

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

Commercial Complex (BDA)
Indiranagar
Bangalore - 560 038

Dated : 10 JUN 1988

APPLICATION NO.

917

/ 87(F)

W.P. NO.

Applicant(s)Shri S.M. Pattanaik
To

V/s

The Chief Secretary, Govt. of Karnataka,
Bangalore & another

1. Shri S.M. Pattanaik IAS

Managing Director
Karnataka Silk Industries Corporation
Public Utility Building
M.G. Road
Bangalore - 560 001

2. Shri B.R. Hegde

Advocate
247, 1st Stage
Indiranagar
Bangalore - 560 038

3. The Chief Secretary

Govt. of Karnataka
Vidhana Soudha
Bangalore - 560 001

4. The Chief Secretary to

Govt. of Karnataka
Vidhana Soudha
Bangalore - 560 001

5. Shri S.V. Narasimhan

State Govt. Advocate
C/o Advocate General (KAT Unit)
Commercial Complex(BDA).
Indiranagar
Bangalore - 560 038Respondent(s)Subject : SENDING COPIES OF ORDER PASSED BY THE BENCHPlease find enclosed herewith the copy of ORDER/87(F)/EXTERIOR ORDER
passed by this Tribunal in the above said application(s) on 8-6-88.

Encl : As above

Recd/Recd
10/6/88B.M. (Advocate) DPC
(Advocate) DPCB.M. Venkatesh
DEPUTY REGISTRAR
(JUDICIAL)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH BANGALORE

DATED THIS THE EIGHTH DAY OF JUNE, 1988

Present : Hon'ble P. Srinivasan ... Member (A)

APPLICATION NO.917/87 (F)

S.M. Pattanaik
(Indian Administrative Service)
Karnataka Cadre,
Presently Managing Director,
Karnataka Silk Industries Corporation,
Public Utility Building,
M.G. Road, Bangalore-1.

Applicant

(Shri B.R. Hegde ... Advocate)

v.

The State of Karnataka,
through the Chief Secretary,
Vidhana Soudha,
Bangalore.

Chief Secretary to Government
of Karnataka,
Vidhana Soudha,
Bangalore.

Respondents

(Shri S.V. Narasimhan . Advocate)

This application came up for hearing on 31.5.1988 before
this Tribunal. Hon'ble Shri P. Srinivasan, Member (A), made the
following:

O R D E R

Adverse remarks in the confidential record of a Government servant veritably constitute writing on the wall for him. They could ruin his career, and if undeserved, demoralise the service itself. On the other hand, the maintenance of a high standard of efficiency in Government service demands that only the best be promoted to the higher echelons for, apart from the increasingly important roles they have to play in the functioning

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of the Government, they also serve as an example for their juniors to follow. Primarily it is the function of the officials in Government to judge the competence of officers working under them because they are in constant and intimate touch with them in their day-to-day work. This Tribunal cannot presume to assess the qualities of a Government servant, for, apart from the unsettling effect such interference may have on the day-to-day running of the administration, it is not qualified to do so. This Tribunal, would, therefore, be slow in entertaining applications challenging adverse remarks in confidential reports. Broadly speaking, interference in such matters would be justified where there is a legal infirmity in the manner of recording the remarks or where the remarks are patently perverse, not being based on any relevant material with the reporting or reviewing officers to support them or where a clear case of animus or malafides is established against the person who made the remarks. The Supreme Court, in R.L. BUTAIL V. UNION OF INDIA, 1970 SLR 926, ruled that in recording remarks based on a general assessment of work performed by a Government servant, the reporting authority need not refer to specific incidents upon which the assessment is based, "except in cases where as a result of any specific incidents a censure or a warning is issued and when such warning is by an order to be kept in the personal file of the Government servant". This ruling of the Supreme Court further restricts the scope of interference on the ground of absence of supporting evidence to cases where a specific incident is the basis of an adverse remark or recordable warning.



P. L. K.

2. The applicant in this application, an IAS officer of the Karnataka Cadre, is aggrieved with a warning issued to him by the Chief Secretary of the Karnataka Government, by a demis official (DO) letter dated 21.8.1986 (Annexure A - page 23 of the application), in respect of a specific incident referred to therein. This was a recordable warning which was directed to be kept in his confidential character rolls. The applicant challenged this letter in application No.1737 of 1986 filed before this Tribunal which, by order dated 22.4.1987, to which I was a party, directed the applicant to file an appeal against the said letter and exhaust the departmental remedies before coming to this Tribunal. Thereafter, the applicant filed an appeal but that was rejected on behalf of the Government of Karnataka by order dated 29.9.1987 (Annexure E pages 38-40 of the application). The applicant challenges the validity of the warning issued to him and the rejection of his appeal against the same. More specifically, he wants this Tribunal to quash the DO letter of the Chief Secretary dated 21.8.1986 (Annexure A- page 23) and the order dated 29.9.1987 issued in the name of the Governor of Karnataka (Annexure E - pages 38-40 of the application) rejecting his representation. The letter of the Chief Secretary, Government of Karnataka, dated 21.8.1986 reads as follows:-

" 'CONFIDENTIAL' "

VIDHANA SOUDHA
BANGALORE - 560 001.

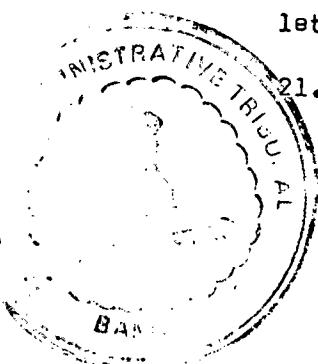
D.O. NO. DPAR 437 SAS 86

CHIEF SECRETARY

DATED 21st Aug. 1986.

My dear Pattanaik,

Sub: Permission for allotment of alternative
site in favour of Sri S.M.Pattanaik and



P.S.

Smt. Subhara Pattanaik.

It has come to the notice of Government that you got allotted an alternative site bearing No.2989/I-A, HAL 11 Stage, in lieu of site No.4011, HAL II Stage allotted earlier by the B.D.A. while functioning as Commissioner, BDA. Government have examined the entire issue and have come to the conclusion from the circumstances of the case and the expedition with which the proposal was processed that you have taken undue advantage of your official position. I am, therefore, desired to convey a warning to you for this lapse.'

Yours sincerely,

Sd/-

(T.R.SATISH CHANDRAN)"

The operative portion of the second document which is challenged here namely, the order dated 29.9.1987 rejecting the appeal of the applicant, reads as follows:-

" ORDER NO.DPAR 220 SAS 87 DATED 29.9.1987

After considering all aspects of the matter, Government do not see any merit to reconsider the decision regarding warning issued to the officer. The representation dated 4.5.1987 of Shri S.M.Pattanaik, IAS, is therefore, rejected.

By order and in the name
of the Governor of Karnataka

Sd/-

(A. Ramaswamy)
Under Secy to Government
I/C DPAR (Services - I)"

This order is preceded by a preamble in which the events leading to the issue of the warning have been set out in detail to which I presently turn.

