

WEST BENGAL ADMINISTRATIVE TRIBUNAL

Bikash Bhavan, Salt Lake, Kolkata – 700 091.

Present-

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

Case No. – OA-118 of 2022

Indrajit Dutta VERSUS – The State of West Bengal & Ors.

Serial No. and Date of order For the Applicant : Mr. P.S. Das
Learned Advocate.

For the State Respondents : Mr. M.N. Roy,
Learned Advocate.

04
07.04.2022

The matter is taken up by the Single Bench pursuant to the order contained in the Notification No. 118-WBAT/1E-08/2003 (Pt.-II) dated 11th February, 2022 issued in exercise of the powers conferred under Section 6 (5) of the Administrative Tribunals Act, 1985.

On consent of counsel for the parties, matter has been taken up for hearing.

The instant application has been filed mainly challenging the final order dated 04.10.2021 passed in the disciplinary proceedings No. 84 dated 26.10.2018 as well as appellate authority's order dated 04.12.2021.

During the course of hearing, the counsel for the applicant has submitted though he was served with disagreement order dated 09.07.2021(Annexure-J) issued by the disciplinary authority i.e. Deputy Commissioner of Police (Traffic Department), Kolkata Police. However, according to the counsel for the applicant since in the said order, it has been directed to Show Cause in writing within seven days from the date of receipt of the notice as to why penalty shall not be taken against him for the charges along with copy of the findings dated 12.02.2021 (second enquiry report), therefore, there is a violation of natural justice for not affording any opportunity to the applicant to make appropriate submission before passing disagreement note.

The counsel for the applicant has prayed for interim protection for staying of operation of final order dated 04.10.2021 and appellate order dated 04.12.2021 on the following grounds :-

- a)Preliminary enquiry report not served upon him.

ORDER SHEET

Form No.

Indrajit Dutta

Vs.

Case No. **OA-118 of 2022**

The State of West Bengal & Ors.

- b)The Disciplinary Authority did not give any opportunity before passing disagreement note..
- c)The appellate authority did not give any opportunity of hearing before passing of final order.
- d)Department is biased.

The counsel for the respondent has vehemently opposed the prayer of stay of operation of impugned orders on the ground that the impugned orders are already in operation from the date of passing of those orders. Secondly, there is no mandatory requirement to serve preliminary enquiry report as the applicant was granted opportunity by way of issuance of charge sheet. Thirdly, as per the provision of rules as well as law, the applicant was served with the disagreement note along with second enquiry report on 09.07.2021, asking him to make appropriate submission before the appellate authority. Thereafter, the applicant made a representation in reply to such disagreement note on 23.07.2021 (Annexure-K). Therefore, the applicant cannot claim that no opportunity was granted to him to make appropriate submission.

It is further submitted by the counsel for the respondent that appellate authority has considered the appeal of the applicant and there is no such mandatory provision to grant personal hearing before passing the appellate order. It has been submitted that there is no bias attitude towards the applicant as the applicant was granted appropriate opportunity as per rules.

Heard the parties and perused the records. Respondents are directed to file reply by four weeks. Rejoinder, if any, may be filed by two weeks thereafter. With regard to stay of operation of final order dated 04.12.2021 and 04.10.2021, I am of the opinion as the order of punishment of dismissal already is in operation, therefore, I do not find

ORDER SHEET

Form No.

Indrajit Dutta

Vs.

Case No. **OA-118 of 2022**

The State of West Bengal & Ors.

to grant any stay of operation in ante to the impugned orders at this stage as the applicant was granted opportunity during the enquiry process as well as disciplinary proceedings and having no prima facie case in favour of him. Let the matter be listed for final Hearing on **10.06.2022**.

URMITA DATTA (SEN)
MEMBER (J)

sc