

**IN THE WEST BENGAL ADMINISTRATIVE
TRIBUNAL
BIKASH BHAVAN, SALT LAKE CITY
K O L K A T A – 7 0 0 0 9 1**

**Present :-
The Hon'ble Smt. Urmita Datta (Sen)
Officiating Chairperson and Member (J)**

**J U D G M E N T
-of-**

Case No. O.A. - 1050 of 2014

Asim Kumar Modak Applicant

-Versus-

State of West Bengal & others....Respondents

**For the Applicant : - Mr. Goutam Pathak Banerjee,
Mr. Subit Kumar Mondal,
Advocates.**

**For the State Respondent:- Mr. Anirudha De,
Ms. Ruma Sarkar,
Mr. S. Debray,
(Departmental Representatives)
Land & Land Reforms Department.**

Judgment delivered on : 27.9.2022

**The Judgment of the Tribunal was delivered by:-
The Hon'ble Smt. Urmita Datta (Sen), Officiating Chairperson and
Member (J)**

Judgement

1. The instant application has been filed praying for following reliefs:-

“a) A direction do issue upon the concerned respondent authorities to forthwith quash / set-aside / revoke / cancel the impugned Final Order dated 13.08.2014, passed by the Director of Land Records & Surveys and Joint Land Reforms Commissioner, West Bengal together with the Findings of the Inquiring Authority dated 03.09.2013 and the entire Departmental Proceeding initiated against the applicant under Charged Memo. No. 59/866/con/2013 dated 11.07.2013, all being ANNEXURE-“H”, “G” & “F” respectively, and to command them to act strictly in accordance with law;

b) A direction do issue upon the concerned respondent authorities to forthwith produce all relevant documents in this regards and further to command them not to act in any manner whatsoever prejudicial to the interest of the applicant.

c) And/or to pass such other or further Order or Orders as to this Hon’ble Tribunal may deem fit and proper.”

2. As per the applicant, while he was posted as U.D.C. under S.D.L. and L.R.O. Sadar, Jalpaiguri, he was served with a Show-Cause Notice dated 03.01.2013, whereby he was asked to Show Cause as to why penal action would not be taken up against him for preparation of false report, on the basis of which, the permission

for cutting of 51 numbers of Sal trees were issued by the Forest Department (Annexure – “A”). Though the applicant vide his reply to the said Show Cause Notice denied such allegation, however, again three Show Cause Notices dated 11.01.2013, 04.04.2013 and 11.04.2013 were issued by the District Land and Land Reforms Officer, Jalpaiguri (Annexure –“B”).

Subsequently, the District Land and Land Reforms Officer, Jalpaiguri put him under suspension vide order dated 24.05.2013 (Annexure -”C”) under Rule 7(1) of the West Bengal Services (Classification, Control and Appeal) Rules 1971.

While the applicant was under suspension, he was served with a Notice on 02.08.2013 (Annexure –“E”) from the Inquiry Authority, wherefrom he came to know that the said Inquiry Authority was appointed to enquire the charges framed against the applicant and he was asked to appear before the said Inquiry Authority on 13.08.2013. The applicant had duly appeared before the Inquiry Authority on the schedule date i.e. on 13.08.2013, when he was served with a Charge Sheet dated 11.07.2013 issued by the O.S.A. and Ex-officio Director of Land Records & Surveys along with forwarding letter dated 07.08.2013 (Annexure “F”). On 13.08.2013, he was granted time to file his written submission of defense by 20.08.2013, which he had filed on 19.08.2013 (Annexure-“G”). However, as per the applicant, the Inquiry Authority, without examine and cross-examine the witnesses, had submitted his final findings on 03.09.2013 (Annexure –“G”). Thereafter, the Disciplinary Authority issued a Second Show Cause Notice by proposing punishment on 07.10.2013 (Annexure –“H”), against which the applicant filed his reply on 14.11.2013. However, the Disciplinary Authority without appreciating the submission of

applicant had passed his Final Order on 13.08.2014 (Annexure-“H”) imposing a major punishment of demotion of applicant from the post of U.D.C. to L.D.C., which was served upon him vide Memo. dated 28.08.2014.

