

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 – 825 of 2018

Debaprasad Manna - VERSUS - THE STATE OF WEST BENGAL & ORS.

Serial No. and Date of order <u>20</u> 08.09.2022	For the Applicant	: Mr. M.N. Roy, Advocate
	For the State Respondents	: Mr. S. Bhattacharjee, Advocate

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:

“(a) An order do issue thereby setting aside/quashing the entire Departmental Proceeding including the Charge Sheet vide Memo No. Con. 18/DR dated, Purba Medinipur 07.06.2013, Second Show Cause Notice Memo No. Con. 10/DR dated, Purba Medinipur 12.05.2017, Inquiry Report, Memo No. Con. II/5(5)/DR dated Purba Medinipur 16.06.2017 being the final order of punishment and the appellate authorities order dated 24.08.2018 communicated vide Memo No. 5044/(4)/1M-61/18 Dated 10.09.2018 forthwith.

(b) An order do issue directing the respondent authorities to give all consequential service benefits after setting aside/quashing the entire Departmental Proceeding including the Charge Sheet vide Memo

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No. Con. 18/DR dated, Purba Medinipur 07.06.2013, Second Show Cause Notice Memo No. Con. 10/DR dated, Purba Medinipur 12.05.2017, Inquiry Report, Memo No. Con. II/5(5)/DR dated Purba Medinipur 16.06.2017 as well as appellate authorities order dated 24.08.2018.

(c) A further order do issue directing the respondent authorities to transmit records pertaining to the instant case so that conscionable justice can be done.

(d) Any other appropriate order/orders direction/directions as this Hon'ble Tribunal may deem fit and proper to protect the right of the applicant and in the ends of justice."

During the course of the hearing, the counsel for the applicant has submitted that he was charge sheeted by Memo dated 07.06.2013 on certain charges of disproportionate assets and along with his Charge Sheet, as per Annexure 'IV', 12 witnesses were indicated. However, inquiry report was submitted only on the basis of his admission made in the defence reply submitted on 15.02.2017. It has been further submitted by the counsel for the applicant that he has been imposed with the punishment by the disciplinary authority without any examination or cross-examination of the witnesses as required by the Rules as well as settled principle of law. Therefore, the final order and earlier order passed on such inquiry report is liable to be quashed as held by the Hon'ble Apex Court in the case of Roop Singh Negi –Vs- Punjab

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National Bank and Others reported in (2009)2 SCC 570.

The counsel for the respondent has submitted that as the applicant had admitted his guilt, therefore, he has been rightly imposed with the punishment.

Heard the parties and perused the records. It is noted that though in the Charge Sheet under Annexure IV, there are list of 12 witnesses, however, from the perusal of the inquiry report, no examination or cross-examination of witnesses has been found and it is further observed that the said issue had already been raised before the Appellate Authority, who only recorded that he confessed his guilt in writing and also submitted that he did not want to examine and cross-examine any prosecution witnesses. Accordingly, no argument was put forward either by the prosecution or by the defence. Further it is noted that in the Appellate Order dated 24.08.2018, the Appellate Authority had observed:

“Under these circumstances, hearing all the parties present and considering all documents, after application of mind the undersigned is of opinion that there is not sufficient ground established by the petitioner to justify that he was not given ample opportunity to examine / cross-examine prosecution witness. The petitioner could also not establish that there was any pressure on him to confess his guilt. Further, the petitioner did not present any arguments or contest the Articles of Charge II, III & IV and he did not provide any further evidence to

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counter Article of Charge I. Therefore, the undersigned is constrained to note that the punishment awarded to Sri Manna appears to be justified.

Hence, the appeal made by the applicant dated 06/07/2017 is hereby disposed of

All concerned may be informed accordingly.”

Whereas from the above, it is clear that the appellate authority had admitted that no prosecution witness was examined by the inquiry authority before coming to his conclusion.

The Hon’ble Apex Court, in the case of Roop Singh Negi (supra), had observed and held inter alia:

“Para 14: Indisputably, a departmental proceeding is a quasi-judicial proceeding. The inquiry officer performs a quasi-judicial function.

**The.....
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Para 23: Furthermore, the order of the disciplinary authority as also the appellate authority are not supported by any reason. As the orders passed by them have severe civil consequences, appropriate reasons should have been assigned. If the enquiry

officer had relied upon the confession made by the appellant, there was no reason as to why the order of discharge passed by the criminal court on the basis of selfsame evidence should not have been taken into consideration. The materials brought on record pointing out the guilt are required to be proved. A decision must be arrived at on some evidence, which is legally admissible. The provisions of the Evidence Act may not be applicable in a departmental proceeding but the principles of natural justice are. As the report of the enquiry officer was based on merely ipse dixit as also surmises and conjectures, the same could not have been sustained. The inferences drawn by the enquiry officer apparently were not supported by any evidence. Suspicion, as is well known, however high maybe, can under no circumstances be held to be a substitute for legal proof.”

In the instant case also admittedly no witnesses were examined or cross-examined and only on the basis of some writing in the statement of defence on subsequent date, had been taken care as the confession of the applicant without any corroboration. In view of the above, in my considered opinion, the impugned Inquiry Report dated 09.03.2017, Second Show Cause Notice dated 12.05.2017, Final Order dated 16.06.2017 and Appellate Authority’s Order dated 24.08.2018 are not sustainable and hereby quashed and set aside. Further I remand back the matter to the Inquiry Authority to hold a proper inquiry after

ORDER SHEET

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following Rules and settled principle of law and direct the Disciplinary Authority to conclude the disciplinary proceedings and communicate his decision by way of reasoned and speaking order within a period of four months from the date of receipt of the order. The applicant is also directed to co-operate with the disciplinary proceedings in this regard. Accordingly, the O.A. is disposed of with the above direction and observation with no order as to costs.

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

A.K.P.