

**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. 582 of 2018

Ratna Sarkar Applicant.

-Versus-

The State of West Bengal & Others. Respondents.

**For the Applicant : Shri M.N. Roy,
Ld. Advocate.**

**For the Respondent No. 2 & 3 : Shri G.P. Banerjee,
Ld. Advocate.**

**For the Respondent No. 1 & 4 : Shri A De,
Ms. R. Sarkar,
Mr. A. Datta,
Departmental Representatives.**

Judgment delivered on : 16th September, 2021

**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 quashing and/or setting aside the impugned order dated 20.09.2005 and portion of the impugned order dated 20.06.2007 issued by the Disciplinary Authority & District Magistrate and Collector, Howrah;

b) an order quashing and/or setting aside the impugned order dated 30.05.2014 issued by the Disciplinary Authority & District Magistrate and Collector, Howrah rejecting the prayer of your applicant;

c) an order quashing and/or setting aside the portion of the impugned order being the final order dated 25.05.2015 issued by the LRC & ACS, which was communicated to your applicant vide order dated 26.08.2015 by the Assistant Secretary to the Government of West Bengal, Land & Land Reforms Department by which the pay scale was made to remain static, with which order all the impugned orders issued earlier being dated 20.09.2005, 20.06.2007 and 30.05.2014 are deemed to have been merged;

d) an order quashing the order No. 443/RM dated 13.04.2018 issued by the disciplinary authority of your applicant addressed to her Learned Advocate Md. Idrish with which all the impugned orders issued earlier in regard to making your applicant's increment static as per punishment were merged;

e) an order directing the respondents to accord your applicant with all the outstanding service benefits as per prevailing rules and release the arrears of benefits and the withheld increments pending since 2005 along with compound interest @10% p.a. and give her a statement of computation.”

2. i) As per the applicant, she was appointed as Group-D employee (Peon) in the office of the District Magistrate and Collectorate, Howrah. Since the applicant sought to enhance her academic qualification to get promotion from time to time, she made an application for the purpose of passing Madhyamik before the Bihar School Examination Board, Patna, Bihar in the year 1997 through “Uttaran Educational Institute” as a private candidate. Accordingly, she appeared in the said examination in the year 1998 through Co-operative High School and passed the said examination successfully in the second division on 31.12.1998 (Annexure-A). Subsequently, she made an application before the District Magistrate, Howrah praying for recording her enhanced academic qualification for her further promotion.

However, the respondent authority had lodged a complaint against the applicant alleging that the mark sheet produced by the applicant is fake and forged one and had submitted a complaint dated 06.05.2003 before the police authority (Annexure-B).

ii) Thereafter, she was served with a Show Cause Notice dated 10.04.2003 (Annexure-C) followed by Charge Sheet dated 18.07.2003 (Annexure-D).

iii) Though she did not receive any article of charges and list of documents however, she gave reply to the said Memo on 29.07.2003 (Annexure-E) and denied the charges labeled against her. Subsequently, the Disciplinary Authority vide his order dated 20.09.2005 held her guilty on the basis of the enquiry report (which was not served upon her).

iv) In the meantime, suspension order was revoked w.e.f. 19.06.2007 for pending finalization of criminal proceedings and she was permitted to join the office from the date to draw full pay and allowances permitted by the department from the date of order dated 20.06.2007 issued by the Disciplinary Authority (Annexure-I).

v) Being aggrieved with, the applicant filed an appeal dated 10.10.2009 and 19.11.2009 before the disciplinary authority. However, the said appeal was rejected and she was directed to file a fresh appeal before the Divisional Commissioner mentioning sufficient reasons for delay vide order dated 22.01.2010 (Annexure-L).

vi) In the meantime as the criminal case was pending for more than long six years, the applicant filed an application under Section 482 read with Section 401 of the Criminal Procedure Code, 1973 before the Hon'ble High Court, Calcutta in CRR No. 560 of 2010. The said application was disposed of by the Hon'ble High Court, Calcutta with a direction upon the Learned District Judge to proceed with the trial strictly in terms of the provisions of Section 309 of Code of Criminal Procedure (Annexure-O).

vii) Thereafter, vide Final Order dated 25.06.2012, the applicant was acquitted in terms of Section 248 (1) of Criminal Procedure Code passed by the Learned Judicial Magistrate, Second Court of Howrah Sadar (Annexure-P).

viii) Subsequently, the applicant filed an application being OA No. 459 of 2013 before this Tribunal praying for an order to release all arrears of financial benefit. The aforesaid OA was finally disposed of vide Order dated 18.02.2014 (Annexure-S) with a direction to the Disciplinary Authority to examine the judgment of the Criminal Court and also the charge framed in the departmental proceeding to take a final decision whether the applicant would get any benefit from the order of acquittal of the Criminal Court by a reasoned and speaking order.

ix) Thereafter, the applicant received Final Order dated 30.05.2014 (Annexure-V) holding that upon going through the judgment of the Criminal Court, charges framed in the Criminal Court as well as charges framed in the departmental proceedings and hearing of the petitioner, he did not find any scope for consideration of giving any further benefit to the applicant. Hence, the Order dated 18.06.2007 in the case of 8/4 of 2003 stand absolute. However, it was ordered that the applicant would be entitled for salary as per ROPA, 2009 without any arrear pay.

