

ORDER SHEET

WEST BENGAL ADMINISTRATIVE TRIBUNAL

Present-

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

Case No – OA 673 OF 2014

Ashoke Kr. Ghosh 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
17 07.03.2019	<p>For the Applicant : Mr. S.K. Nandi, Learned Advocate.</p> <p>For the Respondent : Mr. S. Bhattacharjee, Departmental Representative.</p> <p>The applicant has prayed for direction upon the respondents not to give any effect to Memorandum dated March 31, 2014 issued by the Sub-Divisional Land & Land Reforms Officer, Hooghly and for quashing of Memorandum dated 7th February, 2007 issued by the District Land & Land Reforms Officer, Hooghly and Memorandum dated August 14, 2013 issued by the Assistant Secretary to the Government of West Bengal, Department of Land & Land Reforms and Memorandum dated March 11, 2014 issued by the Sub Divisional Land & Land Reforms Officer, Hooghly.</p> <p>It appears from the materials on record that the applicant joined in the post of Night Guard in terms of order dated February 24, 1975 issued by the Settlement Officer, Howrah-Hooghly-Nadia stationed at Hooghly. The applicant submitted representation before the appointing authority disclosing the fact of acquiring educational qualification of passing Madhyamik Examination. Accordingly, the applicant got promotion to the post of Amin from Group-D post in terms of the order dated July</p>	

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5, 1999 issued by the District Land & Land Reforms Officer, Hooghly. He joined in the promotional post and his pay was fixed in terms of rules applicable to him. On February 7, 2007, the District Land & Land Reforms Officer, Hooghly issued one show cause notice to the applicant calling upon him to show cause why appropriate disciplinary action will not be taken against him for submitting false and forged certificate of passing Madhyamik Examination. On March 26, 2007, the applicant submitted reply to the above show cause notice without claiming the certificate of passing Madhyamik Examination submitted by him as genuine document. On the contrary, the applicant has disclosed in the reply to the show cause that he never claimed for promotion to higher post by submitting any application. Reply to the show cause submitted by the applicant indicates that the applicant pretended that he was not in a position to recollect which documents were submitted by him in connection with passing of Madhyamik Examination. Surprisingly, the disciplinary authority did not initiate any disciplinary proceeding against the applicant who was allowed to retire from service on attaining age of superannuation on April 30, 2011. Admittedly, the applicant received pension, retiring gratuity, commuted value of pension and leave salary on the basis of last pay drawn by him as Amin.

The order of promotion of the applicant to the post of Amin was cancelled by order dated April 8, 2013 issued by the

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Principal Secretary to the Government of West Bengal, Department of Land & Land Reforms on the ground that the applicant got promotion on the basis of the certificate of passing Madhyamik Examination which was found to be false and forged. This order of cancellation of promotion of the applicant passed in the name of the Governor of the State after almost three years of retirement of the applicant from service, has not been challenged by the applicant as illegal or arbitrary. It is established from the materials on record that opportunity of hearing was given to the applicant while the applicant was in service in the year 2007 as to why disciplinary proceeding will not be initiated against him for submission of false and forged certificate of passing of Madhyamik Examination. We have already observed that the applicant did not claim that the documents produced by him in connection with his educational qualification of passing Madhyamik Examination are genuine. Even the applicant did not pray for quashing of the order of cancellation of promotion issued in the name of Governor on April 8, 2013 presumably under Rule 10 of West Bengal Services (Death-cum-Retirement Benefit) Rules, 1971. Even assuming for argument's sake that the principles of natural justice have not been strictly followed by giving the applicant another opportunity of hearing after retirement from service for the purpose of imposition of punishment by way of cancellation of the order of promotion, we are of the view that the violation of principles of natural justice in this particular case has not caused

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any prejudice to the applicant who did not deny the allegation of submission of false and forged certificate of passing Madhyamik Examination for his promotion from Group-‘D’ post to the post of Amin.

The issue whether violation of principles of natural justice have vitiated the order of cancellation of promotion of the applicant needs to be discussed in detail : :

In “K L Tripathi v. State Bank of India” reported in (1984) 1 SCC 43, the Hon’ble Supreme Court has laid down the criteria for deciding violation of the principles of natural justice in paragraph 31 of the judgment, which are as follows :

“31.... Wade in his Administrative Law, Fifth Edition at pages 472-475 has observed that it is not possible to lay down rigid rules as to when the principles of natural justice are to apply: nor as to their scope and extent. Everything depends on the subject-matter, the application of principles of natural justice, resting as it does upon statutory implication, must always be in conformity with the scheme of the Act and with the subject-matter of the case. In the application of the concept of fair play there must be real flexibility. There must also have been some real prejudice to the complainant; there is no such thing as a merely technical infringement of natural justice. The requirements of natural justice must depend on the facts and the circumstances of the case, the nature of the inquiry, the rules under which the tribunal is acting, the subject-matter to be dealt with, and so forth.....”

