

**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)  
Member (J)**

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

**Case No. O.A. – 506 of 2021 (MA – 81 of 2021)**

**Shubhendu Bhattacharjya .....Applicant**

**-Versus-**

**State of West Bengal & others....Respondents**

**For the Applicant : - Mr. Manujendra Narayan Roy,  
Mr. Gourav Halder,  
Advocates.**

**For the State Respondent:- Mr. S. Deb Roy,  
Mr. Anirudha De,  
Ms. Ruma Sarkar,  
Departmental Representatives,  
Land & Land Reforms Department.**

**Judgment delivered on : 15<sup>th</sup> June, 2022**

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

## Judgement

1. The instant application has been filed praying for following relief(s):

**“(a) An order do issue thereby quashing/setting aside the entire Disciplinary Proceeding so initiated against the applicant vide Memorandum No. 1459-A&P/4A-06/2017 Dated, Kolkata, the 2<sup>nd</sup> April, 2018 including Memo No. 11/CON/LR/C Dated, Bankura the 21<sup>st</sup> January, 2018 duly signed by the District Land and Land Reforms Officer & Additional District Magistrate, Bankura, whereby the original order no. 43-A&P/4A-06/2017 dated 07.01.2019 along with copy of the enquiry report was served, immediately as the respondent authorities have miserably failed to conclude the departmental proceeding in terms of the solemn order dated 11.12.2020 passed in O.A. No. 420 of 2020 by invoking the “Default” clause.**

**(b) An order do issue directing the respondent authorities to allow your applicant all consequential service benefits in accordance with law within a stipulated time as this Hon’ble Tribunal may deem fit and proper in the ends of Justice after quashing/setting aside the entire Disciplinary Proceeding so initiated against the applicant vide Memorandum No. 1459-A&P/4A-06/2017 Dated, Kolkata the 02<sup>nd</sup> April,2018.**

**(c) A further order do issue directing the respondent authorities to transmit records pertaining to the instant case so that conscionably justice can be done.**

**(iv) Any other appropriate order/orders direction/directions as this Hon'ble Tribunal may deem fit and proper to protect the right of the applicant and in the ends of justice.”**

2. As per the applicant, one Disciplinary Proceeding was initiated against him vide Memo dated 02.04.2018 (Annexure 'A'), wherein he had participated and filed his reply on 10.05.2018. Subsequently, he was served with the Second Show Cause Notice dated 07.01.2019 vide Memo dated 21.01.2018 (Annexure 'E'), against which he had filed his reply to Second Show Cause Notice on 18.02.2019. As no final order was communicated to him, he had preferred one O.A. being No. 420 of 2020 (Annexure 'P-1' to the M.A. 81 of 2021), which was disposed of vide order dated 11.12.2020 directing the Respondent No. 2 to conclude the departmental proceeding within a period of six months and to take final decision by way of passing a speaking and reasoned order from the date of receipt of the order. It was further stipulated that in default, the proceeding would be vitiated.
3. The applicant communicated the same order vide letter dated 23.12.2020 (Annexure 'P-2'), which was received by the authority on 24.12.2020 by hand with proper receipt (Annexure 'P-2'). As per the applicant, the respondent has to conclude the disciplinary proceeding and communicate the order within the said stipulated six months time from the date of receipt of the order as the Disciplinary Proceeding is at the final stage, as reply to Second Show Cause Notice was already submitted to the

authority on 19.02.2019. Even then no final order was ever communicated to the applicant till the filing of the instant O.A., which was filed on 26.07.2021 and served upon all the respondents along with all annexure by hand on 02.08.2021. Though as per the order dated 11.12.2020, the last date of communicating the final order would be 24.06.2021. However, the respondents had communicated Final Order dated 12.05.2021 only on 19.08.2021 (after the date of admission hearing i.e. on 12.08.2021) by e-mail as well as whatsapp message in the mobile phone of the applicant.

