

**IN THE WEST BENGAL ADMINISTRATIVE TRIBUNAL
BIKASH BHAVAN, SALT LAKE CITY
K O L K A T A – 7 0 0 0 9 1**

Present :-

The Hon'ble Mrs. Urmita Datta (Sen)

MEMBER (J)

J U D G E M E N T

-of-

Case No. OA-155 of 2016

Ramesh SahaApplicant .

-Versus-

State of West Bengal & Others....Respondents

**For the Applicant :- Mr. M.N. Roy,
Mr. G. Halder,
Learned Advocates**

**For the State Respondents :- Mr. S. Bhattacharjee,
Learned Advocate.**

Judgement delivered on: 26th April, 2022

The Judgement of the Tribunal was delivered by:-

Hon'ble Urmita Datta (Sen), Member (J).

OA 155 of 2016

J U D G E M E N T

The instant application has been filed praying for following relief:-

- a) An order be passed quashing/setting aside the Impugned Order of punishment being D.O. No. 1617 dated 30.06.2015 passed by S.P., Paschim Medinipore and Order of confirmation being Range Order No. 85/MR dated 02.11.2015 and D.O. No. 2434 dated 04.11.2015 passed by the appellate authority Deputy Inspector General of Police, Midnapore Range against the Applicant.
- b) An order directing the Respondents and each of them to certify and remit the records of the case to this Learned Tribunal so that this Learned Tribunal may do conscionable justice to the case after perusal of the same.
- c) As such other order or orders, direction or directions as your Lordship may deem fit and proper.

As per the applicant, he was served with a Charge Sheet dated 16.05.2015 with a allegation that the time of his marriage, he took dowry as gold ornaments worth Rs. 4.00 lakhs, silver ornaments of Rs. 50,000/-, furniture, garments and other valuable articles of Rs. 1,50,000/-. A few days after marriage, he and his parents expressed his dissatisfaction over the bridal gift and started torture both physically and mentally. In addition to that on 14.02.2013, at about 4.00 p.m., he and his father and six other persons came to the house of the wife of the applicant for discussion. During discussion, the applicant had lost his temper and started to assault his wife physically even caught hold of his wife's throat to finish her but she was saved by her family and he left the place by using filthy languages after threatening her.

In response to such Charge Sheet, the applicant submitted his written defense on 30.05.2013 (Annexure-P/2). Though, originally the Addl. S.P. (HG), Jhargram was appointed as Enquiry Officer on 12.06.2013, however, after the said Enquiry Officer submitted his finding on 15.05.2014 holding that the charges are not proved, the S.P., Jhargram again appointed S.D.P.O., Jhargram for re-enquiry. During re-enquiry three prosecution witnesses were examined and relevant documents were exhibited. Thereafter, the second

Enquiry Officer submitted his findings holding the charges have been proved on 12.05.2015 (An P/3). Thereafter S.P., Paschim Midnapore served the final order dated 30.06.2015 imposing a punishment of stoppage of two increments for two years with future effect.

Being aggrieved with the applicant filed an appeal to the Appellate Authority on 10.08.2015 (Annexure P/5). However, the Appellate Authority vide his order dated 02.11.2015 had rejected the appeal of the applicant. (Annexure P/6).

As per the applicant, the Disciplinary Authority cannot reappoint enquiring authority for the second time without considering the enquiry report of the first enquiring officer.

The respondents have filed their reply wherein it has been submitted that the applicant was granted all the opportunity for presenting his case, therefore, there was no violation of natural justice. It has been further submitted that though the first enquiring officer submitted his findings holding that no charges were proved, however, after going through the findings of the enquiring officer, it was noted by the Disciplinary Authority that the findings of the enquiring officer did not commensurate with the material on record of the enquiry. Accordingly, Disciplinary Authority pleased to direct to hold enquiry afresh and one enquiry officer was appointed with intimation to the applicant and consequent upon, the applicant fully participated in the said enquiry. The said enquiry proceeding was conducted by the enquiry officer after providing all reasonable opportunity to the applicant, Therefore, subsequently the applicant cannot challenge the appointment of the second enquiry officer. Further the Disciplinary Authority as well as Appellate Authority after considering all the materials on record and after hearing the applicant had passed the impugned orders. Therefore, the respondents have prayed for rejection of the order.

