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RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD

(Registration No.448 of 1986)

Lakshmi Kant Dixit Petitioner

Versus

The Superintending Surveyor,
Survey of India and Others. ... Respondents.

Hon.S.Zaheer Hasan, V.C.
Hon. Ajay Johri, A.M.

(By Hon.Ajay Johri, A.M.)

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This is an application under Section 19 of the Administrative Tribunals Act XIII of 1985. The petitioner has challenged the result of trade test communicated to him vide Survey of India No. 92 Party (SEC) Varanasi Confidential letter No.C-78/4-F-4 dated 18.7.84 (Annexure-2 of the petition) and the Confidential letter No.C-95/4-F-4 dated 22.8.84 conveying that the marks sheet will not be given to the petitioner and the Surveyor General's letter No.E2-69/C/1248/ SEC dated 5.3.86 intimating to the Director that in view of the position explained the Department do not see any reason to interfere in the decision already taken by the Survey of India. The petitioner's case is that a warning

issued to him should have no nexus with the result of the test and the test having been held in September, 1983 and his work and conduct being satisfactory upto 31.12.83 and he having ³¹been passed the trade test has been malafidely declared unsuccessful and the result has been held up for a period of ten months. According to him the warning issued by the Director, Survey of India South Eastern Circle on 28.5.84 should have no ^{relation} ~~bearing in connection~~ with the trade test result and therefore his having been declared unsuccessful is ³¹of violative of legal procedures, rules and regulations. According to the petitioner his promotion to grade 2 was due on 1.1.1984. The record of his work, conduct, capacity and eligibility for the past years preceding the month of January, 1984 on which his trade test is based was above standard and therefore the issue of the warning in the month of May, 1984 could not be a ground for withholding his result and declaring him unsuccessful. The petitioner has referred to the Ministry of Home Affairs, Department of Personnel and Administrative Reforms Memo No.21/5/70-Ests(A) dated 15.5.71 which states that ³¹even the punishment of Censure, recovery ³¹of ~~and~~ pecuniary loss and stoppage of increment do not constitute a bar to

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Departmental promotion if held by test. He has therefore prayed that he may be promoted from grade III to grade II declaring him successful in the departmental promotion trade test held in the year 1983 and be paid the arrears of salary etc. and consequential benefits.

2. In their reply the respondents have said that the petitioner appeared in the trade test which was held in the month of September, 1983 and he passed in the said trade test. The result was sent to the Surveyor General for his approval but before the approval could be received from the respondent No.3 i.e. Surveyor General by the Director, on 22.3.84, at the time of his inspection by the Director, it was found that the petitioner at one place had shown a fixing on plane table Section which actually he never did and he had not even visited the place. He had cooked up some readings and computations in the height book. On a cross examination done by the Director the petitioner ultimately admitted that ^{everything} about ~~the~~ fixing of the plane table was done by him fictitiously. The manipulation which was done by the petitioner during ~~his~~ ^{his work} field, could have resulted in wrong depictions of the details and such gross negligence and knowingly done wrong work is taken very seriously by the Department as such the Surveyor General was informed about the said misconduct and manipulation done by the petitioner. ^{Here upon} ~~Secondly~~ the Surveyor General did not approve the

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candidature of the petitioner for the promotion to grade II from grade III. The petitioner requested for the Marks sheet but the circular order No. 439 issued on 1.8.50 giving provisions for making promotions, regradation, reclassification of technical staff in class III does not provide for giving any Marks sheets and therefore they were not given to the petitioner. In the petitioner's case he has passed the written examination and as such there was no question of his failure or ³marks being advised to him ^{of subjects} in which he has failed. It was only because of his bad conduct that he was not considered for promotion to the grade II and his candidature was not approved. He was communicated on 18.7.1984 that he should prepare himself for the following trade test but he did not appear in the said examination and made a representation to the Surveyor General but his request was not acc-eded to. According to the respondents the candidates who had passed the trade test were approved for promotion to grade II with effect from 1.1.1984. The orders were however issued after 1.4.84 after the approval etc. and other formalities had been completed. According to the respondents the trade test is conducted to assess the theoretical and practical knowledge. Apart from this for promotion to higher grade work, conduct and

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3/ capability of the person have also to be judged. Thus there is a nexus between the trade test, work and conduct and it is wrong to say that the work and conduct was to be judged only upto 31.12.1983. The work and conduct has to be judged till the order of promotion is made and the order was issued on 26.3.84 after the Surveyor General's approval had been received. The petitioner had shown gross sense of dishonesty whereas he was expected to show high sense of honesty so that the quality of field work could be relied upon. The decision of the Trade Test Board can be withheld if some dishonesty, cheating and other irregularities came to notice. The promotion was not denied to the petitioner due to any punishment but because he failed to make the minimum required standard. In his rejoinder the petitioner has said that the allegations about the misconduct of the petitioner are wrong as he was never chargesheeted and he ^{3/} ~~was~~ is unnecessarily being compelled to appear again in the trade test having ^{3/} ~~been~~ qualified in the ^{3/ earlier} trade test, ^{3/ & made} he should not appear again to pass the examination again.