3. As per the applicant, though he had appeared before the Inquiry Authority on 13.08.2013 and the Inquiry Authority had allowed the applicant to file written statement of defense on / or before 20.08.2013 and the applicant had submitted the same on 19.08.2013, however, the Inquiry Authority, without fixing any further date of hearing, had concluded the proceedings in a single date and submitted his findings on 03.09.2013 in violation of the procedure enumerated for disciplinary proceedings. Further the said findings of the Inquiry Authority was submitted without examining and cross-examining the witnesses, which is a clear violation of the settled position of law as laid down by the Hon’ble Apex Court in the case of State of Punjab –Vs- Bhagat Ram, reported in AIR 1974 SC 2335. It has been further submitted that as in the findings no evidences were corroborated by the witnesses, therefore, it vitiates the inquiry proceedings as observed by the Hon’ble Apex Court in the matter of Union of India –Vs- S.C.Goel, reported in 1964 AIR SC 364. It has been further submitted that though the applicant had raised all the points in his reply to the Second Show Cause Notice but none of such points were considered while passing the final order by the Disciplinary Authority.

As per the applicant, the said Final Order dated 03.09.2013 as well as Disciplinary Proceeding is liable to be quashed on the following grounds (i) charges are vague, (ii) list of relied upon were not supplied to him (iii) inquiry was concluded in a single date i.e. on 13.08.2013 as well as (iv) the inquiry report was

submitted without examining and / or cross-examining the witnesses.

4. The respondents have filed their written statement and have submitted that after being appointed as Inquiry Authority, the Inquiry Authority had issued notice on 02.08.2013 fixing the date of hearing on 13.08.2013. Similarly Presenting Officer was appointed also vide Memo. dated 11.07.2013. The same order also received on 29.07.2013 as reflected in the Peon Book. With regard to the conclusion of the inquiry proceeding in a single date, it has been submitted that the Inquiry Authority initiated the departmental proceeding on 01.08.2013 on the basis of facts noted in the order sheet, and thereafter, hearing notice issued to the applicant and all other witnesses fixing the next date of hearing as 13.08.2013. The applicant had prayed for another seven days time to prepare and submit the written statement of defense, which was allowed and the applicant was directed to submit the same on / or before 20.08.2013. However, the applicant submitted his written statement of defense on 19.08.2013. Thereafter, perusing such statement of defense as well as all other documents, the Inquiry Authority submitted his Inquiry Report on 03.09.2013. Therefore, as per the respondents, the departmental proceeding was never disposed of by a single date. However, it has been submitted that inquiry proceedings were concluded on the basis of submission made by the applicant and other documentary evidences and Inquiry Authority had only recommended the punishment. However, the Disciplinary Authority, after applying his mind, has passed the Final Order.
5. The applicant has filed rejoinder by denying the contention of the respondents.

6. I have heard the parties and perused the records. From the perusal of the Peon Book, it is noted that the applicant had received the Show Cause Notices and also Charge Sheet as he had submitted his reply to such Show Cause Notices and Charge Sheet. In the Inquiry Report dated 03.09.2013, it is noted that under the heading Annexure IV, Inquiry Authority had recorded, inter alia:

“All the witnesses were present on the date of hearing and their attendance sheets are enclosed.”

From the perusal of the aforesaid report as well as perusal of the Departmental File, no submission of examination and cross-examination of the witnesses are being found. It is settled principle of law that examination and cross-examination is integral part of natural justice as charges cannot be proved by the prosecution without the corroboration made by the witnesses. In the instant case, admittedly the witnesses were not examined or cross-examined by the Presenting Officer or by the applicant. Therefore, the inquiry proceeding has been vitiated. It is further noted that the applicant has made representation dated 14.11.2013 as well as dated 30.06.2014. However, though the Disciplinary Authority had recorded that the applicant had submitted his representation dated 30.06.2014, however, he did not give any findings on his submission and straightway imposed punishment. As the Inquiry Report was submitted without examining and cross-examining the witnesses and on the basis of such Inquiry Report, Disciplinary Authority has imposed punishment upon the applicant. Therefore, the Final Order dated 13.08.2014 passed by the Disciplinary Authority has also being vitiated.

7. In view of the above, I quash and set aside the Inquiry Report dated 03.09.2013 as well as Disciplinary Authority's order dated 13.08.2014 and remand back the matter to the Inquiry Authority

to hold the inquiry proceeding as per settled principle of Law and Rules and also direct the Disciplinary Authority to conclude the disciplinary proceeding and communicate his final decision by way of reasoned and speaking order. The respondents are directed to conclude the entire proceeding within a period of six months from the date of receipt of the order. Accordingly, the O.A. is disposed of with the above observations and directions with no order as to costs.

URMITA DATTA (SEN)
Officiating Chairperson and Member (J)

A.K.P.