

ORDER SHEET

WEST BENGAL ADMINISTRATIVE TRIBUNAL

Bikash Bhavan, Salt Lake, Kolkata – 700 091.

Present-

The Hon'ble Sayeed Ahmed Baba, Officiating Chairperson & Member (A)

Case No. – OA 110 of 2023

Repon Chowdhury -- VERSUS – The State of West Bengal & Ors.

Serial No. and
Date of order

For the Applicant : Mr. M.N. Roy,
Mr. G. Halder,
Ld. Advocates.

04
20.07.2023

For the State respondent : Ms. R. Sarkar,
Mr. S. Debray,
Mrs. A. Bhattacharya,
Mr. R. Bag,
Depttl. Reps.

The matter is taken up by the Single Bench pursuant to the order contained in the Notification No. 638-WBAT/2J-15/2016 (Pt.-II) dated 23rd November, 2022 issued in exercise of the powers conferred under Section 5(6) of the Administrative Tribunals Act, 1985.

On consent of the learned counsels for the contesting parties, the case is taken up for consideration sitting singly.

In this application, the prayer is for setting aside the second Show Cause Notice dated 10.06.2022, findings of the Disciplinary Authority and the final order dated 05.01.2023 which had imposed a punishment upon the applicant. The memorandum of charge contains two charges (i) that record of rights of some land being altered on the basis of various registered conveyance deeds which later appeared to be fake. (ii) that some patta proceedings were found manipulated and tampered with.

In the article of charge, some Khatian nos. have been mentioned as specific instances for which the charged officer has been charged for tampering the records. The relevant part of the findings of the Inquiring Authority is as under :

“The Charged Officer (C.O.) submitted in written deposition dated 07.01.2022, i.e. prior to the date of hearing of the instant Departmental Proceeding that he incorporated the data of registered deeds which was produced before him at the time of hearing of disposal of alleged mutation applications but being a quasi-judicial authority he did not pay any look to find the facts of the said deeds. For example, in deed no. 3411 dated 25/07/2014 a visible discrepancy could have been found. In the said deed (copy enclosed), it is observed that the name of the vendor

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was of a female but the photograph displayed on the said deed was that of a male. Hence, I am of opinion that the Charged Officer failed to discharge his function properly and violated of provision of Rule 3(2) of West Bengal Services (Duties, Rights and Obligations Rules of the Government employee) Rules, 1980 which is unbecoming of a responsible Government Officer and hence the charge brought against him is established.”

It is also mentioned in the said report that a total of 49 RoRs were allegedly recorded on the basis of fake conveyance deed of those lands. In the same report, the details of names of several persons have been mentioned who have benefited title of these lands through fraudulent deeds in different mouzas under Salboni Block in which the Charged Officer and the applicant was the BL & LRO. In reply to such charges, the Charged Officer/the applicant has denied that as BL & LRO, he has neither any jurisdiction nor the competence to interfere with the process of registration of conveyance deed which is done by a separate and independent office of West Bengal Registration and Stamp Revenue. After completion of the departmental proceedings, the Disciplinary Authority passed the final order dated 05.01.2023 in which the following charge was levelled as established :

“1) Shri Repon Chowdhury, SRO-II attached to the Office of the BL & LRO, Salboni, Paschim Medinipur, altered Record of Rights on the basis of various registered conveyance which subsequently found mismatch (fake) and it further appears that it was an outcome of vicious cycle, allegedly, operating to get the record change on the basis of fake deeds.

It also appears that patta proceedings also found manipulated and tampered which brought hindrance regarding delivery of patta amongst down-trodden society.”

In conclusion, the final order imposed a penalty of “reduction of pay scale by one stage lower and stoppage of increment for a period of two years.”

