

ORDER SHEET

WEST BENGAL ADMINISTRATIVE TRIBUNAL

Present-

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

Case No – OA 665 OF 2014

Samir Kumar Datta 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
08 16.08.2018	<p>For the Applicant : Mr. R. Bhattacharya, Learned Advocate.</p> <p>For the Respondents : Mr. M.N. Roy, Learned Advocate.</p> <p>The applicant has prayed for direction upon the respondents to grant him backwages for the period from the date of dismissal to the date of reinstatement in service and to give him financial benefit by fixation of seniority above his immediate junior on setting aside order passed by the respondent no. 3 on August 2, 2013 in terms of judgment and order passed by the Hon'ble High Court in WPST No. 180 of 2013.</p> <p>The applicant is Assistant Sub-Inspector of Kolkata Armed Police. Two different departmental proceedings were initiated against the applicant – Proceeding No. 75 dated June 19, 1995 and Proceeding No. 81 dated August 21, 1996. The proceeding no. 75 dated June 19, 1995 was kept in abeyance on condition of revival of the said proceeding in case of reinstatement of the applicant after conclusion of subsequent proceeding no. 81 dated August 21, 1996. The applicant was found guilty of the charge in proceeding no. 81 and the Disciplinary Authority dismissed the applicant from service on August 6, 1999. However, the said order of the Disciplinary</p>	

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Authority was set aside by the Appellate Authority on December 17, 1991 and the applicant was reinstated in service. Accordingly, the proceeding no. 75 was revived and on conclusion of the said departmental proceeding, the applicant was again dismissed from service. Ultimately, the applicant challenged the order of his dismissal by filing OA-1283 of 2004 whereby this Tribunal directed the Appellate Authority to dispose of the appeal filed by the applicant within specified period of time. The Appellate Authority disposed of the appeal by affirming the punishment of dismissal of the applicant from service imposed by the Disciplinary Authority.

The applicant again approached this Tribunal by filing OA-567 of 2005 challenging the order of his dismissal passed by the Disciplinary Authority and affirmed by the Appellate Authority. In the meantime, the criminal proceeding started against the applicant on the same charge on which departmental proceeding no. 75 dated June 19, 1995 was initiated, ended in acquittal. The Criminal Court passed the judgment of acquittal in G.R. Case No. 2960 of 1995 on January 12, 2009 mainly on the ground that the alleged wife of the applicant, Jharna Mondal cited as witness no. 4 in the charge sheet did not give any evidence to prove the allegation of abuse and torture inflicted on her by the applicant as husband. The Criminal Court has also observed that the allegation of abuse and mental torture of Jharna Mondal for payment of dowry has not been substantiated

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for not adducing cogent evidence due to amicable settlement of the dispute between the parties. Be that as it may, this Tribunal disposed of OA-567 of 2005 on July 30, 2010 by setting aside the order of dismissal of the applicant from service and by directing the respondents to reinstate the applicant in service without payment of backwages. The said judgment and order passed by the Tribunal was challenged before the Division Bench of the Hon'ble High Court by filing WPST 309 of 2011 whereby the Hon'ble High Court directed the respondent No. 3 to pass a reasoned order in connection with backwages of the applicant for the period from the date of dismissal till the date of reinstatement in service. The said respondent No. 3 was also directed to decide the issue of payment of lesser pay than his junior in service in terms of direction given by the Hon'ble High Court in WPST 309 of 2011. The said respondent No. 3 decided not to give the backwages to the applicant by passing reasoned order on February 9, 2012, but held that the period of absence of the applicant from duty will be considered for the purpose of retirement benefit of the applicant. The said order of the respondent No. 3, the Deputy Commissioner of Police, 2nd Battalion, Kolkata Armed Police was again challenged before this Tribunal by filing OA-816 of 2012, whereby this Tribunal refused to give backwages to the applicant and did not interfere in the reasoned order passed by the Deputy Commissioner of Police, 2nd Battalion, Kolkata Armed Police.

