

ORDER SHEET**WEST BENGAL ADMINISTRATIVE TRIBUNAL****Present-****The Hon'ble Mrs. Urmita Datta (Sen), Member(J)****The Hon'ble Mr. P. Ramesh Kumar, Member(A)****Case No – OA- 1091 of 2015.****Dipak Kumar Kamila. Vs The State of West Bengal & Others.**

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<p>16</p> <hr/> <p>24/12/2019</p>	<p>For the Applicant : Mrs. S. Agarwal, Ld. Advocate.</p> <p>For the State Respondents: Mr. A. De, Ms. R. Sarkar, Departmental Representatives Land & Land Reforms Deptt.</p> <p>The instant application has been filed praying for following relief :-</p> <p>“a) An order directing the concerned Respondents herein to consider the grievance of the applicant forthwith.</p> <p>b) An order directing the concerned Respondents herein to set aside and/or quash the impugned order dated 17.07.2015 passed by the respondent No.2 and the order dated 07.05.2015 passed by the respondent No.3 forthwith and treat the entire suspension period as the applicant was on duty.</p> <p>c) An order of stay of the impugned order dated 17.07.2015 passed by the respondent No.2 and the order dated 07.05.2015 of the respondent No.3 forthwith till the disposal of the application.</p> <p>d) An order directing the Respondents authorities to certify and transmit all the records of the case so</p>	

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	<p>that conscionable justice may be administered by perusing the same by this Hon'ble Tribunal.</p> <p>e) Rule NISI in terms of the prayers above.</p> <p>f) To make the Rule absolute if no cause is shown and/or insufficient cause is shown by the concerned respondents.</p> <p>g) To pass any other or further or orders as to this Hon'ble Tribunal may deem fit and proper.”</p> <p>As per the applicant, while posted in the office of the Block Land and Land Reforms Officer, Kharagpur I, he was served with an order dated 30.05.2015 (Annexure A), whereby the BL & LRO, Kharagpur-I in pursuance to the order of the ADM & D.L. & L.R.O. Paschim Medinipur vide his Memo dated 27.04.12 Sri Narayan Das, R.O. had ordered to attend the programme of demarcation in respect of Defence Land at Air Force Station, Kalaikunda along with the other official personnel including the applicant as Amin. Thereafter, necessary programme of demarcation was conducted and necessary sketch map was prepared by the Amin placing therein and the said sketch map was signed by R.O. & Concerned B.L. & L.R.O. Subsequently, the same was handed over to the Block Land and Land Reforms Officer, Kharagpur I.</p>	

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	<p>However, all on a sudden, the applicant received one Memo dated 08.10.2013 issued by the A.D.M. and District Land and Land Reforms Officer, Paschim Medinipur with a charge that the applicant being Amin attached to the Office of the B.L. & L.R.O. Kharagpur I, two maps, one in 2009 and another in 2013 both on 8" = 1 mile scale of calculation of the Air Force Station, Salua and deliberately caused a grave error in demarcating the boundary of the aforesaid Air Force Station on both the occasions (Annexure B). Simultaneously, he was also being put under suspension. In the meantime the applicant filed an application dated 07.11.2014 to the respondent No.3 for disposing of the disciplinary proceeding as soon as possible since the applicant was suffering with suspension. Thereafter, he was served with a Memo dated 22.12.2014 with a charge of negligence in preparation of map and without the permission and approval of the higher authority (Annexure -C) (handing over the papers to Air Force authorities). The applicant filed his written statements of defence. Subsequently, enquiry was conducted and he was served with a Memo dated 21.04.2015 (Annexure E) proposing an award of penalty of withholding of three annual increments in the scale</p>	

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	<p>of pay. Against the said show-cause notice, the applicant filed representation on 04.05.2015 denying all the charges and proposed penalty. However, the applicant was served with a punishment order of stoppage of three annual increments with cumulative effect vide Disciplinary Authority's Order dated 07.05.2015 (Annexure G).</p> <p>Being aggrieved with, the applicant preferred an appeal before the Appellate Authority i.e. Director of Land Records and Surveys & Jt. LRC, West Bengal on 24.06.2015 (Annexure H). The said Appellate Authority dated 17.07.2015 modified the order of punishment imposing of penalty of holding of two increments with cumulative effect. Being aggrieved with, the applicant has filed this application. As per the applicant, aforesaid demarcation programme was also attended by the BL & LRO and R.O. along with others. However, they were neither charge sheeted nor imposed with any punishment which would be reflected in the order dated 17.07.2015. Further, there is no charge of intentional mistake or any ulterior motive or of any financial implication. Therefore, according to the applicant even if there is any mistake or error in doing his official duties, it</p>	