3. The facts giving rise to this application are these:

The applicant joined the Indian Administrative Service (IAS) in 1967 on the basis of a competitive examination held in 1966 and was allotted to the Karnataka Cadre. From 1982, he has been working in the super-time scale of the said Service.

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He has held several top posts like those of Chairman, Karnataka State Road Transport Corporation, Member, Karnataka Appellate Tribunal, Commissioner, Bangalore Corporation, Commissioner of Bangalore Development Authority, Chairman, Karnataka Silk Industries Corporation and is currently working as Chairman, Mysore Sugar Company, Mandya, an undertaking owned by the State of Karnataka. When the applicant was working as Commissioner, Bangalore Municipal Corporation, in December 1982, he and his wife applied for allotment of a house site to the Bangalore Development Authority (BDA). He was allotted site No.4011 in HAL II Stage measuring 49' x 67' in December 1982 by BDA. He immediately paid the amount due on allotment and took possession of the site. On 23.8.1985, he was transferred to BDA as Commissioner. The post of Commissioner is the highest executive post in BDA. While working in that post, the applicant and his wife made an application on 4.12.1985 for allotment of an alternative site. It was stated in this application that the site already allotted to him was situated in a marshy area 3 ft. below the road level and was liable to water-logging. The site was also too small for his purpose and so he and his wife had not constructed any house on it till then. Though BDA itself had the power to allot an alternative site, the application was addressed to the Housing and Urban Development (HUD), Department of the Karnataka Government with the explanation that such a course was being adopted "as a measure of abundant caution, since Shri S.M. Pattanaik is now the Commissioner of BDA". HUD Department was requested



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to "kindly direct the BDA to allot a bigger stray site situated in a better place in HAL II Stage or in any other lay-out in lieu of our present site". The Under Secretary, HUD Department promptly sent a reply addressed to the Commissioner, BDA (not by name) dated 6.12.1985 in which he wrote

"I am directed to state that an alternative site as requested by Sri S.M. Pattanaik and Smt. Sbuhra Patnaik in lieu of stray site No.4011, HAL-II Stage, Bangalore, may be allotted.

Action taken in the matter may be intimated to Government."

The applicant made a note on the margin of the letter directing the Secretary, BDA, to "process this paper and directly put up to the Chairman, BDA, for being included in the agenda of the Authority meeting. This file should not be routed through me, since I am the subject matter of this case." A meeting of the Governing Body of the BDA was held on 13.12.1985 at which the application of the applicant for allotment of alternative site was put up as Agenda Item No. 974. The Governing Body consisted of 10 non-official members and 11 senior officers of the Government of Karnataka including the Secretary, HUD Department, the Chairman, Water Supply and Sewerage Board, the Chief Architect to the Government, the Director of Health and Family Welfare, the Chairman, Karnataka State Electricity Board, the Vice-Chairman of KSRTC and the Chairman of the BDA. The applicant as Commissioner, BDA, was also

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a member. But in the proceedings of the meeting, it was recorded that he did not participate in the discussion relating to his application. The Governing Body unanimously decided to allot to the applicant alternative site No.2989 I-A in HAL II Stage. On receipt of the letter of allotment, the applicant duly paid the cost of the site to the BDA amounting to Rs.1,00,779 at the rate of Rs.200 per metre on 15.1.1986 and took possession of the same on the same day. It may be mentioned here that for the original site allotted to him in December 1982 the total value paid by the applicant was Rs.26,833.

4. After the applicant took possession of the new site allotted to him, complaints were made in the press by a former member of the Legislative Council of Karnataka about the propriety of the action. It appears that the matter also came up for discussion in the Legislative Council. On 24.1.1986 the Karnataka Government issued directions that the proceedings of the BDA allotting an alternative site to the applicant and his wife be stayed with immediate effect and until further orders. A complaint against the applicant in respect of the same transaction was filed with the Lok Ayukta of Karnataka. The allegation was that he had got a more valuable site in exchange of the old site by misusing his position for his personal gain, and had taken possession of the site by completing the formalities in indecent haste. He had misused his authority to get the adjacent site to one Jose Alexander by-passing all the rules and regulations relating to allotment of alternative stray sites. By a



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detailed order dated 17.7.1986 the Upa Lok Ayukta fully exonerated the applicant of the charges levelled against him. The applicant thereupon addressed a letter dated 18.7.1986 to the Chief Secretary to the Government of Karnataka enclosing the order of the Upa Lok Ayukta. Notwithstanding this, the Chief Secretary addressed the impugned D.O. letter dated 21.8.1986 to the applicant extracted earlier in this order. Reference has already been made to the appeal filed by the applicant against this letter and its rejection by the Government of Karnataka.

5. Shri B.R. Hegde, learned counsel for the applicant, submitted that there was no justification for the Government of Karnataka to come to the conclusion that the applicant had taken undue advantage of his official position and had got himself allotted an alternative site and on that basis to issue a recordable warning to the applicant for the alleged lapse. Merely because the applicant was the Commissioner of BDA, he was not precluded from seeking an exchange of site from BDA. The Government of Karnataka had issued guidelines for allotment of alternative sites by BDA on 26.8.1982. These were, as the name itself suggests, only guidelines and not orders which BDA had invariably to follow. They were not specific directions to do or not to do something as contemplated in Section 65 of the B.D. Act. It was provided in those guidelines that allotment of alternative sites should be confined to cases where multiple allotment or allotment of non-existent sites had taken place or in cases where the



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allotted site was fully unfit for construction of dwelling house. The applicant fulfilled the last of these conditions because the original site allotted to him was in a low-lying area subject to water-logging and filling up the depression to put up a construction thereon would cost more than Rs.50,000. For these reasons, it was a site fully unfit for construction of dwelling house and the applicant was justified in applying for allotment of alternative site. The second guideline requires that alternative sites should be allotted only in new layouts which are being formed by BDA, meaning thereby, sites yet to be notified for allotment to the public. The plan for the layout which comprised the original site allotted to the applicant in 1982 was made in 1975, while the plan covering the layout in which the alternative site allotted to the applicant was located was made in 1985. Clearly therefore the alternative site allotted to the applicant in 1985 was in a new layout in which allotment of sites were made only in December 1985 onwards. A certain Jose Alexander was allotted one site on 3.12.1985 by BDA and the applicant was allotted site No.2989 I-A on 13.12.1985. Thus the second guideline was also fulfilled. The applicant could not be accused of expediting the allotment of alternative site to him because it was not he as Commissioner of BDA who made the allotment. He observed the proprieties by applying to the HUD Department of the Government of Karnataka which surely was not under his control. If his application dated 4.12.1985 was put ^{up} ^M by the Secretary HUD to the Minister and the latter passed order thereon immediately, the applicant was not responsible for it.



P.S. *[Signature]* *[Signature]*

The HUD Department had on its own acted expeditiously and sent a reply to the application made by the applicant on 6.12.1985. The applicant cannot be said to have influenced the minister who directed that alternative site be allotted to the applicant. On receipt of the reply from HUD Department on 6.12.1985, the applicant had acted again with great propriety, directing the Secretary to process the paper and put it up directly to the Chairman for being included in the agenda of the meeting of the authority.