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The applicant again approached the Hon'ble High Court challenging the judgment and order passed by this Tribunal on December 20, 2012 in OA-816 of 2012 by preferring WPST No. 180 of 2013. On June 6, 2013, the Division Bench of the Hon'ble High Court disposed of the said writ application by setting aside the judgment and order passed by the Tribunal and by directing the respondent No. 3, the Deputy Commissioner of Police, 2nd Battalion, Kolkata Armed Police to pass appropriate reasoned order in connection with the backwages of the applicant and in connection with payment of lesser amount of salary of the applicant than his junior. It appears from the said reasoned order passed by the respondent No. 3 in terms of the direction of the Hon'ble High Court given in WPST 180 of 2013 that the applicant has been denied the backwages and disparity in payment of salary to the applicant compared to his junior was not found to be substantiated from the materials placed by the applicant. The said reasoned order is now under challenge before this Tribunal in the instant original application.

Mr. R. Bhattacharya, Learned Counsel for the applicant, contends that the applicant was acquitted of the charge by the Criminal Court on merit and he is entitled to get backwages for the period from the date of dismissal till the date of reinstatement. He further submits that his junior is getting more pay than the applicant which is discriminatory and arbitrary and as such the reasoned order is liable to be set aside. Learned

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Counsel has relied on the case “Deepali Gundu Surwase v. Kranti Junior Adhyapak Mahavidyalaya” reported in (2013) 10 SCC 324 and “M/s. Hindustan Tin Works Pvt. Ltd. v. The Employees of M/s. Hindustan Tin Works Pvt. Ltd. & Others” reported in (1979) 2 SCC 80 in support of his above contention. On the other hand, Learned Counsel representing the state respondents contends that the applicant is not entitled to get backwages as the applicant has not been acquitted of the charge by the Criminal Court on merit. He has relied on the case “H.V.P.N. Limited & Others v. Bal Govind” reported in (2017) 2 SCC 382 and “The Management of Reserve Bank of India, New Delhi v. Shri Bhopal Singh Panchal” reported in 1994 (1) SLR 9 in support of his above contention.

Before going into the merit of the case, we would like to refer to the decisions cited from the Bar. In “Deepali Gundu Surwase” (supra), the Hon’ble Supreme Court dealt with entitlement of backwages on reinstatement after setting aside illegal termination of service of the teacher of a primary school run by Trust whose conditions of service are governed under the provisions of Maharashtra Employees of Private Schools (Conditions of Service) Regulation, 1977. This case does not relate to entitlement of backwages of a Government employee on his reinstatement in service. We do not find any relevance of this judgment in the present case. In “M/s. Hindustan Tin Works Pvt. Ltd.” (supra), the Hon’ble Supreme Court dealt with illegal

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termination of service of a workman who was entitled to get backwages under the provisions of the Industrial Disputes Act, 1947. This case also does not deal with backwages of a Government employee on reinstatement in service and as such this case has also no relevance in deciding the issues involved in the present case.

In "H.V.P.N. Limited & Others" (supra), the service of one workman was terminated for his involvement in the criminal case. The Labour Court passed an award of 50% of backwages on reinstatement of the workmen in service following his acquittal of the charge on the benefit of doubt. The backwages was ultimately denied by the Supreme Court on appeal, but this case again relates to the workmen under the Industrial Disputes Act, 1947 and the decision was passed by the Labour Court. We do not find any relevance of this decision, particularly when the specific provisions of Rules are available for payment of backwages of an employee of Government of West Bengal on reinstatement in service. Similarly, we do not find relevance of the decision of "The Management of Reserve Bank of India" (supra) where the Hon'ble Supreme Court ultimately held that the Labour Court has no jurisdiction to decide the issue, in question, under section 33 C (2) of the Industrial Disputes Act, 1947.

