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**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

O.A.No.2505/2004

**Hon'ble Shri Justice B. Panigrahi, Chairman
Hon'ble Shri M.K. Misra, Member (A)**

New Delhi, this the 27th day of October, 2005

Rajendra Singh
Horticulture Assistant
MSO Building, ITO
New Delhi.

... Applicant

(By Advocate: Shri Shibashish Misra)

Vs.

1. The Government of National Capital Territory of Delhi, (Through The Chief Secretary, Delhi)
5th Level, Delhi Sachivalaya,
I.P.Estate, New Delhi – 110 002.
2. The Secretary, Services Department
(Service-I Branch) Delhi Secretariat
B Wing, 7th Level, I.P.Estate
New Delhi – 110 002.
3. The Development Commissioner
Government of NCT of Delhi
5/9, Under Hill Road, Delhi – 110 054.
4. Dr. Harbir Singh
Horticulture Chief
Arcology Deptt.,
Taj Mahal, Agra, U.P.
5. The Project Officer,
Office of the Project Officer,
Intensive Agriculture Development
Programme, NCT, Government of Delhi
Development Department,
Police Headquarters
Building, New Delhi. ... Respondents

(By Advocate: Mrs. Renu George) (for R1, 2, 3 and 5)

ORDER

By Justice B. Panigrahi, Chairman

Applicant (Sh. Rajendra Singh) assails legality, propriety and validity of the orders passed by the disciplinary authority dated 11.2.2004 and also the appellate authority dated 28.6.2004 whereby and whereunder the disciplinary authority has imposed a punishment for not giving him promotion for a period of three years, which has been affirmed by the appellate authority.

2. Skeletal picture of the applicant's case as depicted in the application is as follows:

2(a). The applicant along with 15 others was employed on 1.8.1984 in the office of the Development Commissioner, Government of Delhi on daily wage basis but subsequently they were regularized in service. It is stated by the applicant that he met with an accident on 20.1.1987 and, therefore, he was on leave and subsequently resumed his duties on 1.4.1987. On 8.5.1987, the applicant along with others was appointed to the post of Horticulture Assistant, Plant Protection Assistant, Agriculture Inspector, etc. by Respondent No.3 on ad hoc basis with effect from 1.5.1987. The applicant joined the post of Horticulture Assistant on 8.5.1987 and continuously performed his duties from 8.5.1987 to 24.9.1987. In proof of such, he submitted his joining report on 8.5.1987. He discharged his duties from 8.5.1987 till 29.9.1987 and submitted his representation to grant him salary, which came to Rs.10319/- . There was some industrial dispute raised by the workmen including the applicant in 1987 and the Industrial Tribunal gave an award on 26.11.1988 directing therein that the workmen were entitled to be regularized from the date of their initial appointment. In connection thereto, there was a meeting held under the Chairmanship of



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Development Commissioner in his Chamber on 8.12.1988. The Government of Delhi filed a Writ Petition in CW No.1128/1989 challenging the award passed by the Industrial Tribunal. It is, interalia, stated that Respondent No.3 without complying with the award passed by the Industrial Tribunal, proceeded to conduct a fresh selection for the post of Horticulture Assistant. Therefore, some Horticulture Assistants questioned the high handed and arbitrary action of Respondent No.3. The Tribunal issued directions to him to adjust all the applicants therein against the vacant posts. The Deputy Director (Horticulture) in compliance of the directions of the Tribunal passed some other orders affecting the applicants' rights. The applicant has claimed to have worked for the period from 8.5.1987 to 29.9.1987 in view of the Office Orders dated 6.7.1993 and 7.10.1995, respectively. But the respondents, without paying the salary for those periods, started disciplinary proceedings on the following two charges:

“CHARGE No.1

That Shri Rajender Singh while working as Horticulture Assistant, Shahdara, under the Development Department, G.N.C.T. Delhi during the period of June 1993 to Nov. 1993 has leveled wild allegations against Dr. Harbir Singh, Dy. Director (Hort.) with his malign intentions to defame him and tried to blame his integrity by mentioning that the Dy. Director (Hort.) is demanding a share from his payment of arrears of salary which is amounting to Rs.10319/-.