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	<p>cannot be termed as misconduct as the other higher authorities who had approved the said map, have been spared from the disciplinary proceeding. Therefore, he has prayed for quashing of the order dated 07.05.2015 & 17.07.2015.</p> <p>The respondents have filed their reply wherein they have stated that the Amin is the trained person about the measurement of field and preparation of coloured map for demarcation programme. However, he had made some mistake while preparing the map and such map created problems for administration and gave a scope to some unauthorised occupant to take advantage of the situation. However, the applicant was granted opportunity to defend his case. Therefore, there is no violation of principles of natural justice and the authorities have rightly imposed the punishment upon the applicant.</p> <p>The applicant has filed rejoinder and has vehemently submitted that though he was entrusted to prepare the map, one more Amin was also deputed along with applicant and while work was completed under the supervision of the BL & LRO. Therefore, it cannot be claimed that the</p>	

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	<p>applicant is alone responsible for such wrong mapping.</p> <p>We have heard both the parties and perused the records. It is noted that the applicant was charge sheeted on the allegation that due to his wrong mapping, administration had faced problems over the actual quantum of the land held by the Air Force. Furthermore, it has also been alleged that without any permission and approval of the higher authority, he had also handed over copies to both the office of the Air Force for which the applicant had to face the disciplinary proceeding and was ultimately imposed with a punishment of withholding of three increments with cumulative effect. He preferred an appeal before the appellate authority and the Appellate Authority vide his order dated 17.7.15 as observed inter alia;</p> <p>“The DLLRO & his representative stated that the incumbent had full knowledge of the area and he did this map with malafied intention. But the DLLRO could not give any document in support of this allegation.</p> <p>Further, the DLLRO stated that due to this wrong preparation of map there was a huge law & order problem.</p>	

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	<p>Another charge is this that the Amin handed over this map to the Air Force Authority without obtaining any approval from the higher authority. But it is not clear why the BLLRO handed over the map to the Amin after putting his signature on the map. It should be the duty of the BLLRO to keep custody of the map after putting his signature for further action.</p> <p>Perused the report of the I.A. and order the D.A. It is a fact that the incumbent made an error in preparation of map. But there is no proof which shows that he did it with malafide intention.</p> <p>Moreover, the map was signed by the R.O. and BLLRO and it is the responsibility of the R.O. & BLLRO, being the higher authorities of Amin, to check and rectify the error if any. But R.O. and BLLRO could not do so. In fact, both R.O. & BLLRO failed to guide the Amin properly.</p> <p>It is a fact that the incumbent made an error in preparation of map & thereby failed to perform his duty properly. He should mark the unsurveyed area with some noting/signage & should write 'not to scale' on the map which he did not. So, the incumbent cannot avoid his responsibility. But punishment inflicted by the DLLRO, Paschim Medinipur vide his Order No.147/Con-26/13 dated</p>	

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	<p>07.05.2015 appears to be slightly harsh.</p> <p>Hence, the punishment given by the D.A. is modified in the effect that 02(two) annual increments be withheld without cumulative effect in terms of rule 8(ii) of the West Bengal Services (Classification, Control & Appeal) Rules, 1971.</p> <p>All concerned may be informed accordingly.”</p> <p>From the perusal of the order of the Appellate Authority, it is noted that the Appellate Authority is also of the opinion that R.O. and BL & LRO were very much aware and responsible about the wrong mapping and further it has been also observed that there is an error in preparation of map. However, there was no such malafide intention as the map was signed by R.O. and BL & LRO who are responsible being higher authority to check and rectify the error, if any, but R.O. & B.L. & L.R.O. did not do so. However, the appellate authority has modified the punishment of stoppage of increments for holding of two annual increments with cumulative effect.</p> <p>From the above, it is observed that admittedly there is no allegation of intentional mistake/error or any ulterior motive and/or financial implication on the part of applicant. Further, the applicant has been treated</p>	

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GM	<p>discriminately along with the other higher authorities. Therefore, in our considered view the penalty imposed on the applicant is harsh and disproportionate. Accordingly, we quash and set aside the appellate order dated 17.07.2015 and remand back the matter to the Appellate Authority for reconsideration of the case of the applicant afresh and communicate the same by a reasoned and speaking order within a period of six weeks from the date of receipt of the order. Accordingly, the OA is disposed of with the above observation and direction with no order as to cost.</p> <p>P. RAMESH KUMAR URMITA DATTA(SEN) MEMBER(A) MEMBER(J)</p>	