

**WEST BENGAL ADMINISTRATIVE TRIBUNAL**

**Bikash Bhavan, Salt Lake, Kolkata – 700 091.**

**Present-**

**The Hon'ble SAYEED AHMED BABA, Officiating Chairperson & Member (A)**

**Case No. – OA- 187 of 2023**

**Piyali Pahari VERSUS – The State of West Bengal & Ors..**

Serial No. and  
Date of order

For the Applicant :

Mr. M.N. Roy,  
Learned Advocate.

03  
04.05.2023

For the State  
Respondents :

Mr. S. Deb Roy,  
Ms. R. Sarkar,  
Mr. R. Bag,  
Mrs. A. Bhattacharya,  
Departmental Representatives.

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 23<sup>rd</sup> November, 2022 issued in exercise of the powers conferred under Section 5(6) of the Administrative Tribunals Act, 1985.

On consent of learned counsels for the contesting parties, the case is taken up for consideration sitting singly.

The prayer in this application is for setting aside the entire departmental proceedings and the final order passed imposing some punishment on the applicant.

Briefly, the applicant working as B.L. & L.R.O. Chinsurah Block was issued a Charge-sheet on 29.11.2021 detailing three charges of extreme misconduct and misusing her power and authority. After the departmental proceedings was concluded, the charged officer was imposed a punishment issued on 11.01.2023, imposing stoppages of three increments for the next three years. Challenging this entire departmental proceedings, Mr. M.N. Roy, learned counsel for the applicant has the following submissions :-

- i) Regarding Article of Charge No. II, which is violating the standard operating procedure, the applicant has been charged for allowing outsiders to the Record Room and thus, violating the “departmental

guidelines and violated her duties and acted with ulterior motive.”

Mr. Roy questions the existence of such departmental guidelines which the applicant has allegedly violated. Earlier, when the charged officer asked for a copy of such a guideline, which she was supposed to have violated, no such information was given to her. Thus, the Article of Charge No. II for violation of guideline is vague and does not prove any ulterior motive.

- ii) Submission of Mr. Roy is that the same person cannot be the Inquiring Officer and the Judge at the same time in the same case. In this case, Mr. Bhaskar Majumder, the Dy. D.L. & L.R.O. upon whose preliminary enquiry report the charges were drawn against the applicant also became the Inquiring Authority in the departmental proceedings. It is a violation of maxim of “Nemo Judex in Causa Sua” (no-one should be a judge in his own case). Thus, the charge under this article of violating the departmental guidelines is not only vague, but also not tenable under existing law. Mr. Roy submits a copy of judgement in the case of Govt. of A.P. & Ors. Vs. A., Venkata Raidu reported in (2007) 1 SCC 338, in which at para 9 is relied on which is as under:-

“9. .... We respectfully agree with the view taken by the High Court. It is a settled principle of natural justice that if any material is sought to be used in an enquiry, then copies of that material should be

supplied to the party against whom such enquiry is held. In Charge I, what is mentioned is that the respondent violated the orders issued by the Government. However, no details of these orders have been mentioned in Charge I. It is well settled that a charge-sheet should not be vague but should be specific. The authority should have mentioned the date of the GO which is said to have been violated by the respondent, the number of that GO etc. but that was not done. Copies of the said GOs or directions of the Government were not even placed before the enquiry officer. Hence, Charge I was not specific and hence no finding of guilt can be fixed on the basis of that charge. Moreover, as the High Court has found, the respondent only renewed the deposit already made by his predecessors. Hence, we are of the opinion that the respondent cannot be found guilty for the offence charged.”

- iii) Regarding the punishment imposed on the applicant by the authority by stopping her three future increments for next three years, Mr. Roy submits that the applicant being a Group-A Officer and a PSC post-holder, the PSC was not consulted before such punishment was imposed in terms of provisions of sub-rule 11 of Rule 10 of WBS (CCA) Rules, 1971, which is quoted as under:-

“If the disciplinary authority, having regard to its findings on the charges, is of the opinion that any of

the penalties specified in Clauses (i) and (iii) of Rule 8 should be imposed, it shall pass appropriate orders on the case provided that in every case in which it is necessary to consult the Commission, the record of the enquiry shall be forwarded by the disciplinary authority to the Commission for advice and such advice taken into consideration before passing the orders.”

From the records available to the applicant, Mr. Roy assumes that the PSC was not consulted, or even if consulted, no such record is available nor a copy of such advice, as required by the above Rule, communicated to the charged officer.

Therefore, based on above submissions, Mr. Roy prays for setting aside the entire departmental proceedings including the punishment imposed or an interim order not to give effect to the final order till disposal of this application.

In response to the submissions made earlier by Mr. Roy on behalf of the applicant, the learned Departmental Representatives led by Ms. Ruma Sarkar submits the following as their response to each submission made by Mr. Roy.

- i) Such a guideline does exist which is under Memo No. 58/204(22)/COMP(MRR)/2015 (Pt.) dated, Alipore, 10<sup>th</sup> August, 2017 issued by the Director of Land Records and Surveys.
- ii) Regarding such a copy not being given to the charged officer, it is submitted that this is an official circular, circulated to all the offices under the department. Therefore, the question of this document not being

given to the charged officer is irrelevant since she supposed to be familiar with it.