As per the applicant, this Hon'ble Tribunal vide their order dated 11.12.2020 had categorically observed that even reply to Second Show Cause Notice was also completed on 19.02.2019 and the matter was finally heard on 11.12.2020 by this Tribunal, in the mean time the respondents did not pass and / or served any final order to the applicant however this Tribunal had granted another six months time to conclude departmental proceeding and communicate final order within six months from the date of receipt of order dated 11.12.2020, with a rider that in default, the proceeding would be vitiated. It has further submitted by the counsel for the applicant that he had properly cooperated with the authorities by filing his reply and also by taking part in the disciplinary proceeding as per Rules. However, the respondents sat tight over the issue and did not pass any final order since 2019, even after granting further chance of six months time vide order dated 11.12.2020, which had expired on 24.06.2021. The counsel for the applicant has again submitted that neither the respondents had preferred any writ petition against the said order before the Hon'ble High Court, Calcutta nor had communicated any final order to the applicant within six months stipulated time or has asked for extension of time to serve Final Order. Rather the applicant has filed the instant application for quashing of the

disciplinary proceeding on the basis of the judgement dated 11.12.2020 (as it attains finality) and the matter was listed for admission hearing on 12.08.2021. Even on that date also admittedly no order was served upon him. The respondents, only on 19.08.2021, have communicated the final order dated 12.05.2021 through e-mail as well as whatsapp. It has been further submitted that it is a settled principle of law that unless and until the executive decision be communicated to the concerned person, it cannot be termed as effective order. The counsel for the applicant has also submitted that if the respondents could have communicated the final order dated 12.05.2021 through e-mail and whatsapp on 19.08.2021, they could have done so within the stipulated period of six months time i.e. 24.06.2021 by same way. During course of the hearing, the counsel for the applicant has referred the following judgement:

**“Sethi Auto Services Station and Another –Vs-  
Delhi Development Authority and Others,  
reported in (2009) 2 SCC 180.”**

4. It has been further submitted by the applicant that the Disciplinary Authority vide his impugned Final Order dated 12.05.2021, had not only imposed punishment of reduction to a lower stage in the time scale of pay by one stage for a period of three years with further direction that the applicant will not earn increment of pay during the period of such reduction and on expiry of such three years, the reduction will not effect of postponing the future increment of his pay under Rule 8 (iv) of West Bengal Services (CCA) Rules, 1971, but with further rider that the applicant would be debarred from promotion during the period of his undergoing the penalty and such debarment would not be during penalty which is beyond the scope of the Rule 8(iv) of West Bengal

Services (CCA) Rules, 1971 as well as the judgement passed by this Tribunal passed in order dated 09.03.2022 in No. O.A. 392 of 2019.

5. The respondents have filed their reply, wherein they have admitted that this Tribunal vide order dated 11.12.2020 had granted time to conclude the departmental proceeding within a period of six months and to communicate the same within that stipulated period of time. However, as per the respondents, the Public Service Commission, vide their communication dated 23.02.2021 had advised the disciplinary authority with regard to the punishment to be imposed upon the applicant (Annexure 'R-1'). Subsequently, the Land Reforms Commissioner and Principal Secretary, Land & Land Reforms and Refugee, Relief and Rehabilitation Department being the Disciplinary Authority had passed the final order dated 12.05.2021 i.e. within the period of six months from the date of receipt of the order dated 11.12.2020 imposing penalty. It has further submitted that in the mean time, all the Government Offices except Emergency Services were declared closed due the pandemic situation vide order dated 15.05.2022 and such complete closure was continued till 15.06.2022 vide subsequent order dated 29.05.2021. Thereafter, in terms of the order dated 14.06.2021, the Government offices were re-opened with only 25% strength from 16.06.2021. It has been submitted that due to such closure and such restriction, the punishment order could not be served upon the applicant and was ultimately served on 19.08.2021.
6. Heard both the parties and perused the records. It is noted that the applicant approached this Tribunal earlier in O.A. No. 420 of 2020, which was disposed of vide order dated 11.12.2020 directing, inter alia:

**“Heard the parties and perused the records. It is noted that the second show cause notice was already issued on 07.01.2019 against which the applicant has submitted his reply on 18.02.2019, which was received by the Department on 19.02.2019. However, the P.S.C. had asked for certain documents on 25.10.2019 but no action was taken by the Respondents. Therefore, we direct the Respondent No. 2 to conclude the departmental proceedings within a period of six months and to take a final decision by way of passing a speaking and reasoned order as per rules and communicate the same from date of receipt of the order. In default, the proceeding should be vitiated. Accordingly, OA is disposed of. Parties are directed to act on the Web Copy of the order.”**

From the perusal of the order dated 11.12.2020, it is noted that the disciplinary proceeding initiated vide Memo dated 02.04.2018, wherein the applicant had duly participated. Even the Second Show Cause Notice was already issued on 07.01.2019 against which the applicant had submitted reply on 18.02.2019. However, the Public Service Commission had asked for certain documents on 25.10.2019 but no action was taken by the State Respondents, when there was no issue of pandemic situation and in that background the respondent was directed to conclude the departmental proceeding within a period of six months. It was further stipulated that in default the proceeding would be vitiated as only the final order has to be passed. Though the said order was communicated to the respondent vide letter dated 23.12.2020, which was received by the department on 24.12.2020, however,

even after expiry of six months no final order was communicated to the applicant though the pandemic situation started for the first phase from 22<sup>nd</sup> March, 2020. It is also an admitted fact that the respondents neither preferred any appeal nor had asked for extension of time to conclude the disciplinary proceeding within a period of six months. Even after filing the instant application on 26.07.2021, neither the respondent has asked for any extension of time to communicate the final order nor had they preferred any appeal against the order dated 11.12.2020. Therefore, the earlier order dated 11.12.2020 passed by this Tribunal has attained finality and the respondent had communicated the final order dated 12.05.2021 only on 12.08.2021. At the time of the hearing, the departmental representative had handed over the final order dated 12.05.2021 to the counsel for the applicant as well as by whatsapp and e-mail on 19.08.2021. It is not understood, if the respondent authority could have communicated the final order dated 12.05.2021 through whatsapp and e-mail on 19.08.2021 to the applicant, why they did not serve the said final order within the stipulated period of six months or earlier to the applicant. However, as no prayer was made by the respondent authority to extend the time for conclusion of the departmental proceeding and communication of the same beyond six months stipulated time, the said order dated 11.12.2020 had attained finality. Therefore, there is no explanation why the respondents authority did not comply with the Memo dated 25.10.2019 by the Public Service Commission? In the case of Sethi Auto (Supra), the Hon'ble Apex Court has held that any decision in note sheet of the file culminate into an executable order, which effect the rights of the parties, only when final decision making authority approved and the said final order is communicated to the person concerned. In the instant case also even if I have to accept that the final order was passed on 12.05.2021 but the said order was



only communicated to the applicant by whatsapp and e-mail on 19.08.2021 and through his counsel by the department during the hearing on 12,08.2021, which is admittedly beyond the stipulated six months time. Therefore, the order of the authority is nonest in the eye of law as the order of this Tribunal dated 11.12.2020 had already attained finality prior to the date of communication of the final order.

7. Further the applicant was imposed with a punishment of reduction to a lower stage in the time scale of pay by one stage for a period of three years with the direction that the Charged Officer will not earn increment of pay during the period of such reduction and on expiry of such period of three years, the reduction will have the effect of postponing the future increment of his pay with a rider that the Charged Officer be debarred from promotion during the period of his undergoing the penalty, such rider is contrary to the decision of judgement dated 09.03.2022 passed in O.A. No. 392 of 2019. Therefore, the final order is also not tenable and liable to be quashed.
8. In view of the above, I have no alternative to quash and set aside the final order dated 12.05.2021 and consequentially also the disciplinary proceeding as it has already been vitiated as per the order dated 11.12.2020, which has attained finality as observed above. Accordingly, the M.A. and O.A. are disposed of with the observations and directions with no order as to costs.

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

**A.K.P.**