

**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) Acting Chairperson**

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

**-of-**

**Case No. OA-534 of 2018**

**Dr. Haricharan Ray . .....Applicant .**

**-Versus-**

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

<b>For the Applicant</b>	<b>:-</b>	<b>Mr. B.N. Roy, Learned Advocates</b>
<b>For the State Respondents</b>	<b>:-</b>	<b>Mrs. Sunita Agarwal, Learned Advocate.</b>
<b>Judgement delivered on:</b>		<b>16<sup>th</sup> September, 2022.</b>

**The Judgement of the Tribunal was delivered by:-**

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

**OA 534 of 2018****J U D G E M E N T**

As per the applicant, he was served with a Charge Sheet dated 04.06.2018 through Memo dated 21.06.2018 (Annexure-C) and the said Memorandum of Charge Sheet, he was charged for submitting false statement with regard to one Post Mortem Report of one Gopal Patra, who died by police firing on 03.03.1999 and subsequently on the basis of the allegation made by the family of the said deceased person, the West Bengal Human Rights Commission had recommended for initiation of Disciplinary Proceedings against the applicant vide recommendation dated 22.07.2002.

As per the applicant, the cause of action had occurred in the year 1999 and 2002, whereas the Memorandum of Charge Sheet has been served upon him on 21.06.2018 i.e. after more than 16 (sixteen) years from the date of recommendation of West Bengal Human Rights Commission. Therefore, the Disciplinary Proceedings is liable to be set aside on the ground of inordinate delay in issuing Charge Sheet as held by the Hon'ble Apex Court in the case of State of Madhya Pradesh Vs. Bani Singh & Anr. reported in 1990 (Supp) SCC 738.

The respondents have filed their reply, wherein, it has been stated that an incidence of police firing at Kantra village of Paschim Midnapore had occurred on 03.03.1999. In such police firing, one villager namely Gopal Patra was seriously injured on the way to the hospital. The Autopsy Surgeon Dr. Haricharan Ray, i.e. the applicant, being the Assistant Professor, Midnapore Medical College & Hospital conducted the Post Mortem examination of the victim under video camera and had submitted a report thereon.

In the said report, the applicant submitted that a single occasion shot wound in the thigh of the deceased Gopal Patra was found. However, after receiving the complaint from Dr. D.P. Roy, President Midnapore Nagarik Samity, the West Bengal Human Rights Commission took due notice of the complaint and by an order dated 04.12.2000, the Commission directed an investigation to be taken up by its own investigating wing and further directed to investigate the Kharagpur local police being case No. 52/1999 and Kharagpur Local P.S. Case No. 199/1999 to be expedited.

In the said investigation, it is observed that in order to save the police personnel, the applicant initially showed a single gunshot wound in the thigh of the deceased Gopal Patra in his report. Later after going through the photograph of the deceased, the applicant admitted his fault and stated that he had actually found three gun shots injuries on the two thighs of deceased Gopal Patra. The applicant has expressed regret for the unintentional fault and

admitted that the said firing was made at random on very close range. In the said circumstances, the Commission recommended the matter to the Chief Secretary for taking appropriate disciplinary action and thereafter the applicant was served with a Charge Sheet dated 04.06.2018 for giving false statement in the Post Mortem Report.

It has been further submitted that after receiving the recommendation of the West Bengal Human Rights Commission in the year 2002, the Medical Education Directorate, Govt. Of West Bengal started a Disciplinary Proceedings against the applicant in the year 2003, however, thereafter the file was mis-placed. In the aforesaid situation, the Deptt. requested the Commission to further furnish the papers relating to the recommendation of the Disciplinary Proceedings for taking further action and after obtaining the said paper, it was found that there was cogent reason to proceed against the applicant, hence the charge sheet dated 04.06.2018 was issued.

The applicant has filed his rejoinder and stated the incident took place in the year 1999 and the recommendation was made in the year 2002, however, the Charge Sheet was issued in the year 2018 for a stale charge. Therefore, as per settled principle of law, the said Charge Sheet cannot sustain and the same is liable to be set aside and quashed.