- iii) As regards the charge of the applicant that the Inquiring Officer cannot be the judge at the same time, Ms. Sarkar submits that the Article of Charge-II was not enquired by the Inquiring Officer. Regarding the submission of Mr. Roy for the maxim of “Nemo Judex in Causa Sua”(no-one should be a judge in his own case) is not applicable in this case since this is strictly a department’s internal enquiry. The Dy. D.L. & L.R.O as the Inquiring Officer appointed by the disciplinary authority is merely assisting the disciplinary authority in making enquiry and not passing any judgements or imposing any punishment. He is only a fact-finding official who will submit his findings to the disciplinary authority, who may or may not accept, in part or full his report. It is the prerogative of the disciplinary authority to appoint him as the Inquiring Officer and also the prerogative to accept or reject such an enquiry report.
- iv) Regarding the complain of Mr. Roy that the charges are vague, the Departmental Representatives submit that it is not true because the charges are not only elaborate but very specific in nature, as can be seen from the Article of Charges.
- v) Regarding consulting the PSC before imposing any punishment on this Group-A Officer, Ms. Sarkar submits that the actual Rule has to be properly

checked before responding to the submission of the applicant in this regard.

- vi) Regarding the prayer for an interim order to restrain the respondent from imposing the punishment, Ms. Sarkar and her colleagues vehemently opposes this and submit that since the charges are grave in nature and the final order for punishment has already been imposed, the question of granting an interim order does not arise.

After hearing the submissions of learned counsel for the applicant and the learned Departmental Representatives and examining the documents filed in this application, the Tribunal has observed the following :-

- i) Article of Charge –II: That charge II relating to allowing outsiders inside the record room and thus, violating the sanctity and confidentiality of the record inside the record room is a specific charge. In a surprise inspection, the D.L. & L R O himself found one outsider, Mahendra Maji inside the record room. On being asked why he as an outsider is inside the record room, Shri Maji appears to have replied by stating that Smt. Piyali Pahari, the B.L. & L R O invited her inside. It appears to be a serious dereliction of duty on part of the charged officer, As a senior officer, she was supposed to be aware of important guidelines regulating maintenance of records and non accessibility for outsiders inside the record room. The contention that she was not supplied a copy of the guideline appears to be a weak plea.

- ii) From the judicial point of view, it appears to be a nonest in the eyes of law that Shri Bhaskar Majumder, the Dy. D.L. & L R O who had led a team and enquired against the charged officer was subsequently appointed as the Inquiring Authority. Such an officer who had already enquired against the delinquent officer being appointed as the Inquiring authority could have some prejudice against the charged officer. If the goal was to conduct the enquiry, free from all biases and prejudices, the disciplinary authority ought to have appointed an officer outside the district for the ends of justice. By such appointment of Mr. Majumder, the charged officer has every reason to feel prejudiced and her faith in the enquiry, supposed to be impartial, is doubted.
- iii) The law regarding consulting the quantum of penalty to be imposed on a Group-A Officer and P.S.C post-holder is clearly settled in terms of sub rule 11 of Rule 10 of WBS (CCA) Rules, 1971. In this case the advice of PSC was not sought by the disciplinary authority before imposing the punishment in the final order. Therefore, the incidence of supplying a copy of such advice of the Commission to the charged officer is not relevant in this case because no such advice was obtained from the Commission. Reference is also made by an order passed by the Hon'ble High Court in WPST-2 of 2023 in the matter of State of West Bengal & Anr. Vs. Basudeb Mukherjee. The relevant portion of the order is as

under :-

“So it is clear to us that recommendation of Public Service Commission has not been supplied to the respondent before passing an order of dismissal which is a clear violation of the provisions as referred above. The disciplinary authority failed to appreciate that before passing of the final order recommendation and the advice of the Public Service Commission should be given to the delinquent respondent enabling him to submit his representation. Non-supply of the recommendations of the Public Service Commission being contrary to the requirements of the Service Rules, any further proof of prejudice was not required. Once the procedural Rule had been violated, prejudice would be presumed.”

Thus, from the above observations, the Tribunal has come to the conclusion that at a very vital point of the disciplinary proceedings the disciplinary authority failed to observe a legal requirement-by not seeking the advice of the Public Service Commission before imposing the punishment upon the charged officer. If such advice was obtained and received, it was also obligatory on the part of the disciplinary authority to supply a copy of the advice to the charged officer. Upon receipt of such advice, the charged officer gets another opportunity to file a representation stating her submissions relating to the specific punishment. Since no such advice was obtained, therefore, no such copy was supplied to the charged officer, hence an opportunity was also denied to the charged officer.

In view of the above observations, the Tribunal quashes and sets aside the final order, second show cause notice and enquiry report



passed by the disciplinary authority upon the charged officer vide Memo -141 dated 11.01.2023 with a direction to the disciplinary authority to make a de novo enquiry proceeding from the enquiry stage itself by appointing a new enquiring authority. This whole departmental proceedings starting right from the enquiry stage till the final order including obtaining the advice of the Public Service Commission should be completed within a period of six months from the date of communication of this order.

Accordingly, the application is disposed of.

sc

SAYEED AHMED BABA  
OFFICIATING CHAIRPERSON & MEMBER(A)