Appearing on behalf of the Department, the Departmental

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Representative Ms. Sarkar submits that the Charged Officer had registered 49 such cases on the basis of fake documents presented before him as “registered deeds”. On enquiry, it was found that the real owner of these lands as per the genuine registered deeds were in the name of somebody else and not in the name of the people whose names were recorded on the basis of these fake deeds. The tabular form shows the transactions of these lands covering both as per the original ADSR records and also transaction of the same person of land on the basis of fake documents. The charge against the applicant is that he recorded the rights of these lands in the name of people on the basis of the fake deeds. Further submission is that he is also responsible for correcting the RoRs in 15 cases by ignoring the visible discrepancies where in this case, name of the vendor was female, but the photograph displayed on the deed was male. A question has been asked to the Departmental Representatives whether the real land owners whose names are shown in the column 4 of the tabular form at page 30 have lodged any complain against such manufactured deed, record of right and mutation ? Since from the charges against the charged officer, it appears that the main allegation is of recording the title of lands in the name of people who had submitted before him fake deeds, therefore, it is important to know whether there was any complain lodged by real owners of these lands in question. Also another question has been put before the Departmental Representatives, since there appears to be instances of manufacturing fake deeds, if any criminal case has been lodged against such people or not ? In response, a copy of First Information Report has been presented in which it appears that a criminal case under section 467/468/471/472/819/420 of IPC has been lodged on 16.11.2022 against one Kailash Agarwal.

My attention is drawn to an order of the Department No. 213 dated 17.01.2020 by which BL & LROs have been cautioned to take necessary steps in view of reports of forged/fake documents being presented in the offices. This order also guides the BL & LROs that in the event of such fake/forged

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being presented, the same shall be reported to the nearest Police Station. Submission is in this case, despite such Government guidelines, the applicant did not bother to either check the authenticity of the deed with the local ADSR Office or lodged any complain with the Police Station against those people who had presented such fake documents before him.

Submitting on behalf of the applicant, Mr.M.N.Roy, learned counsel states that the entire departmental proceeding suffers from serious procedural lapses. For instance, this departmental proceeding against the applicant was pressed on the basis of an inquiry conducted by the SDL & LRO, Sadar, Paschim Medinipur. Since the same SDL & LRO had conducted the preliminary enquiry, he was also appointed in the departmental proceedings as the Inquiring Authority. Thus, the doctrine of “Nemo Judex in Causa Sua” (no one should be a Judge in his own case) was ignored by the Disciplinary Authority.

Mr.M.N.Roy, further submits that on a similar matter, the order of the Tribunal in favour of the respondent was set aside by the Hon’ble High Court in WPST-85 of 2023.

Ms. R.Sarkar, submits that on a similar matter in OA-187 of 2023, the order passed by this Tribunal was upheld by the Hon’ble High Court in WPST-84 of 2023.

My attention has been drawn to an order passed by the Hon’ble High Court in WPST 85 of 2023 in the matter of Bishnu Sarkar v. The State of West Bengal & Others. In this matter also, the Inquiring Officer on whose enquiry the departmental proceeding was initiated was subsequently appointed as the Inquiring Authority. In the opinion of the Hon’ble High Court, by appointing the same person as the Inquiring Authority, “biasness may creep in the adjudicating process with an enquiry officer, who was the preliminary enquiry officer and whose report is sought to be relied upon against the writ petitioner in the disciplinary proceedings.” Thus, the Hon’ble High Court found it

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“inappropriate” for the same person to act as the Enquiry Officer.

This Tribunal has observed that in this departmental proceedings also, Arnab Chowdhury, the then SD & LRO on whose preliminary enquiry, the departmental proceedings was initiated against the charged officer was also appointed as the Inquiring Authority. In the opinion of this Tribunal, the same Inquiring Authority would be to a large degree can be influenced by his biasness from the earlier report he had submitted and thus cloud his decisions. Such biasness may likely impact the objectivity and thus effect the principle of natural justice which the applicant is entitled for.

Therefore, in the light of the observations of the Hon’ble High Court expressed in WPST 85 of 2023, the Tribunal sets aside the Final Order of punishment, 2nd Show Cause Notice and the enquiry report filed against the charged officer, with a direction to Respondent No. 2, Secretary and Land Reforms Commissioner, Department of Land & Land Reforms and Refugee, Relief and Rehabilitation to make a de novo enquiry proceeding from the enquiry stage itself by appointing a new Inquiring Authority. This whole departmental proceedings, starting right from the enquiry stage till the final order, including obtaining the advice of the Public Service Commission, West Bengal should be completed within a period of six months from the date of communication of this order.

Accordingly, the matter is **disposed of.**

CSM/SS

SAYEED AHMED BABA
Officiating Chairperson & Member (A)