

ORDER SHEET

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 – 630 of 2023

Noor Mohammad - VERSUS - THE STATE OF WEST BENGAL & ORS.

Serial No.

and

Date of order

5

13.12.2024

For the Applicant : Mr. G. Halder,
Advocate

For the Respondent No. 2(ii) : Mr. S. Ghosh,
Advocate

For the Respondent Nos. 2
(i), (iii) & (v) : Ms. Ruma Sarkar,
Mr. S. Debray,
Mr. R. Bag,
Mrs. Anjana Bhattacharya,
(Departmental Representatives)
Land and Land Reforms Department.

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

The applicant, a Special Revenue Officer, Grade - II was awarded 25 years MCAS on 07.07.2022, which was subsequently withdrawn on 31.07.2023 on the ground that such benefit was given to him erroneously. The respondent authority, after giving such benefit realised that the applicant was involved in a criminal case, being case No. 1259/2014 since 01.08.2014. The said case against the applicant is pending in the learned court of ACJM, Baruipur, South 24-Parganas. Relying on Memo 1601 – PAR (Vig.) dated 22nd September, 1992 the Departmental representatives have argued that such MCAS benefit was withdrawn from the applicant. The relevant part of this Memo is as under –

“It has been decided that before granting any benefits to an employee under the Carrier Advancement Scheme, 1990, integrity clearance shall have to be taken only from the vigilance wing of the department / or the Cadre Controlling Department.”

It has also been submitted that the Departmental Proceedings initiated against the applicant in 2014 has been concluded and the final order passed in 2022. The final order had imposed a punishment of reduction to lower pay scale for two years and promotion debarred for the period of two years.

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Mr. Banerjee, learned counsel disagreeing with the arguments of the Department cites Memorandum No. 224-P & AR(Vig.) dated 12th June, 1980. The relevant part relied on is as under:-

“(ii) The confirmation / promotion / efficiency bar crossing / selection grade appointment of a Government servant or recruitment of in-service candidates to higher posts should not be held up in cases, where disciplinary proceedings having been started, have continued for more than three years, unless the delay in the disposal of the disciplinary proceedings is due to any dilatory tactics employed by the Government servant concerned or due to proceedings in a Court of law started at the instance of the officer concerned.”

Mr. Banerjee having brought to notice the relevance of the above Memorandum has not only argued that such withdrawing of MCAS benefit was a deviation from this order, but also submits that this Memorandum speaks only about disciplinary proceedings but not pendency of a criminal case. Mr. Banerjee also presents a copy of WPST 154 of 2014 in the matter of Debajyoti Saha –Vs- State of West Bengal & Others and concludes his submission that the respondent authorities erred in withdrawing the MCAS benefit from the applicant and recovering the same from his arrear salaries.

Confirming to what his junior colleague submitted, Mr. Basu, learned counsel also questions the very validity of the order which took away the benefit of MCAS given earlier to the applicant. His contention is that the respondent authorities cannot pass an executive order in retrospective effect.

Mr. Ghosh, learned counsel appearing on behalf of the P & AR Department draws attention to two copies of orders Memo 884 dated 22.08.2023 and 880 dated 21.08.2023 and submits that these orders passed by the respondent authorities have not been assailed by the applicant. He also draws attention to the order 2663 dated 31.07.2023, by which the 25 years MCAS benefit awarded earlier to the applicant was withdrawn and submits that the order has been fully implemented. Therefore, the question of assailing this impugned order 2663 does not arise.

Ms. Sarkar submits that in respect of the departmental proceeding initiated in 2014, a punishment order was initially issued vide order dated 16.05.2018 and his pay

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was reduced and fixed accordingly by the District Magistrate, Nadia. But subsequently, such punishment order was withdrawn in the year 2021 and further order was issued for payment of arrear amount as admissible. Ultimately final punishment order was issued vide order dated 19.07.2022 but the applicant continued to receive reduced pay upto 30.06.2022 in view of such, arrear amount Rs. 3,91,644/- was accrued to him. At the same time, because of the 25 years MCAS benefit wrongly awarded to him, an overdrawn amount Rs. 47,848/- was calculated in the light of withdrawal of MCAS order vide no. 2663 Dated 31.07.2023 and after taking into account such overdrawn amount and accrued arrear amount, the difference money Rs.(3,91,644 – 47,848)/- = Rs. 3,43,796/- has already been paid to him.

Ms. Sarkar referring to Memo 224-P & AR(Vig.) dated 12th June, 1980 presented earlier by Mr. Banerjee argues that as stated in 2(ii) of the Memorandum, the applicant had resorted to some dilatory tactics which are in the records and stated in the reply filed by the State respondents in OA – 636 of 2022. Ms. Sarkar also draws attention to para 2(iii) of the Memorandum 224, the relevant part is as under:-

“(iii) The confirmation / promotion / efficiency bar crossing / selection grade appointment or recruitment of in-service candidates to higher posts should be held up in a case where the Government servant has been placed under suspension, pending disciplinary proceedings, or Government has started criminal proceedings against such Government servant in a Court of Law.”

Ms. Sarkar further draws attention to Memo 1601-PAR(Vig.) dated 22nd September, 1992 and submits that as indicated in this Memo, an integrity clearance is compulsory for employee to become entitled to receive benefit of higher scale and other benefits under CAS. This Memo under reference has also cited the Memorandum 224-P & AR(Vig.) which was earlier presented by Mr. S. Banerjee. Mr. Basu has vehemently opposed the submission made by Ms. Sarkar that the applicant had resorted to some dilatory tactics during the proceedings. The order passed upon the incumbent does not speak of any dilatory tactics so claimed by Ms. Sarkar.

Having heard the submissions of the learned counsels and the departmental representatives and perusing the documents so submitted by them, the Tribunal has come to this finding that the initial punishment order dated 16.05.2018 was withdrawn

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in a second show cause notice bearing no. 1225 dated 03.05.2021 issued against the applicant in connection with a departmental proceeding which eventually culminated in a final punishment order dated 19.07.2022. Memo 224-P & AR (Vig.) dated 12th June, 1980 which both sides relied upon clearly suggests in para 2(iii) that promotion of in-service candidates to higher posts should be held up where disciplinary proceedings is pending against a Government servant. It is also well settled position that for granting benefits to any Government employee under CAS/MCAS, integrity clearance is required to be taken from the vigilance wing of the department/or from the cadre controlling authority to ascertain his/her unblemished record for determining continuous and satisfactory service. In this case, when MCAS benefit was awarded to the applicant in the year 2022 w.e.f. 05.10.2018, disciplinary proceeding as well as criminal proceeding was very much pending against him which clearly indicates that he did not have such unblemished record. It was not proper for the respondent district authority to grant MCAS benefit to the applicant without taking approval from the administrative department.

Having observed the above findings, the Tribunal is of the opinion that the instant application filed against withdrawal order of MCAS benefit does not have any merit, therefore this instant application is disposed of without any order.

SAYEED AHMED BABA
OFFICIATING CHAIRPERSON & MEMBER(A)

A.K.P