

Bikash Bhavan, Salt Lake, Kolkata – 700 091.

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

Sandip Kumar Roy - VERSUS - THE STATE OF WEST BENGAL & ORS.

For the Respondents : Mr. G.P. Banerjee,
Mr. G. Halder,
Learned Advocates.

Mr. P.K. Roy Senior Advocate for the applicant mentioned before this Tribunal on 01.09.2025 in the presence of Mr. G.P.Banerjee Learned Advocate for the State that by an order dated 27.08.2025 the Hon'ble High Court in WPST 108 of 2025 has set aside the order of this Tribunal dated 07.03.2025 in Case No.- OA 450 of 2017 for reconsidering the matter afresh. The Hon'ble High Court has further directed to proceed with the matter expeditiously without any unnecessary adjournment or undue delay. Hence with the consent of both the parties the matter was fixed for hearing on 02.09.2025. Accordingly, the matter is taken up afresh 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 Tribunal Act, 1985.

In the instant case, a Departmental Proceedings was initiated against the applicant for commission of an alleged offence of taking bribe from one Swastik Nag, a Director of Traffic Entertainment Pvt. Ltd. for obtaining one bar-cum restaurant license at Jessore Road, Kolkata, which is similar and identical with the allegations or charge imputed in the criminal proceedings vide case no. 11 of 2016 dated 26.11.2016 u/s 7 of Prevention of Corruption Act, 1988 initiated by the Anti-corruption Branch, West Bengal. The applicant was placed under suspension vide order dated November 28, 2016. The

Form No.

Sandip Kumar Roy

Vs.

Case No. **OA – 450 of 2017**

THE STATE OF WEST BENGAL & ORS.

Disciplinary Authority issued him a charge sheet dated March 07, 2017 for his alleged role as mentioned above. The charge in the Article of Charge of the Departmental Proceedings was ambiguous as the specific details constituting the charge were not elaborated. However, the charge was subsequently corroborated with the charge made out in the Charge Sheet of the Criminal Proceedings at the behest of the State.

Learned Senior Advocate appearing on behalf of the applicant has pleaded upon the vagueness of the flawed charge and he has referred to various RTI information derived from the Investigating Agency and other competent departments of the State Government and that the instant case was not assigned by the State Government to the ACB which is a mandatory clause of the order of the Chief Secretary vide Memo No. Vig-283(SPAR)/2012 dated November 22, 2012 is substantiated by the report of the then Special Public Prosecutor-In-Charge submitted to the Learned Legal Remembrancer dated 21.11.2017 which was received by the applicant in the form of an RTI dated 13.10.2022 from the ACB. The report of the Special Public Prosecutor also confirmed the closure of the ACB office on the day the alleged FIR was lodged which was further corroborated by the RTI reply from the report of the Assistant Engineer PWD Kolkata West vide Memo No. 171. Learned Senior Advocate for the applicant has also relied upon the RTI reply from the Joint Commissioner of Kolkata Police (A) dated 20.07.2017 vide Memo No.13220 which categorically informs that the complainant and his associates did not visit the ACB office for lodging an FIR contrary to the statement made in the FIR. It was further pleaded that in violation of the said order of the Chief Secretary no preliminary enquiry was conducted by the ACB which otherwise would have exposed the facts that the alleged site of excise license was beyond the jurisdiction of the applicant who was posted under South 24 Parganas and at that point of time he was dispossessed of any official capacity as he was undergoing police training at the Swami Vivekananda State Police Academy and most importantly there was no actual application of license and the site mentioned was also a fictitious one. Mr. P.K.Roy Senior Advocate has also drawn attention of this Tribunal to the excerpts of the report of the

Form No.

Sandip Kumar Roy

Vs.

Case No. **OA – 450 of 2017**

THE STATE OF WEST BENGAL & ORS.

