

**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. 95 of 2019

Swarupananda Roy Applicant.

-Versus-

The State of West Bengal & Others. Respondents.

**For the Applicant : Mr. M.K. Ghosh,
Mrs. S. Dey (Basu),
Ld. Advocates.**

**For the State Respondent : Mr. S.N. Ray,
Ld. Advocate.**

**For the Pr. AG (A&E), WB : Mr. B. Mitra,
Departmental Representative.**

Judgment delivered on : 15th June, 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 reliefs :

“ a) Mandatory order may be passed directing the respondents to release the entire sum towards the gratuity to the applicant with statutory interest at the rate of 10% per annum from the date of retirement to the date of actual payment.

b) Declare that the punishment proposed in the second show cause notice under Memo No. 611-AD/O/Con-06/2013 dated 27.03.2017 issued by the disciplinary authority cannot stand on the way to release the gratuity to applicant since the punishment that has been proposed in the second show cause notice is 30% pension cut for a period of 2 (two) years without any effect to his other allowances.

c) Leave to challenge the disciplinary proceedings after the final order is passed and obtained.

d) Direct the respondents to pay cost and advocates fees.

e) To pass such other or further order or orders as Your Lordships may deem fit and proper.”

2. As per the applicant, while he was working as Assistant Milk Commissioner (Sales), was served with a Memorandum of Charge-Sheet dated 26.08.2013 with only one allegation that while functioning as Assistant Milk Commissioner (Sales) and in-charge of Sales Wing during the period from 2007 to 2010, had forwarded the application of one Kalpataru Chowdhury along with other applications on 24.10.2008 for employment on compassionate ground though the application of Shri Kalpataru Chowdhury was incomplete and without signature of appointing authority. Further, Shri Chowdhury was not at all eligible for appointment on compassionate ground since his father Late Bidyut Baran Chowdhury was dismissed from service with effect from 28.11.1994. It was further alleged that the applicant had forwarded the pension paper submitted by Smt. Kalpana Chowdhury, wife of Late Bidyut Baran Chowdhury on 17.11.2008 though she was not legally entitled for pension (Annexure-P/1).

3. Being aggrieved with, the applicant preferred an OA being No. 1454 of 2013 before this Tribunal, which was disposed of on 21.01.2016 (Annexure-P/2) with a direction to the respondents to include the note sheet containing the record of observation of the Milk Commissioner & Special Secretary dated 31.12.2012 in the list of documents and consider the reasonableness of charge against the applicant. It is

submitted by the applicant that in the same note sheet dated 31.12.2012, the Milk Commissioner depict inter-alia :

“ a) He recommended that the applicant be exonerated from the charges labeled against him in the departmental proceedings.

b) The fact of dismissal of Late Bidyut Baran Chowdhury was not within the knowledge of the applicant.

c) The suspension or dismissal of Bidyut Baran Chowdhury was not recorded in his service book or personal file.

d) The fact of dismissal of Late Bidyut Baran Chowdhury was never circulated in the office off the respondents.

e) The applicant was not the recommending authority for compassionate appointment or for family pension.”

4. Thereafter, the applicant submitted his written statement of defence to the Enquiry Authority, State Vigilance Commission on 25.03.2014 (Annexure-P/3). Subsequently, the enquiry report was sent to the Disciplinary Authority holding the applicant guilty of charges and thereafter, second Show Cause Notice was served upon the applicant proposing a punishment of 30% cut in pension for a period of two years vide Memo. Dated 27.03.2017 (Annexure-P/4) against which the applicant made representation on 17.04.2017 (Annexure-P/5).

5. However, thereafter, no final order has been communicated to the applicant. It has been further submitted by the applicant that in the said Charge-Sheet, there is no allegation of misappropriation of funds or any pecuniary loss caused to the Government. As no final order was communicated to the applicant and the applicant retired in the meantime, therefore, vide Advocate's letter dated 14.12.2018, the applicant had prayed for immediate release of gratuity with statutory interest. As neither the final order was served upon the applicant nor the gratuity was paid to the applicant, being aggrieved with, the applicant has preferred this application.

6. The respondents have filed their written statement. However, they have submitted that earlier order of this Tribunal was forwarded to the State Vigilance Commission on 13.06.2016 and recently, the matter was taken up by the Public Service Commission, West Bengal and the Disciplinary Authority revised the proposed punishment as per the

observation of the Public Service Commission, West Bengal and propose to impose 10% cut in pension for one year. However, till date, no final order has been communicated to the applicant. It has been submitted that the Department will take appropriate steps for releasing the gratuity as and when departmental proceedings would be concluded.

7. During the course of the hearing, the counsel for the applicant has referred the following judgments :

- a) Oriental Bank of Commerce v. The Deputy Chief Labour Commissioner (Central), Kolkata & Ors. reported in 2018(2) SLR 267 (Cal.).
- b) Union Bank of India & Ors. v. C.G. Ajay Babu and another reported in AIR 2018 SC 3792.
- c) D.V. Kapoor v. Union of India & Ors. reported in AIR 1990 SC 1923.
- d) Sri Tapan Chandra v. Union of India & Ors. of W.P. No. 22312 (W) of 2018.
- e) Rathin Ghosh v. WB State Electricity Distribution Company Ltd. & Ors. of Civil Appeal No. 5633 of 2019 [@ SLP (CIVIL) No. 31374 of 2017].

8. I have heard both the parties and perused the record. It is noted that the applicant was served with the Charge-Sheet on the allegation that he had forwarded an application for appointment on compassionate ground of Kalpataru Chowdhury, whose father was dismissed from service. However, in the earlier occasion, this Tribunal had observed the comments of the Milk Commissioner & Special Secretary dated 31.12.2012 and had directed the Disciplinary Authority to re-enquire and pass final order within a period of one month from the date of receipt of the order. However, admittedly till date, no final order has been communicated to the applicant. It is also an admitted fact that there was no allegation of misappropriation of fund or loss of Government exchequer even there is no such allegation that the applicant did not co-operate with the Disciplinary Authority during the disciplinary proceedings. However, it is only the Disciplinary Authority who did not take any proper steps since 2016, as even reply to second Show Cause Notice was also completed on 27.03.2017 and the Disciplinary Authority has only to pass the final order. As the applicant has already retired from service, the Department cannot withhold the

gratuity when there is no allegation of misappropriation of fund and as per the provision of payment of Gratuity Act.

9. In view of the above, I am of the opinion that the applicant is entitled to get the gratuity since the disciplinary proceeding is pending from 2013 and even after direction of this Tribunal dated 21.01.2016 to conclude the disciplinary proceeding within one month, the Disciplinary Authority did not conclude the disciplinary proceedings and communicate his final order till date. Even as per the respondents, the reviewed proposed punishment is only for 10% cut in pension for one year.

10. In view of the above, I direct the respondent authority to release the gratuity along with the statutory interest @ 6% per annum from the date of entitlement to the applicant within a period of four weeks from the date of receipt of the order as till date no final order has been passed and for that admittedly the applicant is not at fault.

11. Accordingly, the OA is disposed of with the above observations and directions with no order as to costs.

Urmita Datta (Sen)
Member (J)