

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-875 of 2021

Paresh Chandra BeraApplicant .

-Versus-

State of West Bengal & Others....Respondents

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

**For the State Respondents :- Mrs. S. Agarwal,
Learned Advocate.**

**For the P.S.C.,W.B. : Mr. S. Bhattacharjee,
Learned Advocate.**

For the Principal A.G.W.B. : Mr. B. Mitra., Deptt. Representative.

Judgement delivered on: 13th July, 2022

The Judgement of the Tribunal was delivered by:-

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

OA 875 of 2021

J U D G E M E N T

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

- a) An order do issue thereby setting aside, quashing the entire Departmental Proceeding issued vide Memorandum No. 02/Ag/O/Sec-23/14 Dated, Kolkata, the 09th February, 2015 with immediate effect.
- b) An order do issue thereby direct the respondent authorities to disburse pension, arrear pension and Gratuity after setting aside the entire departmental proceeding so initiated against your applicant vide Memorandum No. 02/Ag/O/Sec-23/14, Dated, Kolkata, the 09th February, 2015 with immediate effect.
- c) An order do issue thereby setting aside/quashing the Second Show Cause Notice vide Memo No. 64-AG-12018(12)/2/2020-LAW VIG SEC-Dept. of Agri dated 08.10.2021 communicated upon your applicant vide Memo No. 1066/CON 3D/1/1872 (Part File) Dated, Kolkata, the 02.11.2021 with immediate effect.
- 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.
- e) An order do issue directing the respondent authorities to transmit records pertaining to the instant Original Application, so that conscionable justice can be rendered.

As per the applicant, he was served with the Charge Sheet dated 09.02.2015 (Annexure-A) on some allegation for the period from 2009 to 2011. Thereafter, he had submitted his written statement of defence on 27.03.2015 (Annexure-B). However, without issuance of any Show Cause Notice as well as without supplying the Enquiry Report, the Disciplinary Authority had imposed punishment vide order dated 16.04.2018 (Annexure-C). Being aggrieved with the applicant had approached this Tribunal in OA-428 of 2018, which was finally disposed of by an order dated 30.08.2018 (Annexure-D) quashing the impugned final order dated 16.04.2018 for violation of provision of specific rules. However, the respondents were granted liberty to take actions as per rules. The said order was communicated to the Assistant Secretary, Govt. of West Bengal Department of Agriculture vide their Memo dated 20.09.2018 and in pursuance to that the respondents had issued Second Show Cause Notice dated 08.10.2021 which was communicated to the applicant vide Memo dated 02.11.2021 (Annexure-E).

In the meantime, the applicant retired from service on 31.05.2020.

As the applicant retired in the meantime, the issuance of Second Show Cause Notice vide Memo dated 08.10.2021 has become nonest in the eye of law as the Provision of Rule 10 (12) of W.B.S.(C.C.A.) Rules, 1971 has become infructuous due to the retirement of the applicant prior to that date.

It has been further submitted by the applicant that from the perusal of the said impugned Second Show Cause Notice, it would be evident that before issuance of such Notice, the respondent authority did not take any advice of the P.S.C. as well as Enquiry Report in this regard which is mandatory as per rules. Pensionary benefits were also not provided to him.

Being aggrieved with, he has filed this instant application.

Though repeated opportunities were granted to the respondents, however, no reply has been filed.

During the course of hearing, the counsel for the respondent has placed some note sheet as well as Second Show Cause Notice. As per the submission of the learned advocate of the P.S.C., no advice was taken before issuance of the Second Show Cause Notice from the P.S.C. However, the counsel for the respondent has submitted that they have already granted provisional pension.

I have heard the parties and perused the records. It is noted that the applicant had approached this Tribunal earlier in OA-428 of 2018, which was disposed of vide order dated 30.08.2018 holding inter alia :-

“From the perusal of the above, it is noted that there is a clear provision of the Rule to serve notice stating the punishment proposed and the grounds which is binding upon both the state respondents as well as the applicant. But in the instant case, it seems that the disciplinary authority has imposed the penalty without any regular enquiry proceedings but only on the basis of enquiry report of the State Vigilance Commission, which is a preliminary enquiry report. Further no second Show Cause Notice was also served as per Rule 10 (12).

Therefore, though we are not inclined to quash the disciplinary proceeding at this stage. However, we are constraint to quash and set aside the impugned final order dated 16.04.2018 passed by the Disciplinary authority for violation of provision of specific Rules. The respondents is at liberty to take action as per Rules as well as law. Accordingly the OA is disposed of with the above observation and directions with no order as to costs.”

However, again the respondents have issued the Second Show Cause Notice dated 08.10.2021, when admittedly the applicant retired from service on 31.05.2020. The counsel for the applicant has further submitted that the respondents have not concluded the Disciplinary Proceedings even they suppose to conclude within six months time as held by the Hon'ble Supreme Court in the case of Prem Nath Bali Vs. Registrar, High Court of Delhi reported in (2015) 16 SCC 415.

The W.B.S. (C.C.A) Rules, 1971 is only applicable to regular government employees and after retirement as the relationship between employee and employer ceases, the said Rule is not applicable for any retired employees. However, as per the W.B.S. (D.C.R.B) Rules, 1971, the government can withheld pension in case of conviction or misconduct. In the instant case, the Second Show Cause Notice dated 08.10.2021 stated interalia :-

“NOW, THEREFORE, in pursuance of rule 10(12) of the West Bengal Services (Classification, Control and Appeal) Rules, 1971, the Governor is pleased hereby to call upon the said Shri Paresh Chandra Bera, Ex-DDA, Sugarcane Development, Ahmedpur, Birbhum to submit within 10 (ten) days from the date of receipt of this memorandum by him such representation as he may wish to make on the penalty proposed but on the basis of the evidence adduced during the enquiry.

A copy of report of the Inquiring Authority is enclosed.”

From the above, it is observed that the respondents has issued Second Show Cause Notice under Rule 10 (12) of the W.B.S.(C.C.A.) Rules, 1971 alongwith Enquiry Report, which is not applicable in case of a retired government employee. From the perusal of the

aforementioned Second Show Cause Notice, it is also observed that the case of the applicant was not referred to P.S.C. for their advise even the Enquiry Report has only served upon the applicant along with 2nd Show Cause Notice. Therefore, in my considered opinion, the impugned Second Show Cause Notice dated 08.10.2021 is not sustainable, thus, I quash and set aside the impugned Second Show Cause Notice.

It is further observed that the disciplinary proceeding was initiated in the year 2015, however, after granting opportunity to the respondents by this Court in earlier occasion, they did not follow the proper procedure for completion of the Departmental Proceedings. Even the applicant, being retired in the meantime in the year 2020, is not getting the pensionary benefits due to such pendency of Disciplinary Proceedings, where the applicant has no fault.

Therefore, I direct the Disciplinary Authority to conclude the Disciplinary Proceedings strictly after complying with the statutory provision as per settled principles of law and communicate his decision within three months from the date of receipt of the order otherwise the Disciplinary Proceedings would be vitiated. Accordingly, the OA is disposed of with no order as to costs.

URMITA DATTA(SEN)
MEMBER (J)