

**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. 518 of 2021

Amit Das Applicant.

-Versus-

The State of West Bengal & Others. Respondents.

For the Applicant

: Shri M.N. Roy,
Shri G. Halder,
Ld. Advocates.

For the State Respondent

: Mrs. S. Agarwal,
Ld. Advocate.

**For the Principal Accountant
General (A&E), West Bengal**

: Shri B. Mitra,
Departmental Representative.

Judgment delivered on

: 19th May, 2022.

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

J U D G M E N T

The instant application has been filed praying for following relief :

“ a) An order do issue thereby quashing/setting aside the Disciplinary Proceeding so initiated against the applicant vide Charge Sheet No. 28-MA/N/Estt (MED)/2M-13/2018 Dated Kolkata, the 04th February, 2020 immediately as the respondent authorities have miserably failed to conclude the departmental proceeding within six months of time as depicted by the Hon’ble Supreme Court of India in the matter of Prem Nath Bali –Vs-The Registrar, High Court of Delhi and another, as well as solemn order dated 23.12.2020 passed by this Hon’ble Tribunal in O.A. No. 429 of 2020 (Amit Das –Vs-The State of West Bengal & Others);

b) An order do issue directing the respondent authorities to allow your applicant all retiral 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 Disciplinary Proceeding so initiated against the applicant vide Charge Sheet No. 28-MA/N/Estt (MED)/2M-13/2018 Dated Kolkata, the 04th February, 2020;

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;

d) 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, while he was working as Chief Engineer, he was served with a Charge Sheet dated 04.02.2020 on various charges (Annexure-A). However, after receiving the said Charge Sheet, he found that the said Charge Sheet is without the copies of relied upon documents (Annexure-iii). The applicant has filed reply to the said Charge Sheet denying the allegations (Annexure – B). However, the Departmental Authority did not conclude the Disciplinary Proceedings, therefore the applicant made a representation on 03.09.2020 before the Disciplinary Authority for conclusion of Departmental Proceedings (Annexure-C). However, as the respondents are sitting tight over the said proceedings and the applicant was due to retire, therefore, he filed OA No. 429 of 2020, praying for direction upon the respondents to conclude the Disciplinary Proceedings within a stipulated period of time

and disbursement of retiral benefits including the provisional pension as in the meantime he has retired on superannuation on 30.04.2020.

3. The said OA was adjudicated by this Tribunal on contest and the Tribunal vide order dated 23.12.2020 (Annexure – D) directed the respondent No. 2 to conclude the Disciplinary Proceedings within a period of 6 (six) months from the date of receipt of the order as well as to make payment of provisional pension and other retiral benefits as per rules within a period of 1 (one) months. However, thereafter neither Disciplinary Proceedings was concluded nor he has been paid legitimate retiral dues as well as provisional pension for the month of May, June and July, 2021 onwards.

4. In the meantime, the respondent authorities vide order dated 28.06.2021 intimated the applicant that he is entitled to get provisional pension for 1 (one) year from the date of superannuation and as such the applicant was paid provisional pension for the period starting from 01.05.2020 till 30.04.2021, but thereafter, all of a sudden the provisional pension was stopped till the filing of the instant application. The applicant subsequently submitted one representation dated 12.07.2021 in response to the said order dated 28.06.2021 and has prayed for disbursement of further provisional pension (Annexure –F). But without any positive effect. Being aggrieved, he has filed the instant application.

5. The applicant has further submitted that after filing of the instant application, the respondent authorities have filed one MA 59 of 2021 arising out of erstwhile OA No. 429 of 2020, praying for further 6 (six) months extension of time to conclude the Departmental Proceedings, wherein vide order dated 02.09.2021, 3 (three) months time was granted from 02.09.2021 to conclude the Departmental Proceedings as a last chance. However, even after expiry of such three month time granted by the Hon'ble Tribunal, the Disciplinary Authority did not conclude the Departmental Proceedings nor preferred any writ petition against the order dated 23.12.2020 and 02.09.2021. During the pendency of the instant application, the applicant has received 2nd Show Cause Notice dated 08.02.2022 proposing a punishment of 10% cut in gratuity without serving the Inquiry Report though the said 2nd Show Cause Notice is non-est in the eye of law as the time extended by the Tribunal, had already expired in the month on 09.12.2021 as they have not asked for extension of time before the court.

