

ORDER SHEET

WEST BENGAL ADMINISTRATIVE TRIBUNAL

Present-

**The Hon'ble Justice Ranjit Kumar Bag
& The Hon'ble Dr. Subesh Kumar Das**

Case No – **OA 200 OF 2017**

Swapan Kumar Roy Vs The State of West Bengal & Ors.

Serial No. and Date of order. 1	Order of the Tribunal with signature 2	Office action with date and dated signature of parties when necessary 3
<p style="text-align: center;">07 <hr/>26.07.2018</p>	<p>For the Applicant : Mr. S. N. Roy, Mrs. P. Sasmal, Learned Advocates.</p> <p>For the Respondents : Mr. G.P. Banerjee, Learned Advocate.</p> <p>The applicant was a Constable of Kolkata Police. He retired on December 31, 2015. While the applicant was in service, a criminal case was started against him vide Charu Market Police Station Case No. 37 dated March 9, 2004 under section 120B/170/419/420/467/468/471 of the IPC. The applicant was placed under suspension on March 9, 2004. The departmental enquiry was started against the applicant on the self-same charge on which criminal case was started against the applicant. The applicant moved the Tribunal by filing OA-1362 of 2004 challenging the departmental proceeding started against the applicant. On February 23, 2005, the Tribunal disposed of the said original application by directing the state respondents to withhold the departmental proceeding till conclusion of the criminal trial. Subsequently, the applicant moved another application being OA-2263 of 2006 before the Tribunal praying for relief against the order of suspension. On December 7, 2006, this Tribunal disposed of the said original application by directing the state respondents</p>	

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to review the order of suspension and consequential relief with regard to subsistence allowance. The state respondents filed MA-126 of 2011 before the Tribunal praying for modification of order passed by the Tribunal in OA-1362 of 2004. Ultimately, on January 10, 2012, the Tribunal disposed of the said Miscellaneous Application by modifying earlier order passed by the Tribunal in OA-1362 of 2004 and thereby the departmental proceeding started against the applicant was restored. However, the applicant challenged the said order of the Tribunal before the Division Bench of the Hon'ble High Court by filing WPST No. 44 of 2012. On November 14, 2014, the Division Bench of the Hon'ble High Court disposed of the said writ application by setting aside the order passed by the Tribunal in MA-126 of 2011. The upshot of the entire above observation is that the order passed by the Tribunal on February 23, 2005 in OA-1362 of 2004 now stands and thereby the departmental proceeding is still withheld by the order of this Tribunal.

With the above factual matrix, we have to decide whether the applicant is entitled to get any relief in the present application. Mr. S.N. Ray, Learned Counsel for the applicant, contends that the applicant is getting interim allowance as per provisions of Rule 14 of West Bengal Services (Death-cum-Retirement Benefit) Rules, 1971, as the criminal case is still pending against the applicant before the competent Court of law. The

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applicant has prayed for direction upon the respondents to treat the period of suspension from March 9, 2004 to December 22, 2015 as the period spent on duty. Admittedly, the suspension of the applicant was withdrawn w.e.f. December 22, 2015. The disciplinary proceeding started against the applicant has been withheld at the instance of the present applicant. So, the delay in conclusion of the departmental enquiry must be attributed to the conduct of the applicant. It is the duty of the disciplinary authority to decide whether the period of suspension of the applicant will be treated as on duty only on conclusion of the disciplinary proceeding, which has been withheld by the order of the Tribunal at the instance of the applicant. So, the applicant is not entitled to get any relief in this regard.

The applicant has prayed for direction upon the respondents for increase of the amount of interim allowance as per provision of Rule 14 of West Bengal Services (Death-cum-Retirement Benefit) Rules, 1971. On our query, Mr. Ray, Learned Counsel for the applicant, submits that the applicant has not submitted any application before the concerned respondent for increase of the amount of interim allowance. Naturally, the respondents cannot be made liable for not increasing the amount of interim allowance as prayed by the applicant. It is the duty of the applicant to submit proper application before the

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concerned authority praying for increasing the amount of interim allowance as per provision of Rule 14 of West Bengal Services (Death-cum-Retirement Benefit) Rules, 1971 and only on submission of such application, the concerned respondent can consider the same and take a decision in accordance with law. So, the applicant is not entitled to get any relief in this regard.

In view of our above findings, we are constrained to hold that the applicant is not entitled to get any relief in the present application. So, the present application is **dismissed**.

Let a plain copy of this order be supplied to both the parties.

(S.K. DAS)
MEMBER(A)

(R. K. BAG)
MEMBER (J)

Sanjib