

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 450 of 2017

Sandip Kumar Roy -- **VERSUS** – The State of West Bengal & Others

Serial No. and
Date of order

For the Applicant

: Mr. Pradip Kumar Roy,
Learned Senior Advocate.
Mr. Shaon Bhattacharya,
Learned Advocate.

20
07.03.2025

For the State Respondents

: Mr. Manujendra Narayan Roy,
Learned 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.

In the instant case, a Departmental Proceedings was initiated against the applicant for commission of an alleged offence of taking bribe from one Swastik Nag, a Director of Traffic Entertainment Pvt. Ltd. for obtaining one bar-cum-restaurant license at Jessore Road, Kolkata. The applicant was placed under suspension vide order dated November 22, 2016. The Disciplinary Authority issued him a charge sheet dated March 07, 2017 for his alleged role as mentioned above. The Anti – Corruption Bureau (ACB) initiated a case no. 11 of 2016 dated 26.11.2016 U/s. 7 of Prevention of Corruption Act, 1988 against the applicant for accepting a bribe money of Rs. 1,00,000/- (One Lakh) from the complainant.

Mr. P. K. Roy, learned senior counsel for the applicant pleaded that the charge is vague, ambiguous and non-specific in nature. He further referred to the Chief Secretary's Memo. Vig.-283(SPAR)/2012 dated November 22, 2012 in which Section 1 clearly required the ACB to carry out investigation of only those cases which are assigned to them by the Personnel & Administrative Reforms (P&AR) Department. A report of the Special Public Prosecutor-in-Charge of this case in the ACB case no. 11/2016 especially mentioned that the instant case was not assigned by the State Government to the ACB and therefore, the ACB had acted without sanction from the competent authority and thus, violated the order of the Chief Secretary. This information was shared

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with the applicant by the Deputy Superintendent of Police (HQ), ACB as part of RTI reply dated 13.10.2022. The report also confirmed the closure of the ACB office on the day the alleged FIR was lodged which was also corroborated by the RTI reply from the Joint Commissioner of Kolkata Police dated 20.07.2017 in Memo. 13220 and also from the report of the Assistant Engineer, PWD, Kolkata West Sub-Div.-II vide Memo. 171. The reply of Joint Commissioner of Kolkata Police (A) categorically informs that the complainant and his associates did not visit the ACB Office for lodging an FIR contrary to the statement made in the FIR. Sub-Section 2 of the Chief Secretary order also stipulates that the ACB has to undertake a preliminary enquiry. In this case, no preliminary enquiry was undertaken by the ACB. Mr. P. K. Roy also argues that the applicant had no jurisdictional authority as alleged by the complainant, as the applicant at that point of time was posted under South 24-Parganas district and the alleged site of complain falls under the territorial jurisdiction of North 24-Parganas Excise authority. Therefore, had a preliminary enquiry been conducted by the ACB Officers, the frivolity of the complaint and malicious intention of the complainant would have been unveiled. Further submission was the allegation that the applicant was caught red-handed while accepting bribe is also a figment of imagination. The report of the Special Public Prosecutor confirms "recovery of the alleged bribe money from the sofa complainant was sitting". This can be well-validated by the post trap memorandum prepared by the ACB which clearly stated that after personal search of Sandip Kumar Roy, nothing was recovered except his Identity Card. In support of his pleadings, Mr. Roy refers to the judgement of Hon'ble Supreme Court of India in Balwant Singh and Others-Vs.-The State of Bihar.

Further points submitted by Mr. Roy is that the Review Committee chaired by the Chief Secretary had on his own recommended the withdrawal of the suspension of the applicant in its meeting dated 19.09.2023. Moreover, by an order dated 27.06.2024, the Finance Department served option to the applicant to come under ROPA, 2019.

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The Division Bench of Hon'ble High Court in its order dated 06.11.2017 had set aside the impugned order of this Tribunal dated 22.06.2017 with a direction to dispose of this matter within eight weeks. Highlighting the agony the applicant had been going through despite direction of the Hon'ble High Court, Mr. Roy referred to a judgement passed by the Hon'ble High Court, Madras in B. Maximus-Vs.-The State of Tamil Nadu and pleaded that the applicant had already suffered so much of mental agony that it would be in fitness of things and natural justice if this matter is disposed of by quashing the departmental proceeding and for treating the suspension period as spent on duty and release all his arrears.

