

**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 Smt. Urmita Datta (Sen)
Officiating Chairperson and Member (J)**

**J U D G M E N T
-of-**

Case No. O.A. - 1460 of 2013

Basudeb Mukherjee Applicant

-Versus-

State of West Bengal & others....Respondents

**For the Applicant : - Mr. Bikash Ranjan Neogi,
Mr. Asim Kumar Niyogi,
Advocates.**

**For the State Respondent:- Mr. Apurba Lal Basu,
Advocate.**

Judgment delivered on : 2.9.2022

**The Judgment of the Tribunal was delivered by:-
The Hon'ble Smt. Urmita Datta (Sen), Officiating Chairperson and
Member (J)**

Judgement

1. The instant application has been filed praying for following reliefs:-

“(a) An order direction upon the respondents to quash and set aside the final order dated 11.01.2008 issued by respondent which is annexure “F” to this application and to pay the applicant all arrears of salaries and allowance including pensionary benefits.

(b) Issuance of any further order or orders as Your Lordships may deem fit and proper.”

2. As per the applicant, while he was working as Deputy Magistrate-cum-Deputy Collector, Howrah, a criminal case was started being Golabari P.S. case No. 70 of 2003 and the applicant was arrested and detained for more than 48 hours in police custody. Thereafter, he was put under suspension in the year 2003. Being aggrieved with the continuation of suspension, the applicant approached this Tribunal in O.A. No. 2504 of 2006, which was disposed of vide order dated 06.12.2006 directing the State Respondents to initiate departmental proceedings, if they have already taken a decision for such initiation within a period of three months to complete and communicate their decision within a period of one year from the date of communication of the order (annexure ‘A’). Subsequently, vide Memo dated 08.02.2007, the Assistant Secretary, the Government of West Bengal served upon him a notice dated 31.01.2007, whereby the applicant was

directed to appear before the Enquiry Authority being the Commissioner of Departmental Enquiries (Annexure 'B').

3. In compliance to such notice, the applicant appear before the enquiry officer and submitted that since the applicant was not served with the Memorandum of Charge Sheet, he is not in a position to make any submission. In view of that, the Enquiry Officer handed over Charge Sheet containing four Article of Charges (Annexure 'C'). Thereafter, he participated in the said enquiry. On 29.11.2007, the Principal Secretary, P & AR Department issued a Show Cause Notice along with copy of the enquiry report directing him to show cause as to why the applicant would not be dismissed from service (Annexure 'D'). The applicant, subsequently, submitted reply to the said Show Cause Notice (Annexure 'E'). Ultimately, vide Memo dated 11.01.2009, the applicant was dismissed from service vide Final Order dated 06.12.2006. Being aggrieved with the final order, he had preferred an appeal before the Governor. Further the Disciplinary Authority's order was affirmed by the Appellate Authority vide Order dated 02.09.2008. Being aggrieved with, the applicant again approached this Tribunal in O.A. No. 293 of 2009, which was disposed of vide order dated 29.07.2010 by remanding back the matter to the Appellate Authority to dispose of the appeal in compliance to the Rule 19 of CCA Rule 1971. Subsequently, the respondents filed an M.A. No. 150 of 2011 with a prayer to re-hear the appeal afresh as the Governor of West Bengal is no longer Appellate Authority with effect from 20.02.2008. The said application was disposed of vide order dated 13.07.2012 (Annexure 'A') observing that since the Governor of West Bengal is not Appellate Authority with regard to Group – A Officers being the Disciplinary Authority of Group A Officers, the Original Application would be heard by the

Tribunal on merit by way of modifying the order dated 29.07.2010 and directed that the O.A. to be fixed on next date. However, against the order dated 13.07.2012, the applicant filed one WPST No. 1 of 2013 before the Hon'ble High Court, which was disposed of vide order dated 04.03.2013 and remanded back the matter to this Tribunal holding that the M.A. No. 150 of 2011 should be heard by the two Members, who passed the order dated 29.07.2010 by way of quashing the Tribunal's order dated 13.07.2012.

4. In pursuance to the aforementioned order dated 13.07.2012, this Tribunal, vide order dated 25.09.2013, disposed of the application being infructuous with a liberty to the applicant to file afresh application. Hence the instant application has been filed.

5. As per the applicant, being a WBCS (Executive) Officer and being appointed by the Governor, under the provision of Rule 9, the Governor being a Disciplinary Authority can only issue the Charge Sheet, whereas the Charge Sheet has been issued by the Principal Secretary, P & AR Department, which is not sustainable in law as per Article 309 of the Constitution of India. It has been further submitted that the Principal Secretary not being the disciplinary authority and having not been delegated of any power of Governor, issuance of Charge Sheet by the Principal Secretary is without jurisdiction and liable to quash. It has been further submitted by the applicant that the copy of the recommendation of the Vigilance Commission as well as Public Service Commission was not supplied to him. The copy of the advice of the Public Service Commission was only supplied to him along with the final order. Therefore, this is a clear violation of settle principle of law as held by the Apex Court in the case of **Union of India –Vs- S.K. Kapoor reported in (2011) 4 SCC 589**. In

support of his contention, he has referred the following judgments:

(i) 2010(2) SCC 772 (State of U.P. & Ors. –Vs- Saraj Kr. Sinha)

(ii) AIR 2016 SC 4107 (Brajendra Singh Yambem –Vs- Union of India & Ors.)

(iii) AIR 2018 SC 4060 (State of Tamil Nadu, represented by Secretary, Tamil Nadu –Vs- Promad Kumar, IPS & Others).