CHARGE No.2

That Shri Rajender Singh, while working as Hort. Asstt., Shahdara under the Development Department, G.N.C.T. Delhi during the period from June 1993 to Nov. 1993 has failed to maintain absolute integrity, devotion to duty and acted in a manner of unbecoming of a public servant in as such as he did not follow the procedure of the administration and he has stolen the attendance register and put the name and signature in the month of 08.05.87 to 29.9.87 and he had submitted the photocopy of the same for arrears payment.”



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3. The applicant filed written statement of defence denying the allegations made by the respondents in the aforesaid disciplinary proceedings. During the pendency of the disciplinary proceedings, the applicant claimed for supply of certain documents in addition to certain information to be furnished by the respondents. The disciplinary authority instead of supplying those documents and information, appointed the inquiry officer, who proceeded with the inquiry. From the inquiry report, it has transpired that the applicant has participated in the inquiry by cross-examining only PW-1. Subsequently, it appears that for some reason or the other, he did not take part in the inquiry. Therefore, the inquiry officer had to record the evidence ex-parte and submitted a report by suggesting that the applicant had prepared fake documents and claimed arrears from the period **8.5.1987 to 29.9.1987**. When such documents were detected, the delinquent, in turn, unnecessarily made fictitious accusation against the Deputy Director (Horticulture). The disciplinary authority agreed with the observation of the inquiry officer and imposed the penalty of denying promotion to the applicant for a period of three years, which was affirmed by the appellate authority.

4. Sh. Shibashish Misra, learned counsel appearing for the applicant, has strenuously urged that the inquiry officer and the disciplinary authority too had not applied their mind at all. The applicant was on medical leave after he met with an accident on 20.1.1987 and he continued to be on leave till 1.4.1987. On 8.5.1987, the applicant and 15 others were appointed to the posts of Horticulture Assistant, Plant Protection Assistant, Agriculture Inspector, etc. on ad hoc basis. The applicant submitted his joining report on 8.5.1987 and was continuously present in his duties from that date till 24.9.1987. Therefore, he presented a claim of Rs.10319/- towards the arrears of his salary. Neither party has submitted that such amount was paid to the applicant. Even assuming such

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amount was not paid, if the applicant manufactured the attendance from 8.5.1987 to 24.9.1987, he had to be held guilty for fabrication of records.

5. In this case, Mrs. Renu George relied upon the Xerox copies of the attendance register. We found the signature of the applicant therein. It is submitted by the learned counsel for the respondents that such signature was later on manipulated by taking the original attendance register to his residence. There is nothing on record to suggest that he had taken the attendance register to his house. This was an incident of the year 1987. From 1987 till the initiation of the proceedings, there appears to be nothing on record to suggest that any explanation was called for by the respondents-authorities from the applicant showing his conduct. From the inquiry report, it is implicit that the applicant was not given any opportunity to take part in the inquiry.

6. Sh. Shibashish Misra, learned counsel appearing for the applicant has submitted that no notice was given to him asking to appear during the inquiry.

7. Be that as it may, the fact remains that he did not participate in the inquiry and the said inquiry was conducted ex-parte. Even inquiry report does not conclusively suggest that the applicant had manipulated with the records by taking away the attendance register to his residence.

8. There was no payment of the wages from 01.05.1987 to 29.9.1987. No evidence is forthcoming as to what happened to the original Attendance Register from May, 1987 till September, 1987. The appellate authority too did not ~~discuse~~ the evidence collected during the inquiry. The copy of the evidence, as the applicant alleged, was not supplied to him besides other documents he required for his defence in the inquiry. Therefore, in the aforesaid circumstances, we are unable to accept the inquiry report as well as the findings of the disciplinary authority and the appellate authority. Accordingly, they are quashed. The

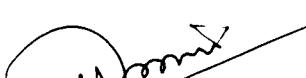


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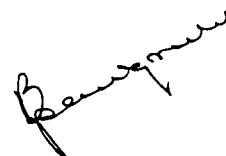
disciplinary authority is directed to proceed with the inquiry from the stage of the examination of PW-2 till completion of the examination of other witnesses. The applicant is directed to take part in the inquiry. In the event, he prefers to remain absent, it is open to the disciplinary authority to proceed with the inquiry by taking such defiant conduct of the applicant in not cooperating with the inquiry.

9. With the above observations, the application succeeds.



(M.K.MISRA)

Member (A)



(B. PANIGRAHI)

Chairman

/Rao/