

**WEST BENGAL ADMINISTRATIVE TRIBUNAL**

Bikash Bhavan, Salt Lake, Kolkata – 700 091.

Present-

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

**Case No. OA – 530 of 2019**

**Ganesh Chandra Mandal - VERSUS - THE STATE OF WEST BENGAL & ORS.**

Serial No. For the Applicant : Mr. M.N. Roy,  
and Advocate

Date of order

17

02.08.2022

For the State : Mr. G.P. Banerjee,  
Respondents Advocate

The matter is taken up by the Single Bench pursuant to the order contained in the Notification No. 354 – WBAT / 2J-15/2016 dated 18<sup>th</sup> May, 2022 issued in exercise of the powers conferred under Section 6(5) of the Administrative Tribunals Act, 1985.

The instant application has been filed praying for following relief(s):

“ (a) An order do issue thereby setting aside/quashing the entire Departmental Proceeding issued vide Memorandum No. 744-P & AR (Vig) Dated 25.11.2014 within a stipulated time period.

(b) An order do issue there setting aside/quashing the Order No. 183-P & AR(Vig) Dated 21.05.2019 whereby they have decided to continue with new Inquiring Authority to inquire into the charges, which has already been enquired into and enquiry report has been submitted to that effect by the Commissioner's No. 293-V/Home-06/2014 dated 15.10.2017 in violations of the directions contained in the Solemn Order dated 28.01.2019 passed in O.A. No. 1033 of 2018.

(c) An further order do issue directing the respondent authorities to transmit records pertaining to the instant case so that conscionably justice can be done.

(d) 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.”**

As per the applicant, he was served with a Memorandum of Charge Sheet dated 25.11.2014, with allegation of having disproportionate assets to the tune of Rs. 36,66,742/- as well as incomplete and misleading information to suppress the relevant particulars during the declaration for this assets. Subsequently, one enquiry officer was also appointed to conduct enquiry, wherein the applicant had participated and the said enquiry officer had also submitted his report to the Disciplinary Authority. However, after lapse of four years, the applicant had received one Memo dated 13.02.2018 (Annexure 'E'), whereby the fresh Enquiry Authority was appointed as per the dictate of the State Vigilance Commission without serving the erstwhile enquiry report as well as any disagreement note of the Disciplinary Authority to enable him to make representation against the said.

Being aggrieved with, he had approached earlier before this Tribunal in O.A. No. 1033 of 2018, which was disposed of vide Order dated 28.01.2019 by remanding back the case to the Disciplinary Authority with a direction to him to serve a disagreement note, if any, along with the erstwhile enquiry report and to take an appropriate steps as per Rules. However, the Disciplinary Authority in violation of the order of this Tribunal had again served one impugned Memo dated 21.05.2019 (Annexure 'H') with a copy of enquiry report without any disagreement note as directed by this Tribunal and had decided to conclude the enquiry with a new Enquiry Authority. Being aggrieved with, he has filed the instant application.

As per the applicant, the respondent not only repeated the same allegation again against the settled principle of law as has been enumerated by the Hon'ble Apex Court in different cases but also has proceeded in total violation of this Tribunal's earlier order dated 28.01.2019.

The counsel for the applicant has also submitted that the applicant is 65 years of age and due to pendency of this disciplinary proceeding, he has not got his gratuity and other benefits.

During the course of the hearing, the counsel for the applicant has referred the following judgements:

- “(i) Nagaraj Shivarao Karjagi –Vs- Syndicate Bank Head Office, Manipal**
- (ii) Punjab National Bank and Others –Vs- Kunj Behari Misra**
- (iii) Union of India –Vs- K.D. Pandey”**

Respondents have filed their reply, wherein they have stated that vide communication dated 15.12.2017, the State Vigilance Commission, West Bengal felt that methodology adopted by the Enquiring Authority for calculation of disproportionate assets in respect of Article of Charge-I was faulty. Hence, the Commission requested the Disciplinary Authority to order for further enquiry only with regard to the Charge No. I is concerned and also recommended the name of Sri Manojit Mandal, Commissioner of Departmental Enquiries as new Enquiry Authority for the second enquiry and in agreeing with such recommendation of the State Vigilance Commission, the Disciplinary Authority appointed the new Enquiring Officer vide order dated 13.02.2018. However, subsequently as Sri Manojit Mandal is not in Commission presently, therefore,

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another incumbent Sri Somenath Bandyopadhyay, Commissioner of Departmental Enquiries, State Vigilance Commission has been appointed as new Inquiring Authority vide order dated 26.06.2019.