6. However, during the hearing of the instant application on 31.03.2022, one communication was made by the Secretary, Urban Development & Municipal Affairs Department, wherein it has been stated that the file has been sent to Public Service Commission, West Bengal for their opinion. Further on 04.04.2022. During the course of hearing on 12.04.2022, one final order dated 11.03.2022 was produced before this Tribunal, which was signed on 11.04.2022 by the Special Secretary, Government of West Bengal, Development & Municipal Affairs Department. Again another final order dated 19.04.2022 was also served upon the applicant subsequently after conclusion of hearing.

7. The counsel for the applicant has submitted that the aforesaid final order is non-est in the eye of law as the respondent authorities neither came up with any application seeking for further extension of time before this Tribunal nor had prayed for leave of the Hon'ble Tribunal to pass any order after expiry of time. From the above, it is clear that the respondent authority had accepted the order passed in MA 59 of 2021 dated 02.09.2021, wherein a last chance was granted to them to conclude departmental proceedings within a period of three months from date of the passing of the order. Even no writ petition was moved challenging the said order.

8. It has been further submitted by the applicant that in the said Memo, there are three witnesses and relied upon documents were mentioned. However, such relied upon documents were not served upon him. It has been further submitted that all the charges are related to preparation of detailed Project Report (DPR). It is well settled proposition in Engineering service that, preparation of DPR by itself, cannot cause loss to the exchequer, DPR is a project report, the same may or may not be accepted by the State Level High Power Committee and such committee on looking into visibility of the same, may or may not approve the said report. Thus, the question of issuing tender comes does not into play as a misconduct. Thus, mere preparation of DPR cannot cause loss to the exchequer as alleged by the state respondents.

9. However, neither the applicant was ever called to submit before Inquiry Authority nor any witnesses were called by the Inquiring Authority. Even no Inquiry Report was served upon him. Therefore, he has prayed for quashing of the final order of punishment dated 11.03.2022 and/or 19.04.2022.

10. No reply has been filed by the respondents. However, one written notes of argument has been filed on behalf of the state respondents, wherein it has been stated that in terms of order dated 23.12.2022 passed in OA No. 429 of 2020, necessary steps were taken by the authorities to conclude the said Disciplinary Proceedings but due to Pandemic situation, day to day work including the emergent works stalled from the time being and the Committee of Engineers has prayed for three months time for field visit and other analysis. It has been further submitted that the authorities has released the provisional pension and other retiral benefits of the applicant. However, the respondents have admitted that no final order was passed before the expiry of the extended period of three months time granted by the Tribunal by 02.09.2021. It has been further submitted that the Charge Sheet was issued on 04.02.2020. Thereafter, the Statement was Defense was submitted by the applicant on 11.03.2020. Subsequently, Inquiring Officer was appointed on 11.11.2020 for holding enquiry against the applicant. The said delay took place due to the prevailing Pandemic situation. Thereafter, the applicant sought for documents by letter dated 11.01.2021 and the said document were handed over to the applicant on 08.04.2021, after collecting the same from different departmental officers. The applicant submitted his supplementary statements of defense on 19.04.2021. It is further submitted that a Committee of Engineers was formed on 16.03.2021 to assist the Inquiry Officer and the presenting officer prayed for one month time on 06.04.2021. However, the Committee of Engineers has prayed for three months time for field visit and other analysis before submission of report on 20.04.2021. Again second wave of pandemic situation started in the month of April, 2021 and due to non-availability and procurement of documents, the progress of the proceeding could not be conducted properly. It has been submitted that there is no willful delay on the part of the Disciplinary Authority to conclude the disciplinary proceeding. It has been further submitted that the hearing of instant OA No. 518 of 2021 was taken up on 31.03.2022 and the Deputy Secretary, to the Government of West Bengal, Department of Urban Development and Municipal Affairs submitted a letter dated 31.03.2020 to the Learned Registrar of this Tribunal requesting him to grant considerable time so as to obtain necessary approval of Public Service Commission, West Bengal. The counsel for the respondents has submitted that the Final Order passed on 11.04.2022 (inadvertently mentioned as 11.03.2022), was submitted before this Hon'ble Court on 12.04.2022. However, in the meantime, the

said error has been removed by way of issuing a fresh order dated 19.04.2022 in conciliation of the said order dated 11.03.2022. Admittedly, no prayer of extension of time for passing final order was made before expiry of three months and delay has been caused to pass the final order dated 19.04.2022. During the course of hearing, the counsel for the respondents has submitted that the state respondents have no intention to drag the matter unnecessarily rather due to some procedural norms, delay occurred in concluding the departmental proceeding and accordingly the ratio of Premnath Bali's case is not applicable in the instant case.