3. We have heard the learned counsel for both parties. Shri M.P.Tandon the learned counsel for the petitioner contended that a warning issued to the petitioner after 1.1.1984 should not come

into the way of his promotion and his conduct and work was satisfactory upto the time his promotion was due and therefore if any incident had taken place after the date when the promotion was due it could not be taken into account while giving that promotion. He further emphasized that even a punishment of Censure does not debar promotion and therefore the warning given to the petitioner should not have resulted in denial of promotion to him.

2/ 4. Circular order No. 439 issued on 1.8.1950 and corrected upto 30.9.1964 by the Survey of India relates to qualifications and trade test for class III technical personnel. Para 6(d) of this circular reads as follows :-

" Personnel will have to complete the following minimum period in a particular grade before they can be promoted to the next higher grade provided their work and conduct have been satisfactory over the past one year :-

Grade IV	: 3 years
Grade III	: 2 years

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The regradations as a result of a trade test are ordered after the approval of the Surveyor General has been received. These requests from the Directors, for the Surveyor General's approval, have to reach his office by 30th September each year

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and all promotions as a result of regradation, reclassification normally take effect from 1st January following. (Para 6(a) of the circular). To assist them in assessing the qualifications of candidates Directors have to periodically convene trade test Boards consisting of not less than 3 members to consider such cases as may be recommended by the Officers Commanding of Units. The Board arranges for the candidates to undergo ^{the} trade test. In the event of any recommendation by the Board to reduce the grade of an individual the Director has to charge the individual under C.C.S. (C.C.A.) Rules for failure to maintain the required standard. The word conduct mentioned in para 6(g) of these rules has been defined to mean conduct so far as it affects the professional work of an individual.

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5. On the subject of record of inspection and correction of bad work the Survey of India Handbook of Topography, Chapter V, Sixth Edition on Plane Tabling at page 87 lays down as follows :-

" Before leaving the surveyor, the inspecting officer should mark up his inspection fixings or partial lines on the plane-table, and write the brief report on the result of his inspection.

This report should be written

neatly in ink by the inspecting officer himself, and signed and dated by him; it is very important that it should be preserved as a permanent record. It should on no account be written in pencil to be inked up by the surveyor.

If a surveyor's work is found inaccurate, the inspecting officer must record the orders that he gives for its proper revision.

The inaccuracies may be of a petty nature and the corrections made by the inspecting officer, sufficient.

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The surveyor may be ordered to go over his work again, either over the whole of it, or over certain definite areas; in this case, it is very important that the work shall be examined a second time.

It may be necessary to get in another surveyor to revise the faulty areas, or it may be necessary to reject the work altogether, and have it resurveyed on another board.

In cases where revision of the work is necessary, the examining officer should take a trace of the faulty work, before he leaves the surveyor. This trace will be compared with the work as finally revised, and will be an evidence of the surveyor's inaccuracy. "

On 28.5.84 a warning was issued to the petitioner by the Director, South Eastern Circle (Annexure-10B of the Paper Book). This warning referred to the inspection made by the Director on 22.3.84 and said

that the petitioner had shown on his Plane Tabling Sections a fixing which he never actually did. Not only this, he had even cooked up some readings and computations in the Height Book and the points from where he was supposed to have taken clinometric readings were not at all visible from his fixing. When the Director chased the matter and followed up the ever-changing versions from place to place in the jungles for 3 hours, the petitioner admitted that everything about the fixing was fictitious. On the above the Director said that it showed lack of professional integrity and therefore the petitioner was warned that unless he remained ^{or absolutely unassailable} in the matter of professional integrity he will soon face serious situation in his career. The point that has to be seen is whether as laid down in the rules this misconduct can be taken as professional misconduct which would debar a person from promotion.

