

ORDER SHEET

WEST BENGAL ADMINISTRATIVE TRIBUNAL

Bikash Bhavan, Salt Lake, Kolkata – 700 091.

Present-

The Hon'ble Sayeed Ahmed Baba, Officiating Chairperson & Member (A)

Case No. – OA 307 of 2022

Gitesh Das Mahapatra -- VERSUS – The State of West Bengal & Ors.

Serial No.	For the Applicant	: Mr. M.N. Roy, Learned Advocate.
and		
Date of	For the State Respondent	: Mrs. Chaitali Bhattacharya,
order		Ld. Advocate.
<u>09</u>		Ms. R. Sarkar,
19.11.2024		Mr. S. Debray,
		Mrs. A. Bhattacharya,
		Ld. Depttl. Representatives.

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 applicant has filed this application praying for setting aside the impugned charge-sheet. The application also prays for a direction to the respondent authorities to regularise the period of suspension from 29.04.2013 to 16.04.2017. Though the suspension order dated 29.04.2013 was later revoked by an order dated 28.01.2015, the submission of the learned counsel is that though the suspension order on 29.04.2013 was later revoked by an order dated 28.01.2015 but the applicant was not allowed to rejoin his duties in the office. The applicant could join his office after revocation of his suspension order on 17.04.2017. By Memo No. 989 dated 22.04.2022, the Land Reforms Commissioner and Secretary as the disciplinary authority proposed to hold an inquiry under rule 10 of the West Bengal Services (Classification, Control and Appeal) Rules, 1971 against the applicant in respect of the following Articles of Charges:

"1. A statement of imputation of misconduct and misbehaviour in support of the article of charge is enclosed (Annexure – II). A list of documents by which, and a list of witness by whom, the articles of charge are proposed to be sustained are also enclosed (Annexure – III & IV).

2. Shri Gitesh Das Mahapatra, R.O. is directed to submit, within seven days of the receipt of this Memorandum, a written statement of his defence to the Inquiring Authority and also to state whether he desires to be heard in person.

3. He is informed that an inquiry will be held only in respect of the article of charge as is not admitted. He should, therefore, specifically admit or deny the article of charge."

Form No.

Case No. **OA-307 of 2022**

Vs.

The State of West Bengal & Ors.

The memo also directed the charged officer to file his written statement of defence. The applicant as the charged officer did not file any written statement of defence before the Disciplinary Authority but filed the present application before this Tribunal praying for setting aside the charge-sheets.

Mr. Roy, learned counsel appearing on behalf of the applicant presents the following points of submission in support of the prayer of this application:

(i) that the charges framed against the applicant is *non est* in the eyes of law for the reason that against the same charges levelled against the applicant by the authorities in the earlier charge-sheet dated 08.08.2014. Those charges were challenged by the applicant before this Tribunal in OA 282 of 2017. The respondent authorities had then agreed before the Tribunal that these charges were the draft charges only.

(ii) In view of the fact that the Tribunal had already heard and leave was not granted to file fresh set of charges against the applicant, therefore, the charges framed under Memo 989 dated 22.04.2022 being similar charges is *non est* in the eyes of law and not tenable as it is also barred by principles of constructive *res judicata*.

Mrs. Bhattacharya, learned counsel representative appearing on behalf of the State respondent made the following submissions:

(i) The applicant's side is wrong to conclude that the present charges dated 22.04.2022 being similar to the charges framed earlier on 08.08.2014 is not tenable. It is admitted that the first charges dated 08.08.2014 was a draft charge which in OA 282 of 2017, the Tribunal had not accepted these as proper charges. Therefore, the department was obliged to frame a new set of charges not as draft but as final charges, Therefore, the argument that these charges are not proper charges or charges similar to the draft charges framed on 08.08.2014 is hardly a valid point.

(ii) The State respondent had not prayed for any leave before the Tribunal in OA 282 of 2017 to frame a fresh set of charges against the applicant. The state is well in power to frame charges against the charged officer which it has done by Memo No. 989 dated 22.04.2022. The State is not barred by any law prohibiting it

ORDER SHEET

Gitesh Das Mahapatra

Form No.

Case No. **OA-307 of 2022**

Vs.

The State of West Bengal & Ors.

to frame charges against the applicant. Though the Tribunal heard the matter, but did not pass any direction on the respondent authorities prohibiting it from framing any charges in the future against the applicant.

Heard in part the submissions of the learned counsels.

Let the matter appear under the heading “**Hearing**” on **18.012.2024**.

SAYEED AHMED BABA
Officiating Chairperson & Member (A)

CSM/SS