

ORDER SHEET
WEST BENGAL ADMINISTRATIVE TRIBUNAL
Bikash Bhavan, Salt Lake, Kolkata – 700 091.

Present-

**The Hon'ble Mrs. Urmita Datta (Sen), Member(J) &
Hob'ble Sayeed Ahmed Baba, Member (A_)**

Case No. – OA-597 of 2021

Jayanta Mukherjee **VERSUS** – The State of West Bengal & Ors.

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|---------------------------------|--------------------------|--------------------------------------|
| Serial No. and Date of order | For the Applicant | : Mr. S. Ghosh, Learned Advocate. |
| <u>04</u> 05.10.2021 | For the State Respondent | : Mr. M.N. Roy, Learned Advocate. |

The instant application has been filed mainly praying for quashing of impugned suspension order dated 15.09.2020 with a prayer for a direction to the authority to allow the applicant to join service.

As per the applicant, he was posed in W.B. Human Rights Commission on deputation vide order dated 27.08.2012 (Annexure-A). However, while working in the said Commission, he was falsely implicated in a criminal case in GR Case No. 798 of 2020 and was under Jail custody since 14.08.2020. Subsequently, he was enlarged on bail vide order dated 19.08.2020 (Annexure-B). In the mean time, the applicant was put under suspension vide order dated 15.09.2020. Thereafter, the applicant made application before the authority for reviewing of his representation dated 04.11.2020 followed by repeated reminders dated 15.12.2020, 08.01.2021, 8.03.2021, 9.03.2021, 10.03.2021 & 30.06.2021 for revocation of his suspension and/or enhancement of subsistence allowance. (Annexure-D). However, till date no steps have been taken on behalf of the respondents.

The respondents have filed their reply wherein they have submitted that though the applicant was put under suspension by the competent authority but unfortunately there is no one in the W.B. Human Rights Commission, who have authority to review/voke the suspension order in terms of the service rules applicable in the case of the applicant due to the vacancy in the said post.

As per the respondent, the Superintendent of Police, W.B. Human

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Rights Commission was transferred from W.B. Human Rights Commission to Kolkata Police vide Notification dated 14.09.2020 who took release from W.B. Human Rights Commission on 15.09.2020 leaving the charge with Dy. Superintendent of Police, W.B. Human Rights Commission in a stop gap management. It is further submitted that W.B.H.R.C. have two posts manned by the Members of I.P.S. for the purpose of investigation for W.B.H.R.C.. The posts are in the ranks of A.D.G. & I.G.P. of Police and Superintendent of Police. Since the post of A.D.G & I.G.P. fallen vacant with the retirement of the then A.D.G. & I.G.P. and the post of Superintendent, W.B.H.R.C. fallen vacant since 15.09.2020 due to the transfer of the then S.P., W.B.H.R.C. to Kolkata Armed Police as D.S.P. Ist Bn. Therefore, there was no authority to review/consider the case of the applicant for suspension. However, as per the provision of Rule 859 and 882 of P.R.B. , the disciplinary authority and the appellate authority in case of a constable lies with the S.P., W.B.H.R.C. However, Rule 858 of P.R.B. goes power to the I.G.P. to suspend , reduce etc. As of the powers, the S.P. is having the authority with regard to disciplinary action. However, since on and from 16.09.2020, there is no A.D.G & I.G.P. or S.P. in the W.B.H.R.C., suspension order could not be reviewed.

Heard both the parties and perused the records.

It is an admitted fact that the applicant was put under suspension vide order dated 15.09.2020. However, till date due to the vacancy created with regard to the post of A.D.G. & I.G.P. and S.P. in W.B.H.R.C., the suspension order of the applicant could not be reviewed. However, as per the Rules as well as settled principle of law, the case of the applicant is required to be reviewed after 180 days. Therefore, in our considered opinion, the applicant should not be deprived of his legal rights to be considered for reviewing his suspension order and/or enhancement of subsistence allowance beyond the stipulated period due to vacancy in the concerned post. Therefore, we direct the Secretary, Home & Hill Affairs

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Department to take appropriate steps with regard to suspension of the applicant for reviewing the suspension order dated 15.09.2020 and to take final decision and communicate the same within a period of four weeks from the date of receipt of the order. Accordingly, OA is disposed of with no order as to costs.

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.

SAYEED AHMED BABA
MEMBER (A)

URMITA DATTA (SEN)
MEMBER (J)

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