

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 - 566 of 2024

Nikhil Ranjan Biswas - Vs - The State of West Bengal & Ors.

Serial No. and
Date of order

02
21.01.2025

For the Applicant : Mr. N.C. Mondal,
Learned Advocates.

For the State : Mr. R.K. Mondal,
Respondents Learned Advocate.

For the Pr. A.G.W.B. Mr. B. Mitra.

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. R.K. Mondal, learned counsel submits that the applicant who had worked as Health Inspector superannuated on 31.10.2024. Though superannuated, his pension and other retiral benefits are withheld on the ground that an enquiry has been initiated against the applicant and FIR also lodged. Mr. N.C. Mondal, learned counsel had submitted that such withholding of pension of a retired employee on the pretext that of an enquiry is tantamount to injustice to the applicant and such action was arbitrary and whimsical. Mr. Mondal has filed a copy of judgement of Hon'ble Supreme Court reported in 2006(7) SCC 651. The relevant portion of the judgement is as follows :

“The State of U.P. Vs. Brahm Datt Sharma--- This Court observed that if the Government incurs pecuniary loss on account of misconduct or negligence of a government servant and if he

retires from service before any departmental proceedings are taken against him, it is open to the State Government to initiate departmental proceedings, and if in those proceedings, he is found guilty of misconduct, negligence or any other such act or omission as a result of which the Government is put to pecuniary loss, the State Government is entitled to withhold, reduce or recover the loss suffered by it by forfeiture or reduction of pension.”

Today while submitting on behalf of the state respondents, Mr. R.K. Mondal, learned counsel also cites the same judgement has referred above and submits that it is clear from the operative part of the judgement at paragraph 7, the State Govt. in its discretion can withhold, reduce or recover by forfeiture/ reduction of pension if employee has been found guilty of misconduct, injustice or any other act of omission.

Mr. R.K. Mondal also relies of Rule 10 of WBS(DCRB) Rules, 1971 in particular emphasis is given at para 2 (1) of Rule 10. The relevant part is cited as under :-

“The Governor reserves to himself the right of withholding or withdrawing a pension or any part of it whether permanently or for a specified period, and the right of ordering the recovery from a pension of the whole or part of any pecuniary loss caused to Government, if the pensioner is found in a departmental or judicial proceeding to have been guilty of grave misconduct or negligence, during the period of his service, including service rendered on re-employment after retirement.”

Mr. N.C. Mondal has submitted that the rule referred to by the state respondents, being Rule 10(1) relates to only in two cases where an employee has been found after conclusion of Disciplinary Proceedings or Judicial Proceedings guilty of a grave misconduct or negligence. In this case, however, only an enquiry has been initiated and the applicant has not been found guilty . Therefore, this Rule is not applicable in this case. A close reading of the Rule 10 (1) (a) makes it clear that any enquiry instituted during the service life of an employee is also deemed to be a proceeding under this Article, the Rule 10 (a) by which the pension of an employee can be withheld. The allegation of the respondent authority against the applicant was based on a complaint of one Md. Mezahar Ali. This Mezahar Ali had written the complain addressed to the respondents. A close reading of the complaint filed by this complainant on 08.07.2024 does not mention specific misconduct committed by the applicant. This complainant had also filed one WPA 15213 of 2023 alleging that the applicant had promised jobs to innocent people in lieu of money. Fake appointment letters were given to those aspiring persons who had given money and FIR has also been registered. The Hon'ble Court in this matter had directed the investigating agencies to conclude the enquiry in accordance with law.

From the above paragraphs it is clear that the applicant was involved in a racket of promising government jobs to innocent people who had succumbed to such allurements and paid money and also received fake appointment letters. The Tribunal is satisfied that the respondent authority had taken the correct decision withholding

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THE STATE OF WEST BENGAL & OTHERS.

of pension and other retiral benefits in terms of Rule 10(1) of DCRB Rules, 1971. Hence finding no merit in this application, this application is disposed of.

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

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