In the instant case, the applicant was reinstated in

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service on setting aside the order of dismissal passed by the Disciplinary Authority and affirmed by the Appellate Authority by the order of the Court. Naturally, the backwages to be paid to the applicant on reinstatement will be decided as per provisions of Rule 72A of West Bengal Service Rules, Part-I (in short WBSR, Part-I), which is as follows :

“72A. Pay and allowances on reinstatement when orders of dismissal, etc. are set aside by a Court of law – (1) Where the dismissal, removal or compulsory retirement of a Government employee is set aside by a Court of law, and such Government employee is reinstated without holding any further inquiry, the period of absence from duty shall be regularised and the Government employee shall be paid pay and allowances in accordance with the provisions of sub-rule (2) or sub-rule (3) subject to the directions, if any, of the Court.

(2)(i) Where the dismissal, removal or compulsory retirement of a Government employee is set aside by the Court solely on the ground of non-compliance with the requirements of clause (1) or clause (2) of Article 311 of the Constitution, and where he is not exonerated on merits, the Government employee shall, subject to the provisions in sub-rule (7) of rule 72 be paid such amount (not being the whole) of the pay and allowances to which he would have

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been entitled had he not been dismissed, removed or compulsorily retired, or suspended prior to such dismissal, removal or compulsory retirement, as the case may be, as the competent authority may determine after giving notice to the Government employee of the quantum proposed and after considering the representation, if any, submitted by him, in that connection, within such period, which in no case shall exceed sixty days from the date on which the notice has been served, as may be specified in the notice.

(ii) The period intervening between the date of dismissal removal or compulsory retirement including the period of suspension preceding such dismissal, removal or compulsory retirement, as the case may be, and the date of judgement of the Court shall be regularised in accordance with the provisions contained in sub-rule (5) of rule 72.

(3) If the dismissal, removal or compulsory retirement of a Government employee is set aside by the Court on the merits of the case, the period intervening between the date of dismissal, removal or compulsory retirement including the period of suspension preceding such dismissal, removal or compulsory retirement, as the case may be, and the date of reinstatement shall be treated as duty for all purposes and he shall be paid the full pay and allowances for the period to which he would have been

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entitled, had he not been dismissed removed or compulsorily retired or suspended prior to such dismissal, removal or compulsory retirement, as the case may be.

(4) The payment of allowances under sub-rule (2) or sub-rule (3) shall be subject to all other conditions under which such allowances are admissible.

(5) Any payment made under this rule to a Government employee on his reinstatement shall be subject to adjustment of the amount, if any, earned by him through an employment during the period between the date of dismissal, removal or compulsory retirement and the date of reinstatement. When the emoluments admissible under this rule are equal to or less than those earned during the employment elsewhere, nothing shall be paid to the Government employee.”

On perusal of the above provisions of Rule 72A (3) of WBSR, Part-I, we find that the applicant is entitled to get full backwages on reinstatement, if the order of dismissal is set aside by the Court on merit. Otherwise, the applicant is entitled to get backwages on reinstatement, which will be not less than the subsistence allowance and other allowances admissible under Rule 71 of WBSR, Part-I, if the order of dismissal resulted from non-compliance with the requirement of clause (1) or

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clause (2) of Article 311 of the Constitution of India and the employee has not been exonerated of the charges on merit, as laid down in sub-rule (2) of Rule 72A of WBSR, Part-I.

So, the question for consideration is whether the applicant is entitled to get full backwages on reinstatement or backwages not less than the subsistence allowance and other allowances on reinstatement in service. Unfortunately, the Deputy Commissioner of Police, 2nd Battalion, Kolkata Armed Police, did not consider the provisions of Rule 72A of WBSR, Part-I for deciding the issue of backwages of the applicant on reinstatement in service. Without relegating the issue to the respondent No. 3 we would like to decide whether the order of dismissal of the applicant was set aside by the Court on merit of the case or on the ground of non-compliance of provisions of Rule 311 (1) & (2) of the Constitution of India and whether the applicant was not exonerated on merit. On perusal of the order passed by the Tribunal in OA-816 of 2012, we find that the Tribunal had set aside the order for dismissal of the applicant only on the ground that the applicant has been acquitted of the charge by the Criminal Court as the criminal case was started against the applicant on the charge on which the departmental proceeding no. 75 dated June 19, 1995 was also initiated by the Disciplinary Authority. This aspect of the observation passed by the Tribunal has not been dealt with by the Hon'ble High Court at the time of passing order dated June 6, 2013 in WPST 180 of

