, however, make it clear that nothing stated herein will debar the respondents from proceedings against the applicant for any specific misconduct on his part in accordance with the rules, if so advised.

CCP 99/1991

In this CCP, the petitioner has alleged that the respondents wilfully violated the interim orders passed by this Tribunal on 26.3.1991 and 3.4.1991. We have heard the learned counsel of both parties. In view of the directions given in OA 736/1991, we do not consider it necessary to proceed further and pass order on the contempt petition. We, however, make it clear that the petitioner would be entitled to his salary for the entire period from the date of passing of the impugned order dated 15/18.3.1991 to date. The respondents shall release to the petitioner the pay and allowances for the post of Farm Manager notwithstanding the fact that they had issued an

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order relieving him from that post with effect from 18.3.1991. We further direct that the period from 18.3.1991 to date shall be treated as duty for all purposes. The CQP is disposed of accordingly and the notice of contempt is discharged.

There will be no order as to costs.

*B.N. Dhoundiyal*  
(B.N. DHOUNDIYAL)  
MEMBER (A)

*P.K. Kartha*  
(P.K. KARTHA)  
VICE CHAIRMAN (J)