Mr. M. N. Roy, learned counsel appearing on behalf of the State Respondents had submitted the following points :-

1. Whatever be the opinion of the learned Public Prosecutor in this matter, the fact remains that a charge was framed against the applicant and a case under ACB P. S., case no. 11 of 2016 dated 26.11.2016 U/s. 7 of Prevention of Corruption Act, 1988 is still pending before the competent Court.
2. The charges against the applicant are very specific. Therefore, it cannot be said to be vague in nature.
3. It is correct that the suspension order was revoked by the competent authority on its own. However, such revocation does not mean that the applicant is absolved of all the charges framed against him.
4. With regard to the applicant's suspension being revoked and ROPA, 2019 benefits awarded, Mr. M. N. Roy emphasises that the said Rule is clear for granting such benefits to an employee once suspension order has been withdrawn.
5. Relying on a judgement of the Hon'ble Apex Court in (1999)3 SCC 679 : Capt. M. Paul Anthony –Vs.- Bharat Gold Mines Ltd. and Anr., Mr. Roy argued that irrespective of any criminal case is pending, the Departmental Enquiry can proceed without any

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preponderance of the Criminal Court. It was also argued that irrespective of the views of the learned Public Prosecutor, the Department is of the view that the disciplinary authority against the applicant should continue against the applicant. It is also a well-settled law that such Departmental Proceedings can continue without any reliance on the criminal case.

In the light of available materials and records as well as the supplementary affidavit, the Tribunal, beyond any reasonable doubt, has come to this conclusion that the allegation against the applicant is untenable. The very fact of the applicant's posting outside jurisdiction of North 24-Parganas defies any logic for such allegation. The Hon'ble Supreme Court of India in N. Vijoy Kumar-Vs.- The State of Tamil Nadu had observed that recovery of currency notes for illegal gratification without proof of demand is not sufficient under Section 7. In this case, both the post trap memorandum prepared by ACB as well as the report of Special Public Prosecutor-in-Charge have denied recovery of the said bribe money from the physical possession of the applicant. Such recovery from elsewhere (in this case from the sofa where the complainant himself was sitting) cannot be regarded as being recovered from the applicant. Additionally, the closure of the ACB office and non-appearance of the complainant there on that day to lodge the complaint on 26.11.2016 completely negates the statement recorded in the FIR. Statement in the RTI reply of the Joint Commissioner of Kolkata Police (A) on 14.07.2017, Assistant Engineer, PWD, Kolkata West Sub-Div.-II on 20.07.2017 and the report of Special Public Prosecutor-in-Charge of the case submitted to the learned Legal Remembrancer dated 21.11.2017 are clear pointers. These reports pose a big question mark on the authenticity of the entire trap episode and intention to malign the applicant cannot be ruled out. Notwithstanding, the direction of the Hon'ble High Court in 2017 for concluding within eight weeks, continuation of this enquiry is absolutely unjust. Justice delayed is justice denied.

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It is pertinent and necessary to cite the relevant judgement of the Hon'ble Supreme Court in Prem Nath Bali-Vs.-Registrar, High Court of Delhi recorded in (2015)16 SCC 415

“28. Keeping these factors in mind, we are of the considered opinion that every employer (whether State or private) must make sincere endeavour to conclude the departmental enquiry proceedings once initiated against the delinquent employee within a reasonable time by giving priority to such proceedings and as far as possible it should be concluded within six months as an outer limit. Where it is not possible for the employer to conclude due to certain unavoidable causes arising in the proceedings within the time-frame then efforts should be made to conclude within the reasonably extended period depending upon the cause and the nature of inquiry but not more than a year.”

As such, the instant application is not tenable in the eyes of law and is quashable and is quashed and set aside. Keeping in view the withdrawal of suspension by the Review Committee chaired by Chief Secretary and allowances, salary and other benefits given to the applicant as per ROPA, 2019, the Respondent No. 1, the Additional Chief Secretary, Department of Finance is directed to treat the suspension period as “spent on duty” and his arrears, if any, be released expeditiously but positively within three months from the date of communication of this order.

The application is disposed of.

SAYEED AHMED BABA
Officiating Chairperson & Member (A)

S.M.