

WEST BENGAL ADMINISTRATIVE TRIBUNAL

Bikash Bhavan, Salt Lake, Kolkata – 700 091.

Present-

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

Case No. OA - 219 of 2021

Pradip Kumar Chakraborty - VERSUS - THE STATE OF WEST BENGAL & ORS.

Serial No. and Date of order <u>2</u> 31.03.2021	For the Applicant	: Mr. M.N. Roy, Mr. G. Halder, Advocates
	For the State Respondent	: Ms. S. Bandyopadhyay, Advocate
	For Pr. A.G. (A & E), West Bengal	: Mr. B. Mitra, (Departmental Representative)

The matter is taken up by the Single Bench pursuant to the Notification No. 949 – WBAT / 2J – 15 / 2016 dated 24.12.2020 issued in exercise of the powers conferred under sub section (6) of Section 5 of the Administrative Tribunal's Act, 1985.

With the consent of both the parties the matter is taken up.

The instant application has filed challenging the disciplinary authorities order dated 02,12,2020 whereby the applicant was imposed of the following penalty:

- “ a) As per sub-Rule (2) 10 of West Bengal Services (Death-cum-Retirement Benefits) Rules of 1971, the amount of gratuity is required to be denied to the Sri Pradip Kumar Chakraborty and is hereby denied;**
- b) As per sub-Rule (3) of 168 A of West Bengal Service Rules Part – I the cash equivalent of EL is required to be denied and is hereby denied;**
- c) As per the Rule 10 of West Bengal Services (Death-cum-Retirement Benefits) Rules of 1971**

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(Read with the letter vide Memo No. 885-DP/O/2C-22/2020 Dated 14/10/2020) the amount of pension is required to be withheld and hence the amount of interim pension which is being received by Sri Chakraborty is hereby withheld with immediate effect and the full amount of pension is also hereby withheld till the termination of criminal proceeding which is pending against him.”

As per the applicant, under Rule 170 (2) (b) and 168(a) West Bengal Service Rule Part – I, even the dismissed employee is entitled to get Earned Leave, whereas the disciplinary authority had denied the Earned Leave of the applicant. Moreover, disciplinary authority while withholding the pension till the termination of the criminal proceeding had withheld interim allowance granted to him under Rule 10 of the West Bengal Services (Death-cum-Retirement Benefit) Rules, 1971, whereas under Rule 14 of the aforesaid Rules, the applicant is entitled to get interim allowance till the disposal of the criminal proceedings. Therefore, the counsel for the applicant has prayed for a direction to the respondent's authority for revival of the payment of interim allowance till the disposal of the instant application or criminal proceedings. The counsel for the applicant has submitted that even till date, the appeal filed by him, has not been disposed of by the appellate authority.

The counsel for the respondent has prayed for some time to take instruction.

Heard the parties and perused the records as well as the Rules under 14 of Death-cum-Retirement Benefit Rules provide as follows:

“Criminal proceedings – A Government servant who retires from service but against whom criminal proceeding involving moral turpitude are pending in a court of law, shall not be sanctioned any pension until the termination of the criminal proceedings. An interim allowance not exceeding two-thirds of the pension that granted during the pendency of such proceedings in cases of hardship. If he is convicted on a criminal charge involving moral turpitude he shall not be entitled to any pension; compassionate allowance may be granted subject to the same terms and conditions as laid down in rule 12”.

In the instant case, the applicant was granted an interim allowance since one criminal proceeding is pending against the criminal court. However, the disciplinary authority while passing the final order had only withholding the full pension as well as interim allowance till the conclusion of criminal proceeding whereas under Rule 10, the Governor has right to withheld full or any part of the pension but not the interim allowance. Therefore, as the balance of convenience in favour of the applicant, I direct the respondent to disburse the interim allowance as an interim measure till the disposal of the application. In the interim, the respondents are directed to file their reply by four weeks and rejoinder, if any, by two weeks thereafter. However, in the meantime, the

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appellate authority would be at liberty to take decision in his appeal and to pass a reasoned and speaking of the appellate authority and to communicate the same.

Let the matter be adjourned to **25.06.2021**.

Mrs. URMITA DATTA (SEN)
MEMBER (J)

A.K.P.