He had made it clear that the file should not be routed through him since he was the subject matter of the case.

The Secretary put up the reply of the HUD Department to the Chairman who decided to include it in the agenda of the meeting of the authority to be held on 13.12.1985. This was a decision of the Chairman of the BDA and not of the applicant. At the meeting of the authority on 13.12.1985, the applicant did not take part in the discussion about his application for alternative site. The other members comprising very senior officials of the Government of Karnataka and 10 non-official members unanimously decided to allot the alternative site to the applicant. Truly the applicant cannot be accused of influencing all the members of the authority, none of whom was working under him or was in any

way beholden to him. After the alternative site was allotted, the applicant paid the enhanced cost of the site compared to the cost paid by him earlier for the original site. He was in no way responsible for expediting the process. In fact,

he took no part in the decision making process at all because

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he took the care of applying to the Government and after getting the reply of the Government, staying away from the meeting of the authority which considered his application along with the directions of the Government.

Therefore, even if there was any violation of any guideline set down by the Government, he could not be held

guilty. The Secretary, HUD Department and the Minister of that Department who had directed the BDA to allot to him an alternative site and the members of the authority who were present and unanimously decided to allot the alternative site to him were all aware of the guidelines.

The question here was not whether any guideline had been violated in the allotment of alternative site to the applicant but whether the applicant had misused his position to get the alternative site allotted to him and to get it done quickly. If the allotment of alternative site violated any guideline and if it was felt that such allotment was therefore illegal, Government would have taken steps to cancel the allotment, but on the other

hand, the stay of the allotment ordered by the Government on 24.1.1986 was removed by them on their own initiative in October 1986. When the applicant acted with the utmost

propriety in keeping himself away from the decision making process, the letter of the Chief Secretary alleging (1) that he had got allotted the alternative site and (2) that he had got the proposal processed expeditiously taking undue advantage of his official position was not based on any evidence whatsoever and therefore the action in conveying the warning to the applicant was arbitrary and illegal.



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6. Shri S.V. Narasimhan, learned counsel for R-1 and 2 sought to refute the contentions urged by Shri Hegde. The main theme of his argument was that the allotment of alternative site to the applicant was in gross violation of the guidelines issued by the Government of Karnataka in its order dated 26.3.1982. Government had power to issue directions to the BDA and these directions were binding on the BDA. The guidelines issued by the Government on 26.3.1982 constituted such directions which BDA was bound to follow. Shri Narasimhan drew my attention to guidelines 1 and 2 which according to him had been violated in this case. Guideline 1 reads thus:

"Allotment of alternative sites should be confined to the cases where multiple allotment and allotment of non-existent sites have taken place or in cases where the allotted site is fully unfit for construction of dwelling house."

This was not a case of multiple allotment or allotment of non-existent site nor was this a case of a site which was fully unfit for construction of dwelling house. Others had been allotted sites in the same area and they had accepted the allotment. An inspection team had also reported that a house could be constructed on the site. Guideline 2 on which Shri Narasimhan laid great stress reads thus:

"The BDA should allot alternative sites only in the new lay outs which were being formed by it. For this purpose new lay out means in which the sites are yet to be notified for allotment to public."

HAL II stage was only ^{one} lay out and it was in this lay out that the original site was allotted to the applicant. The alternative site allotted to him was also in the same lay out. The applicant, as Commissioner of BDA, should have

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known that in his case neither of these guidelines was applicable and knowing this he should not have accepted the allotment. The fact that the site plan in respect of the area in which the alternative site was situated was made in 1985 while the plan covering the site earlier allotted to the applicant was made in 1975 does not mean that the two constituted separate lay outs. The entire land comprising the HAL II Stage had been acquired as a block in 1959 and the plans for making plots were made in two stages, one in 1975 and other in 1985. The first allotment of a site in the plan prepared in 1985 was made on 2.12.1985 i.e., before the applicant even applied for an alternative site. In other words, when the applicant made his application, the sites in the plan made in 1985 had already been notified for allotment to the public and an allotment had in fact been made. Guideline 2 contemplated that when an alternative site is allotted, the new lay out in which the alternative site is located should not have been notified for allotment of sites. Therefore there was clear material to show that allotment of alternative site to the applicant was against guideline 2 and the applicant as the Chief Executive of BDA should not have accepted the alternative site.

7. Shri Narasimhan also posed the question whether the warning issued to the applicant was at all justiciable. The State Government had assessed the events leading to the allotment of the alternative site to the applicant and had come to the conclusion that he had misused his position to



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get the allotment and to expedite the same. His explanation against the warning had also been duly considered and rejected. This Tribunal should not reapprise the evidence and come to a different assessment.

8. Dealing further with the indication that led to the conclusion that the applicant had actually misused his position, Shri Narasimhan drew my attention first to the letter dated 6.12.1985 from the Under Secretary HUD Department addressed to the Commissioner, BDA (Annexure A). The letter merely conveyed the decision of the Government that an alternative site as requested by Shri S.M. Pattanaik and Smt. Subhra Pattanaik in lieu of stray site 4011 HAL II stage, Bangalore may be allotted. The assumption here was that such allotment should be made in accordance with the guidelines laid down by the Government on the subject. It was for the applicant to ensure that the guidelines were strictly followed. But he failed to do so. In his note on the margin addressed to the Secretary, BDA, the applicant had directed that the paper be put up to the Chairman for being included in the agenda of the Authority meeting. When the applicant as the Chief Executive of the BDA specifically directed that the paper may be put up to the Chairman 'for being included in the agenda of the Authority meeting' the Secretary had no choice but to do so. He was, therefore, in fact forcing pace by directing that the Government's letter be included in the agenda of the Authority meeting. Instead, he should have left it to the Secretary and the Chairman to

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decide whether the paper should be put up at the meeting of the Authority.

9. In short, Shri Narasimhan contended that there was enough material for the respondents to come to the conclusion conveyed in the impugned DO letter of 21.8.1986 (Annexure A) viz., that guidelines for allotment of alternative sites issued by the Government had been violated and the matter had been expedited in such a way that the allotment of alternative site was made within 9 days of the date of the application given by the applicant. The Government of Karnataka had rejected the applicant's representation against the warning issued to him by its order dated 29.9.1987, giving cogent and detailed reasons for doing so. This Tribunal, therefore, should not interfere with the decision of the Government.

