

WEST BENGAL ADMINISTRATIVE TRIBUNAL

Bikash Bhavan, Salt Lake, Kolkata – 700 091.

Present-

The Hon'ble Mrs. Urmita Datta (Sen), Member(J).

Case No. –OA 505 of 2021

Niharendu Hazra - **VERSUS** - THE STATE OF WEST BENGAL & ORS.

Serial No.	For the Applicant	: Mr. M.N. Roy,
and		Mr. G. Halder,
Date of order		Ld. Advocates.
<u>03</u>	For the State Respondent	: Mr. G.P. Banerjee,
02.09.2021		Ld. Advocate

The matter is taken up by the Single Bench pursuant to the Notification No. 949-WBAT/2J-15/2016 dated 24th December, 2020 and 456-WBAT/2J-15/2016 dated 16th July, 2021 issued in exercise of the powers conferred under Section 6 (5) of the Administrative Tribunals Act, 1985.

The instant application has been filed challenging the impugned order dated 04.01.2021. As per the applicant, the disciplinary authority had passed his order dated 04.01.2021 holding inter-alia :

“NOW, THEREFORE, in exercise of the power conferred under Rule 8 of the West Bengal Services (Classification, Control and Appeal) Rules, 1971 read with Rule 10 of the said Rules, the Governor has been pleased to direct that the following penalty shall be imposed upon the said Shri Niharendu Hazra, Junior Engineer (Civil) [erstwhile Sub-Assistant Engineer (Civil)], presently posted at Burdwan Sub-Division, Public Works Directorate in terms of 8(iv) of the West Bengal Services (Classification, Control and Appeal) Rules, 1971 :-

The pay of the Charged Officer be reduced to 03 (three) stages lower in the current pay band for a period of 03 (three) years under rule 8(iv) of the West Bengal Services (Classification, Control and Appeal) Rules, 1971. During the period of such reduction, he will not earn any increment of pay and on the expiry of such period, the reduction will have the effect postponing future increments of his pay.

The Charged Officer be debarred from promotion during the period of his undergoing the penalty. However, such debarment from promotion is not to be treated and imposed as a penalty and may be incorporated in the final order distinctly as a direction.”

As per the applicant, from the perusal of the Rule 8(iv), it would be evident that the disciplinary authority had no power to debar him from promotion during the period of undergoing penalty as there was no such provision under Rule 8(iv). Further, it has been submitted that in one hand the disciplinary authority had directed that the applicant shall be debarred from promotion during the period of undergoing penalty, on the other hand, it has been stated that such

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debarment should not be treated as a penalty. Therefore, as per the counsel for the applicant, if the debarment of promotion would not be treated as a penalty then under which provision the disciplinary authority can direct debarment of promotion while imposing penalty under Rule 8(iv) of WBS (CCA) Rules, 1971. Therefore, the counsel for the applicant has prayed for an interim protection.

Heard the counsel for the applicant and perused the records as well as Rule 8(iv) of the WBS (CCA) Rules, 1971. Since balance of convenience is in favour of the applicant and the applicant has a prima facie case, therefore, the respondents are directed to file reply by four weeks positively and rejoinder, if any, may be filed by the applicant within a period of two weeks thereafter and in the interim, the respondents are directed not to implement the final orders dated 04.01.2021 till the next date.

List the matter under the heading **“Admission Hearing”** on **18.11.2021**.

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.

Mrs. URMITA DATTA (SEN)
MEMBER (J)

SS/CSM