The above principles laid down in the Administrative Law is reiterated by the Hon’ble Supreme Court in paragraph 26 of “Natwar Singh v. Director of Enforcement” reported in (2010) 13 SCC 255, which are as follows :

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“26. Even in the application of the doctrine of fair play there must be real flexibility. There must also have been caused some real prejudice to the complainant; there is no such thing as a merely technical infringement of natural justice. The requirements of natural justice must depend on the circumstances of the case, the nature of the inquiry, the rules under which the tribunal is acting, the subject-matter to be dealt with and so forth....”

The question whether departmental enquiry was vitiated for non-supply of enquiry report was considered by the Hon’ble Supreme Court of India in “Burdwan Central Cooperative Bank v. Asim Chatterjee and others” reported in (2012) 2 SCC 641. By relying upon the previous decisions, the Hon’ble Supreme Court held in paragraph 22 of the judgment that disciplinary proceedings was not vitiated for non-supply of enquiry report as the same did not cause any prejudice to the delinquent employee. It is relevant to quote paragraph 22 of the judgment, which is as follows :

“22.... We, therefore, repeat that since no prejudice has been caused to respondent no. 1 (delinquent employee) by the non-supply of the enquiry officer’s report, the said respondent had the little scope to contend that the disciplinary proceedings had been vitiated on account of such non-supply.”

The above proposition indicates that the Court must consider whether real prejudice is caused for violation of the principles of natural justice for setting aside any order under challenge before it. In the instant case, no real prejudice is caused to the applicant for cancellation of order of promotion,

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which was obtained by the applicant by submission of false and forged certificate of passing Madhyamik Examination while he was in service and for which show-cause notice was not only served on the applicant, but reply to the show-cause was also given by the applicant while he was in service.

Let us now consider what are the consequential benefits to which the applicant is entitled after cancellation of promotion of the applicant to the post of Amin. The applicant was allowed to serve by the disciplinary authority till the date of retirement on April 11, 2011 even when the disciplinary authority detected the fact of submission of false and forged certificate of passing Madhyamik Examination by the applicant for the purpose of obtaining promotion w.e.f. April 7, 1999. Since the applicant was allowed to serve from the date of promotion to the post of Amin in the month of April 1999 till the date of retirement on April 30, 2011, the applicant is entitled to get salary in terms of the pay scale applicable to Group-D post to which the applicant belonged along with annual increment from April 1, 1999 till the date of retirement on April 30, 2011. The last pay to be drawn by the applicant in the Group-D post on the date of retirement will be taken into consideration for grant of pension and other retirement benefits like gratuity, commuted value of pension and leave salary by issuing appropriate revised order by the respondent no. 5, Sub-Divisional Land & Land Reforms Officer, Hooghly Sadar.

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With regard to the issue of recovery of excess payment of salary of the applicant to the tune of Rs.53,275/-, we are of the view that excess payment of salary of the applicant was detected about three years after retirement of the applicant from service. By applying the principle of law enunciated by the Hon'ble Supreme Court of India in the case of "State of Punjab v Rafiq Masih" reported in (2015) 4 SCC 334, we would like to hold that the said amount of Rs.53,275/- cannot be recovered from the applicant, particularly when this recovery of excess payment done almost after three years from the date of retirement would cause hardship to the applicant to such an extent, which will outweigh the equitable balance of the right of the state respondents to recover the same.

With regard to recovery of excess payment of retiring gratuity to the tune of Rs.33,845/- excess payment of commuted value of pension to the tune of Rs.14,356/- and excess payment of leave salary to the tune of Rs.15,440/- can be recovered from the applicant by the respondent no. 5, Sub-Divisional Land & Land Reforms Officer, Hooghly after giving the applicant an opportunity of hearing. The ratio of "States of Punjab v. Rafiq Masih" (Supra) has no manner of application in case of excess payment of retirement benefits obtained by the applicant by practising fraud i.e. by producing false and forged certificate of passing Madhyamik Examination. So, the amount of excess payment of pension, if any, after cancellation of the order of

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promotion of the applicant, can be recovered by the respondent no. 5, Sub-Divisional Land & Land Reforms Officer, Hooghly after calculation of last pay drawn by the applicant on the date of retirement as Group-D employee after giving the applicant an opportunity of hearing. We hope and trust that the respondent no. 5, Sub-Divisional Land & Land Reforms Officer, Hooghly will take necessary steps for issuance of revised last pay certificate to the applicant as Group-'D' employee on the date of his retirement from service and recover excess payment of retirement benefits including pension from the applicant within a reasonable period of time preferably within a period of 12 (twelve) weeks from the date of communication of the order.

In view of our above observation, we cannot persuade ourselves to quash Memorandum dated February 7, 2007 and Memorandum dated August 14, 2013 and Memorandum dated March 11, 2014. Nor can we persuade ourselves not to give any effect to Memorandum dated March 31, 2014 as prayed by the applicant.

With the above observation, 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 & Rajib

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