10. I have given the most anxious thought to the contentions addressed by both sides. This is a ~~case~~ ^{of} warning ~~was~~ issued to the applicant as a result of a specific incident and that warning has been ordered to be kept in the personal file of the applicant. Respondents have taken the view that the circumstances of the case and the expedition with which the proposal was processed showed that the applicant had taken undue advantage of his official position. That being the case, in terms of the judgment of the Supreme Court in R.L. Butail's case, this Tribunal is required to examine the evidence on which the conclusion was drawn. I, therefore, reject the contention of Shri Narasimhan that this Tribunal cannot examine the soundness of the decision of the Respondents to



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issue a warning to applicant. If there is any evidence which would support the conclusion, then, of course, it is not for this Tribunal to go into the adequacy of the evidence or to appraise it all over again and to substitute its own judgment. Now what is the specific charge against the applicant? He is said to have (i) taken undue advantage of his official position in getting allotted the alternative site and (ii) expediting the whole process. The charge suggests positive action on the part of the applicant in misusing his official position. What is the evidence for saying so? As urged by Shri Hegde, there is no law preventing the Chief Executive of the BDA from asking for allotment of an alternative site in exchange for a site already allotted to him. It may be that because of the position held by him, he was aware at the time that a fresh plan had been made in HAL II stage in which he could obtain a site. But, as the records show, the applicant chose not to make any recommendation himself to the governing body of BDA, but made an application to the State Government clarifying therein that he did not desire that BDA should make the allotment since he was its Chief Executive. In fact, his application to the Government for allotment of alternative site should itself absolve him of any charge of using his position to get an alternative site allotted. Now, the Under Secretary, HUD Department wrote back to BDA promptly on 6.12.1985 conveying the decision of the Government to allot an alternative site to him. It is common ground that the application of the applicant was put up by the Secretary, HUD Department to the Minister concerned who directed that BDA be asked to accede



P. J. — C

to the applicant's request. There is nothing to show that this speedy action was a result of any influence exercised by the applicant on the Secretary HUD Department or on the Minister concerned. It is quite possible that the Secretary HUD Department being himself an IAS officer took quick action on the application made by the applicant, another officer of the same service. But how can this be taken to mean that the applicant exercised any influence himself? There is nothing either to show that the applicant had exercised influence on the minister concerned to pass order in his favour quickly. It is, therefore, not as if the mere expedition with which the HUD Department and its minister acted without any more evidence could lead to only one conclusion viz. that the applicant had exercised any influence or pressure. When the letter from the HUD Department was received in BDA, the applicant made a note in the margin addressed to the Secretary directing him to put it up to the Chairman directly and not to himself because he was an interested party. Again, this note, in the absence of any evidence to the contrary, supports the applicant's case that he had not got anything done himself. The reference in the note to inclusion of the item in the agenda of the Authority meeting which has been played up by Shri Narasimhan as an attempt to expedite its consideration by the Authority does not impress me. It is not disputed that every application for alternative site has to go before the Authority, more so when it is supported by a direction from the Government. Moreover, even if the applicant suggested the item to be included in the



agenda, the Chairman of BDA who was an officer superior in rank to the applicant could have vetoed the suggestion but he did not. It was not as if the applicant could order the Chairman to include a particular matter in the agenda. The only inference that can be drawn is that the Chairman acting on his own volition decided to include the application for an alternative site by the applicant in the agenda of the Authority meeting on 13.12.1985. Here again it is quite possible that the Chairman knew the applicant closely as Commissioner of BDA and, therefore, directed the matter to be included in the agenda but this can hardly be held against the applicant. Therefore, on the record, the applicant has taken the utmost care to see that he was not in any way associated with the process of decision making and apart from the record there is nothing to indicate that he had actually persuaded or induced or directed anybody to act in his favour. The minutes of the meeting of the Authority held on 13.12.1985 have recorded that the applicant did not take part in the discussion relating to his application for an alternative site. It is not disputed that the Authority consisted of 10 non-officials and 11 senior officials. The officials who participated were not subordinate to the applicant nor has it been shown by any scrap of evidence that they or any of the non-officials were in any way beholden to the applicant. The decision to allow the alternative site to him was unanimous. I am, therefore, unable to find any evidence to support the conclusion that the applicant had actively used his position to get an alternative site allotted to him.



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11. I now turn to the contention that the allotment of an alternative site to the applicant was in violation of the guidelines issued by the Government. If, as held by me above, the applicant kept himself away at all stages of the processing of his application, it would seem idle to say that he was responsible for the violation of any guideline on the matter. Be that as it may, it is also difficult to come to a categorical finding that the guidelines were violated in this case. First of all, if the guidelines constituted directions issued by the Government under Section 65 of the BDA Act which BDA was bound to follow and if, further as contended by Shri Narasimhan, they were issued in pursuance of the executive power of the State Government under Articles 162 and 166 of the Constitution of India and if it was felt that the allotment of alternative site in this case violated those guidelines, nothing prevented the State Government from cancelling the allotment which it had the power to do. The fact that this has not been done is a clear indication that the State Government either did not consider the guidelines as statutory orders to be invariably followed in all cases or that the allotment in this case was in accordance with the guidelines. Secondly, on a close scrutiny of the guidelines I am unable to come to a view that there has been a flagrant violation thereof in this case. The first guideline so far as it is relevant for the present case is that allotment of alternative site



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should be made only where the site already allotted is fully unfit for construction of dwelling house. The applicant had in his application stated that the site allotted to him was at a level 3 ft. below the road, and was therefore subject to water logging and because of this he was unable to construct a house thereon. When can a site be considered fully unfit for construction of a dwelling house? Is it only when no construction whatsoever is possible in spite of any steps being taken by the owner? Obviously, it cannot be so because BDA itself would not select an area where no construction is possible at all for the purpose of plotting it out into house sites and allotting them. On the other hand, one person may be able to incur the expenditure of filling up a marshy area and raise the site to road level to put up a building and another may not be able to afford such expenditure in addition to putting up a house of the size required by him. So far as the latter is concerned the site may, therefore, be fully unfit for construction. There cannot be an absolute standard prescribed for this purpose. I should not be understood here to be interpreting the guidelines but I am only indicating that it is capable of different interpretations. In this case the applicant pleaded his inability to construct a house and the Government obviously after due consideration directed BDA to allot him an alternative site. The only inference that can be drawn is that his claim that the site was fully unfit for construction of dwelling house was accepted by the Government which had issued the guidelines. In these circumstances I am unable to say that there was a violation of the guideline



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justifying a warning to the applicant. I have perused the note recorded by the Chief Secretary on the subject. He has mentioned that between 26.8.1982 and 31.12.1985, BDA had given 783 alternative sites all of which violated the conditions laid down in the Government order. Over the years, BDA had been exercising a great deal of flexibility and discretion in allowing alternative sites. The applicant's case was only one such. The note also states that Government was aware of the practice and in many cases had itself given directions. From all this the only one inference that is possible is that the Government did not consider the guidelines as inviolable and so violation of the guidelines, if any, cannot be held against any allottee including the applicant.

12. Turning to guideline No.2, here also I am unable to agree that there was a patent violation of that guideline in this case so as to justify the issue of a warning to the applicant. This guideline says that an alternative site can be allotted only in a new lay out. What is a new lay out? Is Shri Narasimhan right when he says that since the entire land comprised in the two plans made in 1975 and 1985 was acquired in one transaction in 1959, the sites in the two plans constituted only one lay out or when two areas in a plot of land acquired in one deed are plotted out into sites on two different occasions can it be said that a separate lay out was formed on each such occasion? In my view the choice between these two ways of looking at the guideline is not so obvious as to say that if one



P. D. 18

of them were followed the guideline itself is violated. When the governing body of BDA consisting of several non-officials and several senior officers of the Government approved of the allotment of the alternative site to the applicant, the presumption has to be that they knew the guideline and acted in accordance with it. I have already mentioned that Government itself which issued the guidelines did not consider them inviolable. Therefore, even assuming that the applicant took an active part in the entire process leading up to the allotment of alternative site to him, for which there is no evidence at all as already stated, I am convinced that no categorical statement can be made against him of having violated guideline 1 or 2.

