

WEST BENGAL ADMINISTRATIVE TRIBUNAL

Bikash Bhavan, Salt Lake, Kolkata – 700 091.

Present-

The Hon'ble Sayeed Ahmed Baba, Officiating Chairperson and Administrative Member.

Case No. –OA 470 of 2023

Debashis Chakraborty. - Versus - The State of West Bengal & Others.

Serial No. and Date of order	For the Applicant	: Mr. M. N. Roy, Mr. G. Halder, Advocates.
<u>03</u> 03.08.2023.	For the State Respondents	: Mrs. S. Mitra, Mr. S. Bhattacharyya, Advocates.
	For the Public Service Commission, West Bengal	: Mr. S. Bhattacharjee, 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.

The prayer in this application for setting aside the impugned Order No. 475 dated 08.06.2022 passed by the respondent imposing a punishment upon the applicant as the charged officer after completion of the Departmental Proceedings. Submission of Mr. Roy, learned counsel appearing for the applicant is that this order is not maintainable since it contains double punishment :- one withholding of an annual increment for a period of two years and depriving him of promotion during the period of the penalty.

Mr. Roy referring to Rule (ii) of the WBS (CC&A) Rules, 1971 submits that such double punishment by a single order is void under this Rule. Here, the respondent has deviated from the Rule by imposing two separate and distinguishable punishments. Therefore, this impugned punishment order is not maintainable in the eyes of law.

Mrs. S. Mitra, learned counsel appearing on behalf of the State respondents refers to page 35, the Order No. 540 dated 15.06.2022

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which stays the operation of the Order No. 475 dated 08.06.2022 as “temporarily kept in abeyance”. This order is signed by the Principal Secretary of the Department who is also the Disciplinary Authority of this Departmental Proceeding against the applicant.

Mr. Bhattacharjee also files a copy of Commission’s correspondence to the Department dated 21.06.2023 by which the Commission is of the view that the “Penalty of withholding of annual increments for a period of 2 (two) years without cumulative effect in terms of Rule 8(ii) of WBS (CCA) Rules, 1971 is appropriate in the instant case, as was communicated to the Department under this office earlier letter No. 639-P.S.C dt. 01.06.2022”.

From the submissions above and the documents in this application, it is the opinion of this Tribunal that the order imposing a punishment upon the charged officer by memo. 475 –DCA/O/CON-01/22 dated 08.06.2022 suffers from serious miscarriage of justice. The punishment imposed upon the applicant is like a “Double Barrel Gun”, the first part of the order imposes a punishment of withholding annual increment for two years and in the same sentence by adding an ‘and’ the second punishment debars him from promotion during the penalty period. Further, adding salt into the injury, the disciplinary authority adds one more part in the same sentence :- “such debarment (meaning denial of promotion) should not be treated as a penalty”. This Tribunal is not only surprised but also dismayed to read that denial of promotion should not be considered as penalty? Furthermore, on close examination of the Rule 8 (ii) of West Bengal Services (Classification, Control & Appeal) Rules, 1971, it is abundantly obvious that a penalty can be either for withholding the increments **or** promotion ; but it cannot be both – withholding increment **and** promotion at the same time for the

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same offence.

In view of the above submissions, the final Order passed by the Principal Secretary vide memo. 475 –DCA/O/CON-01/22 dated 08.06.2022 is not sustainable in the eyes of law. Therefore, it is quashed and set aside with a direction to the respondent no. 2, the Principal Secretary, Department of Correctional Administration to consider the matter afresh and pass a reasoned order strictly as per the Rules within a period of six weeks from the date of communication of this order.

Accordingly, the matter is disposed of.

(SAYEED AHMED BABA)
Officiating Chairperson and Member (A)

HS/SM