6. Alfred Avins in his Hand Book "Employees Misconducts" has observed that

" in analysing the mass of conflicting cases of disabling conduct, two guiding principles must always be kept in mind. The law of Industrial Discipline never punishes damage without fault; and it never immunizes fault which creates a risk because no damage materialises. "

In the letter issued to the petitioner by the

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Director on 28.5.84 (Annexure-108 of Paper Book) his professional integrity was questioned. Such a misconduct involves dishonesty and can be considered a serious misconduct. When an employee is guilty of only carelessness or negligence but there is no question of fraud or dishonesty then a severe punishment may become disproportionate. In cases where repeated acts of misappropriation are found it has been felt that it would be hardly conducive to harmonious industrial relations to compel the defaulters retention in service against the will of the employer. It was only a very minor punishment that was given to the petitioner for his fudging the fixing of the plane table. It becomes difficult for an employer to tolerate dishonest employees who indulge in fudging, specially when the type of work that is being done in the employer's organisation is of a very important nature and is likely to have serious repercussions if it is wrongly depicted. We do not find in this case any extraordinary circumstances which the petitioner could plead to justify his conduct in falsifying the work which was entrusted to him. It can therefore not be argued that the action of the petitioner which resulted in a warning having been given to him on 22.3.84 was in any way not a professional misconduct.

7. The second question that arises is that

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the petitioner was due for promotion on 1.1.1984. According to the instructions given in circular order No. 439 the request for regradation on the results of trade test had to reach the Surveyor General's office by 30th September in each year, and after his approval has been received the promotions take effect from 1st January following. During the course of arguments the learned counsel for the respondents was emphatic that there was no time table and a few months delays in finalizing the promotion orders are normal and routine. The promotion orders were issued in March, 1984 and the promotions were made effective from 1.1.1984. The learned counsel for the respondents further contended that though the Surveyor General had approved the result of the trade test in which the petitioner's promotion was also approved, ³¹ this approval was subsequently withdrawn by him on a report sent by the Director in regard to the above professional misconduct of the petitioner. We therefore find here a situation where the circular order laid down a time table ³² ~~that~~ the recommendations for the particular year ³² ~~must~~ ^{should have} reach the Surveyor General by 30th September so that promotions could be made effective from 1.1.1984. The petitioner's case was that on 1.1.1984 there was no case against him and his work was entirely satisfactory. He had not been communicated any adverse remarks. This is supported by the communication of the ³³ ~~adverse~~ ^{adverse re-} marks in 1984 (Annexure-RA.4). In this it was mentioned

31/ that for the year ending 30.9.84 the following adverse remarks are communicated. " You did fudging in Plane-tabling " and in the same report the good qualities and other general comments of the petitioner were also conveyed which showed that his performance in the field was satisfactory. His proficiency in the field was also satisfactory. His attitude towards subordinates and superiors is good and his sense of responsibility, consciousness, initiative and reliability are satisfactory. It would thus be seen that the petitioner's ^{performance} has been generally satisfactory ^{31/} in his ~~performance~~ and therefore if the time table as laid down in the circular order No. 439 had been followed and the recommendations had been sent in September his approval for promotion would have been received and he would have been promoted from 1.1.1984. The contention of the learned counsel for the respondents that any misconduct upto the time of issue of the promotion orders could still withhold the promotion orders cannot be accepted as a sound argument. If there is a misconduct which can result in the withholding of promotion proper disciplinary proceedings have to be followed before a promotion could be stopped. We agree with the contention of the learned counsel for the petitioner that a conduct which has to be taken into account should be only the conduct upto the time when the promotion became due and

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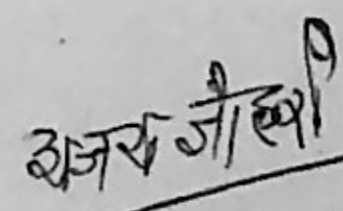
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orders for which should have been issued with the approval having been asked in the month of September preceding the month of January when the promotion was to be made. The petition is therefore liable to be allowed on this account.

8. On the above considerations we order that the petitioner's case should be reviewed by the competent authority on the ground that the recommendations from the Director became due in the month of September for the promotion to be ordered with effect from January following and if the petitioner had nothing against his conduct at the relevant time, the petitioner will be entitled to be considered for promotion with effect from 1.1.1984 and he will also be eligible to the consequential benefits. This review should be made within three months from the date of this order. The petition is disposed of accordingly. Parties will bear their own costs.


Vice Chairman(J)


Member (A)

Dated the 27th May, 1987

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