13. In the light of the above discussion I am convinced that there was no evidence whatsoever on which the respondents could reach the conclusion which they did when conveying a recordable warning to the applicant in the impugned DC letter of the Chief Secretary dated 21.8.1986. The decision of the Upa Lok Ayukta exonerating the applicant of more or less the same charges fortifies me in the view I have taken. For the same reason, I am also unable to uphold the decision of the respondents on the representation of the applicant against the warning so issued to reject the same by order dated 29.9.1987 (Annexure E). I have therefore, no hesitation in quashing the DO letter dated 21.8.1986 (Annexure A) and the order dated 29.9.1987 of the Government rejecting the applicant's representation. I hereby quash both of them and direct the respondents to delete any reference to this warning incorporated in his character roll. The said letter

P. S - 18



of warning shall not form part of the confidential dossier of the applicant and should not be taken into account for any purpose whatsoever.

14. In the result the application is allowed. But in the circumstances of the case, parties to bear their own costs.

sd/-

MEMBER (A) 8/6/80

TRUE COPY

bsv



R. Venkatesh
DEPUTY REGISTRAR (JDL) 8/6/80
CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

Commercial Complex(BDA),
II Floor, Indiranagar,
Bangalore- 560 038.

To

Dated: 13-6-88

1. Shri. Sanjeev Malhotra,
All India Services Law Journal,
Hakikat Nagar, Mal Road,
New Delhi- 110 009.
2. Administrative Tribunal Reporter,
Post Box No. 1518,
Delhi- 110 006.
3. The Editor,
Administrative Tribunal Cases,
C/o. Eastern Book Co.,
34, Lal Bagh,
Lucknow- 226 001.
4. The Editor,
Administrative Tribunal Law Times,
5335, Jawahar Nagar,
(Kolhapur Road),
Delhi- 110 007.
5. M/s. All India Reporter,
Congressnagar,
Nagpur.

Sir,

I am directed to forward herewith a copy of the Order
mentioned order passed by a Bench of this Tribunal comprising of

Hon'ble Mr. _____ Vice-Chairman/

Member(J) and Hon'ble Mr. P. Sreenivasan Member(A)

with a request for publication of the order in the Journals.

Order dated 8.6.88 passed in A.Nos. 917/87(F)

Yours faithfully,

Sdl -
(B.V. VENKATA REDDY)
DEPUTY REGISTRAR(J).

getred
Ranjan
13-6-88

de

Copy with enclosure forwarded for information to:

1. The Registrar, Central Administrative Tribunal, Principal Bench, Faridkot House, Copernicus Marg, New Delhi- 110 001.
2. The Registrar, Central Administrative Tribunal, Tamil Nadu Text Book Society Building, D.P.I.Compunds, Nungambakkam, Madras- 600 006.
3. The Registrar, Central Administrative Tribunal, C.G.O.Complex, 234/4, ADC Bazar Road, Nixon Palace, Calcutta- 700 020.
4. The Registrar, Central Administrative Tribunal, CGO Complex(CBD), 1st Floor, Naar Karkon Bhawan, New Bombay- 400 614.
5. The Registrar, Central Administrative Tribunal, 23-A, Post Bag No. 013, Thorn Hill Road, Allahabad- 211 001.
6. The Registrar, Central Administrative Tribunal, S.C.O.102/103, Sector 34-A, Chandigarh.
7. The Registrar, Central Administrative Tribunal, Rajgarh Road, Off Bhilong Road, Guwahati- 781 005.
8. The Registrar, Central Administrative Tribunal, Kandamkulathil Towers, 5th & 6th Floor, Opp.Maharaja College, M.G.Road, Ernakulam, Cochin-682001.
9. The Registrar, Central Administrative Tribunal, CARAVS Complex, 15 Civil Lines, Jabalpur(MP).
10. The Registrar, Central Administrative Tribunal, 88-A B.M.Enterprises, Shri Krishna Nagar, Patna-1.
11. The Registrar, Central Administrative Tribunal, C/o.Rajasthan High Court, Jodhpur(Rajasthan).
12. The Registrar, Central Administrative Tribunal, New Insurance Building Complex, 6th Floor, Tilak Road, Hyderabad.
13. The Registrar, Central Administrative Tribunal, Navrangpura, Near Sardar Patel Colony, Usmanapura, Ahmedabad.
14. The Registrar, Central Administrative Tribunal, Dolamundai, Cuttak-
(AGRA)-753001.

Copy with enclosure also to:

1. Court Officer(Court I)
2. Court Officer(Court II)

B.V.Venkata Reddy
(B.V.VENKATA REDDY)
DEPUTY REGISTRAR(J).

dc:

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH BANGALORE

DATED THIS THE EIGHTH DAY OF JUNE, 1988

Present : Hon'ble P. Srinivasan ... Member (A)

• • •

Member (A)

APPLICATION NO.917/87 (F)

S.M. Pattanaik
(Indian Administrative Service)
Karnataka Cadre,
Presently Managing Director,
Karnataka Silk Industries Corporation,
Public Utility Building,
M.G. Road, Bangalore-1.

Applicant

(Shri B.R. Hegde ... Advocate)

v.

The State of Karnataka,
through the Chief Secretary,
Vidhana Soudha,
Bangalore.

Chief Secretary to Government
of Karnataka,
Vidhana Soudha,
Bangalore.

Respondents

(Shri S.V. Narasimhan • Advocate)

This application came up for hearing on 31.5.1988 before
" ..
this Tribunal. Hon'ble Shri P. Srinivasan, Member (A), made the
following:

ORDER

Adverse remarks in the confidential record of a Government servant veritably constitute writing on the wall for him. They could ruin his career, and if undeserved, demoralise the service itself. On the other hand, the maintenance of a high standard of efficiency in Government service demands that only the best be promoted to the higher echelons for, apart from the increasingly important roles they have to play in the functioning

of the Government, they also serve as an example for their juniors to follow. Primarily it is the function of the officials in Government to judge the competence of officers working under them because they are in constant and intimate touch with them in their day-to-day work. This Tribunal cannot presume to assess the qualities of a Government servant, for, apart from the unsettling effect such interference may have on the day-to-day running of the administration, it is not qualified to do so. This Tribunal, would, therefore, be slow in entertaining applications challenging adverse remarks in confidential reports. Broadly speaking, interference in such matters would be justified where there is a legal infirmity in the manner of recording the remarks or where the remarks are patently perverse, not being based on any relevant material with the reporting or reviewing officers to support them or where a clear case of **animus** or **malafides** is established against the person who made the remarks. The Supreme Court, in **R.L. BUTAIL V. UNION OF INDIA**, 1970 SLR 926, ruled that in recording remarks based on a general assessment of work performed by a Government servant, the reporting authority need not refer to specific incidents upon which the assessment is based, "except in cases where as a result of any specific incidents a censure or a warning is issued and when such warning is by an order to be kept in the personal file of the Government servant". This ruling of the Supreme Court further restricts the scope of interference on the ground of absence of supporting evidence to cases where a specific incident is the basis of an adverse remark or recordable warning.

