

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 506 OF 2023**

NARESH SARKAR - Vs - THE STATE OF WEST BENGAL & OTHERS.

Serial No. and
Date of order

03
31.01.2024

For the Applicant : Ms.Ashmita Chakraborty
Advocate
For the State Respondents : Mr.Manujendra Narayan Roy
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.

Submitting on behalf of the applicant, Ms.A.Chakraborty, learned counsel draws attention to page 118 of this application. This page appears to be the Articles of charge framed against the applicant, Naresh Sarkar, now under the suspension. The charges framed against him is quoted as under:

“ That the said Sri Naresh Sarkar, Excise Constable (now under suspension), was consciously present in the raid and played a conscious role in collusion with others in the matter of illicit possession, transportation and disposal of commercial quantity of narcotics drugs in the wake of recovery of ganja from the possession of the accused in connection with the NDPS case No. 136/2017 dated 06/09/2017 and was deliberately associated with this unlawful misreporting act, subsequently unduly siphoning off the articles and that such an act was completely unbecoming of a public servant.”

Ms.Chakraborty submits that, as is evident from the above charge, the applicant was suspended for his illicit possession,

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transportation and disposal of substantial quantity of narcotic drugs, as filed in the NDPS case No. 136/2017. She refers to page No. 120 which appears to be the list of documents for framing the Article of Charge against the applicant. It is mentioned as *“(1) Copy of the Charge Sheet submitted by the then Additional Excise Commissioner, Krishnanagar Excise Division, before the Special Court, Krishnanagar, Nadia with regard to the NDPS case No. 136/17 of Krishnanagar Excise Division.”*

Ms.Chakraborty lays emphasis on above two statements and submits that as is clear from the above, the charges against the applicant was for possession and transportation of narcotic drugs which was filed as a case by the respondent authority in the NDPS Court, Case No. 136 of 2017. Now, attention is drawn to pages 1 of 55 onwards which appears to be the judgement of the Learned Judge Special Court, NDPS Act, Nadia, Krishnanagar. The relevant paras of the judgement in the internal page No. 50 of 55 and 52 of 55 are as under:

“From the first seizure list regarding the recovery of ‘Ganja’ of 20 kg. it appears from the contents of the seizure list, PW-6 and PW-7 searched the accused Swapna Ghose and 20 kg ‘Ganja’ was recovered. They are constables of the Excise Department. But, from their evidence it is nowhere found that 180 kg to 200 kg of ‘Ganja’ was recovered. Rather it is established fact that PW-6 and PW-7 signed in the seizure list which they did not deny. So, it can be said that in their presence 20 kg ‘Ganja’ was recovered and there is no reason to disbelieve the said fact. PW-6 and PW-7 did not corroborate the prosecution case rather their evidence established the fact of recovery of 20 kg of ‘Ganja’ from the lady accused.

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Following are the loopholes or defects of the prosecution case:

- 1. No seizure list is proved;*
- 2. There is no existence of seized contraband which alleged to be 180 Kg to 200 Kg of 'Ganja'; no contraband was seized from the possession of the accused persons except Swapna Ghose;*
- 3. Only on the basis of statement recorded under section 67 of NDPS Act, it is very risky to come to the conclusion that the accused persons are involved in the alleged offence; as it is not admissible in evidence;*
- 4. Place of recovery is not proved from the statement of the witnesses and the documents. It is found that PO is two different places - one is Durgapur More and another is Tentia village;*
- 5. There is no investigation whether the alleged contraband was disposed of or purchased by any person or whereabouts of the seized contraband. If there is no existence of seized contraband, no case can be attracted against the accused persons;*
- 6. Section 43, 50 and 57 of NDPS Act are not complied with;*
- 7. No independent witness has come to prove the prosecution case;*
- 8. PW-6 and PW-7, who are Excise Constables, are not corroborating the prosecution case and they were not declared hostile by prosecution;*
- 9. There is no iota of evidence before the Court whether 180 Kg to 200 Kg of 'Ganja' was siphoned or recovered;*
- 10. ID calls are not proved in connection with the present case;*

11. *In view of the decision of the Hon'ble Apex Court the statement which was recorded under section 67 of NDPS Act is not admissible in law;*
12. *There are no corroborating evidence in support of the prosecution case;*
13. *Court cannot convict any person merely on the basis of suspicion or assumption or presumption;*
14. *There is no iota of evidence that before the recovery raid of the said contraband there is any meeting by and between the parties for siphoning the contraband articles; even during the trial the prosecution did not adduce any such evidence.*
15. *There is no evidence that the accused persons entered into conspiracy with other accused for committing the alleged offence."*

Attention is now finally drawn to page No. 55 of 55 in which the Learned Judge has passed the following order:

" that the accused, 1. Swapna Ghose, 2. Samar Kumar Swarnakar, 3. Soumen Kumar Sadhukhan, 4. Madhusudan Ghosh, 5. Rabi Bhusan Pandey, 6. Tapas Bala, 7. Nayan Sarkar, 8. Naresh Sarkar, 9. Maharam Sk, 10. Amit Roy and 11. Krishna Gore, faced trial, are found not guilty of commission of offence punishable under Sections Under section 20(ii)(b)/29 of the Narcotic Drugs and Psychotropic Substance Act, 1985 read with section 8(c) of NDPS Act, as per the charge, so framed against them and, accordingly, they are acquitted from this case under Section 235(1) of the Cr.P.C. and be set at liberty

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to once, if not wanted to any other case.”

Having drawn the attention of the Tribunal to the above foregoing paragraphs, Ms.Chakrbaorty submits that the sole basis of the charge sheet being the NDPS Case No. 136 of 2017 and the only document relied upon by the respondent authority do not exist as on date. Since the applicant being earlier accused in this case has now been honourably acquitted by the competent court, therefore, no charge sheet framed against him in the disciplinary proceedings are valid and supported by any law.

Finally, Ms.Chakraborty submits that in view of such acquittal from the case in the NDPS court, the applicant had furnished a representation before the respondent authorities praying for revocation of the suspension with reinstatement and payment of full back wages.

Let the submissions on behalf of the State respondents be heard on 13th March, 2024 at 10 A.M. as a Specially Fixed Matter.

BLR

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