

**WEST BENGAL ADMINISTRATIVE TRIBUNAL**

Bikash Bhavan, Salt Lake, Kolkata – 700 091.

Present-

**The Hon'ble Sayeed Ahmed Baba, Officiating Chairperson & Member (A)**

**Case No. OA – 345 of 2022**

**Biswajit Sarkar - VERSUS - THE STATE OF WEST BENGAL & ORS.**

Serial No. and Date of order <u>8</u> 08.12.2022	For the Applicant	: Mr. M.N. Roy, Mr. G. Halder, Advocates
	For the Respondents	: Mr. S. Ghosh, Advocate

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

On consent of the learned counsels for the contesting parties, the case is taken up for consideration sitting singly.

Mr. Roy refers to Memorandum 9266 – F(P) dated 16.11.2012 regarding constitution of Review Committee to review cases of employees under suspension. Mr Roy highlights the fact mentioned in the Memorandum that the purpose of review of suspension cases is primarily to review the “*substantive question of suspension*”. Mr. Roy submits that although such a Review Committee was formed to review this case on 28.09.2018, the Review Committee held its first meeting on 7<sup>th</sup> July, 2022 only after the notice was served upon the respondents by the applicant. The Review Committee in its meeting decided to continue with the suspension of the applicant on the basis of the ongoing departmental proceedings and the criminal case, which are yet to be concluded. Mr. Roy feels that the spirit of Review Committee to review the substantive question of suspension has not been achieved and the applicant continues

ORDER SHEET

Form No.

Biswajit Sarkar

Case No. **OA – 345 of 2022**

Vs.

THE STATE OF WEST BENGAL & ORS.

---

to suffer without getting any justice. Farther, Mr. Roy relies on paragraph 21 of a judgement passed by the Supreme Court in Ajay Kumar Choudhary –Vs- Union of India (2015) 7 SCC 291, the relevant para is quoted hereunder:

*“We, therefore, direct that the currency of a suspension order should not extend beyond three months if within this period the memorandum of charges/charge-sheet is not served on the delinquent officer/employee; if the memorandum of charges/charge-sheet is served, a reasoned order must be passed for the extension of the suspension.”*

Mr. Roy’s contention is that in the light of above judgement, the Review Committee extended the suspension period without giving any substantive justification and without passing any reasoned order. The minutes of the meeting does not explain and justify why the suspension of the applicant should be continued. In view of the above submissions, Mr. Roy prays for setting aside the impugned order of suspension of the applicant.

In reply to above submissions, Mr. Ghosh appearing on behalf of the State submits that although belated, the Review Committee in this case had its sitting on 07.07.2022 and after detailed deliberation passed the order for continuation of suspension. He further submits that the Committee reviewed and decided to extend the suspension since the criminal case and the departmental proceeding of the applicant is still continuing.

After hearing the submissions and perusing the records, it appears

that although belated, the Review Committee had its first sitting after a gap of four years from the date the Review Committee was constituted. In my view, the Review Committee although having its first sitting after a gap of four years dealt primarily with an application from the applicant praying for enhancement of his subsistence allowance. The Review Committee does not seem to have properly dealt with the very question of suspension as indicated in the Memorandum 9266 – F(P), relevant portion is quoted hereunder:

*“It has come to the notice of the Government that though the subsistence allowance granted to an employee under suspension is reviewed by the competent authority within three months from the date of suspension as a matter of court’s, the substantive question of suspension remains unreviewed.”*

The Memorandum makes it clear that the Review Committee should not only review the question of subsistence allowance but also review the substantive question of suspension. Further, the Memorandum also stipulates that the Review Committee shall review “whether there are sufficient grounds for continuation of suspension”.

Mr. Roy’s reference to the judgement of Apex Court also supplements the message given in the Memorandum of 16.11.2012, which has been quoted above. Thus, it is very clear now, after examination of the Memorandum and Apex Court judgement that the Review Committees are not to review suspension cases in a routine manner. Their main purpose is to review the very substantive question of the suspension and decide after

**ORDER SHEET**

Form No.

**Biswajit Sarkar**

Case No. **OA – 345 of 2022**

**Vs.**

**THE STATE OF WEST BENGAL & ORS.**

giving a reasoned order whether the suspension would continue or be revoked.

In this case, I find the Review Committee in his first meeting after four years has mainly reviewed whether the application for enhancement of subsistence allowance should be considered or not without dealing with the more important question of suspension per se. Having expressed the above view, I direct the Respondent No. 2 i.e. Principal Secretary, Department of Transport to regularly review the suspension and pass reasoned orders after reviewing the very suspension itself as per Memorandum. It appears the next review is due by 7<sup>th</sup> January, 2023.

Accordingly, the matter is disposed of.

SAYEED AHMED BABA  
OFFICIATING CHAIRPERSON & MEMBER(A)

A.K.P