

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 441 of 2023

Basudeb Guha -- **VERSUS** – The State of West Bengal & Ors.

Serial No. and
Date of order

For the Applicant : Mr. M.N. Roy,
Mr. G. Halder,
Ld. Advocates.

02
30.11.2023

For the State respondent : Mr. G.P. Banerjee,
Ld. Advocate.

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.

On consent of the learned counsels for the contesting parties, the case is taken up for consideration sitting singly.

This application has been moved before this Tribunal praying for setting aside the revised order of penalty passed by the Respondent No. 3, the Commissioner of Police, Siliguri Police Commissionerate. Submission of the learned counsel for the applicant is that this revised order of punishment passed on 08.07.2022 by the Commissioner of Police, has not only enhanced the quantum of punishment but was also in violation of Regulation 884 of Police Regulations of Bengal, 1943.

From the submissions and the documents, it appears that a disciplinary proceeding was concluded against Mr. Basudeb Guha, the applicant and the final order was passed imposing a punishment by withholding one increment from the next date of his due increment for one year without cumulative effect.

Though the charged officer after receiving the punishment order did not file any appeal before the Appellate Authority, however, the Commissioner of Police, as the Appellate Authority, suo mottu reconsidered the final order and enhanced the punishment earlier given by the Disciplinary Authority. The relevant part of this order is quoted below :

“After applying my mind judiciously and considering the degree delinquencies, I am with the opinion that the punishment should be enhanced. Hence the Modified/Revised Final order passed as :

Next 01 (one) annual increment of the Charged SI (UB) Basudeb Guha to be stopped permanently which will be effect his future Pay and Service.”

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During the submissions, a reference has been made to the Regulation 884 of Police Regulations of Bengal, 1943; the relevant portion is as under :

“884. Right to call for records [7, Act V, 1861, read with 243 of the Government of India Act, 1935] – The Inspector-General or the Deputy Inspector-General may call for the proceedings of any case, even where no appeal lies, and pass such orders as may seem fit provided that no order under this regulation shall be made to the prejudice of any person unless he has had an opportunity of showing cause against the proposed order. If he so desires he shall be granted a personal hearing and this fact should be recorded in the proceedings.”

After examining the matter, the Tribunal has observed that the Appellate Authority while passing the revised order did not give any opportunity to the Charged Officer either by issuing him a Show Cause Notice or calling him for a personal hearing. Such a revised punishment which not only revised the order passed by the Disciplinary Authority but the quantum of such punishment was enhanced without giving any opportunity of hearing or reply to the Charged Officer. In the opinion of this Tribunal, this revised order was passed in contravention of the Regulation 884. Thus, the revised order passed by the Commissioner of Police dated 08.07.2022 is not only bad in law but is not legally enforceable and thus, liable to be quashed and set aside. Therefore, the revised order passed by the Commissioner of Police dated 08.07.2022 imposing a higher punishment without giving any opportunity to the Charged Officer is quashed and set aside with a direction to the Commissioner of Police to reconsider the order as the Appellate Authority in accordance with prevailing law and communicate the same to the Charged Officer.

Accordingly, the matter is **disposed of.**

SS/SM

SAYEED AHMED BABA
Officiating Chairperson & Member (A)