

ORDER SHEET

WEST BENGAL ADMINISTRATIVE TRIBUNAL

Bikash Bhavan, Salt Lake, Kolkata – 700 091.

Present-

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

Case No. –OA 303 of 2022

Abhijit Acharya Bhaduri - **VERSUS** - The State of West Bengal & Ors.

Serial No. and Date of order	For the Applicant	: Mr. M.N. Roy, Mr. S. Ghosh, Learned Advocates.
<u>05</u> 12.09.2022	For the State Respondents	: Mr. G.P. Banerjee, Learned Advocate.
	For the P.S.C., W.B.	: Mr. S. Bhattacharjee, Learned Advocate.

The matter is taken up by the Single Bench pursuant to the order contained in the Notification No. 536-WBAT/2J-15/2016 dated 26th August, 2022 issued in exercise of the powers conferred under Section 5 (6) of the Administrative Tribunals Act, 1985.

The instant application has been filed praying for following reliefs :

- (a) *“An order do issue thereby quashing/setting aside the entire Disciplinary Proceeding so initiated against the applicant vide Order No. 461-F.T/FT/O/1E-26/10 Dated 15.03.2011, enquiry report, findings of the respondent authorities after receipt of enquiry report and second show cause notice proposing punishment, final order no. 524-FT/FT/O/1E-26/10 Regn Dated, Howrah, the 31st March, 2022 as well as the reasoned order dated 03.03.2022 passed by the Principal Secretary, Finance Dept. immediately as the respondent authorities have miserably failed to conclude the departmental proceeding within six months of time as depicted by this Hon'ble Tribunal in O.A. No. 494 of 2021 vide solemn*

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order dated 05.08.2021.

- (b) *An order do issue directing the respondent authorities to allow you applicant all service benefits, arrear service benefits in accordance with law within a stipulated time as this Hon'ble Tribunal may deem fit and proper in the ends of Justice after quashing/setting aside the entire Disciplinary Proceeding so initiated against the applicant vide Order No. 461-F.T/FT/O/1E-26/10 Dated 15.03.2011 including enquiry report, findings of the respondent authorities after receipt of enquiry report, second show cause notice proposing punishment, reasoned order dated 03.03.2022 and final order no. 524-FT/FT/O/1E-26/10 Regn. Dated, Howrah, the 31st March, 2022.*
- (c) *A further order do issue directing the respondent authorities to transmit records pertaining to the instant case so that conscionably justice can be done.*
- (d) *Any other appropriate order/orders direction/directions as this Hon'ble Tribunal may deem fit and proper to protect the right of the applicant and in the ends of justice."*

As per the applicant, this is second round of litigation, earlier he had filed one OA 494 of 2021, which was disposed of vide order dated 05.08.2021 holding inter alia :

"Heard both the parties and perused the records. The

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judgment passed by this Tribunal, it is noted that the disciplinary proceeding was initiated way back on 15.03.2011. Even the second Show-Cause Notice was served upon the applicant on 5th October, 2018 in reply which was received by the respondent on 3rd December, 2018. But, till date, no final order has been communicated to them. Since a long period has already been lapsed after issuance of second Show-Cause Notice, then only the final order has to be passed as the applicant had already replied to the Show-Cause Notice also. Therefore, I direct respondent no. 2, Principal Secretary, Deptt. Of Finance (Revenue), Govt. of West Bengal to conclude the Departmental Proceedings and to take a final decision by way of passing a reasoned and speaking order as per Rules and communicate the same within six months from the date of receipt of the order, in default, the proceeding should be vitiated. However, I have made it clear that I have not observed anything on the merit of the case. Accordingly, the O.A. is disposed of with no order as to cost."

The said order was communicated by the applicant vide letter dated 06.08.2021, which was received by the respondent on 09.08.2021. Even then, the respondent did not pass any final order within stipulated period of time. It has been further submitted that the respondent neither prefer any writ petition before the Hon'ble High Court, Calcutta challenging the said order dated 05.08.2021 nor they have asked for any extension of time to pass final order. However, the Assistant Secretary, Finance Department, Government of West Bengal has communicated the reasoned order vide Memo dated

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03.03.2022 (Annexure–D). Again the Principal Secretary to the Government on behalf of Governor has issued a Order dated 31.03.2022. It has been submitted by the applicant that in both the cases of final orders were as communicated and/or passed after expiry of six months time as was stipulated by the Tribunal. Therefore, he has prayed for quashing of the impugned order dated 31.01.2022 as well as 03.02.22.

The counsel for the respondents however has submitted that due to pandemic situation, they could not complete the proceeding within time.

Heard the parties and perused the record. It is noted that the Disciplinary Proceeding was initiated way back on 15.03.2011. Even second Show-Cause Notice was served upon the applicant on 05.10.2018 against which the applicant submitted his representation dated 03.12.2018. Even, if, the respondent could not complete the disciplinary proceeding and the applicant had to approach this Tribunal in earlier OA 494 of 2020, which was disposed of by the Order dated 05.08.2021 clearly directing the respondent to complete the disciplinary proceeding within six months time from the date of receipt of this order (which they had received on 09.08.2021), in default, the proceeding should be vitiated.

In the instant application, admittedly the respondent neither preferred any writ petition against the Order dated 05.08.2021 nor they had asked for any extension of time before the expiry of six months time stipulate by the Tribunal. Therefore, as per default clause, the proceeding had automatically vitiated. Accordingly, I do

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not find any other alternative but to set aside and quash the Final Order dated 03.03.2011 as well as 31.03.2022.

In view of the above, the respondents are directed to provide consequential benefit to the applicant in this regard.

Accordingly, the OA is disposed of with no order as to costs.

Mrs. URMITA DATTA (SEN)
Officiating Chairperson & Member (J)

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