P. S. K.

2. The applicant in this application, an IAS officer of the Karnataka Cadre, is aggrieved with a warning issued to him by the Chief Secretary of the Karnataka Government, by a demis official (OO) letter dated 21.8.1986 (Annexure A - page 23 of the application), in respect of a specific incident referred to therein. This was a recordable warning which was directed to be kept in his confidential character rolls. The applicant challenged this letter in application No.1737 of 1986 filed before this Tribunal which, by order dated 22.4.1987, to which I was a party, directed the applicant to file an appeal against the said letter and exhaust the departmental remedies before coming to this Tribunal. Thereafter, the applicant filed an appeal but that was rejected on behalf of the Government of Karnataka by order dated 29.9.1987 (Annexure E pages 38-40 of the application). The applicant challenges the validity of the warning issued to him and the rejection of his appeal against the same. More specifically, he wants this Tribunal to quash the OO letter of the Chief Secretary dated 21.8.1986 (Annexure A- page 23) and the order dated 29.9.1987 issued in the name of the Governor of Karnataka (Annexure E - pages 38-40 of the application) rejecting his representation. The letter of the Chief Secretary, Government of Karnataka, dated 21.8.1986 reads as follows:-

" 'CONFIDENTIAL' "

VIDHANA SOUDHA
BANGALORE - 560 001.

D.O. NO. DPAR 437 SAS 86

CHIEF SECRETARY

DATED 21st Aug. 1986.

My dear Pattanaik,

Sub: Permission for allotment of alternative
site in favour of Sri S.M.Pattanaik and



Smt. Subhara Pattanaik.

It has come to the notice of Government that you got allotted an alternative site bearing No.2989/I-A, HAL 11 Stage, in lieu of site No.4011, HAL II Stage allotted earlier by the B.D.A. while functioning as Commissioner, BDA. Government have examined the entire issue and have come to the conclusion from the circumstances of the case and the expedition with which the proposal was processed that you have taken undue advantage of your official position. I am, therefore, desired to convey a warning to you for this lapse.'

Yours sincerely,

Sd/-

(T.R.SATISH CHANDRAN)"

The operative portion of the second document which is challenged here namely, the order dated 29.9.1987 rejecting the appeal of the applicant, reads as follows:-

" ORDER NO.DPAR 220 SAS 87 DATED 29.9.1987

After considering all aspects of the matter, Government do not see any merit to reconsider the decision regarding warning issued to the officer. The representation dated 4.5.1987 of Shri S.M.Pattanaik, IAS, is therefore, rejected.

By order and in the name
of the Governor of Karnataka

Sd/-

(A. Ramaswamy)
Under Secy to Government
I/C DPAR (Services - I)"

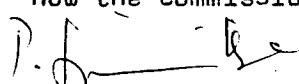
This order is preceded by a preamble in which the events leading to the issue of the warning have been set out in detail to which I presently turn.

3. The facts giving rise to this application are these:

The applicant joined the Indian Administrative Service (IAS) in 1967 on the basis of a competitive examination held in 1966 and was allotted to the Karnataka Cadre. From 1982, he has been working in the super-time scale of the said Service.

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He has held several top posts like those of Chairman, Karnataka State Road Transport Corporation, Member, Karnataka Appellate Tribunal, Commissioner, Bangalore Corporation, Commissioner of Bangalore Development Authority, Chairman, Karnataka Silk Industries Corporation and is currently working as Chairman, Mysore Sugar Company, Mandya, an undertaking owned by the State of Karnataka. When the applicant was working as Commissioner, Bangalore Municipal Corporation, in December 1982, he and his wife applied for allotment of a house site to the Bangalore Development Authority (BDA). He was allotted site No.4011 in HAL II Stage measuring 49' x 67' in December 1982 by BDA. He immediately paid the amount due on allotment and took possession of the site. On 23.8.1985, he was transferred to BDA as Commissioner. The post of Commissioner is the highest executive post in BDA. While working in that post, the applicant and his wife made an application on 4.12.1985 for allotment of an alternative site. It was stated in this application that the site already allotted to him was situated in a marshy area 3 ft. below the road level and was liable to water-logging. The site was also too small for his purpose and so he and his wife had not constructed any house on it till then. Though BDA itself had the power to allot an alternative site, the application was addressed to the Housing and Urban Development (HUD), Department of the Karnataka Government with the explanation that such a course was being adopted "as a measure of abundant caution, since Shri S.M. Pattanaik is now the Commissioner of BDA". HUD Department was requested

P. S. Iyer


to "kindly direct the BDA to allot a bigger stray site situated in a better place in HAL II Stage or in any other lay-out in lieu of our present site". The Under Secretary, HUD Department promptly sent a reply addressed to the Commissioner, BDA (not by name) dated 6.12.1985 in which he wrote

"I am directed to state that an alternative site as requested by Sri S.M. Pattanaik and Smt. Sbuhra Patnaik in lieu of stray site No. 4011, HAL-II Stage, Bangalore, may be allotted.

Action taken in the matter may be intimated to Government."

The applicant made a note on the margin of the letter directing the Secretary, BDA, to "process this paper and directly put up to the Chairman, BDA, for being included in the agenda of the Authority meeting. This file should not be routed through me, since I am the subject matter of this case." A meeting of the Governing Body of the BDA was held on 13.12.1985 at which the application of the applicant for allotment of alternative site was put up as Agenda Item No. 974. The Governing Body consisted of 10 non-official members and 11 senior officers of the Government of Karnataka including the Secretary, HUD Department, the Chairman, Water Supply and Sewerage Board, the Chief Architect to the Government, the Director of Health and Family Welfare, the Chairman, Karnataka State Electricity Board, the Vice-Chairman of KSRTC and the Chairman of the BDA. The applicant as Commissioner, BDA, was also

P. f. 65

a member. But in the proceedings of the meeting, it was recorded that he did not participate in the discussion relating to his application. The Governing Body unanimously decided to allot to the applicant alternative site No.2989 I-A in HAL II Stage. On receipt of the letter of allotment, the applicant duly paid the cost of the site to the BDA amounting to Rs.1,00,779 at the rate of Rs.200 per metre on 15.1.1986 and took possession of the same on the same day. It may be mentioned here that for the original site allotted to him in December 1982 the total value paid by the applicant was Rs.26,833.

