ORDER SHEET

WEST BENGAL ADMINISTRATIVE TRIBUNAL

Bikash Bhavan, Salt Lake, Kolkata – 700 091.

Present-

The Hon'ble Mrs. Urmita Datta (Sen), Member (J) &
Hon'ble Sayeed Ahmed Baba, Member (A)

Case No. – OA 342 of 2021

Dr. Samar Kanti Kayal -- **VERSUS –** The State of West Bengal & Ors.

Serial No. and Date of order		
	For the Applicant	: Mr. M.N. Roy, Mr. G. Halder, Learned Advocates.
06 01.02.2022	For the State respondent	: Mr. B.P. Roy, Learned Advocate.

As per the applicant, he was served with a Charge-Sheet dated 03.03.2014 proposing to hold an enquiry under Rule 10 of the West Bengal Services (Classification, Control and Appeal) Rules, 1971 and was asked to submit his written statement of defence within a stipulated period of time (Annexure-A). In response to that, the applicant had filed his written statement of defence and thereafter enquiry was held and ultimately the Disciplinary Authority issued Second Show Cause Notice dated 18.01.2019 proposing penalty of punishment with a direction to make representation, if any, within a stipulated period of time (Annexure-B). Ultimately, the Disciplinary Authority vide order dated 17.01.2020 passed the impugned final order (Annexure-B). Being aggrieved with, the applicant has filed the instant application.

It has been submitted by the applicant that the Disciplinary Authority not only imposed punishment of reduction of three-stages lower in the current pay band for a period of three years under Rule 8(iv) of the West Bengal Services (Classification, Control and Appeal) Rules, 1971 with a further direction that during such period, he will not earn any increment of pay and on the expiry of such period of reduction, it will have the effect of postponing future increments of his pay, but also directed that the applicant would be debarred from promotion during the period of his undergoing penalty. Though according to the Disciplinary Authority, it would not be treated as penalty, but to be incorporated in the final order distinctly as a direction as per the advice of the PSC, WB. As per the applicant, Rule 8(iv) of the West Bengal Services (Classification,

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Control and Appeal) Rules, 1971 does not provide any provision for debarment of promotion during the period of punishment, however, the Disciplinary Authority had directed to debar the applicant from getting promotion during the period of punishment, which is prejudicial to the applicant. Therefore, such direction for debarment of promotion is not only contrary to the Rule 8(iv) of the West Bengal Services (Classification, Control and Appeal) Rules, 1971, but also prejudicial and punitive in nature, which is not prescribed in the penal provision stipulated under Rule 8 (iv) of the West Bengal Services (Classification, Control and Appeal) Rules, 1971. Therefore, the applicant has prayed for quashing of the impugned order dated 17.01.2020.

The respondents have filed their written statement and have submitted that the PSC, WB has not dictated to debar the applicant from promotion but only advised to debar him from promotion and the Disciplinary Authority after, applying judicious mind, has accepted the advice rendered by the Commission.

The applicant has filed his rejoinder, wherein they have stated that the reply of the respondent is not at all acceptable as the order was passed with a total non-application of mind even the respondents have passed the order of debarment of promotion beyond the scope of the provision stipulated in Rule 8(iv) of the West Bengal Services (Classification, Control and Appeal) Rules, 1971. Therefore, according to the applicant it amounts to double punishment, which is beyond the scope of the provision of Rule 8(iv) of the West Bengal Services (Classification, Control and Appeal) Rules, 1971.

We have heard both the parties and perused the records. It is noted that the Disciplinary Authority has passed the following order :

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"NOW THEREFORE , in exercise of the power conferred under Rule 8 of the West Bengal Services (Classification, Control and Appeal) Rules, 1971 read with Rule 10 of the said Rules, the Governor has been pleased to direct that the following penalty shall be imposed upon the said Shri Niharendu Hazra, Junior Engineer (Civil) [erstwhile Sub-Assistant Engineer (Civil)], presently posted at Burdwan Sub-Division, Public Works Directorate in terms of ***8(iv)*** *of the West Bengal Services (Classification, Control and Appeal) Rules, 1971 :-*

'The pay of the Charged Officer be reduced to 03 (three) stages lower in the current pay band for a period of 03 (three) years under rule 8(iv) of the West Bengal Services (Classification, Control and Appeal) Rules, 1971. During the period of such reduction, he will not earn any increment of pay and on the expiry of such period, the reduction will have the effect of postponing future increments of his pay.'