11. I have heard the parties and perused the records. It is noted that the applicant was served with a Charge Sheet dated 04.02.2020, wherein some documents were relied upon to establish charges, which according to the applicant was not served upon him and was never denied by the respondents. Subsequently, the applicant submitted a statement of defense. However, he retired from service on 30.04.2020. As his pensionary benefits was not paid to him nor disciplinary proceeding was concluded, the applicant preferred one application being OA No. 429 of 2020, which was disposed of vide Order dated 23.12.2020 with a direction to the respondents to conclude the Disciplinary Proceeding within six months time and also to pay retiral benefits as per rules. However, even after expiry of time of six months, neither the departmental proceeding was concluded nor any application was filed praying for extension of time to conclude the departmental proceeding before expiry of said six months time. In the meantime, the applicant has filed the instant application and thereafter the respondents has filed one MA 59 of 2021, praying for extension of time of three months to conclude the disciplinary proceedings on the ground that due to pandemic situation from 22.03.2020 onwards, they could not complete the departmental proceedings. Even then, this Tribunal granted three months more time to conclude the departmental proceedings by way of passing a reasoned and speaking order vide order dated 02.09.2021. It is pertinent to observe that against the order dated 23.12.2020 and or 02.09.2021 neither any writ petition has been preferred by the respondents nor they have conclude the departmental proceedings and/or has asked for further extension of time before expiry of the extended period as granted by this Court by order dated 02.09.2021.

12. It is noted that this Tribunal had passed the following order in OA 429 of 2020 :

“In view of the above, the respondent no. 2 is directed to conclude the disciplinary proceeding within a period of 6 (six) months from the date of receipt of the order. The applicant is directed to co-operate with the respondent authority to complete the said proceeding. In the meantime, the department is directed to provide the provisional pension and other retirement benefits as per Rules within a period of 1 (one) month.

Accordingly, the original application is disposed of. No order as to cost.”

And subsequently while disposing of MA 59 of 2001 (arising out of erstwhile OA No. 429 of 2020), this court had extended further three months time to conclude the departmental proceedings vide Order dated 02.09.2021, which is as follows :

“Heard both the parties and perused the record. It is noted that vide our order dated 23.12.2020, we had already directed the respondents to conclude the disciplinary proceeding within six month time as the disciplinary proceeding already initiated on 04.02.2020. However, due to the Second Wave of Covid-19 Pandemic, the respondent could not complete the same. Therefore, I grant extension of further three months time from today to conclude the disciplinary proceeding as a last chance. Accordingly, the MA is disposed of with no order as to costs.”

13. It is an admitted fact that the state respondents neither had asked for extension of time before expiry of three months (as last chance was granted by this Tribunal vide Order dated 02.09.2021) rather they have served the copy of the final order dated 11.03.2022, which was signed by Special Secretary to the Government of West Bengal on 11.04.2022. Therefore, it is clear that the state respondents have issued the final order on 11.04.2022, which is beyond three months time of extension granted by this Tribunal. Even no leave was prayed for either by filing an application or even verbally asking of extension of further time or to pass a final order.

14. It is further noted that as per the applicant neither he was even call to submit before the Inquiry Authority nor any witnesses were called

by the Inquiry Authority. Even no Enquiry report was served upon him. However, the same has not been controverted or denied by the respondents. Therefore, it seems that the respondents neither following the procedure of Disciplinary Proceeding nor they bother about the direction of the court. Though this court had granted 6 (six) months time vide order dated 23.12.2020 while disposing of the OA 429 of 2020. Even this Tribunal had granted further 3 (three) months extension of time to conclude the disciplinary proceeding as a last chance. However, the respondents did not conclude the disciplinary proceeding nor had asked for further extension of time or preferred any writ petition against the aforesaid orders, which has attended finality.

15. In view of the above facts and circumstances, I have no alternative but to quash and set aside the Disciplinary Proceedings initiated vide Charge Sheet dated 04.02.2020 as well as Final Order dated 11.03.2022/11.04.2022/19.04.2022 and direct the respondent authorities to make payment of all retiral benefits to the applicant within a period of 6 (six) weeks from the date of receipt of the order.

16. Accordingly, OA is disposed of with above observations and directions with no order as to cost.

Urmita Datta (Sen)
Member (J)