

ORDER SHEET

WEST BENGAL ADMINISTRATIVE TRIBUNAL

Bikash Bhavan, Salt Lake, Kolkata – 700 091.

Present-

THE HON'BLE SAYEED AHMED BABA, OFFICIATING CHAIRPERSON AND ADMINISTRATIVE MEMBER,

Case No. – OA 222 OF 2023

PRAKAS KUMAR NATH - Vs - THE STATE OF WEST BENGAL & OTHERS

Serial No. and
Date of order

For the Applicant : Mr. Manujendra Narayan Roy
Advocate

03

17.01.2024

For the State Respondents : Mr.Sankha Ghosh
Advocate

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 a direction to the respondent authority to re-fix his pay and allowances after adding annual increments since due to him from 18.07.2017. It appears that the suspension order was withdrawn by the respondent, however, with a rider that "*His Service condition along with yearly increment will be regularised according to the final decision of Honable Court in connection with ACB PS Case No. 09/15, dated 16.11.2015 u/s 7/8/9/10/14 of PC Act'88 r/w sec 109/34/120B IPC and final order of the Disciplinary Proceedings against him*".

Mr.M.N.Roy, learned counsel for the applicant submits that such withholding of his annual increment without any orders of the Hon'ble Court or any punishment order imposed after completion of any disciplinary proceeding, is not legal and not supported by any service rules.

Mr. Roy refers to Rule 45 of West Bengal Service Rules, Part-I.

The relevant wordings of rule 45 is as under :-

“...An increment shall ordinarily be drawn as a matter of course unless it is withheld. When an increment is ordered to be withheld, the authority passing the order shall state a period for which it is to be withheld...”

Since no specific order was passed withholding the increment, the decision to withhold the increment is therefore not in accordance with the above rule.

Mr. Roy also refers to an order of this Tribunal in OA 507 of 2021 (Pintu Sardar – vs- The State of West Bengal & Ors) dated 17.2.2022 in which an order was passed on the similar matter.

In response, Mr.S.Ghosh, learned counsel for the State respondents submits that the disciplinary authority withheld the increments in accordance with rule 45 of West Bengal Service Rules. Since the revocation of suspension order passed by the Disciplinary Authority has clearly stated the reason why it is being withheld, therefore, there was no necessity to pass a separate order withholding the increments.

On close examination of the Rule 45, a strong impression has been left that withholding of any increment will require a separate and distinct order to be passed. For instance, increments are withheld or promotions are stopped after conclusion of the entire disciplinary proceedings and such punishments are imposed in the final order. However, it is clear that his increments have been withheld and will be released only after order of the learned Court and final order of the disciplinary proceedings. The relevant para of the impugned order No. 405/17 dated

17.07.2017 is as under :

“Service condition along with yearly increment will be regularized according to the final decision of Hon’ble Court in connection with ACB PS Case No. 09/15, dated 16.11.2015 u/s 7/8/9/10/14 of PC Act’88 r/w sec 109/34/120B IPC and final order of the Disciplinary Proceedings against him.”

From the above, it is clear that the increments have been withheld without passing an order giving reasons why such increment has been withheld. Rule 45 of West Bengal Service Rules, Part 1 makes it clear that an order has to be passed before an increment has been withheld. The order also requires mentioning the period for which it is to be withheld. In this case, neither any separate order, giving reasons for withholding the increment has been passed nor any period for withholding such increment has been mentioned. Therefore, it is the observation of this Tribunal that such increments cannot be withheld without passing a separate order nor can it be withheld linking it to the outcome of a case pending with the Learned Court hearing a criminal case. Further, such increment again cannot be withheld on the ground that it is subject to the final order of the disciplinary proceedings. In short, the impression given by the respondent authority is that a punishment has been imposed upon the applicant without conclusion of the disciplinary proceedings. Such punishment before the final order being passed is, not only against the rules, but is palpably denial of natural justice to the applicant.

Thus, the part of the impugned order No. 405/17 dated 17.07.2017 passed by the Director General, West Bengal Fire & Emergency Services, relating to withholding the annual increment to the applicant is

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not supported by any law and is quashable and therefore, it is quashed
and set aside.

Accordingly, the application is disposed of.

(SAYEED AHMED BABA)
OFFICIATING CHAIRPERSON AND MEMBER (A)

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