The Charged Officer be debarred from promotion during the period of his undergoing the penalty. However, such debarment from promotion is not to be treated and imposed as a penalty and may be incorporated in the final order distinctly as a direction."

From the perusal of the above, it is noted that the Disciplinary Authority has imposed penalty in terms of Rule 8 of the West Bengal Services (Classification, Control and Appeal) Rules, 1971 which stipulates inter alia :

The following penalties may, for good and sufficient reasons and as hereinafter provided, be imposed on a Government employee, namely;

i. Censure;

ii. Withholding of increments or promotions;

iii. Recovery from pay of the whole or part of any pecuniary loss caused to the Government by negligence or breach of orders;

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iv. ***Reduction to a lower stage in the time-scale of pay for a specified period with further direction as to whether or not the Government employee will earn increments of pay during the period of such reduction and whether on the expiry of such period the reduction will or will not have the effect of postponing the future increments of his pay;***

v. *Reduction to a lower time-scale of pay, grade, post or service which shall ordinarily be a bar to the promotion of the Government employee to the time-scale of pay, grade, post or service from which he was reduced, with or without further directions regarding conditions of the restoration to the grade or post or service from which the Government employee was reduced and his seniority and pay on such restoration to that grade, post or service;*

vi. *Compulsory retirement*

vii. *Removal from service which shall not be a disqualification for future employment;*

viii. *Dismissal from service which shall ordinarily be a disqualification for future employment under the Government."*

From the above, it is noted that the Rule 8(iv) of the West Bengal Services (Classification, Control and Appeal) Rules, 1971 has only stipulated reduction to a lower stage in the time-scale of pay for a specified with a further direction as to whether or not the Government employee will earn increments of pay during the period of such reduction and whether on the expiry of such period, the reduction will or will not have the effect of postponing the future increment of his pay, but there was no such provision for debarment of promotion as has been directed

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by the Disciplinary Authority. Further though the Disciplinary Authority has indicated that such debarment of promotion would not be treated as penalty, however, subsequently the said authority has also stated that it may be incorporated in the final order distinctly as a direction. Therefore, if it has to be treated as a direction, then it must have some punitive effect on the applicant. Thus, it cannot be said that it is not a penalty imposed upon the applicant. We fail to understand if the Disciplinary Authority is of the view that debarment of promotion should not be treated as penalty, then what is the purpose to direct that the applicant should be debarred from promotion during the period of undergoing penalty, which is having a punitive effect. However, as the Rule 8(iv) of the West Bengal Services (Classification, Control and Appeal) Rules, 1971 has not stipulated any such provision for debarment of promotion. Therefore, such direction in the impugned final order cannot be a part of punishment under Rule 8(iv) of the West Bengal Services (Classification, Control and Appeal) Rules, 1971. Thus, in our considered view, the Disciplinary Authority cannot pass any order contrary to any provision of rules as prescribed.

The Hon'ble Apex Court in the case of Vijay Singh v. State of UP & Others reported in (2012) 5 SCC 242 has specifically held that punishment not prescribed under the rules cannot be awarded. As in the instant case also, there is no provisions for debarring of promotion under Rule 8 (iv) of the West Bengal Services (Classification, Control and Appeal) Rules, 1971, therefore, any direction to that effect is beyond the scope of the provision of Rule 8 (iv) of the West Bengal Services (Classification, Control and Appeal) Rules, 1971.

Accordingly, we quash and set aside the impugned final order dated 17.01.2020 and remand back the matter to the Disciplinary Authority to pass a *de novo* final order as per the provision of rules and settled principle of law as observed above.

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ORDER SHEET

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Form No.

Vs.

Case No**. OA-342 of 2021**

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Accordingly, OA is **allowed** with no order as to cost.

Since for circumstances beyond control, the Registry is unable to furnish plain copies of this order to the learned advocates for the parties, the Registry is directed to upload this order on the website of the Tribunal forthwith and parties are directed to act on the copies of the order downloaded from the website.

SAYEED AHMED BABA
MEMBER (A)

Mrs. URMITA DATTA (SEN)
MEMBER (J)

CSM/SS

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