

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 358 of 2017

Dr. Alok Kumar Khan -- **VERSUS** – The State of West Bengal & Ors.

Serial No. and
Date of order

24
30.09.2021

For the Applicant : Mr. B.P. Roy,
Mrs. S. Mitra,
Ld. Advocates.
For the State Respondent : Mr. G.P. Banerjee,
Learned Advocate.
For the Pr. AG, WB : Mr. B. Mitra,
Departmental Representative.

The instant application has been filed challenging the impugned final order dated 26.02.2010, whereby the Disciplinary Authority without granting any opportunity had increased the proposed punishment of 10% cut in pension made by the Public Service Commission, West Bengal (PSC, WB) to 50% cut in pension permanently. As per the applicant, he was served with a charge sheet dated 21.11.2006. The applicant took part in the disciplinary proceedings and vide communication dated 30.06.2008 (Annexure-C), PSC, WB had recommended for imposition of penalty of withholding of 10% of the pension for a period of one year, against which the applicant filed a reply. However, PSC, WB had reiterated their same view vide communication dated 21/24/28.11.2008 (Annexure-C). However, according to the applicant, the Disciplinary Authority without granting any further chance to make representation had unilaterally increased the punishment from withholding of 10% of pension for one year to withholding of 50% of pension permanently. The counsel for the applicant has submitted that such enhancement without granting any opportunity is not permissible under law. Therefore, the counsel for the applicant has prayed for quashing of the said impugned order dated 26.02.2010. The counsel for the respondent has submitted that though Second Show Cause Notice with regard to imposition of punishment of withholding of 10% of pension was communicated to the applicant, however, no Second Show Cause Notice with regard to the disagreement and enhancement of the cut in pension for 50% permanently

Form No.

Case No. OA-358 of 2017

Vs.

The State of West Bengal & Ors.

was communicated to the applicant. The counsel for the applicant has also submitted that since the order was passed in the year 2010, the respondent had implemented the order and applicant is suffering of 50% cut in pension till date from the date of passing of the order.

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

“AND WHEREAS the replies to 2nd show Cause Notice submitted by the charged officer were duly considered by the Govt. which could not adduce any new evidence.

AND WHEREAS the Government consulted the Public Service Commission, West Bengal on the punishment proposed to be imposed on the charged officer.

AND WHEREAS the Public Service Commission, West Bengal agreed with regard to issue of guilt and advised to impose penalty of withholding of 10% of pension for one year under Rule 10 of WBS (DCRB) Rules, 1971.

AND WHEREAS the Disciplinary Authority considered the view of the PSC, WB expressed his disagreement with the view of Public Service Commission and revised the penalty to the tune of withholding of 50% of pension permanently and the same was sent to the Commission for their review.

AND WHEREAS the Public Service Commission reiterated its earlier decision.

AND WHEREAS the Disciplinary Authority decided to stick to its revised decision of withholding of 50% permanently under rule 10 of WBS (DCRB) Rules, 1971.

AND WHEREAS the matter was placed before the Cabinet with approval of the Chief Minister, West Bengal for consideration of the decision of the Disciplinary Authority.

AND WHEREAS the decision of the Disciplinary Authority is approved by the Cabinet.

NOW, THEREFORE, the Governor has been pleased to order that the penalty of withholding of 50% of pension permanently under rule 10 of WBS (DCRB) Rules, 1971 be imposed upon Dr. Alok Kumar Khan Ex. Professor (since retired) Department of Neurosurgery Medical College and Hospital, Kolkata.”

Form No.

Case No. **OA-358 of 2017**

Vs.

The State of West Bengal & Ors.

Therefore, it is an admitted fact that before enhancement of the proposed penalty made by the PSC, WB, the Disciplinary Authority did not issue any second show cause notice or granted any opportunity to the applicant to make representation with regard to the proposed enhancement of penalty, which is not permissible as per the settled principle of law. Therefore, we quash and set aside the impugned order dated 26.02.2010 and remand back the matter to the Disciplinary Authority to reconsider the case of the applicant after granting him an opportunity of personal hearing with regard to the enhancement of penalty and to take a final decision in this regard and communicate the same by way of a reasoned and speaking order within a period of eight weeks from the date of receipt of the order.

Accordingly, the OA is **disposed of** 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