

WEST BENGAL ADMINISTRATIVE TRIBUNAL

Bikash Bhavan, Salt Lake, Kolkata – 700 091.

Present-

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

Case No. – OA 516 of 2022

Dr. Tarjan Mondal -- VERSUS – The State of West Bengal & Ors.

Serial No. and Date of order	For the Applicant	: Mrs. S. Agarwal, Ld. Advocats.
	For the State Respondent	: Mr. S.K. Mondal, Ld. Advocate.
<u>04</u> 07.11.2022		

The matter is taken up by the Single Bench pursuant to the order contained in the Notification No. 536-WBAT/2J-15/2016 dated 26th August, 2022 issued in exercise of the powers conferred under Section 5(6) of the Administrative Tribunals Act, 1985.

The instant application has been filed praying for the following reliefs :

“(a) An order do issue thereby directing the respondent authorities to set aside the Memo No. 1293/DDARD & PO, Msd/2022 Date, Berhampore the 12.07.2022 and after setting aside allow your applicant the annual increment on and from 01.07.2022 and after allowing annual increment re-fix his pay and allowances in accordance with rules and to disburse the arrear salaries and revised salary upon such revision within a stipulated time period.

(b) An order do issue thereby directing the respondent authorities to dispose of the representations, last representation dated 15.07.2022 made praying for annual increment from 01.07.2022 by passing a reasoned and speaking order after giving an opportunity of hearing and communicating the decision thereof to your applicant within a stipulated time period.

(c) Any other appropriate order/orders direction/directions as this Hon'ble Tribunal may deem fit and proper to protect the right of the applicant and in the ends of justice.”

During the course of the hearing, the counsel for the applicant has submitted that though one Show Cause Notice was issued with regard to his unauthorised absence for intermittent period, however, without issuance of any Charge-Sheet or disciplinary proceedings, his annual increment as on 01.07.2022 has been withheld vide Order dated 20.07.2022 and not paid till date. Being aggrieved with, he has filed the instant application.

However, the counsel for the respondent has submitted that as his leave has not been regularised, his annual increment has been withheld under Rule 45 of WBSR, Part-I, which stipulates inter alia :

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“45. An increment shall ordinarily be drawn as a matter of course unless it is withheld. When an increment is ordered to be withheld, the authority passing the order shall state the period for which it is to be withheld, and whether the postponement shall have the effect of postponing future increments; and if so, for how long. Where the order fails to specify clearly for what period the officer is to be deprived of his increments, the deprivation shall be held to cease on the expiry of the period during which the officer would have drawn the increment initially withheld. Moreover, unless the order provides otherwise, the officer shall, when the deprivation ceases, be restored in all respects to the same position in the time-scale as he would have occupied had the order not been passed.”

Further, Rule 8 (ii) of West Bengal Services (Classification, Control and Appeal) Rules, 1971 prescribed the following penalty :

- “(i)
(ii) withholding of increments or promotions.
(iii)”**

I have heard the parties and perused the Rules.

After harmonious reading of both the Rules, it is noted that withholding of increment can be done only as a measure of penalty. However, in the instant case, admittedly, no increment has been paid to the applicant even no disciplinary proceedings has been initiated or Charge-Sheet has been issued to the applicant for alleged unauthorised absence, but one Show Cause Notice dated 04.01.2022 has been issued. It is a settled principle of law that no withholding of increment [which is one of the prescribed penalties under Rule 8 (ii) of West Bengal Services (Classification, Control and Appeal) Rules, 1971] can be imposed without any disciplinary proceedings.

Therefore, Memo No. 1293/DD, ARD&PO/MSD/2022 dated 12.07.2022 and Memo No. 134/DDARD&PO, Msd/2022 dated 20.07.2022 are

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quashed and set aside and the respondents are directed to make the payment of increment. However, they are at liberty to take appropriate steps as per Rules with regard to his unauthorised absence.

Further, the counsel for the applicant has submitted that he wants to make a detailed representation against the Show Cause Notice dated 04.01.2022 before the authority within a period of seven days and has further prayed that the authority be directed to consider his representation and communicate his decision within a stipulated period of time.

The counsel for the respondent has no objection to such proposition.

The counsel for the applicant is at liberty to make representation in details before the concerned authority, within a period of seven days. If the applicant would file any such representation, the Respondent No. 5 is directed to consider the same as per Rules and communicate his decision by way of a reasoned and speaking order within a period of four weeks from the date of receipt of such representation with regard to the regularisation of his leave.

Accordingly, the OA is **disposed of** with no order as to costs.

CSM/SS

URMITA DATTA (SEN)
Officiating Chairperson & Member (J)