The counsel for the applicant has further submitted that in the case of **Allahabad Bank and Others –Vs- Krishna Narayan Tewari – reported in (2017) 2 SCC 308**, wherein it has been held that remanding back the matter to the authority for a fresh enquiry would be very harsh and would practically deny the applicant any relief whatsoever. Therefore, the counsel for the applicant has prayed for quashing of the impugned final order dated 11.01.2008. According to the applicant, the Charge Sheet dated 29.01.2007 was not served upon the applicant by the Governor and or Principal Secretary, P & AR Department, but he had received the Charge Sheet from the enquiry authority.

6. The respondents have filed their reply, wherein, it has been stated that the Charge Sheet was delivered to the applicant through the District Magistrate, South 24-Parganas vide Memo No. 105-P & AR (Vig.) dated 05.02.2007 with a direction to the applicant to submit his written statement of defense within 21 days from the date of receipt of the said Memo. and the same was returned by the C.D.O., Writers' Buildings The said Charge Sheet was signed by the Principal Secretary on behalf of the Governor as per the provision of Clause (2) of the Article 166 of Constitution of India. Therefore, as per the respondent, the Charge Sheet has been

rightly issued by the Principal Secretary, P & AR Department on or on behalf of the Governor. It has been further submitted by the respondent that the applicant was granted each and every opportunity to make representation against the proposed punishment. Therefore, the disciplinary authority has rightly imposed punishment upon the applicant.

7. I have heard the parties and perused the records. It is noted that the applicant has mainly prayed for quashing of the final order dated 11.01.2008 on the following grounds:

(1) The charge sheet was not issued by the competent authority i.e. Governor but was issued by the Principal Secretary, P & AR Department. Therefore, the said charge sheet is not sustainable.

(2) The recommendation of the Vigilance Commission was not supplied to him.

(3) Recommendation / Advice of the Public Service Commission proposing the penalty, which supposed to be supplied before imposition of penalty to enable the applicant to make appropriate representation against the proposed punishment, was not served upon him in advance.

8. Article 166 of Constitution of India stipulates, inter alia:

“(1) All executive action of the Government of a State shall be expressed to be taken in the name of the Governor.

(2) Orders and other instruments made and executed in the name of the Governor shall be authenticated in such manner as may be

specified in rules to be made by the Governor, and the validity of an order or instrument which is so authenticated shall not be called in question on the ground that it is not an order or instrument made or executed by the Governor.

(3) The Governor shall make rules for the more convenient transaction of the business of the Government of the State, and for the allocation among Ministers of the said business insofar as it is not business with respect to which the Governor is by or under this Constitution required to act in his discretion.”

The Hon'ble Apex court in the case of P. Joseph John vs The State of Travancore-Cochin, reported in 1955 AIR 160 held that the provisions of Act, 166(1) and (2) are directory, not mandatory, and, in order to determine whether there has been compliance with the said provisions, all that is necessary to see is that the requirements of the sub-sections are met in substance.

9. It is noted that the Government of West Bengal, Home Department vide Notification No. 261 A.R.-5th February 1959, notified Rule under Clause (2) of Article 166 of the Constitution of India, which stipulates, inter alia:

“Orders and other instruments made and executed in the name of the Governor shall be authenticated by the (signature of the Chief Secretary, a Secretary), a Joint Secretary, a Deputy Secretary, an Under Secretary or an Assistant Secretary to the Government of West Bengal, or of an officer of the Government of

**West Bengal specially empowered in this
behalf by the Governor.”**

In view of the above, the Charge Sheet issued by the order of the Governor is valid as per the Rule made under Clause (2) of Article 166 of Constitution of India by Notification dated 05.02.1959.

10.It is noted that one Commissioner of Departmental Inquiry, Vigilance Commission, West Bengal was appointed as Inquiry officer and the report dated 14.09.2007 of the said Inquiry Officer, which was served upon the applicant along with the Second Show Cause Notice dated 29.11.2007. Therefore, as the Inquiry Officer is the Commissioner of the Vigilance Commission, obviously there is no such separate report of the Vigilance Commission and the supply of the same does not arise as against which the applicant made representation on 10.12.2007 (Annexure 'E'). However, it is noted that the advice / recommendation of Public Service Commission, West Bengal was supplied to the applicant only along with the final order dated 11.01.2008 (Annexure 4).

11. In the case of S.K. Kapoor (supra), it has been held that if any material is to be relied upon in departmental proceedings then its copy must be supplied in advance to charge sheeted employee so that he may have chance to rebutt that material. It has been further held that if authority consulted with the U.P.S.C. and relies on its report for taking disciplinary action then copy of report must be supplied in advance to employee concerned, otherwise, it would amounts to violation of principle of natural justice. In the instant case, from the perusal of the final order, it is observed that the Public Service Commission, West Bengal having considered the gravity of the offence committed by the

delinquent and all other aspects of the case had recommended that the officer be dismissed from service as a measure of punishment and the disciplinary authority being agreed with the recommendation and advice of the Public Service Commission, West Bengal had imposed the punishment of dismissal. Therefore, non supply of the recommendation of the Public Service Commission in advance i.e. before passing final order to enable the applicant makes representation against the same. Therefore, such non supply of the Public Service Commission recommendation in advance i.e. before passing the final order amounts to violation of natural justice. Accordingly, the final order dated 11.01.2008 is quashed and set aside on the ground of violation of natural justice and the matter is remanded back to the disciplinary authority with a direction to serve the copy of the Public Service Commission advice to the applicant and to grant him opportunity to make representation, and thereafter, to pass a reasoned and speaking order within a period of three (3) months from the date of receipt of the order. The applicant is also directed to cooperate with the respondent for completing the disciplinary proceeding within stipulated period of time. Accordingly, the O.A. is disposed of with the above observation and direction with no order as to costs.

URMITA DATTA (SEN)
Officiating Chairperson and Member (J)

A.K.P.