

**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)

&

The Hon'ble Shri Sayeed Ahmed Baba  
Member (A)

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

-of-

**Case No. : O.A. 392 of 2019**

**Satya Prakash Mishra ..... 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 : Shri A.K. Das Sinha,  
Ld. Advocate.**

**For the Public Service Commission,  
West Bengal : Shri S. Bhattacharjee,  
Ld. Advocate.**

**Judgment delivered on : 09.03.2022**

**The Judgment of the Tribunal was delivered by :  
The Hon'ble Smt. Urmita Datta (Sen), Member (J) &  
The Hon'ble Shri Sayeed Ahmed Baba, Member (A)**

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

The instant application has been filed praying for following relief :

**“ a) An order do issue thereby setting aside/quashing the Disciplinary Proceeding so initiated against the applicant vide Memorandum No. 1013-DCA/O/Con-03/16 Dated 15.09.2016, enquiry report, Show cause notice no. 1692-DCA dated 10.01.2017, second time show cause notice no. 1492-DCA/O/CON-03/2016 Dated 01.12.2017, final Order of punishment vide Order**

**No. 1571-DCA/O/CON-03/2016 (Pt) dated 22.11.2018, whereby punishment has been imposed as per the provision of sub-rule (ii) and sub rule (iv) of Rule 8 of West Bengal Services (Classification, Control and Appeal) Rules, 1971 with immediate effect;**

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

**c) 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, he was served with a Charged Sheet dated 13.05.2016 (Annexure-A) basically alleging that during the period from 18.02.2016 to 13.05.2016, he lifted fish from the tank inside correctional home and sold said fishes outside without the guidance of the Fisheries Department. Further it has been alleged that he had cut down branches of trees inside and outside correctional home without permission of the competent authority and sold out the wood illegally without incorporating the quantity in the Stock Book. The applicant filed a written statement of defense by pleading not guilty on 22.09.2016 (Annexure C). Though one Inquiry Officer as well as Presenting Officer was appointed, however, the said enquiry was conducted in the absence of Presenting Officer and the Enquiry Authority submitted his report vide Memo dated 23.12.2016 (Annexure D). Thereafter, 2<sup>nd</sup> Show Cause Notice issued to the applicant vide Memo dated 10.01.2017, proposing punishment (Annexure E). Subsequently on the basis of the observation of P.S.C., W.B as well as learned L.R., final order was passed by the Disciplinary Authority on 22.11.2018, which is illegal as per the provisions of Rules as well as settled principle of law. Being aggrieved, the applicant has preferred the instant application.

3. As per the applicant, during the enquiry proceedings, the Presenting Officer failed to remain at the venue i.e. at Coochbehar, where the enquiry took place and as such the entire enquiry conducted by the authorities becomes redundant and perverse. Though Shri Siladitya Chakraborty, Law Officer, Department of Correctional Administration was appointed as "Presenting Officer", who has a vital role and is responsible to place the documents, which are to be relied upon before the Inquiry Authority to make them as "Exhibits" however,

in the instant application as the Presenting Officer was all along absent during the entire enquiry process, therefore, the Inquiring Officer took the burden to play the role of Presenting Officer as well as Inquiry Officer and has become judge and jury at the same time, which is not permissible under the law such fact would be evident from the depositions, as each and every pages of depositions were witnessed by the signature of the charged officer, enquiry authority as well as deposing witnesses (those were present at the time of deposition) but no signature of the Presenting Officer at any point of time as he was absent. Therefore, the action at the part of the Inquiry Authority is void and presume to be biased and not fair. Thus as to remove the hurdle of “**Nemo debet esse judex in propria sua causa**” in short no one should not be Judge and Prosecutor at a same time as held in State of Uttar Pradesh-Versus-Saroj Kumar Sinha, reported in (2001) 2 SCC 772, the Inquiry Report should be quashed.

4. It has been further submitted that the Hon’ble High Court at Calcutta had also dealt with very aspect in the case of Krishna Choudhury – Versus – The State of West Bengal and Others reported in 2011 (2) CHN (CAL), 498 and held that it is difficult for the Enquiry Authority, to conduct the enquiry in an unbiased manner in absence of the Presenting Officer. Even this Tribunal in its judgment dated 26.07.2021 passed in OA No. 28 of 2018 (Obaidulla Sk. Vs. The State of West Bengal and Others) as held that the Departmental Enquiry cannot be conducted in a casual manner in the absence of Presenting Officer.

