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(1974) 12 J&K CK 0006

In the Jammu And Kashmir High Court

Case No : Writ Petition No. 71 of 1972

Bansi Lal APPELLANT

Vs

State of Jammu and Kashmir and others RESPONDENT

Date of Decision : 17-12-1974

Acts Referred:

Citation : (1975) KashLJ 248

Hon'ble Judges : Mufti Baha-Ud-Din Farooqi, J

Bench : Single Bench

Advocate : T.S.Thakur, A.D.Singh, Advocates appearing for the Parties

Judgement

(1) This petition must be accepted on the short ground that the impugned order is violative of the principles of natural justice.

(2) The facts are these: The petitioner joined service of the State as a Patwari in the year 1956. In due course he was promoted as a Girdawar by

order of the Deputy Commissioner. Poonch made on February 5, 1970. Against this order some of his colleagues namely Sadhu Singh, Said

Ahmad and Harnam Singh filed appeals before the Divisional Commissioner By his order dated August 12, 1970 the Divisional Commissioner

dismissed the appeals. Harnam Singh went in revision to the Government. By Govt. order No. Rev (A) NG225 of 1972 dated 641972 his revision

petition was accepted. The order reads thus:

GOVERNMENT OF JAMMU AND KASHMIR REVENUE DEPARTMENT

Sub: Revision application dated 1471971 of Shri Harnam Singh Patwari.

Ref : Financial Commissioner's No. 691/81 EApp dated 1571971.

Government Order No Rev (A) No. 225 of 1272 Dated : 641972

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The revision application submitted by Shri Harnam Singh Patwari Poonch District against the order No. IV appeal (51, 52, 53)/3516 dated

1231970 is accepted.

By order of the Govt. of Jammu and Kashmir.

Sd/ S, M. S. Andrabi.

Addl. Secretary to Govt.''

(3) Aggrieved by this order the petitioner has filed this writ petition challenging the order on twin grounds: one, that it is violative of the principles of

natural justice and the second that it is not a speaking order.

(4) On the first question the petitioner's case is that in pursuance of the notice issued to him in the revision petition he appeared in the Revenue

Secretariat on February 8, 1972. The Revenue Minister was busy otherwise and could not take up the case which was adjourned to February 18,

1972. On the said date, he adds, the matter could not be taken up for hearing as the Revenue Minister was busy with the elections. Accordingly,

he further adds, the case was adjourned sine die, the petitioner being told that a fresh notice regarding the date of hearing would be issued to him.

The petitioner asserts that no such notice was served on him and meanwhile the impugned order was passed by the Revenue Minister behind his

back In reply the respondentState has denied these allegations and added that as a matter of fact the case was posted for hearing on January 18,

1972 and the petitioner's counsel too had notice of that date but even so the petitioner did not ask for a personal hearing or submit his written

arguments

(5) In view of this divergence on facts, I perused the department file. From the said file I have noticed that the case was fixed for hearing on

January 18, 1972. It was, however, taken up on January 20, 1972. On that date the Revenue Minister directed that the case be put up before him

on January 24, 1972 adding that the parties be informed On January 24, 1972 the case again came up before the Revenue minister and he found

that the parties had not been informed. He called for an explanation and directed further that the case be put up before him in the third week of

February. Meanwhile he appears to have proceeded on tour and was not available at the headquarters In his absence on February 18, 1972 his P.

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A. noted on the file that the case be put up before the Revenue Minister on March 15, 1972, That was not done presumably because the Revenue

Minister was not available at the headquarters. The file actually came to him subsequently with an office note dated March 25, 1972 which invited

reference to the remarks of the Revenue Secretary at paragraphs 27, 28 and 29 of the note file giving the service particulars of the rival parties and

the comments of the Revenue Secretary in the matter. It was in this context that the matter was considered by the Revenue Minister and the

impugned order passed by him on April 6, 1972. The order was clearly made in the absence of the parties. They did not even have any notice of

this date. On facts, therefore, it must be held that the order was passed without affording reasonable opportunity to the petitioner to be heard in the

matter.

(6) This brings me to the legal aspect of the matter. The impugned order was admittedly passed by the Revenue Minister acting under Rule 53 of

the J and K Civil Services (Classification. Control and Appeal) Rules, 1956. That Rule reads thus :

''Notwithstanding anything contained in these rules, the Government may, of its own motion or otherwise, call for the record of any case decided

by an authority subordinate to it in the exercise of any power conferred on such authority by these rules, and

(a) confirm, modify or reverse the order passed by such authority; or

(b) direct that a further inquiry be held in the case 3 or

(c) reduce or enhance the penalty imposed by the order; or

(d) make such other order in the case as it may deem fit;

Provided that where it is proposed to enhance the penalty imposed by any such order, the Government servant concerned shall be given an

opportunity oÂ£ showing cause against the proposed enhancement;

Provided further chat the period of limitation for an application for revision on behalf of an aggrieved party shall be thirty days from the date of the

communication of the order sought to be revised to the party aggrieved.

(7) In terms, this rule does not require the Government to give opportunity muchless a reasonable opportunity to a Government servant to be heard

in the matter before making an order under it. That does not however clinch the

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matter about notice and hearing under this rule, even if it were

assumed, as the learned Deputy Advocate General put it, that the orders passed under this rule by the Government are of administrative nature.

The matter largely depends on the facts and circumstances and the nature of the order proposed to be made in each case. For the law is well

settled that even an administrative order involving civil consequences must be made in continuity with the principles of natural justice which requires

that where an order is proposed to be made to the prejudice of any person, it must be made after notice to him and after affording him an

reasonable opportunity to be beard in the matter In the present case the impugned order was clearly to the detriment of the petitioner. It involved

loss of pay promotion and status by him. As such it had grave legal civil consequences for him. On the principles of law stated above which in the

circumstances of the present case must be read in Rule 53, the petitioner was clearly entitled to notice and hearing in the matter before the

impugned order was passed. On proved facts notice and hearing was clearly denied to the petitioner. The order is therefore vitiated with an error

of law manifest on the face of the record and cannot be sustained.

(8) In the view expressed above it is not really necessary to dwell on the second point raised by the petitioner that the order is not a speaking

order. However from the copy of the contemporaneous record filed by the respondent. State along with the reply affidavit it appears that the

matter was considered by the Revenue Minister and disposed of on merits by a reasoned judgment. Accordingly this point does not have any

substance in it.

(9) In the result I accept this petition, set aside the impugned order, and, direct that the Revenue Minister will rehear the revision after giving

reasonable opportunity to the parties to be heard in the matter and decide the case afresh in accordance with law. The parties will bear their own

costs. The parties are directed to appear before the Revenue Minister on 2611975.

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