4. After the applicant took possession of the new site allotted to him, complaints were made in the press by a former member of the Legislative Council of Karnataka about the propriety of the action. It appears that the matter also came up for discussion in the Legislative Council. On 24.1.1986 the Karnataka Government issued directions that the proceedings of the BDA allotting an alternative site to the applicant and his wife be stayed with immediate effect and until further orders. A complaint against the applicant in respect of the same transaction was filed with the Lok Ayukta of Karnataka. The allegation was that he had got a more valuable site in exchange of the old site by misusing his position for his personal gain, and had taken possession of the site by completing the formalities in indecent haste. He had misused his authority to get the adjacent site to one Jose Alexander by-passing all the rules and regulations relating to allotment of alternative stray sites. By a

P. S. Iyer

detailed order dated 17.7.1986 the Upa Lok Ayukta fully exonerated the applicant of the charges levelled against him. The applicant thereupon addressed a letter dated 18.7.1986 to the Chief Secretary to the Government of Karnataka enclosing the order of the Upa Lok Ayukta. Notwithstanding this, the Chief Secretary addressed the impugned D.O. letter dated 21.8.1986 to the applicant extracted earlier in this order. Reference has already been made to the appeal filed by the applicant against this letter and its rejection by the Government of Karnataka.

5. Shri B.R. Hegde, learned counsel for the applicant, submitted that there was no justification for the Government of Karnataka to come to the conclusion that the applicant had taken undue advantage of his official position and had got himself allotted an alternative site and on that basis to issue a recordable warning to the applicant for the alleged lapse. Merely because the applicant was the Commissioner of BDA, he was not precluded from seeking an exchange of site from BDA. The Government of Karnataka had issued guidelines for allotment of alternative sites by BDA on 26.8.1982. These were, as the name itself suggests, only guidelines and not orders which BDA had invariably to follow. They were not specific directions to do or not to do something as contemplated in Section 65 of the B.D. Act. It was provided in those guidelines that allotment of alternative sites should be confined to cases where multiple allotment or allotment of non-existent sites had taken place or in cases where the

P.S. - 16a

allotted site was fully unfit for construction of dwelling house. The applicant fulfilled the last of these conditions because the original site allotted to him was in a low-lying area subject to water-logging and filling up the depression to put up a construction thereon would cost more than Rs.50,000. For these reasons, it was a site fully unfit for construction of dwelling house and the applicant was justified in applying for allotment of alternative site. The second guideline requires that alternative sites should be allotted only in new layouts which are being formed by BDA, meaning thereby, sites yet to be notified for allotment to the public. The plan for the layout which comprised the original site allotted to the applicant in 1982 was made in 1975, while the plan covering the layout in which the alternative site allotted to the applicant was located was made in 1985. Clearly therefore the alternative site allotted to the applicant in 1985 was in a new layout in which allotment of sites were made only in December 1985 onwards. A certain Jose Alexander was allotted one site on 3.12.1985 by BDA and the applicant was allotted site No.2989 I-A on 13.12.1985. Thus the second guideline was also fulfilled. The applicant could not be accused of expediting the allotment of alternative site to him because it was not he as Commissioner of BDA who made the allotment. He observed the proprieties by applying to the HUD Department of the Government of Karnataka which surely was not under his control. If his application dated 4.12.1985 was put ^{up} ^M by the Secretary HUD to the Minister and the latter passed order thereon immediately, the applicant was not responsible for it.

P.F. *[Signature]*

The HUD Department had on its own acted expeditiously and sent a reply to the application made by the applicant on 6.12.1985. The applicant cannot be said to have influenced the minister who directed that alternative site be allotted to the applicant. On receipt of the reply from HUD Department on 6.12.1985, the applicant had acted again with great propriety, directing the Secretary to process the paper and put it up directly to the Chairman for being included in the agenda of the meeting of the authority. He had made it clear that the file should not be routed through him since he was the subject matter of the case. The Secretary put up the reply of the HUD Department to the Chairman who decided to include it in the agenda of the meeting of the authority to be held on 13.12.1985. This was a decision of the Chairman of the BDA and not of the applicant. At the meeting of the authority on 13.12.1985, the applicant did not take part in the discussion about his application for alternative sites. The other members comprising very senior officials of the Government of Karnataka and 10 non-official members unanimously decided to allot the alternative site to the applicant. Truly the applicant cannot be accused of influencing all the members of the authority, none of whom was working under him or was in any way beholden to him. After the alternative site was allotted, the applicant paid the enhanced cost of the site compared to the cost paid by him earlier for the original site. He was in no way responsible for expediting the process. In fact, he took no part in the decision making process at all because

P. S. - 15

he took the care of applying to the Government and after getting the reply of the Government, staying away from the meeting of the authority which considered his application along with the directions of the Government.

Therefore, even if there was any violation of any guideline set down by the Government, he could not be held guilty. The Secretary, HUD Department and the Minister of that Department who had directed the BDA to allot to him an alternative site and the members of the authority who were present and unanimously decided to allot the alternative site to him were all aware of the guidelines. The question here was not whether any guideline had been violated in the allotment of alternative site to the applicant but whether the applicant had misused his position to get the alternative site allotted to him and to get it done quickly. If the allotment of alternative site violated any guideline and if it was felt that such allotment was therefore illegal, Government would have taken steps to cancel the allotment, but on the other hand, the stay of the allotment ordered by the Government on 24.1.1986 was removed by them on their own initiative in October 1986. When the applicant acted with the utmost propriety in keeping himself away from the decision making process, the letter of the Chief Secretary alleging (1) that he had got allotted the alternative site and (2) that he had got the proposal processed expeditiously taking undue advantage of his official position was not based on any evidence whatsoever and therefore the action in conveying the warning to the applicant was arbitrary and illegal.

75-18

agenda, the Chairman of BDA who was an officer superior in rank to the applicant could have vetoed the suggestion but he did not. It was not as if the applicant could order the Chairman to include a particular matter in the agenda. The only inference that can be drawn is that the Chairman acting on his own volition decided to include the application for an alternative site by the applicant in the agenda of the Authority meeting on 13.12.1985. Here again it is quite possible that the Chairman knew the applicant closely as Commissioner of BDA and, therefore, directed the matter to be included in the agenda but this can hardly be held against the applicant. Therefore, on the record, the applicant has taken the utmost care to see that he was not in any way associated with the process of decision making and apart from the record there is nothing to indicate that he had actually persuaded or induced or directed anybody to act in his favour. The minutes of the meeting of the Authority held on 13.12.1985 have recorded that the applicant did not take part in the discussion relating to his application for an alternative site. It is not disputed that the Authority consisted of 10 non-officials and 11 senior officials. The officials who participated were not subordinate to the applicant nor has it been shown by any scrap of evidence that they or any of the non-officials were in any way beholden to the applicant. The decision to allow the alternative site to him was unanimous. I am, therefore, unable to find any evidence to support the conclusion that the applicant had actively used his position to get an alternative site allotted to him.

P.S. 1/2

11. I now turn to the contention that the allotment of an alternative site to the applicant was in violation of ~~the~~ M guidelines issued by the Government. If, as held by me above, the applicant kept himself away at all stages of the processing of his application, it would seem idle to say that he was responsible for the violation of any guideline on the matter. Be that as it may, it is also difficult to come to a categorical finding that the guidelines were violated in this case. First of all, if the guidelines constituted directions issued by the Government under Section 65 of the BDA Act which BDA was bound to follow and if, further as contended by Shri Narasimhan, they were issued in pursuance of the executive power of the State Government under Articles 162 and 166 of the Constitution of India and if it was felt that the allotment of alternative site in this case violated those guidelines, nothing prevented the State Government from cancelling the allotment which it had the power to do. The fact that this has not been done is a clear indication that the State Government either did not consider the guidelines as statutory orders to be invariably followed in all cases or that the allotment in this case was in accordance with the guidelines. Secondly, on a close scrutiny of the guidelines I am unable to come to a view that there has been a flagrant violation thereof in this case. The first guideline so far as it is relevant for the present case is that allotment of alternative site.

