

WEST BENGAL ADMINISTRATIVE TRIBUNAL

Bikash Bhavan, Salt Lake, Kolkata – 700 091.

Present-

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

Case No. – OA 151 of 2021

Dr. Tapas Ghosh -- VERSUS – The State of West Bengal & Ors.

Serial No. and
Date of order

For the Applicant : Mrs. S. Mitra,
Learned Advocate.

04
11.04.2022

For the State respondent : Mr. S. Ghosh,
Learned Advocate.

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.

The instant application has been filed challenging the impugned order dated 13.02.2020 whereby the following punishment has been imposed upon the applicant by the disciplinary authority.

“NOW, THEREFORE, in exercise of power conferred by sub-rule 14 of rule 10 of the West Bengal Services (Classification, Control and Appeal) Rules, 1971, the Governor has been pleased to order that penalty of withholding of 1 (one) annual increment without cumulative effect under rule 8(ii) of the West Bengal Services (Classification, Control and Appeal) Rules, 1971 be imposed upon Dr. Tapas Ghosh.

The Governor has further been pleased to direct that the said Dr. Tapas Ghosh, be debarred from promotion during the penalty period.”

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 applicant that this Tribunal has already considered the said Rule and vide its judgment dated 11.01.2009 passed in OA-494 of 2017, had held that under Rule 8(ii) of the West Bengal Services (Classification, Control and Appeal)

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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 15.11.2009 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 the 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 13.02.2020 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/SS

**URMITA DATTA (SEN)
MEMBER (J)**