

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 - VERSUS - THE STATE OF WEST BENGAL & ORS.

Serial No. and Date of order	For the Applicant	:	Mr. Gautam Pathak Banerjee, Advocate
	For the State Respondents	:	Mr. Soumendra Narayan Ray, Mr. Debabrata Kole, Advocate

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12.04.2023

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 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. Gautam Pathak Banerjee, learned counsel for the applicant is that the entire Departmental Proceeding is conducted without the presence of the Presenting Officer. Therefore, 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

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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 also referred to certain judgements and orders of higher courts in which he 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.

Reserved for order.

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

SCN.

WEST BENGAL ADMINISTRATIVE TRIBUNAL