I have heard both the parties and perused the records. It is noted that in a disciplinary proceeding, disciplinary authority has the only power to take final decision with regard to disciplinary proceeding. Rule 9 (15) of W.B.S.(C.C.A) Rules, 1971 has specifically stipulated that in case of disagreement with the findings of the enquiry authority, the disciplinary authority should communicate the said disagreement with the finding of the enquiring authority to the applicant before passing his final order.

The Hon'ble Apex Court in the case of Punjab National Bank & Others Vs. Kunj Behari Misra reported in (1998)7 SCC page 84 has observed interalia :-

- a) “Under Regulation 6, the enquiry proceedings can be conducted either by an enquiry officer or by the disciplinary authority itself. When the enquiry is conducted by the enquiry officer, his report is not final or conclusive and the disciplinary proceedings do not stand concluded. The disciplinary proceedings stand concluded with the decision of the disciplinary authority. It is the disciplinary authority which can impose the penalty and not the enquiry officer. Where the disciplinary authority itself holds an enquiry, an opportunity of hearing has to be granted by him. When the disciplinary authority differs with the view of the enquiry officer and proposes to come to a different conclusion, there is no reason as to why an opportunity of hearing should not be granted. It will be most unfair and iniquitous that where the charged officers succeed before the enquiry officer, they are deprived of representing to the disciplinary authority before that authority differs with the enquiry officer’s report and, while recording a finding of guilt, imposes punishment on the officer. In our opinion, in any such situation, the charged officer must have an opportunity to represent before the disciplinary authority before final findings on the charges are recorded and punishment imposed. This is required to be done as a part of the first stage of enquiry as explained in Karunakar case.
- b) The result of the aforesaid discussion would be that the principles of natural justice have to be read into Regulation 7 (2). As a result thereof, whenever the disciplinary authority disagrees with the enquiry authority on any article of charge, then before it records its own findings on such charge, it must record its tentative reasons for such disagreement and give to the delinquent officer an opportunity to represent before it records its findings. The report of the enquiry officer containing its findings will have to be conveyed and the delinquent officer will have an opportunity to persuade the disciplinary authority to accept the favourable conclusion of the enquiry officer. The principles of natural justice, as we have already observed, require the authority which has to take a final decision and can impose a penalty, to give an opportunity to the officer charged of misconduct to file a representation before the disciplinary authority records its findings on the charges framed against the officer.”

The Hon'ble Apex Court further in the case of Union of India Vs. K.D. Pandey and Another reported in (2003) SCC (L & S) 791 has observed the following :-

“Learned counsel for the appellant contended that in this case the Board had examined the material on record and come to the conclusion that four of the six charges could be proved on the available material, which had not been properly examined in the earlier inquiry. In fact from the order made by the Railway Board as well as from that part of the file where the inquiry report made earlier is discussed, it is clear that specific findings have been given in respect of each of the charges after discussing the matter and, if that is so, we fail to understand as to how there could have been a remit to the inquiry authority for further inquiry. Indeed this resulted in second inquiry and not in a further inquiry on the same set of charges and the material on record. If this process is allowed the inquiries can go on perpetually until the view of the inquiry authority is in accord with that of the disciplinary authority and it would be abuse of the process of law. In that view of the matter we think that the order made by the High Court affirming the order of the Tribunal is just and proper and, therefore, we decline to interfere with the same. The appeal is dismissed accordingly.”

From the above, it is clear that if the Disciplinary Authority would disagreed with the findings of the enquiry authority, he has every right to disagree with the same but he has to record the reasons for such disagreement and serve both copy of enquiry report as well as disagreement note to the delinquent officer and after granting him an opportunity to make submission with regard to such disagreement and then could have pass final order. In the case of K.D. Pandey supra, the Hon'ble Apex Court has disapproved the second enquiry made by any other authority which is squarely applicable in the instant case also.

Therefore, I quash and set aside the impugned punishment order dated 30.06.2015 as well as appellate order date 2-4/11/2015 and remand back the matter to the Disciplinary Authority to take appropriate steps in view of the above observation by way of supplying the first enquiry report as well as disagreement note, if any, to the applicant after granting him an opportunity to make appropriate submission against the said enquiry report and disagreement note and to communicate the reasoned and speaking final order to the applicant within a period of twelve weeks from the date of receipt of the

order. Accordingly, OA is disposed of with the above observation and direction with no order as to costs.

**URMITA DATTA(SEN)
MEMBER (J)**

SC