

ORDER SHEET
WEST BENGAL ADMINISTRATIVE TRIBUNAL

Present-

The Hon'ble Justice Soumitra Pal (Chairman)
 & The Hon'ble Mr. Subesh Kumar Das (Administrative Member)

Case No – O.A. 409 of 2019

SAMBHU SEN 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
4 <hr/> 22.07.2019	<p>For the Applicant : Mr. M.N. Ray, Mr. G. Halder, Advocate</p> <p>For the Respondent : Mr.A.L. Basu, Advocate</p> <p>For the Principal Accountant : Mr. B. Mitra General(A&E), West Bengal Departmental Representative</p> <p style="text-align: center;">The applicant, an employee working as Sub-Inspector (Armed Branch) and superannuated on 30th September, 2017, has prayed for certain reliefs, the relevant portion of which is as under :</p> <p style="text-align: center;">“(a) An order do issue directing the concerned respondent authorities to forthwith grant and disburse the regular pension, arrear pension after calculating the pension cut of 25% for 05 years without cumulative effect, with effect from 30.09.2017 gratuity, leave salary, G.I.S., G.P.F. and other retiral benefits to your applicant herein, in accordance with law, within stipulated time.</p>	

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	<p>(b) An order do issue directing the concerned respondent authorities to forthwith grant and disburse the regular pension, arrear pension after calculating the pension cut of 25% for 05 years without cumulative effect, with effect from 30.09.2017 gratuity, leave salary, G.I.S., G.P.F. and other retiral benefits to your applicant herein, with interest @ 18% p.a. till the date of actual realization of the same in accordance with law, within stipulated time.</p> <p>It appears that during the service tenure of the applicant one departmental proceeding was initiated against him being North 24-Parganas District Proceeding N. 16 / 2015 dated 15.06.2015. The applicant contested the proceeding. In the departmental proceedings he submitted that he was not guilty of the charges levelled against him and his defence was not considered. Second show-cause notice was issued on 2nd November, 2016 proposing the punishment of dismissal from service. The applicant challenged the proposed punishment by way of second show cause before the Tribunal and the same was registered and numbered as O.A. 1104 of 2016. Ultimately the said matter was disposed of by passing an</p>	

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	<p>order the relevant portion of which is as under:</p> <p style="text-align: center;">“Heard both the parties and perused the records. It is noted that the applicant has come at the very initial stage i.e. after issuance of second show cause notice proposing one punishment of dismissal though till date no decision in this regard has been taken. Therefore, we are agreeable with the contention of the respondents that the applicant would have made appropriate submission before the authority for any reduction of his punishment, if there is any confirmation of the proposed punishment also. In that case, he may also approach the appellate authority. Therefore, in our considered opinion, the application is pre-mature one. However, the respondents are directed to pass final order after considering the reply of the applicant in accordance with law within three (03) months from the date of communication of this order. Accordingly, the O.A. is dismissed with the above observation and direction.”</p>	

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	<p>Thereafter the Disciplinary Authority passed the final order on 20th February, 2019 inflicting punishment of curtailment of pension of 25% for a period of five years without any cumulative effect with effect from 30th September, 2017. After passing of the final order the applicant made a representation dated 4th March, 2019, being Annexure “D” to the application, before the Senior Superintendent of Police, Coordination, North 24 Parganas and the Superintendent of Police, in the office of the Superintendent of Police, Barasat, the respondent no.3 praying for release of pension and other pensionary benefits. According to the applicant the said representation is yet to be disposed of.</p> <p>According to the applicant that apart from the departmental proceeding which concluded by passing of the final order dated 20th February, 2019 one case is pending before the competent court of law under section 125 of Code of Criminal Procedure, which according to him, is civil in nature and does not constitute moral turpitude and Rule 14 of the D.C.R.B. Rules is not attracted. The applicant submits that the aforesaid application under section 125 of the Cr. Pc. is for maintenance and has nothing to do with the disbursement of pension and other retiral dues. Since the applicant has by letter dated 4th March, 2019 before the respondent no.3</p>	

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	<p>prayed for release of pension and other retirement benefits in terms of the final order dated 20th February, 2019 and as the proceedings under section 125 are not a criminal proceedings, as held by the Supreme Court in Vijay Kumar Prasad Versus State of Bihar and Others: (2004) 5 SCC 196, the respondents may be directed to release family pension and other superannuation benefits.</p> <p>Mr. A.L. Basu, learned advocate appearing on behalf of the State respondents submits that in view of the judgement of the Supreme Court passed in Vijay Kumar Prasad (Supra), the respondent authority may be directed to consider the representation dated 4th March, 2019 in accordance with law .</p> <p>Heard Mr. Ray, Mr. Basu and Mr. Mitra. There is no dispute that proceedings under section 125 of the Cr.PC are civil in nature. The Judgement of the Hon'ble Supreme Court in Vijay Kumar Prasad (Supra) refers to the judgement in Jagir Kaur v. Jaswant Singh : AIR 1963 SC 1521 wherein it has been held that :</p> <p style="text-align: center;">“The crucial words of sub-section (8) are, ‘resides’is’and ‘where he last resided with his wife’. Under the Code of 1882 the Magistrate of the district where the husband or father, as the case may be, resided only had</p>	

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	<p>jurisdiction. Now the jurisdiction is wider. It gives three alternative forums. This in our view, has been designedly done by the legislature to enable a discarded wife or a helpless child to get the much needed and urgent relief in one or other of the three forums convenient to them. <u>The proceedings under this section are in the nature of civil proceedings, the remedy is a summary one and the person seeking that remedy, as we have pointed out, is ordinarily a helpless person. So the words should be liberally construed without doing any violence to the language.</u>”</p> <p style="text-align: right;">(Emphasis supplied)</p> <p>In paragraph 14 of the judgement in Vijay Kumar Prasad (Supra) it has been held that :</p> <p style="text-align: center;">“.....As noted by this Court in several cases, proceedings under Section 125 of the Code are of civil nature.....”</p> <p>Since proceedings under section 125 of the Cr.PC are civil in nature, considering the position of law,</p>	

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SCN.	<p>this application is disposed of by directing the Senior Superintendent of Police, Coordination, North 24 Parganas and the Superintendent of Police, in the office of the Superintendent of Police, Barasat, the respondent no.3 to dispose of the letter dated 4th March, 2019, filed by the applicant for release of pension and other retiral benefits, by passing a reasoned order to be communicated to the parties within ten weeks from the date of furnishing a copy of the certified copy of this order after granting an opportunity of hearing and after taking into consideration the judgement in Vijay Kumar Prasad (Supra). If the respondent no.3 comes to the conclusion that the applicant is entitled to benefits as prayed for, the said respondent shall issue direction for payment of pensionary benefits and other allowances within two weeks thereafter.</p> <p>(S.K. Das) MEMBER (A)</p> <p>(Soumitra Pal) CHAIRMAN</p>	