

WEST BENGAL ADMINISTRATIVE TRIBUNAL

Bikash Bhavan, Salt Lake, Kolkata – 700 091.

Present-

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

Case No. – OA 115 of 2019

Dr. Pinaki Saha -- **VERSUS** – The State of West Bengal & Ors.

Serial No. and
Date of order

For the Applicant : Mrs. B. Ghoshal,
Learned Advocate.

For the State Respondent : Mr. G.P. Banerjee,
Learned Advocate.

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01.11.2022

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.

During the course of the hearing, the counsel for the applicant has submitted that the punishment order dated 27.11.2018 (Annexure-R) is liable to be quashed in the light of the Judgment dated 11.01.2019 passed in OA 494 of 2017 which was subsequently affirmed by the Hon'ble High Court, Calcutta in their Judgment dated 15.11.2019 passed in W.P.S.T. 105 of 2019 and the State respondents without challenging the said had already implemented the order. Therefore, the counsel for the applicant has prayed for extension of benefit of the said orders. It has been further submitted by the applicant that the State respondents had imposed the following punishment:

“NOW, THEREFORE, in exercise of power conferred by sub-rule 14 of rule 10 of the West Bengal Services (Classification, Control & Appeal) Rules, 1971, the Governor has been pleased to order that penalty of *withholding of 2 (two) annual increments without cumulative effect* be imposed upon Dr. Pinaki Saha under rule 8(ii) of the West Bengal Services (Classification, Control & Appeal) Rules, 1971;

The Governor has further been pleased to direct that the said Dr. Pinaki Saha, *be debarred from promotion during the currency of the penalty.*”

As per the applicant, there is no provision of withholding the annual increment as well as barring from promotion during the penalty period under Rule 8(ii) of the West Bengal Services (Classification, Control and Appeal) Rules, 1971. It has been further submitted by the counsel for the

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applicant that this Tribunal has already considered the said Rule and vide its judgment dated 11.01.2019 passed in OA-494 of 2017, had held that under Rule 8(ii) of the West Bengal Services (Classification, Control and Appeal) Rules, 1971, both stoppage of increment as well as promotion at a time cannot be imposed upon the delinquent employee under Rule 8(ii) of the West Bengal Services (Classification, Control and Appeal) Rules, 1971, which was further affirmed by the Hon'ble High Court vide judgement dated 15.11.2019 passed in WPST No. 105 of 2019. Subsequently, it was implemented by the Government without preferring any appeal before the Hon'ble Apex Court. Therefore, it is settled principle of law that both stoppage of increment and promotion cannot be imposed as a punishment under Rule 8(ii) of the West Bengal Services (Classification, Control and Appeal) Rules, 1971. The counsel for the respondent has accepted the contention of the applicant. However, he has submitted that even during the currency of the penalty period, he may not be promoted.

I have heard both the parties and perused the records as well as judgments referred above by the counsel for the applicant. From the perusal of both the judgments, it is clear that the instant order is liable to be quashed as the issue involved in the instant case is squarely covered by the aforementioned judgments. Therefore, I quash and set aside the impugned order dated 27.11.2018 and remand back to the disciplinary authority to pass a fresh order in the light of the aforesaid judgments and pass a reasoned and speaking order within a period of two months from the date of receipt of the order.

Accordingly, the OA is **disposed of** with the above observations and directions with no order as to costs.

CSM

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