

**WEST BENGAL ADMINISTRATIVE TRIBUNAL**

Bikash Bhavan, Salt Lake, Kolkata – 700 091.

Present-

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

**Case No. –OA 342 of 2021**

Dr. Samar Kanti Kayal - **VERSUS** - THE STATE OF WEST BENGAL & ORS.

Serial No. For the Applicant : Mr. G.P. Banerjee,  
and Ld. Advocate.  
Date of order For the State Respondent : None.  
03  
26.08.2021

The matter is taken up by the Single Bench pursuant to the Notification No. 949-WBAT/2J-15/2016 dated 24<sup>th</sup> December, 2020 and 456-WBAT/2J-15/2016 dated 16<sup>th</sup> July, 2021 issued in exercise of the powers conferred under Section 6 (5) of the Administrative Tribunals Act, 1985.

The instant application has been filed challenging the impugned order dated 17.01.2020 as well as review order dated 06.03.2020, whereby the final order dated 17.01.2020 was affirmed by the Reviewing Authority. As per the applicant, the disciplinary authority had passed his order dated 17.01.2020 holding inter-alia :

**“NOW, THEREFORE, in exercise of power conferred by sub-rule 14 of rule 10 of the West Bengal Services (Classification, Control and Appeal) Rules, 1971, the Governor has been pleased to order to punish by reduction of his pay to 2 (two) stages lower in the current pay band till retirement under Rule 8(iv) of W.B. Services (Classification, Control and Appeal) Rules, 1971. During the period of such reduction the charged officer will not earn any increment of pay and his pension will be drawn on such reduced pay.**

**The Governor has further been pleased to direct that the said Dr. Samar Kanti Kayal shall be debarred from promotion during the period of undergoing penalty and such debarment should not be treated and imposed as a penalty.”**

As per the applicant, from the perusal of the Rule 8(iv), it would be evident that the disciplinary authority had no power to debar him from promotion during the period of undergoing penalty as there was no such provision under Rule 8(iv). Further, it has been submitted that in one hand the disciplinary authority had directed that the applicant shall be debarred from promotion during the period of undergoing penalty, on the other hand, it has been stated that such debarment should not be treated as a penalty. Therefore, as per the counsel for the applicant, if the debarment of promotion would not be treated as a penalty

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then under which provision the disciplinary authority can direct debarment of promotion while imposing penalty under Rule 8(iv) of WBS (CCA) Rules, 1971.

Therefore, the counsel for the applicant has prayed for an interim protection. None appeared for the respondent on earlier occasion also. Though affidavit of service has been filed by the applicant even today none appear for the respondent.

Heard the counsel for the applicant and perused the records as well as Rule 8(iv) of the WBS (CCA) Rules, 1971. Since balance of convenience is in favour of the applicant and the applicant has a prima facie case, therefore, the respondents are directed to file reply by four weeks positively and rejoinder, if any, may be filed by the applicant within a period of two weeks thereafter and in the interim, the respondents are directed not to implement the final orders dated 17.01.2020 and 06.03.2020 till the next date.

List the matter under the heading “**Admission Hearing**” on **18.11.2021**.

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.

SS/CSM

Mrs. URMITA DATTA (SEN)  
MEMBER (J)