I have heard the parties and perused the records. It is noted that the applicant came earlier before this Tribunal in O.A. No. 1033 of 2018 and challenged the appointment of new Enquiry Authority on the ground that without serving the copy of the erstwhile enquiry report as well as any disagreement note, new enquiry officer was appointed. The said application was disposed of by this Tribunal vide order dated 28.01.2019 holding, inter alia:

**“We have heard both the parties and perused the records. It is observed that the erstwhile enquiry officer has already submitted his enquiry report. However, the Disciplinary Authority may be not agreeable to such findings and have disagreed with the findings of the enquiry report has ordered for appointment of fresh enquiry officer, who has to enquire into the matter de novo. It is the settle principle of law that such action on the part of the Disciplinary Authority , by not serving the erstwhile enquiry report as well as disagreement note before directing for de novo enquiry by a new enquiry officer, violates the settle principle of natural justice. Therefore, we quash and set aside the impugned order dated 13-02-2018 by which the new enquiry officer was appointed to enquire into the charges of de novo and remanded back the order to the Disciplinary Authority with a direction to serve the disagreement note if any along with the erstwhile enquiry officer report and to take**

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**appropriate steps as per Rules as well as settle law. The applicant is also directed to cooperate with the authority.**

**Accordingly, the OA is disposed of with the above observations and direction with no order as to cost.”**

However, the Disciplinary Authority vide Memo dated 21.05.2019 had communicated the following:

**“ In compliance of above Order of Hon’ble WBAT on the subject cited above, I am directed to serve a copy of enquiry report of the Inquiring Authority as received from State Vigilance Commission in c/w departmental proceedings against the above noted officer. I am further directed to inform you that on consideration of the report SVC, the Disciplinary Authority has decided to continue the enquiry with a new I.A.**

**Yours faithfully,**

**Joint Secretary to the  
Government of West Bengal**

**Encl: i) Copy of Enquiry Report of the I.A.**

**ii) Copy of Order dtd. 28.01.2019 of Hon’ble WBAT  
in O.A. No. 1033 of 2018”**

From the perusal of the above as well as from the reply of the respondent, it is noted that as per said State Vigilance Commission, they are not satisfied with the methodology adopted by the erstwhile enquiry officer while calculating the disproportionate assets and had recommended the Disciplinary Authority to

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appoint a fresh enquiry officer.

In the case of Kunj Behari Misra (supra), the Hon'ble Apex Court has held, inter alia:

**“ when the enquiry report is in favour of the delinquent officer but the disciplinary authority proposes to differ with such conclusions, then that authority which is deciding against the delinquent officer must give him an opportunity of being heard for otherwise he would be condemned unheard. It will be most unfair and iniquitous that where the charged officers succeed before the enquiry officer, they are deprived of representing to the disciplinary authority before that authority differs with the enquiry officer's report and, while recording a finding of guilt, imposes punishment on the officer. In our opinion, in any such situation, the charged officer must have an opportunity to represent before the disciplinary authority before final findings on the charges are recorded and punishment imposed.”**

In the case of Nagaraj Shivarao Karjagi, the Hon'ble Apex Court held, inter alia:

**“The authorities have to exercise their judicial discretion having regard to the facts and circumstances of each case. They cannot act under the dictation of the Central Vigilance Commission or of the Central Government. No third party like the Central Vigilance Commission or the Central Government could dictate the disciplinary**

authority or the appellate authority as to how they should exercise their power and what punishment they should impose on the delinquent officer. (See: De Smith's Judicial Review of Administrative Action, Fourth Edition, P. 309). The impugned directive of the Ministry of Finance is, therefore, wholly without jurisdiction and plainly contrary to the statutory Regulations governing disciplinary matters.”

In the case of K.D. Pandey, the Hon'ble Apex Court had observed and held, inter alia:

“Learned counsel for the appellant contended that in this case the Board had examined the material on record and come to the conclusion that four of the six charges could be proved on the available material, which had not been properly examined in the earlier inquiry. In fact from the order made by the Railway Board as well as from that part of the file where the inquiry report made earlier is discussed, it is clear that specific findings have been given in respect of each of the charges after discussing the matter and, if that is so, we fail to understand as to how there could have been a remit to the inquiry authority for further inquiry. Indeed this resulted in second inquiry and not in a further inquiry on the same set of charges and the material on record. If this process is allowed the inquiries can go on perpetually until the view of the inquiry authority is in accord with that of the disciplinary authority and it would be abuse of the process of law. In

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**that view of the matter we think that the order made by the High Court affirming the order of the Tribunal is just and proper and, therefore, we decline to interfere with the same. The appeal is dismissed accordingly.”**

From the perusal of the averments of respondent as well as their order, it is clear that the Disciplinary Authority has appointed a new enquiry officer as per the recommendation of the State Vigilance Commission without applying his mind by not supplying any disagreement note to the applicant to enable him to make his proper representation before the Disciplinary Authority, which is not only contrary to the settled principle of law but also in violation of our earlier order dated 28.01.2019.

Therefore, I have no option but to quash and set aside the impugned order dated 28.01.2019 and remand back the matter again to the Disciplinary Authority to act strictly as per the observation of this Tribunal as well settled principle of law and to conclude the disciplinary proceedings and communicate his decision within a period of three months from the date of receipt of the order. The applicant is also directed to cooperate with the Disciplinary Authority in this regard. Accordingly, the O.A. is disposed of with the observations and directions with no order as to costs.

URMITA DATTA (SEN)  
MEMBER (J)

A.K.P.