

which is as under :-

“.....Heard learned advocates for the parties. Since prima facie I find though the applicant on 7th December, 2018 had submitted unconditional apology which called for censure in the year 2018 and as the Public Service Commission, West Bengal, has resolved that in such an event one should not be considered for promotion for a period of one year and as no order was passed in the year 2018, let there be an interim order by directing the respondent nos. 1,2,3 and 4 not to fill up the post of Deputy Inspector General of Correctional Services, West Bengal till 19th April, 2021....”.

Reply and rejoinder have been filed and are on record. Interim order passed has been subsequently extended and is continuing.

It is submitted by Mr. G.P. Banerjee, learned advocate for the applicant that the respondent authorities by memo dated 14th May, 2019 called for an explanation from the applicant. The applicant replied by memo dated 10th May, 2018, inter alia, stating that *“.....I shall not again commit any misdeed like this construction without any permission of the competent authority....”.*

Thereafter, charge sheet was issued on 27th November, 2018. The applicant replied by memo dated 7th December, 2018, inter alia stating *“....I am submitting my unconditional apology for the misdeed done by me as mentioned in those articles. I shall be more conscious in maintenance of Correctional Home Administration in a good way under guidance of my superior authorities without violating norms and regulations in force...”.*

It appears that during pendency of the proceedings, the post of Deputy Inspector General under Correctional Services fell vacant.

According to the applicant, he is the seniormost with the private respondent no. 5 being junior to him. It is submitted on behalf of the applicant that by intimation dated 25th January, 2021, the Principal Secretary to the Government of West Bengal to the Secretary, Public Service Commission, West Bengal requested the Commission to consider several aspects regarding the applicant, the relevant portion of which is as under :-

“a).....Departmental proceedings, instituted vide No. 1604-DCA dated 27.11.2018 (copy enclosed) against Shri Debaishis Chakraborty at Sl. No.1 in the Annexure II for promotion to post of Deputy Inspector General of Correctional Services, West Bengal are pending and it has been sent to the PSC, WB vide Letter No. 849-DCA dated 24.11.2020 (copy enclosed) proposing for the penalty of ‘Censure’ upon Shri Chakraborty.

b) Departmental proceedings, instituted vide No. 1870-DCA dated 28.12.2018 (copy enclosed) against Shri Soumik Sarkar at Sl. No. 4 in the Annexure – II for promotion to post of Deputy Inspector General of Correctional Services, West Bengal are pending.

c) No record of confirmation in the entry post against Shri Dorjee Bhutia named at Sl. No. 5 in the Annexure-II for promotion to the post of Deputy Inspector General of Correctional Services, West Bengal is available. But, earlier he had already got three promotions from Controller (initial appointment) ->Chief Controller ->Superintendent, Dist. Corr. Home ->Superintendent, Central Corr. Home.

d) ACRs for the last 5(five) years in respect of all the officers as mentioned in the two different sets of Annexure-II are enclosed...”.

It is submitted by Mr. Banerjee that though the applicant

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had tendered unconditional apology by letter dated 27th November, 2018, the State respondents had kept the disciplinary proceedings pending in order to deny the applicant of being promoted. As the said action is harsh, arbitrary and malafide, appropriate order as prayed for, may be passed directing the respondent authorities to promote the applicant to the post of Deputy Inspector General under Correctional Service, West Bengal. In support of his submission, the learned advocate for the applicant has referred to the intimation dated 25th June, 2021 addressed by the Public Service Commission, West Bengal to the Secretary to the Government of West Bengal, Department of Correctional Administration, being annexure "R-1" to the rejoinder filed by the applicant. Since there is an interim order not to fill up the post of Deputy Inspector General of Correctional Services, which is subsisting, appropriate order may be passed promoting the applicant to the post of Deputy Inspector General under Correctional Services, West Bengal.

Mr. D. Koley, learned advocate appearing for the State respondents submits that the entire action is in accordance with law as it was done in tune with the recommendation by the Public Service Commission, West Bengal.

