

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

(b)

Regn.No.OA 748/91

Date of decision: 21.02.1992

Kishore Lal
Shri ~~Kishan Lal~~

...Applicant

Vs.

Lt. Governor, Delhi & Another

...Respondents

For the Applicant

...Shri S.S. Vats,
Counsel

For the Respondents

...Shri M.K. Sharma,
Counsel

CORAM:

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

THE HON'BLE MR. S. GURUSANKARAN, ADMINISTRATIVE MEMBER

1. Whether Reporters of local papers may be allowed to see the Judgment? *ye*
2. To be referred to the Reporters or not? *no*

JUDGMENT

(of the Bench delivered by Hon'ble Shri S. Gurusankaran, Administrative Member)

The applicant, while working in the Land Acquisition Branch from 5.5.1983, was proceeded against under memorandum dated 18.10.1985 (Annexure-III) for certain alleged misconduct during the period of his working as Patwari in Halqa Jharoda Kalan from 1.1.1982 to 5.5.1983. He was put under suspension with effect from 22.8.1985 and after an enquiry, the Enquiry Officer (E.O) submitted a report. Based on the E.O's report, the Disciplinary Authority (D.A.), respondent No.2 passed the order dated 11.10.1989 imposing the penalty of removal from service. The applicant submitted an appeal to the Appellate

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Authority (A.A) respondent No.1, which was dismissed vide order dated 4.1.1991. Aggrieved by the same, the applicant has filed this application praying for quashing the orders of D.A. and A.A, declaring that the applicant be deemed to be in service as Patwari at all material times till the age of superannuation and directing the respondents to pay all back wages in full.

2. In his application the applicant has raised the following important points: (1) He made the changes in the Khatauni on the direction of his superior, the concerned field Kanugo and the directions of the Kanugo are contained at S.No.56 of the Roznamacha for village Surakhpur. The Kanugo in turn had directed the applicant to do the needful on the basis of Khatuni for the year 1962-63 and order of the Revenue Assistant passed on 31.3.70 (ii) The E.O. did not examine the field Kanugo, under whose orders the applicant acted; (iii) No irregularity or illegal entry was noticed by any of the superior officers during the course of checking; (iv) The copy of the E.O's report was not given to the applicant in violation of rules of natural justice; (v) The E.C. has suggested that the responsibility vested with the Field Kanugo, who was supposed to make cent-percent checking especially of entries in which the changes have taken place. The Field Kanugo would have got the records corrected after taking appropriate action and getting the approval of the competent authority; and (vi) The findings

of the E.O. appear to be baseless and mala fide.

3. The respondents have filed reply contesting the application. They have pointed out that the applicant made changes without any lawful authority in the record ^{right} of ~~for~~ the year 1981-82, whereas the next Khatuni is to be ^{prepared &} ~~prepared~~ on the basis of the earlier Khatuni already issued. They have submitted that as regards Rapat No.56 of Rosnamacha, the field Kanungo has stated that Halqa Patwari should make "Amal Dramada" in Column No.5 of the Khasra Girdhawari about the decision of SDM/FA and asamaiya in the Gaon Sabha may be intered in Column No.5 of the Khasra Girdhawari and be put up for the partal. Instead of making entries as per directions of the field Kanungo, the applican made the entry in the Khatauni for the year 1981-82. They have admitted that the Revenue Assistant had decided that there was no encroachment. It is their case that the applicant made the changes in the revenue record without getting orders from the competent authority. They have also stated that disciplinary action is being initiated against Field Kanungo. Regarding the supply of the copy of E.O's report, they have stated that the applicant never demanded a copy of the report from the E.O. The respondents have pointed out that during the course of the cross-examination, the applicant denied to produce any more defence witnesses in his favour. They have stressed the fact that the decision of the Revenue Assistant was only about encroachment and he had not decided that those, whose names have been

9

entered in the Khatauni by the applicant, are the rightful owners in 1976.

4. We have heard the counsel for both parties. We find that the applicant has never denied making the entries in the record of rights and his case is that he did it as per the orders of the Field Kanungo. The E.O. has also observed that the Field Kanungo should have made cent-percent check of the entries, particularly where changes have taken place and taken appropriate action with the approval of the competent authority. From the reply of the respondent we note that they had decided to initiate action against the concerned Field Kanungo. While it would have been better for the D.A. to have listed the concerned Field Kanungo as a P.W., it was equally open to the applicant to have called him as a defence witness to justify his actions. The A.A. has not given specific reasons for rejecting the points raised by the applicant in his appeal/personal interview. The counsel for the applicant stressed the fact that the copy of E.O's report was not supplied to the applicant thus denying him the opportunity to make his representation. We see considerable force in this contention. There is absolutely no merit in the submission of the respondents that the applicant never demanded a copy of the report from the E.O. It is now well settled that

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the non-furnishing of a copy of the E.O's report to the charged officer before imposing the penalty would amount to violation of rules of natural justice. Hence on this ground alone the orders of D.A. and A.A. are liable to be set aside. In view of this, we are not going into the merits of the other points raised by the applicant.

5. In the conspectus of the case, we allow the application and dispose of the same with the following directions:-

(i) The orders of the D.A. dated 11.10.1989 and the A.A. dated 4.1.1991 are quashed and set aside.

(ii) However, the respondents are at liberty to continue the departmental proceedings, if they so desire, by supplying copy of the report of the E.O. to the applicant within 15 days from the date of receipt of a copy of this order. The applicant shall submit his representation, if any, within one month from the date of receipt of the report. The respondents shall expeditiously consider the representation and finalise the proceedings within 3 months thereafter. The treatment of period of suspension and payment of regular pension and other retirement dues, in accordance with law, shall depend on the outcome of the disciplinary proceedings.

(iii) Since the applicant submitted his appeal to A.A. on 17.11.1989 and the final order was passed by A.A. after a long time on 4.1.1991, the request of the applicant to

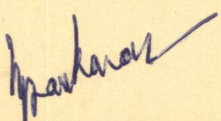
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enhance his subsistence allowance to 75%, may be considered sympathetically by the respondents, in case they decide to proceed with the disciplinary proceedings. Such enhanced sussistence allowance, if sanctioned, shall be paid from the date of his removal to the date of his superannuation.

(iv) Since the applicant is stated to have reached the age of superannuation during the pendency of this application, he shall be deemed to have been in service till the date of his superannuation. In case the respondents want to continue with the disciplinary proceedings, the applicant should be paid subsistence allowance, as admissible under the rules, from the date of his removal to the date of his superannuation and provisional pension from the date of superannuation. The arrears of subsistence allowance and provisional pension upto 29.2.1992 shall be paid within one month from the ⁴date of receipt of a copy of this order. The provisional pension thereafter shall be paid every month till the departmental proceedings are finalised.

(v) In case the applicant is aggrieved by the outcome of the disciplinary proceedings, he will have the liberty to approach this Tribunal as per law.


(S. GURUSANKARAN)
MEMBER (A)
21.02.1992


(P.K. KARTHA)
VICE CHAIRMAN (J)
21.02.1992