

WEST BENGAL ADMINISTRATIVE TRIBUNAL

Bikash Bhavan, Salt Lake, Kolkata – 700 091.

Present-

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

Case No. – MA-118 of 2021 (OA-396 of 2015)

Monika Sen VERSUS – The State of West Bengal & Ors.

Serial No. and Date of order	For the Applicant	:	Mrs. S. Mitra, Learned Advocate.
	For the State Respondent	:	Mr. S. Ghosh, Learned Advocate.
<u>08</u> 24.02.2022			

As per the applicant, she was served with a charge sheet vide Memo No. C/17 dated 09.01.2014 whereby she has been charged with not being present and diligent during the vaccination on 14.09.2013 (Annexure-I). In response to said charge sheet, the applicant had denied the charges and submitted her written statement of defence by speed post on 24.02.2014 (Annexure-N). Thereafter, enquiry proceedings initiated and the applicant had participated in the enquiry, however, without supplying the copy of the enquiry report and copy of day to day proceedings, disciplinary proceedings was proceeded. Being aggrieved with, the applicant made a representation to the Deputy Assistant Director of Health Services (Nursing) on 18.07.2014 (Annexure-N). Even the disciplinary authority had passed his final order on 15.10.2014 (Annexure-P). Being aggrieved with, the applicant filed statutory appeal on 09.01.2015 (Annexure-R) and has also submitted that no enquiry report was ever supplied to her before passing final order. However, her appeal was dismissed by the Principal Secretary, Department of Health & Family Welfare vide Memo dated 13.03.2015 (Annexure-T) in a non mechanical way without passing any speaking order. Being aggrieved with she has approached this Tribunal.

As per the applicant, the settled principle of law that the enquiry report as well as copy of day to day enquiry proceedings should be supplied to the delinquent officer to enable her to make appropriate submission before the disciplinary authority and for which the applicant had made representation before the authority for supply of such documents. However,

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without supplying the enquiry report, the disciplinary authority had imposed punishment in a mechanical way. Even before the appellate authority she had taken the same ground for the purpose of adjudication of the appeal. However, the appellate authority also dismissed the appeal of the applicant by a non speaking order without dealing with the grounds taken by the applicant.

In support of her contention, the applicant has referred the following judgements :-

- a) (2017) 2 SCC 308 Allahabad Bank & Ors. Versus Krishna Narayan Tiwari.
- b) OA-776 of 2016 dated 24.12.2020 Bismay Ray Versus State of West Bengal & Ors.

I have gone through the appeal filed by the applicant wherein she had specifically taken the ground that the enquiry report was not supplied to her. However, neither disciplinary authority communicated the enquiry report nor the appellate authority had considered the submission of the applicant and pass the following order :-

“And whereas the Director of Health Services, West Bengal, being the disciplinary authority of the post held by Smt. Monika Sen, Health Supervisor (F), inflicted the following penalty upon her-

- 1) One periodical increment of Smt. Monika Sen, H.S. (F) be stopped for two years without cumulative effect in terms of rule 8(II) of the West Bengal Services (CC & A) Rules, 1971.
- 2) The period of suspension of Smt. Monika Sen be treated as the period spent on suspension.

a) And whereas the Principal Secretary, Department of Health & Family Welfare, West Bengal, being the Appellate Authority of

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the post hold by the charged officer Smt. Monika Sen, heard her in person today i.e. on 09.03.2015 and consulted the relevant documents in this case. Considering gravity of the charge and subsequent punishment imposed upon Smt. Monika Sen, H.S. (F), it appears to me that the nature of punishment imposed by the Director of Health Services, West Bengal is comparatively less;

b) And as such on going through the entire matter and after due consideration of the case with judicious mind, I the Principal Secretary, Department of Health & Family Welfare, West Bengal being the Appellate Authority hold the view that there is no ground for reducing/modifying the penalty imp[osed by the Director of Health Services, West Bengal under No. C/459 dated 15.10.2014.

c) Hence the appeal is hereby dismissed.”

From the perusal of the above, it is clear that the Appellate Authority did not apply his mind or consider the plea of the applicant that the enquiry report was never served upon her.

No reply has been filed by the respondents.

Heard the parties and perused the records. The respondents has to chosen not to file any reply since 2015 nor have submitted any document to show that enquiry report was ever communicated to the applicant. It is settled principle of law that non supplying of enquiry report by the disciplinary authority before passing final order is not valid as per the settled principle of law.

Therefore, aforementioned judgements are squarely applicable in the instant case and non supply of enquiry report amounts to violation of natural justice. Even the appellate order also non-speaking one. Therefore, I quash and set aside the Disciplinary Authority's order dated 15.10.2014 as well as Appellate Authority Order dated 13.03.2015 and

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remand back the matter to the Disciplinary Authority to supply the copy of enquiry report and day to day enquiry proceedings to the applicant and after granting appropriate opportunity as per rules and to pass reasoned and speaking final order within a period of four months from the date of receipt of the order. Accordingly, OA is disposed of with no order as to costs.

In view of the above, both the MA and OA are being disposed of.

Since the circumstances beyond control, the Registry is unable to furnish plain copies of this order to the learned advocates for the parties, the Registry is directed to upload this order on the website of the Tribunal forthwith and parties are directed to act on the copies of the order downloaded from the website.

URMITA DATTA (SEN)
MEMBER (J)

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