Mr. A.K. Das Sinha, learned advocate appearing for the private respondent no. 5 submits that there is a dispute regarding the promotion of the applicant alleging that he has been superseded by the private respondent no.5. The private respondent no. 5 is the second seniormost in the gradation list and as there is no adverse remark against his client, he is entitled to be promoted to the post of Deputy Inspector General of Correctional Services, West Bengal.

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There is no dispute that the departmental proceeding is hanging fire with the issue of charge sheet on 27th November, 2018. The applicant by memo dated 7th December, 2018 submitted his “*unconditional apology*”. It is surprising that the Principal Secretary, Department of Correctional Administration, Government of West Bengal and the Additional Director General & Inspector General of Correctional Services, West Bengal, - the respondent nos. 2 and 3 respectively, sat tight over the matter since December, 2018. However, on 25th January, 2021 the said respondent had sought for the opinion of the Commission, being annexure “F” to the application. The delay of more than two years in seeking opinion or the report from the Commission has not been explained and is baffling. In this regard, it is appropriate to refer to the intimation dated 25th June, 2021 issued by the Joint Secretary, Public Service Commission, West Bengal to the Secretary to the Government of West Bengal, Department of Correctional Administration, being annexure “R-1” to the rejoinder, wherein some observations of the Commission deserve mention, which are as under :-

“.....I am directed to refer to the Correctional Administration Department letter No. 849-DCA/O/Con.-06/2018 dated 24.11.2020 on the subject noted above and to state that after careful examination of the case records as forwarded the Commission is of the opinion that the Charged Officer is guilty of all the 2 (two) charges framed against him. The C.O. has also admitted both the charges framed against him.

Considering the facts and circumstances of the case, the Commission recommends the penalty of censure under rule 8(i) of

W.B.S.(C C & A) Rules, 1971 be imposed upon the charged officer for a period of 1(one) year from the date of communication of the order, without any further delay.

However in consideration of the fact that imposition of the penalty on the charged officer was delayed inordinately for reasons beyond his control. Non-completion of 1 (one) year from the date of imposition of the penalty may not, in this case be considered as an impediment to being considered for promotion, if the incumbent is otherwise eligible for promotion before completion of the tenure of 1 (one) year. The Commission advises the Govt. to act accordingly.

The Commission may be informed of the action taken on its recommendation in due course...”.

We find that the Commission has observed that there was an inordinate delay on the part of the State respondents and non completion of one year from the imposition of penalty may not in this case be considered as an impediment to the applicant to be considered for promotion, if he is otherwise eligible for promotion before completion of one year of tenure. This was the advice of the Commission as noted hereinbefore. However, as evident from the intimation dated 25th January, 2021 the State respondents have proposed for the “*Penalty of Censure*” upon the applicant with effect from 25th January, 2021 which goes against the advice of the Commission, which has been ignored. The delay in passing the order of “*Penalty of Censor*” has been issued after more than two years in order to deprive the applicant of being promoted. This action of the respondent no. 2 and 3 speaks of arbitrariness, malafide and illegality. Hence in our view the

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intimation dated 25th January, 2021 is a colourable exercise of power. Accordingly, in view of the categorical observation made by the Commission in the intimation dated 25th January, 2021 as noted hereinbefore, the applicant is entitled to be promoted to the post of Deputy Inspector General under Correctional Services, West Bengal. Hence, the application is allowed. Therefore, the Principal Secretary, Department of Correctional Administration, Government of West Bengal and the Additional Director General & Inspector General of Correctional Services, West Bengal, - the respondent nos. 2 and 3 respectively, are directed to issue necessary orders to promote the applicant to the post of Deputy Inspector General under Correctional Services, West Bengal with effect from 1st March, 2021, when the vacancy to the said post arose, within a period of eight weeks from the date of presentation of a copy of this order downloaded from the website of the Tribunal.

Let plain copies of this order be furnished to the learned advocates to the parties on usual undertakings.

(SAYEED AHMED BABA)
MEMBER(A)

(SOUMITRA PAL)
CHAIRMAN.

Skg.

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