

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,
Ld. Advocate.
For the State respondent : Ms. R. Sarkar,
Mr. S. Debroy,
Mrs. A. Bhattacharya,
Mr. R. Bag,
Depttl. Reps.

02
26.04.2023

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 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.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.

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- 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 Deputy 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. & Others v. 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

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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 West Bengal Services (Classification, Control and Appeal) 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 at least, 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 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, 10th 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

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offices under the department. Therefore, the question of this document not given to the Charged Officer does not arise since all the officials, including the charged officer is 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. Ruma 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 Deputy 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 judgments 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 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.
- (v) 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.
- (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

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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.

Let the matter appear under the heading **“For Orders”** on **04.05.2023.**

SAYEED AHMED BABA
Officiating Chairperson & Member (A)

CSM/SS