Special Public Prosecutor which confirms that the alleged bribe money was recovered from the sofa where the complainant was sitting. He has also placed reliance upon the Post Trap Memorandum prepared by ACB which clearly mentioned that on personal search of Sandip Kumar Roy nothing was recovered except his official identity card. It is also submitted on behalf of the applicant that the RTI documents annexed in the supplementary affidavit being public documents can be aptly relied upon by the Tribunal u/s 22 (3)(d) of the Administrative Tribunal Act, 1985.

Mr. P.K.Roy Senior Advocate on behalf of the applicant has also submitted that the Review Committee chaired by the Chief Secretary had suo motto recommended the withdrawal of the suspension of the applicant in its meeting dated 19.09.2023. Moreover, by an order dated 27.06.2024 the Finance Department served option to the applicant to come under ROPA, 2019.

The Division Bench of Hon'ble High Court in its order dated 06.11.2017 vide WPST 92 of 2017 had set aside the impugned order of the Tribunal dated 22.06.2017 with a direction to dispose of this matter within 8 weeks. Mr. P.K. Roy further pleaded that it is apparent that the applicant has suffered substantially for the lackadaisical conduct of the State respondents in pursuing the matter before the Tribunal for an expeditious adjudication of the matter as stipulated by the Hon'ble Division Bench. Finally, it was pleaded by Mr. Roy that the applicant had already suffered so much of mental agony and social distress that it would be in fitness of things and Natural Justice if this matter is disposed of by the Hon'ble Tribunal by quashing the Departmental Proceedings, at the same time treating the suspension period as "spent on duty" and by releasing all his arrears as prayed for by the applicant in the Supplementary Affidavit dated 20.02.2025 in Para 12(a). Mr. Roy further pleaded that in view of hearing of the Original Application conclusively, the primary relief sought for in the Original Application in Para 6 (a) to forthwith rescind/cancel and/or withdraw the impugned Departmental Proceedings against the applicant gets preponderance over the interlocutory reliefs and the latter are therefore not pressed.

Form No.

Sandip Kumar Roy

Vs.

Case No. **OA – 450 of 2017**

THE STATE OF WEST BENGAL & ORS.

Mr. G.P.Banerjee, Learned Advocate for the State argued that irrespective of any criminal case is pending, the Departmental Enquiry can proceed without any preponderance of the criminal court. This has been held by a judgement of the Hon'ble Apex Court in (1999) 3 SCC 679: Capt. M. Paul Anthony -vs- Bharat Gold Mines Ltd. and Anr. It was further argued that whatever be the opinion of the Learned Public Prosecutor in this matter, the fact remains that on the same allegations of the Departmental Proceedings, a criminal proceeding under ACB PS, Case No. 11 of 2016 dated 26.11.2016 u/s 7 of Prevention of Corruption Act, 1988 was earlier initiated which is still pending before the competent court.

The Division Bench of Hon'ble High Court in WPST 108 of 2025 dated 27.08.2025 has observed in Para 7 of its order as follows: "Upon consideration of the rival submissions of the parties, and considering the order of the Tribunal, extracted above, we are of the view that the matter is required to be reconsidered by the Tribunal since no definite finding has been recorded by the Tribunal in respect of the relief sought for in the OA, even though various documentary evidence and several arguments advanced on behalf of the parties has been noted in the order." In Para 8 of the said order, it was further stipulated that "the matter in our opinion also requires a fresh consideration in view of nature of findings returned by the Tribunal. We, therefore, remand the matter to the SAT for consideration afresh..... For facilitating reconsideration, we set aside the order of the Tribunal dated 07.03.2025".

In the light of the orders of Hon'ble High Court in WPST 108 of 2025 dated 27.08.2025 and WPST 92 of 2017 dated 06.11.2017, the available materials and records as well as the supplementary affidavit, the Tribunal beyond any reasonable doubt has come to this conclusion that allegation against the applicant is absolutely untenable and violative of Natural Justice. The distinct facts of the applicant's posting outside the jurisdiction of North 24 Parganas where the alleged excise license was sought by the complainant, absence of any actual application for such license before any competent authority, the site of the license being a figment of imagination and nullity of any evidence or whisper of facilitation by the applicant defy any logic for the alleged cause of

Form No.

