

WEST BENGAL ADMINISTRATIVE TRIBUNAL

Bikash Bhavan, Salt Lake, Kolkata – 700 091.

Present-

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

Case No. – MA-82 of 2021 (OA-503 of 2021)

Subhendu Bhattacharjya VERSUS – The State of West Bengal & Ors.

Serial No. and
Date of order

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

07
10.05.2022

For the State
Respondents : Mr. S. Deb Roy,
Mr. A. De,
Ms. R. Sarkar,
Departmental Representatives.

The matter is taken up by the Single Bench pursuant to the order contained in the Notification No. 118-WBAT/1E-08/2003 (Pt.-II) dated 11th February, 2022 issued in exercise of the powers conferred under Section 6 (5) of the Administrative Tribunals Act, 1985.

On consent of counsel for both the parties, matter has been taken up.

The instant application has been filed initially challenging the Disciplinary Proceedings dated 06.03.2019, Enquiry dated 12.09.2019 as well as Second Show Cause Notice dated 05.11.2019 on the ground that the applicant had approached this Tribunal earlier in OA-485 of 2020 with a prayer for a direction upon the respondent to complete the Disciplinary Proceedings within a stipulated period of time. This Tribunal vide order dated 22.12.2020 had directed the respondents to conclude the Disciplinary Proceedings within a period of six months time and to communicate the same from the date of receipt of the order.

Subsequently, the applicant communicated the order vide letter dated 23.12.2020, however, the respondents did not concluded the said Disciplinary Proceedings. Being aggrieved with, the has filed this instant application. However, after filing the original application, the respondents had communicated the order through Email as well as Whats app only on 19.08.2021. Therefore, the applicant has challenged

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the final order through MA-82 of 2020.

As per the applicant, the order is liable to be quashed, being contrary to the judgement passed by the Tribunal dated 01.02.2022 in OA-55 OF 2021 as there is no such provision under Rule 8 (iv) of the W.B.S. (CCA) Rules, 1971 to debar the applicant from promotion. The counsel for the applicant has referred the order dated 01.02.2022 passed in OA No. 505 of 2021 which has not been appealed against and has prayed for extension of the benefit of the said judgement by quashing the final order.

The Departmental Representative has submitted that with regard to punishment under Rule 8 (iv) of WBS(CCA) Rules, 1971, Senior Special Secretary, L& L R Deptt. has asked for further advise of the P.S.C. to the Joint Secretary, P.S.C., W.B. as the Disciplinary Authority had imposed the punishment as per advice of the P.S.C.

I have heard both the parties and perused the records. It is noted that the applicant ultimately was served with final order dated 17.06.2021 vide communicated dated 19.08.2021 whereby the following punishment was imposed upon the applicant :-

a)NOW, THEREFORE, after careful consideration of the gravity of the charges, the Governor, in consultation with the Public Service Commission, West Bengal has been pleased to order to inflict the penalty of "Reduction of the pay of the charged officer be reduced to 03 (three) stages lower in the current Pay Band for a period of 03 (Three) years in terms of Rule 8 (iv) of the West Bengal Services (Classification, Control & Appeal) Rules, 1971 with the direction that the Charged Officer will not earn any increment of pay during the period of such reduction and on expiry of such period of three years, the reduction will

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have the effect of postponing the future increment of his pay” be imposed upon Shri Shubhendu Bhattacharjya, SRO-II with a rider that the Charged Officer be debarred from promotion during the period of his undergoing the penalty, Such debarment should not be treated and imposed as a penalty”.

This Tribunal vide their judgement dated 01.02.2022 passed in OA-505 of 2021 has held interalia :-

“From the above, it is noted that the Rule 8 (iv) of the West Bengal Services (Classification, Control and Appeal) Rules, 1971 has only stipulated reduction to a lower stage in the time scale of pay for a specified with a 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 increment of his pay, but there was no such provision for debarment of promotion as has been directed by the Disciplinary Authority. Further though the Disciplinary Authority has indicated that such debarment of promotion would not be treated as penalty, however, subsequently the said authority has also stated that it may be incorporated in the final order distinctly as a direction. Therefore, if it has to be treated as a direction, then it must have some punitive effect on the applicant. Thus, it cannot be said that it is not a penalty imposed upon the applicant. We fail to understand if the Disciplinary Authority is of the view that debarment of promotion should not be treated as penalty, then what is the purpose to direct that the applicant should be debarred from promotion during the period of undergoing penalty, which is having a punitive effect. However, as the Rule 8 (iv) of the West Bengal Services (Classification, Control and Appeal) Rules, 1971 has not stipulated any such provision for debarment

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of promotion. Therefore, such direction in the impugned final order cannot be a part of punishment under Rule 8 (iv) of the West Bengal Services (Classification, Control and Appeal) Rules, 1971. Thus, in our considered view, the Disciplinary Authority cannot pass any order contrary to any provision of rules as prescribed.

The Hon'ble Apex Court in the case of Vijay Singh Vs. 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 provisions for debaring of promotion under Rule 8 (iv) of the WBS (Classification, Control and Appeal) Rules, 1971, therefore, any direction to that effect is beyond the scope of the provision of Rule 8 (iv) of the West Bengal Services (Classification, Control and Appeal) Rules, 1971.

Accordingly, we quash and set aside the impugned final order dated 04.01.2021 and remand back the matter to the Disciplinary Authority to pass a de novo final order as per the provision of rules and settled principle of law as observed above.

Accordingly, OA is allowed with no order as to costs."

From the above, it is clear that the issue involved is squarely covered by the aforesaid judgement of this Tribunal. Therefore, in my considered opinion, the said applicant is entitled to get the benefit of the aforementioned judgement dated 01.02.2022. It is also noted that the Disciplinary Authority has referred the issue to the P.S.C. for their advice as he has imposed punishment on the advice of the P.S.C. However, as per settled principal of law, Disciplinary Authority is competent to take final decision after applying his mind. Therefore, I quash and set aside the impugned order dated 07.06.2021 and remand back the matter to the Disciplinary Authority to take appropriate decision as per the order dated 01.02.2022 and communicate the same

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by way of a reasoned and speaking order within a period of eight weeks from the date of receipt of the order. Accordingly, both OA & MA are disposed of.

URMITA DATTA (SEN)
MEMBER (J)

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