

ORDER SHEET

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 505 of 2022

SYED ABDUL AHASAN - Vs - THE STATE OF WEST BENGAL & OTHERS.

Serial No. and
Date of order

08
21.06.2023

For the Applicants : Mr.Goutam Pathak Banerjee
Advocate

For the State respondents : Mr.Soumendra Narayan Ray
Mr.D.Koley
Advocates

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 is for setting aside the entire Departmental Proceeding, Inquiry Report, final order of punishment imposed on the applicant.

The primary submission of Mr.Goutam Pathak Banerjee, learned counsel for the applicant is that the entire Departmental Proceeding was conducted without the presence of the Presenting Officer. In this particular case, the Enquiring Officer himself acted both as an Enquiring Officer and the Prosecutor. Therefore, the procedure followed is in violation of law and therefore, it should be set aside. Mr.Banerjee relied on a judgement of the Apex Court in *2018(6) SLR 101 (S.C.): Union of India and Others versus Ram Lakhan Sharma* at paragraph 35 a copy of which has been filed, be kept on record.

Mr.Banerjee also submits a copy of the notification of the Finance Department No.4956/1(500)-F(P) dated 19.09.2014. The relevant paragraph 2 of the said notification is as hereunder:

“ (4A) The disciplinary authority shall, in all cases of enquiry, appoint a Presenting Officer either from officers in service under the Government or a retired Government officer or a legal practitioner as deem fit.”

Further Mr.Banerjee also submits a copy of the Tribunal’s order in O.A. 28 of 2018: Md.Obaidulla Sk. Versus State of West Bengal & Ors. dated 26th July, 2021 as relevant for his case in this application.

Mr.Ray submits that as per existing practice, the requirement of Presenting Officer during the inquiry was dispensed with. Mr.Ray submits that the presence of Presenting Officer during the departmental proceeding is not mandatory and the responsibility of the Presenting Officer can also be performed by the Enquiring Officer.

Mr.S.N.Ray also submits that there is no specific direction for engaging a Presenting Officer in the Police Regulations of Bengal 1943.

After hearing the submissions of the learned counsels and perusing the records, it is the observation of the Tribunal that, it is true that though no specific mention regarding appointment of a Presenting Officer is in the Police Regulations of Bengal 1943, but the same regulations also does not stop the disciplinary authority from engaging the Presenting Officer. Apart from the judgements of the Apex and other higher Courts mandating the presence of a Presenting Officer, the State Government had also issued a Notification No. 4956 dated 19.09.2014 – Finance Department which has been quoted above and which also makes it obligatory that the “D.A. shall in all cases of enquiry appoint a Presenting Officer.....” .

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In view of the above observations, it is the finding of the Tribunal that the impugned order is quashable and has to be set aside. Thus, the inquiry report dated 22.08.2020, the final order dated 31.08.2020 and the appellate orders dated 09.11.2020 and 23.02.2021 are hereby set aside with a direction to the respondent No. 5, the Superintendent of Police, Birbhum, to conduct a denovo enquiry by way of following settled principle of natural justice by appointing both Enquiry and Presenting Officers after granting the applicant a fair opportunity to place his case and to communicate the final decision by way of reasoned and speaking order within a period of six months from the date of receipt of the order. Accordingly, the O.A. is disposed of with the above observations and direction with no order as to costs.

Monetary deductions, if any, made in terms of the final order shall be refunded to the applicant within a period of three months from the date of this order.

Accordingly, the application is disposed of.

(SAYEED AHMED BABA)
OFFICIATING CHAIRPERSON AND MEMBER (A)

BLR