

ORDER SHEET

WEST BENGAL ADMINISTRATIVE TRIBUNAL

Bikash Bhavan, Salt Lake, Kolkata – 700 091.

Present- The Hon'ble Sayeed Ahmed Baba, Officiating Chairperson & Member (A)

Case No. –OA 558 of 2023

TAPAS KUMAR ROY -- **VERSUS** – The State of West Bengal & Others

Serial No. and
Date of order

For the Applicant

: Mr. K. Basu,
Mr. S. Banerjee,
Mr. A. Dasgupta,
Ld. Advocates.

03

20.06.2024

For the State Respondents

: Mr. G.P. Banerjee,
Ld. 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.

Mr. K. Basu, learned counsel shows a copy of the order passed by the Hon'ble High Court in WPST No. 04 of 2024 which records that the Tribunal is hearing the matter on the prayer for an interim orders as prayed by the applicant on 20th June, 2024 i.e. today. Praying for such an interim order, Mr. Basu, refers to para 20 and 21 of the judgment passed in (2015) 7 Supreme Court Cases 291 (Ajay Kumar Choudhary V Union of India & Another). The relevant para is as under :

20. It will be useful to recall that prior to 1973 an accused could be detained for continuous and consecutive periods of 15 days, albeit, after judicial scrutiny and supervision. The Code of Criminal Procedure, 1973 contains a new proviso which has the effect of circumscribing the power of the Magistrate to authorise detention of an accused person beyond a period of 90 days where the investigation relates to an offence punishable with death, imprisonment for life or imprisonment for a term of not less than 10 years, and beyond a period of 60 days where the investigation relates to any other offence. Drawing support from the observations contained of the Division Bench in Raghbir Singh v. State of Bihar¹⁶ and more so of the Constitution Bench in Antulay¹², we are spurred to extrapolate the quintessence of the proviso to Section 167(2) CrPC, 1973 to moderate suspension orders in cases of departmental/disciplinary enquiries also. It seems to us that if Parliament considered it necessary that a person be released

Form No.

Case No. **OA 558 of 2023**

Vs.

The State of West Bengal & Ors.

from incarceration after the expiry of 90 days even though accused of commission of the most heinous crime, a fortiori suspension should not be continued after the expiry of the similar period especially when a memorandum of charges/charge-sheet has not been served on the suspended person. It is true that the proviso to Section 167(2) CrPC postulates personal freedom, but respect and preservation of human dignity as well as the right to a speedy trial should also be placed on the same pedestal.

21. We, therefore, direct that the currency of a suspension order should not extend beyond three months if within this period the memorandum of charges/charge-sheet is not served on the delinquent officer/employee; if the memorandum of charges/charge-sheet is served, a reasoned order must be passed for the extension of the suspension. As in the case in hand, the Government is free to transfer the person concerned to any department in any of its offices within or outside the State so as to sever any local or personal contact that he may have and which he may misuse for obstructing the investigation against him. The Government may also prohibit him from contacting any person, or handling records and documents till the stage of his having to prepare his defence. We think this will adequately safeguard the universally recognised principle of human dignity and the right to a speedy trial and shall also preserve the interest of the Government in the prosecution. We recognise that the previous Constitution Benches have been reluctant to quash proceedings on the grounds of delay, and to set time-limits to their duration. However, the imposition of a limit on the period of suspension has not been discussed in prior case law, and would not be contrary to the interests of justice. Furthermore, the direction of the Central Vigilance Commission that pending a criminal investigation, departmental proceedings are to be held in abeyance stands superseded in view of the stand adopted by us.

Mr. Basu submits that the respondent authorities were legally bound to initiate the Disciplinary Proceedings within three months from the date the

Form No.

Case No. **OA 558 of 2023**

Vs.

The State of West Bengal & Ors.

suspension order was passed. Unfortunately, in this case, though the applicant was suspended on 03.08.2022, but, till date the Respondent/Disciplinary Authorities have not initiated any proceedings against the applicant. This very omission violates the direction of the Hon'ble Apex Court as referred to by him in the above paragraph.

In response to such a prayer, Mr. G.P. Banerjee, learned counsel appearing on behalf of the State respondent submits today the main matter was to be heard and not the prayer for an interim order. Secondly, the respondent authority is yet to file a reply in this matter which would be filed only after the Hon'ble High Court has heard the matter on 09.07.2024. Thirdly, Mr. Banerjee argues that Ajay Kumar Choudhury V Union of India & Another cases as relied by Mr. Basu is not relevant in this matter for the reason that in the Ajay Kumar Choudhary case, the employee was a Central Government employee, whereas in this matter, the applicant is a State Government employee; the Rules governing Disciplinary Proceeding of the Central employees differ from the state employees. Mr. Banerjee also enlightens that the existing rules of the State does not impose any binding on the Disciplinary Authority to initiate such a Disciplinary proceedings within a certain period of time. The existing Rules only bind the authorities to review the order of suspension periodically. In this case, the authorities have reviewed the order of suspension on three occasions. Mr. Banerjee informs that the authorities have taken steps to initiate the Disciplinary proceeding against the charged officer and the Vigilance Commission has been moved for consultation. Finally, Mr. Banerjee also feels that since the charges are grave in nature, the Tribunal may not accept the prayer from the applicant's side to stay the operation of the suspension order.

Disagreeing with the argument of Mr. Banerjee, Mr. Basu feels that the state authorities are not serious in taking any action. Had the charges been so serious against the applicant, it would be imperative for the state authorities to have taken some serious steps by now. By such non action on the part of the state authorities, it has to be surmised that there are no serious charges against the applicant. Mr. Basu also submits that if there are no rules compelling the disciplinary authority to initiate the Disciplinary Proceedings within a fixed limit, then the mandate of the Apex Court has to be accepted as the law under article 141 of Constitution of India.

Since Mr. G.P. Banerjee, learned counsel has wished to file a Reply on behalf of the State respondents, let such reply be filed by the next date and a copy

ORDER SHEET

TAPAS KUMAR ROY

Form No.

Case No. **OA 558 of 2023**

Vs.

The State of West Bengal & Ors.

be served upon the other side. Upon receipt of the Reply, if the applicant's side wishes, rejoinder may also be filed in the meantime.

Let the matter appear under the heading "**For Orders**" on **12.08.2024**.

SAYEED AHMED BABA
Officiating Chairperson & Member (A)

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