x) Being aggrieved with, she had again filed one OA 1314 of 2014 which was finally disposed of by Order dated 01.04.2015 (Annexure-Z1) whereby the respondent No. 1 was directed to dispose of the appeal preferred by the applicant on merit within the stipulated period of time.

xi) In pursuance of the said order, the ACS and LRC of Land and Land Reforms Department vide his Letter dated 26.08.2015 had communicated his Order dated 25.05.2015 (Annexure-Z2) holding her guilty of charges with a modification that she should be given ROPA, 2009 benefit on the same corresponding scale.

xii) Being aggrieved with, the applicant filed another OA No. 501 of 2016. However, as the said application was found defective one, therefore, vide Order dated 06.06.2016 (Annexure-Z3) liberty was granted to file another OA afresh, if she is still aggrieved.

xiii) The applicant again filed one OA No. 1219 of 2016 (Annexure-Z8), which was disposed of vide Order dated 06.09.2017 with a direction to the Disciplinary Authority to make available certain documents within the stipulated period of time.

xiv) As those documents were not completely supplied to her, the applicant again filed another OA No. 142 of 2018 before this Tribunal as there was some inadvertent errors in the prayer portion, the same was dismissed as withdrawn vide Order dated 12.04.2018 (Annexure-Z15). However, the point of limitation, if any, was kept open with a liberty to file fresh OA, if so advised.

xv) In the meantime, the applicant received another Memo No. 443/RM dated 13.04.2018 issued by the Disciplinary Authority whereby she was informed that she would get the ROPA, 2009 benefits but the pay scale would be corresponding to the existing one and will remain static in terms of the punishment. Therefore, there is no provision for releasing any amount of increments (Annexure-Z16).

xvi) Being aggrieved with, she has filed the instant application. It has been submitted by the applicant that from the perusal of the Enquiry Report and other documents, it would be evident that the author of the said Letter No. 106 dated 25.02.2000 (Exhibit 6) was not produced to prove the said letter. Therefore, on the basis of the said Letter No. 106 dated 25.02.2000 (Exhibit 6), the concerned marksheet should not be claimed to be forged one, discarding the earlier Letter No. 1124/February 2000 (Exhibit 5), whereby the marksheet was claimed to be genuine.

xvii) Though no reply has been filed by the respondents, however, the counsel for the respondent has submitted that she would rely upon the order passed by the disciplinary authority as well as the appellate authority.

xviii) With a consent of both the parties, I heard the parties and perused the records.

It is noted that the impugned orders were challenged basically on the ground that since the Letter No. 106 dated 25.02.2000 (Exhibit 6) was not produced to prove the said Letter in the Enquiry proceedings. Therefore, as per the applicant the disciplinary authority should not give his decision relying upon the said Letter No. 106 dated 25.02.2000 (Exhibit 6) discarding the earlier Letter No. 1124/February 2000 (Exhibit 5). However, from the perusal of the Enquiry Report, it is noted that the Letter No. 106 dated 25.02.2000 (Exhibit 6) was corroborated by the PW2 Shri Raghendra Nath Tiwari, who is the Law Officer of Bihar School Examination Board, Patna. The PW2 also identified and proved

the Letter No. 3282 dated 23.11.2002 issued by the Joint Secretary (Vig.) Bihar School Examination Board, Patna (Exhibit 8) as well as the Letter No. SPA-326 dated 12.12.2001 addressed to the District Magistrate, Howrah issued under the signature of Hasan Waris, Secretary, Bihar School Examination Board (Exhibit 9), wherein it was opined that the Letter No. 1124/February 2000 (Exhibit 5) was not issued by the Bihar School Examination Board, Patna. The said PW2 had further identified the signature of Shri M P Sharma, Chief Vigilance Officer, Bihar School Examination Board, Patna in the Letter No. 106 dated 25.02.2000 (Exhibit 6). However, he could not identify the signature of the person signing the Letter No. 1124/February 2000 (Exhibit 5).

Further, PW3 i.e. Shri Bimal Kanti Bandyopadhyay, ACI, Howrah, in his evidence, has stated that he had gone to Patna to verify the bonafide of the two letters i.e. Letter No. 1124/February 2000 (Exhibit 5) and Letter No. 106 dated 25.02.2000 (Exhibit 6). In the Letter No. 1124/February 2000 (Exhibit 5), two discrepancies were found with regard to the spelling of Patna in Hindi and in the address column also District Magistrate, Howrah has been written in English instead of using Hindi script. On verification, the Joint Secretary has declared it as forged one.

From the above, it is observed that during the course of the enquiry, both the Letter Nos. 1124/February 2000 and 106 dated 25.02.2000 were placed as Exhibit Nos. 5 & 6 and was also corroborated by different witnesses and the applicant also took part in the said enquiry. Therefore, this cannot be a ground to challenge the final order, which is based upon the Enquiry Report. Further, the Enquiry Report was also not under challenge. Therefore, in my opinion there is no scope to interfere with the impugned orders. Further, the process of coming to the conclusion in the Departmental proceeding and the Criminal Proceeding being different one, I do not inclined to interfere with the decisions of Disciplinary Authority and/or the Appellate Authority.

Accordingly, the OA is **dismissed** being devoid of merit with the above observation with no order as to cost.

Urmita Datta (Sen)
Member (J)