

ORDER SHEET

WEST BENGAL ADMINISTRATIVE TRIBUNAL

Bikash Bhavan, Salt Lake, Kolkata – 700 091.

Present-

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

Case No. OA – 454 of 2022

Shyamapada Giri - VERSUS - THE STATE OF WEST BENGAL & ORS.

Serial No. For the Applicant : Mr. M.N. Roy,
and Advocate

Date of order

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17.11.2022

For the State Respondent : Mr. G.P. Banerjee,
Mr. S. Ghosh,
Advocates

The matter is taken up by the Single Bench pursuant to the order contained in the Notification No. 536 – WBAT / 2J-15/2016 dated 26th August, 2022 issued in exercise of the powers conferred under Section 5(6) of the Administrative Tribunals Act, 1985.

The instant application has been filed praying for following reliefs:

“i. The Final order passed in reducing pay of Applicant in two stages under order No. HF/O/Vig/142/9A-192/2005 dated 01.02.2021 passed by the Director of Health Services W.B. be quashed and set aside and the applicant pay of reduction on two stages be declared void and allowed to be released and paid to the Applicant and consequently fixing the last pay drawn on that basis.

ii. That respondent be directed to regularize the suspension period to treat on duty. As no review was due for justification of continuation of such suspension and order of treating the suspension period as confirmed as passed by the Disciplinary Authority under No. HF/O/GA/(vig) 386/9A-

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192/2005 dated 24.03.2021 be quashed and set aside and direct the Disciplinary Authority to allow the suspension period to be treated as spend on duty and allowing the applicant all the yearly increments earn and all other consequential benefit during the said period and the last pay drawn before the superannuation be revised as such.

iii. And to pass such other order or orders as Your Lordship fit and proper.”

During the course of the hearing, the counsel for the applicant has placed one order dated 01.02.2022 passed in O.A. No. 505 of 2021. As per the applicant, Disciplinary Authority had imposed penalty of reduction of pay by two stages till his retirement under Rule 8(iv) of the West Bengal Services (Classification, Control and Appeal) Rules, 1971. However, in addition to that, he has also directed that the applicant be debarred from the promotion during the period of his penalty. It has been submitted by the counsel for the applicant that this Tribunal has observed that no order can be passed contrary to any provision of Rule as prescribed. Therefore, the counsel for the applicant has submitted that presently his purpose would be served if this case would be continued in the light of the order dated 01.02.2022 passed in O.A. No. 505 of 2021. However, his other rights and contention with regard to his submission against the disciplinary proceeding be remained same.

The counsel for the respondent has submitted that there is no violation of natural justice while passing the order.

Heard the parties and perused the order dated 01.02.2022 passed by this

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Tribunal, wherein it has been observed:

“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 through the Disciplinary Authority has indicated that such debarment or 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

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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 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 v. 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 debarring of promotion under Rule 8 (iv) of the West Bengal Services (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

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observed above.

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

It is further noted that Disciplinary Authority had imposed the following order:

“NOW, THEREFORE, the Governor has been pleased to order that the penalty of “the pay of Shyamapada Giri be reduced to 02 (two) stages lower in the current pay band till his retirement under Rule 8(iv) of West Bengal Services (Classification, Control & Appeal) Rules, 1971. During the period of such reduction, Sri Giri will not earn any increment of pay. However, on expiry of such period the reduction will have no effect on pension and other retiral benefits”.

The Governor has further been pleased to direct that Sri Shyamapada Giri be debarred from promotion during the period of his undergoing penalty and such debarment should not be treated and imposed as a penalty.”

On perusal of both the parties, it is noted that the issue involved with regard to imposition of penalty with regard to debarring from promotion is squarely covered by the order dated 01.02.2022. Therefore, I quash and set aside the impugned order dated 01.02.2021 and remand back the matter to the Disciplinary Authority to pass a de novo final order as per provision of Rule and settled principle of Law after granting appropriate opportunity to the applicant as

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observed above. It is further submitted by the counsel for the applicant that as the impugned order has already been implemented by the respondents, they have deducted some amount. Therefore, that may be refunded back. Accordingly, the respondents are directed to refund back the amount, if any, deducted as per impugned order dated 01.02.2021 within four weeks and to pass a de novo final order by way of reasoned and speaking order within a period of sixteen weeks. Accordingly, the O.A. is disposed of with no order as to costs.

URMITA DATTA (SEN)
Officiating Chairperson and Member (J)

A.K.P.