

ORDER SHEET

WEST BENGAL ADMINISTRATIVE TRIBUNAL

Bikash Bhavan, Salt Lake, Kolkata – 700 091.

Present-

THE HON'BLE SAYEED AHMED BABA, OFFICIATING CHAIRPERSON AND ADMINISTRATIVE MEMBER

Case No. – MA-52 of 2024 (OA -241 of 2020)

Utpal Kumar Basu - Vs - The State of West Bengal & Ors.

Serial No. and
Date of order

For the Applicant : Mr. S. Samanta,
Learned Advocate.

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10.06.2024

For the State Respondents : Mr. G.P. Banerjee,
Learned Advocate.

The matter is taken up by the Single Bench pursuant to the order contained in the Notification No. 638-WBAT/2J-15/2016 (Pt.-II) dated 23rd November, 2022 issued in exercise of the powers conferred under Section 5 (6) of the Administrative Tribunals Act, 1985.

In his submission today, Mr. Samanta, learned counsel narrates that since vires of the Rule 10(4) and 10(3) of WBS (CCA) Rules, 1971 is being challenged through this original application and since this Bench has directed that the matter be heard by a Bench comprising two Members, therefore, the order passed by the Enquiring Authority by his order dated 28.12.2023, runs contradictory to the directions of the Tribunal. In the order dated 28.12.2023, the Enquiring Authority had recorded that the matter will be heard ex-parte against the charged officer. It appears that the charged officer taking the plea of the matter pending in the Tribunal has not participated in the Disciplinary Proceedings. Submission of Mr. Samanta is that the charged officer has been relying on the Tribunal for its direction in which he has challenged the legality of the Rules as quoted aforesaid. However, Mr. Banerjee, learned counsel disagrees with the above arguments and submits that both in the original application and MA application, prayers are same to the fact that Enquiring Authority may be restrained from proceeding further in the Disciplinary Proceedings against him. Further Mr. Banerjee refers to order No. 2 of this Tribunal dated 14.08.2020 and in particular, refers to the concluding para in which the Tribunal refuses to pass any interim direction at this stage. Therefore, Mr. Banerjee submits that since the Tribunal had already considered the matter and did not

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agree to pass any interim direction, therefore, prayer in this MA application for such interim direction is not admissible. Mr. Banerjee concludes his submission by stating that the charged officer has refused to participate in the ongoing Disciplinary Proceedings since long. Such non cooperation on the part of charged officer has now compelled the Disciplinary Authority to proceed ex-parte.

Having heard the submissions of the learned counsels, this Tribunal reiterates its order dated 14.03.2023 for hearing of this matter before a Bench comprising two Members. Since this matter involves various points of law and the Rules is being challenged, it would be appropriate if this matter is heard by such a Bench., The Tribunal also finds that hearing of this matter by such a Bench does gave any liberty to the applicant for non participation in the Disciplinary Proceedings being conducted against him as a charged officer as has been recorded in the aforesaid paragraphs. The Enquiring Authority has noted that the charged officer has not been appearing in the hearing related to the Disciplinary Proceedings. Mere filing of an application in the Tribunal cannot give any or excuse to the applicant from staying out of the Disciplinary Proceedings. The Tribunal makes it clear that the Disciplinary Proceedings being conducted against him is a statutory judicial process and, therefore, it is incumbent and obligatory on his part as an employee to participate and fully cooperate with the proceedings. With these observations, the Tribunal also directs the applicant to appear before the Enquiring Authority on the next of hearing.

Let this application alongwith the original application appear before a Bench comprising two Members on **20.11.2024**.

(SAYEED AHMED BABA)
OFFICIATING CHAIRPERSON AND MEMBER (A)

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