ORDER SHEET

WEST BENGAL ADMINISTRATIVE TRIBUNAL

Bikash Bhavan, Salt Lake, Kolkata - 700 091.

<u>Present-</u> The Hon'ble Sayeed Ahmed Baba, Officiating Chairperson & Member (A)

Case No. -<u>OA 279 of 2024</u>

Amitava Roy -- VERSUS - The State of West Bengal & Others

Serial No. and Date of order

For the Applicant : Mr. P. Mukherjee,

Ld. Advocate.

02 27.06.2024

For the State Respondents : Mr. M.N. Roy,

Ld. 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.

The prayer in this application is for setting aside the final order passed on 05.04.2024 by the Deputy Inspector General of Police, CID imposing the punishment of dismissal from service. The applicant had served as a Lower Division Assistant in the CID office. Opposing the application, Mr. M.N. Roy, learned counsel for the State respondents submits that this application is not admissible for the simple reason that the dismissed employee has not preferred any appeal before the Appellate Authority.

Mr. Mukherjee, refers to Section 20 (2) of the Administrative Tribunal's Act, 1985 and submits that a representation has been preferred before the Appellate Authority within the time. Therefore, the argument of the State's side that no such Appeal was preferred is not a valid argument. The respondent authorities in particular, the Appellate Authority, has not considered such an appeal.

Mr. M.N. Roy, argues that the dismissed employee has not exhausted all his remedies available to him as per Section 20 of the Act. Even if, it is to be accepted that the representation he had preferred through his legal counsel was an appeal, no order has been passed against such representation. The Act stipulates a minimum of six months waiting period necessary after filing of an appeal to approach the Tribunal for a remedy. Mr. Roy also submits that this so-called appeal mentioned by Mr. Mukherjee is actually a legal notice by the advocate of the applicant. Such demand and justice notice cannot be considered as an appeal by the employee himself under any existing rules. Further strengthening has

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points of argument, Mr. Roy refers to Rule 15 of Sub-clause (2) of the West Bengal Services (CCA) Rules, 1971. Submission is that in this rule, the words mentioned is "a Member of the West Bengal of State Service". By very definition of this Sub-rule, Mr. Roy feels it is clear that the applicant, being a member of the service should have preferred such an appeal himself and not through an advocate. In response, Mr. Mukherjee submits that since the day his applicant was dismissed from service, he ceased to be a member of the service. As a former member of the service, he had the liberty to represent himself before the authorities through his legal counsel. Therefore, the sub-rule cited by Mr. Roy is not a tenable argument.

Let further submission of the counsels be heard under the heading "Admission Hearing" on 26.11.2024.

SAYEED AHMED BABA
Officiating Chairperson & Member (A)

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