Sandip Kumar Roy

Vs.

Case No. **OA – 450 of 2017**

THE STATE OF WEST BENGAL & ORS.

action i.e; the factor of demand. The Hon'ble Supreme Court of India in N. Vijoy Kumar vs The State of Tamil Nadu has observed the recovery of currency notes for illegal gratification without proof of demand is not sufficient u/s 7 of the P. C. Act. In this case, both the Post Trap Memorandum prepared by ACB as well as the report of the Special Public Prosecutor-in-charge have denied recovery of the said bribe money from the physical possession of the applicant. Such recovery from elsewhere (in this case from the sofa where the complainant himself was sitting) cannot be regarded as being recovered from the applicant. It is clearly evident from the report of the Special Public Prosecutor that the ACB has acted ultra vires and malafide in violating order of the Chief Secretary dated 22.11.2012 by starting a criminal case against the applicant without being assigned by the Government in the P & AR Department. Additionally, the closure of the ACB office and non-appearance of the complainant there on that day to lodge the complaint on 26.11.2016, completely negate the statement recorded in the FIR. Statements in the RTI reply of the Joint Commissioner of Kolkata Police (A) on 14.07.2017, Assistant Engineer PWD, Kolkata West, Sub-division II on 20.07.2017 and the independent report of the Special Public Prosecutor of the case and submitted to the learned Legal Remembrancer dated 21.11.2017 are clear pointers. The aforesaid documents are of cardinal importance and bear immense evidentiary value to determine the fate and veracity of the allegations on which the Departmental Proceedings has been initiated. Moreover, this Tribunal u/s 22(3)(d) being vested with the power of a civil court is competent to take cognizance of and requisition any public documents from any office under the provisions of sections 123 and 124 of the Indian Evidence Act, 1872. The said reports pose a big question mark on the authenticity of the entire trap episode and intention to malign the applicant cannot be ruled out.

Notwithstanding the direction of the Hon'ble High Court in 2017 for concluding the matter within 8 weeks, continuation of this enquiry after a lapse of more than 8 years shall be an abuse of the process of law and is absolutely unjust and barred by limitation. Justice delayed is justice denied. It is pertinent and necessary to cite the relevant judgement of the Hon'ble

Form No.

Sandip Kumar Roy

Vs.

Case No. **OA – 450 of 2017**

THE STATE OF WEST BENGAL & ORS.

Supreme Court in Prem Nath Bali versus Registrar, High Court of Delhi recorded in (2015) 16 SCC 415:“28. Keeping these factors in mind, we are of the considered opinion that every employer (whether State or private) must make sincere endeavour to conclude the Departmental Enquiry Proceedings once initiated against the delinquent employee within a reasonable time by giving priority to such proceedings and as far as possible it should be concluded within 6 months as an outer limit. Where it is not possible for the employer to conclude due to certain unavoidable causes arising in the proceedings within the time-frame then efforts should be made to conclude within reasonably extended period depending upon the cause and nature of inquiry but not more than a year”.

Considering the rival submissions of both the parties and the primary prayer of the applicant to rescind/ cancel the Departmental Proceedings in the OA, at the same time not pressing the interlocutory prayers which therefore requires no adjudication and subsequent prayer in the Supplementary Affidavit for release of his pending dues and arrears while considering the suspension period “as spent on duty”, it is judicially imperative that the instant Departmental Proceedings based upon a vague, ambiguous and defective charge is not sustainable in the eyes of law and is absolutely quashable both on merits and legal incongruities and is quashed and set aside in its entirety. Keeping in view the withdrawal of suspension by the Review Committee chaired by Chief Secretary and allowances, salary and other benefits given to the applicant as per ROPA, 2019, the respondent no. 1 the Additional Chief Secretary, Department of Finance is directed to treat the suspension period “spent on duty” and his arrears if any, be released expeditiously but positively within 3 months from the date of communication of this order.

The application is disposed of.

A.K.P.

SAYEED AHMED BABA
OFFICIATING CHAIRPERSON & MEMBER(A)