I have heard the parties and perused the records. As per the applicant, the cause of action had occurred in the year 1999 and the recommendation and West Bengal Human Rights Commission was made in the year 2002, however, the Memorandum of Charge Sheet has been served upon him on 04.06.2018 i.e. after more than 16 years. Therefore, the Disciplinary Proceeding is liable to be quashed on the ground of inordinate and unexplained delay in issuing Charge Sheet as held by the Hon'ble Apex Court in the case of Bani Singh (supra).

It is noted that after receiving one complaint with regard to the applicant and others in relation to an incidence of firing on the villagers, the then West Bengal Human Rights Commission had recommended interalia :-

“As regards the post-mortem doctor Dr. Haricharan Roy is concerned the Commission will recommend to the State Government an appropriate disciplinary proceedings against him in not giving the correct version of the position of injuries on the body of the deceased Gopal Patra in the Autopsy Report and giving contradictory versions thereof before the Commission in the context of his earlier statement before the Investigating Officer as appointed by

the Commission, which betrays an unprofessional conduct as well as lack of professional competence.”

The aforesaid recommendation was subsequently forwarded to the Chief Secretary, Govt. of West Bengal vide communication reference No. 1574/WBHRC/com/617/99-00 dated 22.07.2002. The said fact has been admitted by the respondents and according to them the Medical Education Directorate, Govt. of West Bengal started a Disciplinary Proceedings against the applicant in the year 2003. However, thereafter since the file got misplaced, they have issued the Charge Sheet only on 04.06.2018.

The Hon'ble Apex Court in the case of Bani Singh (supra) has held interalia:-

“The appeal against the order dated December 16,1987 has been filed on the ground that the Tribunal should not have quashed the proceedings merely on the ground of delay and laches and should have allowed the enquiry to go on to decide the matter on merits. We are unable to agree with this contention of the learned counsel. The irregularities which were the subject matter of the enquiry is said to have taken place between the years 1975-77. It is not the case of the department that they were not aware of the said irregularities, if any, and came to know it only in 1987. According to them even in April 1977 there was doubt about the involvement of the officer in the said irregularities and the investigations were going on since then. If that is so, it is unreasonable to think that they would have taken more than 12 years to initiate the disciplinary proceedings as stated by the Tribunal. There is no satisfactory explanation for the inordinate delay in issuing the charge memo and we are also of the view that it will be unfair to permit the departmental enquiry to be proceeded with at this stage. In any case there are no grounds to interfere with the Tribunal's orders and accordingly we dismiss this appeal.”

In the instant case also the incidence of firing and also giving a wrong report, is a serious charge and against which one complaint was filed before the West Bengal Human Rights Commission and the West Bengal Human Rights Commission after thorough investigation had forwarded their

report with the recommendation against the applicant to take strong disciplinary action in the year 2002 to the Chief Secretary, Govt. of West Bengal.

However, as per the respondents, thereafter they had started Disciplinary Proceedings in the year 2003 though no supporting documents have been enclosed in their reply to substantiate their claim. Moreover, it is an admitted fact that as the said disciplinary file got misplaced in the year 2003, they had issued the Charge Sheet in the year 2018 only. Therefore, it is an admitted fact that the Disciplinary Proceedings has been initiated in the year 2018 only, not in 2003, i.e. after more than 16 years from the date of recommendation of West Bengal Human Rights Commission. Further I do not find any satisfactory explanation for such inordinate delay in issuing the Charge Sheet as even if as per the respondents, the file was misplaced in the year 2003, however, the respondents never took any initiative to reconstruct the said file or to issue Charge Sheet on the serious allegation as per the recommendation of the West Bengal Human Rights Commission. Therefore, I strongly condemn such lackadaisical attitudes of the concerned respondents to initiate the Disciplinary Proceeding on such serious allegation, which makes the charges stale at this distance period of time.

In view of the above, I quash and set aside the Charge Sheet dated 04.06.2018. Accordingly, OA is disposed of with no order as to costs.

**URMITA DATTA(SEN)**  
**MEMBER (J) Acting Chairperson.**