5. It has been further submitted that final order have been passed without application of mind and contrary to the provisions of Rule 8 of West Bengal Services (Classification, Control and Appeal) Rules, 1971. However, the Disciplinary Authority imposed punishment of under sub-rule (ii) and sub-rule (iv) of Rule 8.

6. It has been further submitted by the counsel of the applicant that from the perusal of the aforementioned penalty visa-vise Rule 8 of the West Bengal Services (Classification, Control and Appeal) Rules, 1971, it would be evident that Rule 8 (ii) speaks of “Withholding of Increment or Promotion” and Rule 8 (iv) never speaks of reduction of three increments for one year but dealt with reduction to a lower stage in the time scale of pay for a specific period. Further the applicant was debarred from promotion during the period of his undergoing penalty. However, debarment shall be treated as penalty which is contrary to the

judgment passed by this Tribunal. Therefore, the applicant has prayed for quashing of the Inquiry Report and Final Order.

7. Further the disciplinary authority has imposed punishment of recovery of pecuniary loss to the tune of Rs. 15,500/- under Rule (ii) to (iv) of Rule 8 whereas there is no such provisions under Rule (ii) and Rule (iv) with regard to pecuniary loss.

8. The respondents have filed their reply wherein it has been stated that after going through the enquiry report, the disciplinary authority being found him guilty, had sent 2<sup>nd</sup> Show Cause Notice proposing punishment vide letter dated 10<sup>th</sup> January, 2017. In reply to that, the applicant claimed to be not guilty, however, the disciplinary authority not being satisfied with the reply of the applicant referred the matter to the Public Service Commission, West Bengal for their advice through letter dated 16.06.2017. The Public Service Commission sent their advice vide letter dated 30.08.2017 (Annexure-R1). Thereafter, the matter was referred to the learned Legal Remembrancer, West Bengal had sent his opinion. Thereafter second show cause notice was issued dated 01.12.2019 proposing the penalty. Therefore, the disciplinary authority has rightly imposed punishment upon the applicant.

9. We have heard both the parties and perused the records. It is noted that the applicant has challenged the impugned order on the following grounds :

- i. No Presenting Officer was present at the time of holding the enquiry, which would be evident from the enquiry report and or statement recorded during the enquiry process. Since no Presenting Officer was present at the time of holding enquiry, the entire enquiry process is vitiated as the enquiry authority had acted as both the Presenting Officer and enquiry officer, which is not permissible as per settled principle of law.
- ii. From the perusal of the penalty vis-à-vis of Rule 8 of the West Bengal Services (Classification, Control and Appeal) Rules, 1971, it would be evident that there is no such provisions under Rule 8 (ii) or Rule 8 (iv) for recovery of pecuniary loss as well as debarment from promotion during the undergoing penalty. Therefore, the penalty imposed by the disciplinary authority is also liable to be quashed.

It is noted that the disciplinary authority had imposed the following punishment vide final order dated 22.11.2018 :

***“NOW THEREFORE in exercise of the power conferred by sub rule (ii) and sub rule (iv) of Rule 8 of the West Bengal Services (Classification, Control and Appeal) Rules, 1971,***

**ORDERED THAT**

***Shri Satya Prakash Mishra, the Superintendent, Coochbehar District Correctional Home at the material time is imposed with the penalty of***

- i) Recovery from pay the entire amount of pecuniary loss caused to the Government by negligence to the tune of Rs. 15500 (Rupees Fifteen Thousand Five Hundred only) and;***
- ii) Reduction of basic pay by three increments in the time scale of pay held by him, for one year. He will not earn any increment during the period of his undergoing penalty i.e.1 (one) year from the date of issue of this order. On completion of one year and on expiry of the period the reduction will not have the effect of postponing his future increments.***

***The charged officer shall be debarred from promotion during the period of his undergoing penalty and such debarment shall not be treated as penalty.”***

10. Further the Rule 8 of the West Bengal Services (Classification, Control and Appeal) Rules, 1971, stipulated the following penalty as punishment.