D. S. - 19 -

should be made only where the site already allotted is fully unfit for construction of dwelling house. The applicant had in his application stated that the site allotted to him was at a level 3 ft. below the road and was therefore subject to water logging and because of this he was unable to construct a house thereon. When can a site be considered fully unfit for construction of a dwelling house? Is it only when no construction whatsoever is possible in spite of any steps being taken by the owner? Obviously, it cannot be so because BDA itself would not select an area where no construction is possible at all for the purpose of plotting it out into house sites and allotting them. On the other hand, one person may be able to incur the expenditure of filling up a marshy area and raise the site to road level to put up a building and another may not be able to afford such expenditure in addition to putting up a house of the size required by him. So far as the latter is concerned the site may, therefore, be fully unfit for construction. There cannot be an absolute standard prescribed for this purpose. I should not be understood here to be interpreting the guidelines but I am only indicating that it is capable of different interpretations. In this case the applicant pleaded his inability to construct a house and the Government obviously after due consideration directed BDA to allot him an alternative site. The only inference that can be drawn is that his claim that the site was fully unfit for construction of dwelling house was accepted by the Government which had issued the guidelines. In these circumstances I am unable to say that there was a violation of the guideline

P. L. K.

justifying a warning to the applicant. I have perused the note recorded by the Chief Secretary on the subject. He has mentioned that between 26.8.1982 and 31.12.1985, BDA had given 783 alternative sites all of which violated the conditions laid down in the Government order. Over the years, BDA had been exercising a great deal of flexibility and discretion in allowing alternative sites. The applicant's case was only one such. The note also states that Government was aware of the practice and in many cases had itself given directions. From all this the only one inference that is possible is that the Government did not consider the guidelines as inviolable and so violation of the guidelines, if any, cannot be held against any allottee including the applicant.

12. Turning to guideline No.2, here also I am unable to agree that there was a patent violation of that guideline in this case so as to justify the issue of a warning to the applicant. This guideline says that an alternative site can be allotted only in a new lay out. What is a new lay out? Is Shri Narasimhan right when he says that since the entire land comprised in the two plans made in 1975 and 1985 was acquired in one transaction in 1959, the sites in the two plans constituted only one lay out or when two areas in a plot of land acquired in one deed are plotted out into sites on two different occasions can it be said that a separate lay out was formed on each such occasion? In my view the choice between these two ways of looking at the guideline is not so obvious as to say that if one

P. J. K. S.

of them were followed the guideline itself is violated. When the governing body of BDA consisting of several non-officials and several senior officers of the Government approved of the allotment of the alternative site to the applicant, the presumption has to be that they knew the guideline and acted in accordance with it. I have already mentioned that Government itself which issued the guidelines did not consider them inviolable. Therefore, even assuming that the applicant took an active part in the entire process leading up to the allotment of alternative site to him, for which there is no evidence at all as already stated, I am convinced that no categorical statement can be made against him of having violated guideline 1 or 2.

13. In the light of the above discussion I am convinced that there was no evidence whatsoever on which the respondents could reach the conclusion which they did when conveying a recordable warning to the applicant in the impugned DC letter of the Chief Secretary dated 21.8.1986. The decision of the Upa Lok Ayukta exonerating the applicant of more or less the same charges fortifies me in the view I have taken. For the same reason, I am also unable to uphold the decision of the respondents on the representation of the applicant against the warning so issued to reject the same by order dated 29.9.1987 (Annexure E). I have therefore, no hesitation in quashing the DC letter dated 21.8.1986 (Annexure A) and the order dated 29.9.1987 of the Government rejecting the applicant's representation. I hereby quash both of them and direct the respondents to delete any reference to this warning incorporated in his character roll. The said letter

P. S. [Signature]

of warning shall not form part of the confidential dossier of the applicant and should not be taken into account for any purpose whatsoever.

14. In the result the application is allowed. But in the circumstances of the case, parties to bear their own costs.

sd/-

MEMBER (A) 8/6/80

TRUE COPY

bsv

R. Venkatesh
DEPUTY REGISTRAR (JDL) *5/6*
CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

Commercial Complex (BOA)
Indiranagar
Bangalore - 560 038

Dated : 13 JAN 1989

CONTEMPT
PETITION (CIVIL) APPLICATION NO. _____
IN APPLICATION NO. 917/87(F) _____
W.P. NO. _____

73

88

Applicant(s)

Shri S.M. Pattanaik
To

Respondent(s)

V/s The Chief Secretary, Govt. of Karnataka,
Bangalore & another

1. Shri S.M. Pattanaik, IAS
Chairman & Managing Director
The Mysore Sugar Co., Ltd.,
MYSUGAR Building
Jayachamarajendra Vadeyer Road
Bangalore - 560 002
2. Shri B.R. Hegde
Advocate
247, 1st Stage
Indiranagar
Bangalore - 560 038
3. The Chief Secretary
Govt. of Karnataka
Vidhana Soudha
Bangalore - 560 001
4. Shri A.B. Datar
Chief Secretary
Govt. of Karnataka
Vidhana Soudha
Bangalore - 560 001
5. Shri S.M. Babu
State Govt. Advocate
C/o Advocate General's Office (KAT Unit)
BOA Commercial Complex
Indiranagar
Bangalore - 560 038

Subject : SENDING COPIES OF ORDER PASSED BY THE BENCH

Please find enclosed herewith the copy of ORDER/STAY/INTERIM ORDER
passed by this Tribunal in the above said application(s) on 6-1-89

R. Venkatesh
DEPUTY REGISTRAR
(JUDICIAL)

Encl : As above

**In the Central Administrative
Tribunal Bangalore Bench,
Bangalore**

ORDER SHEET

C.P. (Civil) Application No. 73 .. of 198 8

Applicant

S.M. Pattanaik

V/s

**The Chief Secretary, Govt. of Karnataka,
Bangalore & anr**

Respondent

Advocate for Applicant

Advocate for Respondent

B.R. Hegde

S.M. Babu

Date

Office Notes

Orders of Tribunal

KSP/PS : 6.1.89

ORDER

In this petition, the petitioner wants us to punish the respondents in application No. 917/87 for failure to comply with the directions issued by one of us (Hon'ble Shri P. Srinivasan) sitting as a Single Member Bench disposing of this application.

Notices were issued to the respondents.

When the matter came up for hearing, Shri S.M. Babu, learned counsel for the respondents, informs us that our order has been duly complied with. M

Shri N. Umapathi for Shri B.R. Hegde for the petitioner does not dispute. H

In view of the above, we hereby drop the contempt of court proceedings leaving the parties to bear their own cost.

Sd/-

VICE CHAIRMAN & J.

Sd/-

MEMBER (A)

for Deceased
DEPUTY REGISTRAR (JDL) 13/1
CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE