

(1993) 04 AHC CK 0052
In the Allahabad High Court
Case No : Writ Petition No. 6536 of 1989

Hari Shanker Srivastava

APPELLANT

Vs

Special Land Acquisition Officer, Faizabad & Others

RESPONDENT

Date of Decision : 05-04-1993

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (1993) 04 AHC CK 0052

Hon'ble Judges : I.S.Mathur, J

Final Decision : Allowed

Judgement

I.S. Mathur, J.—This writ petition is directed against the orders dated 771989 (Annexure1), 2171989 (Annexure2), 2121988 (Annexure8) and 3011989 (Annexure 9) to the writ petition.

2. It appears that the petitioner was engaged on daily wages in a leave vacancy on 1C81981. He worked from 1081981 to 3061983 under the Special Land Acquisition Officer, Faizabad. From 171983 to 1591984 he worked on daily wages under the Special Land Acquisition Officer, Gonda. Again from 1101985 to 3131986 he worked under the Special Land Acquisition Officer, as Amin on daily wages. By a letters dated 491986 (Annexure3 to the writ petition) the Board of Revenue informed, the district officers that, as far as possible, regular Lekhpal or Chakbandi Lekhpal should be appointed on the post of Amin.

3. Some Vacancies of Amins occurred in district Faizabad and its selection was held on 331987. The petitioner was selected. In the order dated 321987 (Annexure5 to the writ petition) the Board of Revenue intimated the Special Land Acquisition Officer, Faizabad, that if the petitioner is an experienced official and has sufficient experience of Chakbandi Lekhpal and land acquisition work the Board of Revenue will have no objection to his appointment, but relaxation in age will have to be obtained in accordance with Rules. In the order dated 1031987 (Annexure4 to the writ petition) passed by the Special Land Acquisition Officer, Faizabad, it was stated that the petitioner has been selected for appointment and

he may be appointed on the availability of vacancy and on relaxation being given in regard to age. Thereafter post of Survey Amin fell vacant due to the death of Ram Subhag Singh on 911988 and by order dated 131988 (Annexure6 to the writ petition) the petitioner was appointed on the post of Survey Amin with the condition that his appointment will be considered to be valid only if relaxation in age is given by the Board of Revenue. By letter dated 231988 (Annexure7 to the writ petition) the Special Land Acquisition Officer, Faizabad, sent a proposal to the Board of Revenue for relaxation in age mentioning that the petitioner has been appointed. However, instead of relaxing age, the Board of Revenue called for explanation of the Special Land Acquisition Officer, Faizabad, by letter dated 2121988 (Annexure8 to the writ petition) as to why the appointment was made before relaxation in age. It was also mentioned in this letter that the services of the petitioner may be terminated on one month's notice. Accordingly by order dated 3011989 (Annexure9 to the writ petition) petitioner's services were terminated.

4. The petitioner's grievance is that the impugned order dated 311989 (Annexure9 to the writ petition) is not a speaking order and is arbitrary. It is alleged that the order is violative of Article 14 of the Constitution. It is also alleged that the Board of Revenue itself required a proposal to be sent to them for giving relaxation in age and refusal by them to give such relaxation is not justified.

5. I have heard learned counsel for the petitioner and the learned Standing Counsel. It is an established law that an order adversely affecting an employee has to be a speaking order. In *A.K. Kraipak v. Union of India* AIR 1970 SC 150, the Supreme Court has laid down that requirement of fair play extends even to administrative decisions. The Court remarked in that context that the line between administrative and judicial decisions is getting almost obliterated and it is not always easy to distinguish one from another.

6. In *I.J. Rao, Assistant Collector of Customs and others v. Bibhuti Bhushan Bagh and another* (1989) 3 SCC 202 the Supreme Court has laid down that where rights of a person are adversely and prejudicially affected by an order made by an authority in a proceeding, such person is entitled to an opportunity whether the proceeding is judicial, quasijudicial or administrative in nature.

7. In *Government Branch Press v. D.B. Belliappa* AIR 1979 SC 429 the services of a temporary Government employee were terminated without assigning any reason. The Supreme Court held that where there is a charge of unfair discrimination or of an improper motive it was the duty of the authority to dispel that charge by disclosing to the court the reason or motive which impelled to take the impugned action.

8. In *A.L. Kalra v. Project and Equipment Corporation of India Ltd.*, (1984)3 SCC 316 the Supreme Court relied upon *Ajai Hasia's case* (1981)1 SCC 722 for the view that every arbitrary action affecting public employment is violative of

Articles 14 and 16 of the Constitution.

9. Indeed, any decision whether judicial, quasi judicial or administrative has to be fair and reasonable and not arbitrary or discriminatory. Even purely administrative decisions insofar as they affect citizen's right have to be fair and reasonable substantively. One of the procedural rule of fairness is that whatever decision is taken should be a reasoned one. The condition of giving reason minimises arbitrariness. Giving of reasons may also be necessary in view of the constitutional provisions regarding judicial review contained in Articles 226 and 32 of the Constitution.

10. In a given case it may be possible that, if the order does not disclose any reason, but when the matter is taken in judicial review, the reasons are disclosed and are found to be germane to the orders passed, the court may not find any fault with the order passed.

11. In the present case the impugned order of termination dated 30/1/1989 (Annexure 9 to the writ petition) is indisputably based on the directions issued by the Board of Revenue vide order dated 7/7/1989 (Annexure 1 to the writ petition). This order dated 7/7/1989 is challenged in this petition on the ground that it rejects the proposal for providing relaxation in age without giving any reasons. This order does not contain any reasons for refusing to grant relaxation. No reasons have either been disclosed in the counter affidavit for such a refusal, even though the petitioner specifically alleged in the writ petition that the order is arbitrary and is violative of Article 14 of the Constitution. The order is clearly adverse to the petitioner and since the termination has been based solely on the basis of this order, it was necessary that reasons should have been given and refusal to give reasons must lead to the inference that the order is arbitrary and is violative of Article 14 of the Constitution.

12. Indeed, the facts on record clearly support this inference. It would appear from the facts mentioned in the earlier part of this judgment that it was at the instance of Board of Revenue itself that the Special Land Acquisition Officer had sent a proposal for giving relaxation in age to the petitioner. The Board of Revenue had itself stated in its letter dated 3/2/1987 (Annexure 5 to writ petition) that if the petitioner is experienced Chakbandi Lekhpal and has sufficient experience of land acquisition work, the Board of Revenue will have, no objection in his appointment, but proposal for relaxation in age must be sent. It was in pursuance of this direction of the Board of Revenue itself that the Special Land Acquisition Officer sent a proposal for relaxation in age, vide his letter dated 23/1/1988 (Annexure 7 to the writ petition). The petitioner had admittedly worked for a number of years on various posts of Amin in district Faizabad and earlier in district Gonda and it is not disputed that he had started working since the year 1981. It is also not disputed before me by the learned standing counsel that the petitioner was an experienced employee nor it is suggested that there was anything against the petitioner which could have been a hindrance in giving him relaxation in Age. Accordingly, there was no apparent reason for the Board of

Revenue for refusing to give relaxation in age.

13. This relaxation in age could have been accorded by the Board of Revenue in exercise of powers under the Rules published with Notification No. 1129 (5)/II17539 dated July 31, 1941, reproduced in paragraph 773 of the Manual of Government Orders. These Rules, which continue to be good law in view of Article 313 of the Constitution, inter alia, lay down that such relaxation could be given "in the interest of fair dealings or in the public interest." It was accordingly necessary for the Board of Revenue to consider the relaxation in age fairly and justly and not arbitrarily. "Fair dealing" mentioned in this Rule will obviously mean that the Board of Revenue should have considered the past experience of petitioner, the favourable recommendation of the Special Land Acquisition Officer and above all their own direction to the effect that if the petitioner was an experienced official and had sufficient experience in land acquisition work, he may be appointed and proposal for relaxation in age should be sent to them.

14. The failure of the Board of Revenue to accept this proposal for relaxation in age without giving any reasons must accordingly be held to be illegal and the order dated 771989 (Annexure 1 to the writ petition) is liable to be quashed for this reason. As the facts are, the action must be found to be arbitrary and violative of Articles 14 and 16 of the Constitution.

15. So far as the order of termination is concerned there would be no question of quashing that order for the simple reason that the petitioner was entitled to be appointed only if relaxation in age was given. His appointment will be valid only if relaxation in age is given. Since the appointment could not have been made and consequently could not be considered to be valid unless relaxation in age was given and such relaxation has not yet been given, it will not be proper to quash that order.

16. So far as the order dated 2121988 (Annexure 8 to the writ petition) is concerned there could be no question of quashing that order also as by that order merely explanation of the concerned Special Land Acquisition Officer has been called and it has been advised that the alleged illegal appointment should be terminated.

17. In view of the above, the petition is liable to be and is partly allowed. The order dated 771989 (Annexure 1 to the writ petition) is quashed. The opposite party No. 4, Board of Revenue U.P. Lucknow, is directed to consider the matter afresh and pass a speaking order in regard to the proposal regarding relaxation in age. In passing such an order the Board of Revenue shall take into consideration the observations made in the body of this order. If relaxation in age is given by the Board of Revenue, the opposite parties shall appoint the petitioner on the post of Amin by creating supernumerary post, if necessary. The orders in regard to relaxation in age and appointment shall be passed within two months of the date a certified copy of this order is produced before the opposite parties. The opposite parties may also consider the desirability of

appointing the petitioner provisionally if post and work is available till the final disposal of the matter regarding relaxation in age.

18. In the circumstances of the case there shall be no order as to costs.

(Petition allowed)