

ORDER SHEET

WEST BENGAL ADMINISTRATIVE TRIBUNAL

Bikash Bhavan, Salt Lake, Kolkata – 700 091.

Present-

THE HON'BLE SAYEED AHMED BABA, OFFICIATING CHAIRPERSON AND ADMINISTRATIVE MEMBER,

Case No. – OA 186 of 2023

BISHNU SARKAR - Vs - THE STATE OF WEST BENGAL & OTHERS.

Serial No. and
Date of order

02
10.05.2023

For the Applicant : Mr. Gourav Halder
Advocate

For the Respondents No. 1, : Ms. Ruma Sarkar
2 &3 Mr.Sourav Debray
Mrs. Anjana Bhattacharjee
(Departmental Representatives)

For the Respondent No. 4 : Mr.Sourav Bhattacharjee
Advocate

The matter is taken up by the Single Bench pursuant to the order contained in the Notification No. 638-WBAT/2J-15/2016 (Pt.-II) dated 23rd November, 2022 issued in exercise of the powers conferred under Section 5 (6) of the Administrative Tribunals Act, 1985.

On consent of the learned counsels and the Departmental representative, the case is taken up for consideration sitting singly.

The prayer in this application is for setting aside the impugned order passed by the respondent imposing the punishment as part of the final order of the departmental proceedings.

Submission of the learned counsel for the applicant is that :

- (i) the findings of the enquiry officer were vague, ambiguous and perverse.
- (ii) the respondent has failed to state which Act or Rule or procedures have been violated by the applicant.
- (iii) the three charges against the applicant are not specific in nature and there are several instances of procedural lapses. Further, it is also alleged that the applicant was not given fair opportunity to cross-examine the witnesses. In this

regard the depositions of the land owners along with one Bidyut Das was recorded in absence of the applicant.

- (iv) That the respondent No.2, the Secretary of the Department, relying upon the enquiry report of Shri Jagadish Sarkar has also appointed him as the Inquiring Authority for the same case. It clearly hits the maxim of “Nemo Judex in Causa Sua” (no-one should be a judge in his own case).
- (v) Mr. Haldar submits that due to the punishment imposed upon the applicant, the applicant is suffering immensely. Thus, to mitigate his difficulty there should be an interim order restraining the respondent from giving further effect to the final order.
- (vi) In conclusion, Mr. Haldar relies on the judgement of the Apex Court passed in AIR 1979 SCC 1165: “Tarinikamal Pandit and Others Versus Perfulla Kumar Chatterjee” at paragraph 15 the relevant portion of which is as under:

“15. Before we conclude we will shortly refer to the question of law raised by Mr. L.N. Sinha on behalf of the defendant. He submitted that as the title in the property vested in the defendant by confirmation of the court sale and later by a registered conveyance, the plaintiffs cannot seek relief on the unregistered agreement Ex.4 as conveying any title to them. This point was

not taken in any of the courts below but learned counsel submitted that because it is a pure question of law not involving any investigation of facts and as it goes to the root of the matter the court may permit the point to be taken. In support of his contention that a pure question of law in the circumstances can be taken for the first time in this court he relied on the decisions of this Court in Yeswant Deorao Deshmukh v. Walchand Ramchand Kothari 1950 SCR 852 AT P.861..... As the point raised is a pure question of law not involving any investigation of the facts, we permitted the learned counsel to raise the question.”

Mr. Haldar also submits that the order passed by the Tribunal in O.A. 110 of 2023 is also relevant for this matter.

Responding to the above submissions, Ms. Ruma Sarkar, the Departmental Representative submits that :

- (i) On several days of hearing when the applicant got the opportunity, the applicant did not raise this issue of being prejudiced by the appointment of Shri Jagadish Sarkar as the Inquiring Authority.
- (ii) Mr. S. Debray, the Departmental Representative, refutes that the charges levelled are vague and ambiguous rather these charges are not only specific but are grave in nature.

- (iii) Refuting the submission that the charged officer was not given opportunity to cross-examine the witnesses, Ms. Sarkar refers to pages 45 and 46 of the original application in which the examination of the witnesses were held in presence of the applicant, the Charged Officer.
- (iv) As regards Shri Jagadish Sarkar, being appointed the Inquiring Authority, Ms. Sarkar submits that there is nothing wrong under any existing law to appoint him as the Inquiring Authority. Since he is the S.D.L.R.O.; he was familiar with the case matter and there is nothing illegal about appointing him as the Inquiring Authority.
- (v) Opposing the prayer for interim order from the applicant's side, Ms. R. Sarkar submits that the final order passed in December, 2022 has already been implemented and the pay band of the applicant has been lowered down with effect from the month of February, 2023 and his salaries are now being drawn on the basis of the new fixation of pay as per the punishment. So, the question of interim order has no relevance and such a prayer is strongly opposed.
- (vi) Responding to the citation of the Tribunal's order in O.A. 110 of 2023, Ms. Sarkar submits that this order is not relevant to this case as in this case salary has been deducted whereas in the case of "*Repon Chowdhury Versus The State of West Bengal & Ors*" in O.A. 110 of 2023, no such punishment was implemented.

After hearing the submissions of the learned counsels and perusing the records, the Tribunal observed the following:

- (i) Regarding the vagueness of the charges, it is clear that the charges are specific. In the articles of charge, specific case numbers with land schedule have been cited in which the charged officer have been charged for violating the procedure in changing the classification of the land.
- (ii) As regards the complaint of the applicant that he was not given opportunity to cross examine the witnesses, it is clear from page No. 46, in which it appears that on 06.08.2020, the charged officer, Bishnu Sarkar was present and heard along with other witnesses / land owners – Shri Chandan Roy and Shri Bidyut Das.
- (iii) By appointing Shri Jagadish Sarkar as the Inquiring officer and thus violating the maxim of “Nemo Judex in Causa Sua” (no-one should be a judge in his own case) is not established. I do not see any illegality or relevance of the maxim in this case. It is an internal departmental inquiry in which the head of the department, the Secretary as the disciplinary authority has the responsibility to conduct an impartial inquiry against the charged officer. If the disciplinary authority has preferred a particular official, it is her discretion to appoint him as the inquiring officer.

Based on the above observations, the Tribunal does not find any illegality or serious procedural lapses in conducting the departmental

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proceedings which was concluded by imposing a punishment through the final order. Therefore, no order is passed.

As regards the submission for the applicant side for an interim order, the Tribunal feels that since the punishment has already commenced by the reduction of salary, the scope for passing an interim order at this juncture is not appropriate, therefore denied.

Accordingly, the application is disposed of.

BLR

(SAYEED AHMED BABA)
OFFICIATING CHAIRPERSON AND MEMBER (A)