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	<p>2013. Naturally, we would like to consider the observation of the Learned Magistrate of the Criminal Court for deciding whether the order of dismissal of the applicant was passed on merit or not. On perusal of the judgment passed by the Criminal Court in G.R. Case No. 2960 of 1995, we find that the alleged wife of the applicant namely Jharna Mondal who was cited as witness no. 4 of the charge sheet was not examined as witness. That apart, the defacto complainant being PW3 has admitted during his evidence that the dispute has been settled amicably out of Court. Accordingly, we cannot persuade ourselves to come to the conclusion that the applicant was acquitted of the charge by the Criminal Court on merit. The logical inference of the observations made by the Learned Magistrate in judgment is that the applicant has been acquitted of the charge due to amicable settlement of the dispute between the parties out of Court. As a consequence, we are constrained to hold that the order of dismissal of the applicant has been set aside initially by the Tribunal and ultimately by the Hon'ble High Court not on merit. On consideration of the materials on record, we would like to hold that the provisions of Rule 311 (1) (2) of the Constitution of India have been complied with in connection with departmental proceeding no. 75 dated June 19, 1995, and the order of dismissal of the applicant was set aside not on merit. So, the applicant is entitled to get backwages as per provisions of Rule 72A (2) of WBSR, Part-I and not as per provisions of Rule 72A (3) of WBSR, Part-I.</p>	
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The next issue which calls for our determination is whether the applicant is deprived of pay in an arbitrary manner, when his immediate junior is getting more pay than the applicant. On this aspect, the respondent No. 3 has specifically observed that the applicant joined as Constable of Kolkata Police on July 30, 1982 and his so called junior Bharat Karmakar joined as Constable of Police on July 2, 1982. Naturally, the applicant cannot claim that Bharat Karmakar was his junior in service. That apart, the applicant did not get the benefit of Career Advancement Scheme due to unsatisfactory service, whereas Bharat Karmakar has got all the financial benefits due to satisfactory service. So, the conclusion drawn by the respondent No. 3 in the reasoned order in connection with payment of salary to the applicant compared to his alleged junior Bharat Karmakar is justified under the law.

So, the respondent No. 3 has rightly decided that the fixation of pay of the applicant is not done in an arbitrary and illegal manner by depriving him of his due financial benefits.

We have already observed that the applicant is entitled to get backwages as per provisions of Rule 72A (2) of WBSR, Part-I. Accordingly, the reasoned order dated August 2, 2013 passed by the respondent no. 3 is set aside, so far the backwages of the applicant is concerned. The respondent no. 3, Deputy Commissioner of Police, 2nd Battalion, Kolkata Armed Police, is directed to take necessary action for release of the entire

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amount of backwages equal to the amount of subsistence allowance and other allowances admissible under Rule 71 of WBSR, Part-I to the applicant for the period from the date of his dismissal till the date of his reinstatement in service within a period of 12 (twelve) weeks from the date of communication of the order. The said respondent No. 3 is also directed to regularise the absence of the applicant from duty during the period from the date of dismissal till the date of reinstatement in service as laid down in Rule 72(5) of W.B.S.R, Part I within a period of 12 weeks from the date of communication of this order.

With the above direction, the original application is **disposed of.**

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

**S.K. DAS)
MEMBER(A)**

**(R. K. BAG)
MEMBER (J)**

Sanjib