

WEST BENGAL ADMINISTRATIVE TRIBUNAL

Bikash Bhavan, Salt Lake, Kolkata – 700 091.

Present-

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

Case No. OA – 424 of 2017

Bidhan Chandra Bhattacharjee - VERSUS - THE STATE OF WEST BENGAL & ORS.

Serial No. and Date of order <u>31</u> 15.02.2022	For the Applicant	: Mr. A.N. Ghosh, Mrs. S. Agarwal, Advocates
	For the Respondents	: Mr. M.N. Roy, Mr. G. Halder, Advocates

The instant application has been filed praying for setting aside the order of disciplinary proceeding dated 18.07.2016, order of dismissal dated 31.01.2017 as well as Appellate order dated 19.04.2017 on the following grounds:

- (1) The charge sheet has not been served upon the applicant. Therefore, the enquiry proceeding is bad in law.**
- (2) No presenting officer was appointed by the disciplinary authority.**
- (3) Though the list of witnesses contains five witnesses but the enquiry officer examined ten witnesses without serving notice to the applicant, which he came to know through the reply filed by the respondent. Thus, the enquiry officer has traversed beyond the scope of the charge sheet.**

It has been submitted that since there is a clear violation of natural justice, any decision / punishment arising out of such disciplinary proceedings is liable to be quashed being bad in law.

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The counsel for the applicant has submitted that from the perusal of the reply, it would not be evident that respondents have not denied that they have not served the copy of charge sheet.

The counsel for the respondent on the other hand has submitted that the applicant should collect the charge sheet from the disciplinary authority as several notices were issued to him.

Heard both the parties and perused the records. During the course of the hearing, the counsel for the respondent has reiterated the submission made in the reply and basically accepted that no charge sheet was served upon him. From the perusal of the document submitted in the reply, it is noted that admittedly there are 5 witnesses to be examined as per the charge sheet. However, from the perusal of the enquiry report, it is noted that ten witnesses were examined. Therefore, the enquiry officer has traversed beyond the scope of the charge sheet as the respondents are not in a position to show whether any subsequent notice has been served upon the applicant for inclusion of the witnesses or the charge sheet has been served upon the applicant or not? From the above, I am of the opinion, the charge sheet has not been served upon the applicant as there are many other ways to serve the copy of the charge sheet however, no such attempt has been shown by the respondent to serve the copy of charge sheet in other mode. Further the enquiry officer had examined ten witnesses. From the perusal of the charge sheet, it would be evident that only the names of 5 witnesses are there. Therefore, in my considered opinion, the enquiry officer has traversed beyond the scope of the charge sheet. Therefore the said proceeding is not sustainable. Accordingly, I quash and set aside the final order dated 31.01.2017, Appellate order dated 19.04.2017 as well as the Enquiry Report dated 10.12.2016 and remand back to the authority to take appropriate

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steps as per law and also to reinstate the applicant within a period of six weeks from the date of receipt of the order. Accordingly, the O.A. is disposed of with no order as to cost.

Since for 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.

URMITA DATTA (SEN)
MEMBER (J)

A.K.P.