*“8. Penalties – The following penalties may for good and sufficient reasons and as hereinafter provided, be imposed on a Government employee, namely:*

- i) Censure;*
- ii) With holding of increments or promotions;*
- iii) recovery from pay of the whole or part of any pecuniary loss caused to the*

*Government by negligence or breach of orders;*

- iv) reduction to a lower stage in the time-scale of pay for a specified period with further direction as to whether or not the Government employee will earn increments of pay during the period of such reduction and whether on the expiry of such period the reduction will or will not have the effect of postponing the future increments of his pay;*
- v) reduction to a lower time-scale of pay, grade, post or service which shall ordinarily be a bar to the promotion of the Government employee to the time-scale of pay, grade, post or service from which he was reduced, with or without further directions regarding conditions of the restoration to the grade or post or service from which the Government employee was reduced and his seniority and pay on such restoration to that grade, post or service;*
- vi) compulsory retirement*
- vii) removal from service which shall not be a disqualification for further employment;*
- viii) dismissal from service which shall ordinarily be a disqualification for future employment under the Government.”*

11. From the perusal of the penalties stipulate under Rule 8 of the West Bengal Services (Classification, Control and Appeal) Rules, 1971 as well as the impugned order, it is observed that there is no provision for recovery of any pecuniary loss under Rule 8 (ii) and (iv) of the West Bengal Services (Classification, Control and Appeal) Rules, 1971. Further, there is no provision under Rule 8 (iv) of the West Bengal Services (Classification, Control and Appeal) Rules, 1971 for reduction of basic pay by three increments in the time-scale of pay even there is no such provisions under Rule 8 (ii) and (iv) of the West Bengal Services (Classification, Control and Appeal) Rules, 1971 for debarment of promotion during the period of undergoing penalty. Though the disciplinary authority had also mentioned that it should not be treated

as penalty, therefore, from the perusal of the above Rule vis-a-vis punishment order, it is clear that there is no such provision under Rule 8 of the West Bengal Services (Classification, Control and Appeal) Rules, 1971 of pecuniary loss as well as debarment of promotion lowering of three stage of increment in time pay scale under Rule 8 (ii) and (iv) of the West Bengal Services (Classification, Control and Appeal) Rules, 1971. If the debarment of promotion could not be treated as a penalty imposed upon the applicant then what is the purpose directing that the applicant should be debarred from promotion during the period of undergoing penalty which is having a punitive effect.

12. The issue of absence of Presenting Officer is clearly contrary to the principle of "*Nemo debet esse iudex in propria suas causa*" as the role of enquiry officer is quasi judicial nature the presence of Presenting Officer is mandatory at the time of enquiry as the role of Presenting Officer is to present the case on behalf of the department and the enquiry officer has to submit the enquiry report after giving opportunity to both the Presenting Officer and charged officer and other witnesses. In the absence of Presenting Officer, the enquiry officer has to act as a prosecutor as well as judge at the same time, which is not permissible as per settled principle of law as held in case of State of UP vs. Saroj Kumar Sinha reported in (2010) 2 SCC 772, which has been further followed by the Hon'ble High Court, Calcutta in the case of Krishna Chowdhury v. State of West Bengal & Others reported in 2011 (2) CHN (Cal) 498. The said case of Krishna Chowdhury had dealt with the same issue. The contention of the said writ petition was that there is no provision for appointing a Presenting Officer in Police Regulation of Bengal, 1943. However, the said regulation does not also prohibit engagement of Presenting Officer. However, as per the principle laid down by the Hon'ble Apex Court, the presence of Presenting Officer while conducting enquiry proceedings is mandatory, otherwise, it would be contrary to the principle of no one should be Judge and Prosecutor at the same time. Therefore, in our considered opinion, the enquiry proceedings has been vitiated though Presenting Officer was appointed, but no Presenting Officer was present at the time of enquiry as it is evident that absence of signature of the Presenting Officer in the statement recorded before the enquiry authority wherein except the Presenting Officer, the enquiry officer, the charged officer as well as the signature of the witnesses there.

13. Further The Hon'ble Apex Court in the case of Vijay Singh v. State of UP & Others reported in (2012) 5 SCC 242 has specifically held that punishment not prescribed under the rules cannot be awarded. As in the instant case also, there is no such provision for debarring of promotion, recovery from the pay of pecuniary loss as well as debarment of promotion is not provided under Rule 8 (ii) and (iv) of the West Bengal Services (Classification, Control and Appeal) Rules, 1971. Therefore, in our considered view, the impugned order is liable to be quashed.

14. Accordingly, we quash and set aside the Inquiry Report dated 23.12.2016 and Final Order dated 22.11.2018 and remand back the matter to the Disciplinary Authority with a direction to the enquiry authority to hold the enquiry as per above-mentioned observation and settled principle of law and the disciplinary authority is directed to pass a reasoned and speaking final order as per provision of the West Bengal Services (Classification, Control and Appeal) Rules, 1971 and communicate the same to the applicant. The entire process should be completed within a period of six (6) months from the date of receipt of the order.

**Sayeed Ahmed Baba**  
Member (A)

**Urmita Datta (Sen)**  
Member (J)