

**WEST BENGAL ADMINISTRATIVE TRIBUNAL**

Bikash Bhavan, Salt Lake, Kolkata – 700 091.

Present-

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

Case No. – OA 201 of 2021

**SHYAMAL DATTA - VERSUS - THE STATE OF WEST BENGAL & ORS.**

Serial No. and Date of order	For the Applicant	: Mrs. S. Mitra Advocate
<u>04</u> 29.07.2021	For the State respondents	: Mr. M.N. Roy Advocate

The matter is taken up by the single Bench pursuant to the Notification No.949-WBAT/2J-15/2016 dated 24<sup>th</sup> December, 2020 and 456-WBAT/2J-15/2016 dated 16<sup>th</sup> July, 2021 issued in exercise of the powers conferred under sub-Section (6) of Section 5 of the Administrative Tribunals Act, 1985.

The instant application has been filed mainly challenging the final order dated 03.12.2020 passed by the Additional Chief Secretary to the Government of West Bengal, Department of Labour by directing and withholding of 3(three) increments in the pay scale for a period of 3(three) years without cumulative effect along with a direction that the Applicant would not be entitled to any promotion during the period of undergoing penalty. As par the Applicant, such order of stoppage of promotion is contrary to the rule 8(ii) of WBS(CCA) Rules, 1971 as well as judgment passed by this Tribunal dated 11.01.2019 passed in OA-494 of 2017, which was further affirmed by the Hon'ble High Court, Calcutta vide their judgement dated 15.11.2019.

During the course of the hearing, the Counsel for the Applicant has fairly submitted that presently she wants to place the prayer "C" only. She has further submitted that the matter may be disposed of accordingly. She has further submitted that the impugned order has already been implemented and

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same amount has already been deducted that should be refunded back to the applicant.

The Counsel for the Respondent has submitted that the Authority has rightly passed the order.

Heard both the parties and perused the records as well as the judgement referred by the parties. It is noted that the Disciplinary Authority vide order dated 03.12.2020(Annexure – I) has passed the following order:-

*“Now, therefore, after considering the gravity of misconduct committed by the delinquent officer, the Governor is pleased to award penalty of withholding of 3(three) next increments in the current Pay Scale for a period of three years w.e.f. the date of issue of this order under rule 8(ii) of West Bengal Services(Classification, Control & Appeal) Rules, 1971 with direction that such penalty will not have cumulative effect, i.e., after 3(three) years of withholding of increments, Sri Shyamal Datta, Deputy Labour Commissioner, the Charged Officer, will be restored with 3(three) increments and no retrospective effect and no arrears of restoration of increments would be given on completion of the penalty, i.e., on the fourth year from the imposition of the penalty.*

*The Governor is also pleased to order that the said Sri Shyamal Datta, Deputy Labour Commissioner will not be entitled to any promotion during the period of his undergoing the penalty and such debarment shall not be treated and imposed as penalty.”*

With regard to both the issues of withholding of increment and promotion, which was earlier considered by this Tribunal vide judgement dated 11.01.2019 passed in OA No. 494 of 2017, and was further affirmed by the

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Hon'ble High Court, Calcutta vide judgement dated 15.11.2019 passed in WPST No. 105 of 2019. From the perusal of both the judgments, it is clear that the instant impugned order is liable to be quashed as some of the issue involved in the instant case is squarely covered by the aforementioned judgments. Therefore, I quash and set aside the impugned order dated 3<sup>rd</sup> December, 2020 and remand back the matter to the Disciplinary Authority to pass a fresh order after considering the aforesaid judgment and applying his mind by way of a reasoned and speaking order within a period of 2(two) months from the receipt of the order. Further, the Authority is directed to refund back the amount as per their order dated 31.12.2020, if already implemented, within a period of six weeks from the date of receipt of the order. However, I have made it clear that I have not gone through the merit of this case.

Accordingly, the OA is disposed of with the above observations and direction with no order as to cost.

Since for circumstances beyond control, the Registry is unable to furnish plain copies of this order to the learned advocates for the parties, the Registry is directed to upload this order on the website of the Tribunal forthwith and parties are directed to act on the copies of the order downloaded from the website.

PKD

Urmita Datta(Sen)  
Member(J)