

ORDER SHEET

WEST BENGAL ADMINISTRATIVE TRIBUNAL

Bikash Bhavan, Salt Lake, Kolkata – 700 091.

Present-

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

Case No. – OA 63 of 2020

Baisakhi Banerjee -- **VERSUS** – The State of West Bengal & Ors.

Serial No. and Date of order	For the Applicant	: Mr. M.N. Roy, Mr. S. Ghosh, Mr. G. Halder, Learned Advocates.
<u>08</u> 21.06.2022	For the State Respondent	: Mr. S.N. Ray, Learned Advocate.

The matter is taken up by the Single Bench pursuant to the order contained in the Order No. 354-WBAT/2J-15/2016 dated 18th 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 basically challenging the second Charge-Sheet dated 23.09.2019 (Annexure-A/13) whereby in cancellation of earlier Charge-Sheet dated 06.06.2019 issued on self-same charges and witnesses and in compliance with the recommendation of the State Vigilance Commission, West Bengal, again the second impugned Show Cause Notice was issued. As per the counsel for the applicant, such second Show Cause Notice in terms of the direction of the State Vigilance Commission, West Bengal on the self-same charges and witnesses is not permissible under the law. It has been further submitted that in the para 4 of the said impugned Memorandum, the Additional Secretary to the Government of West Bengal, Department of Women and Child Development and Social Welfare had quoted a wrong Rule i.e. Rule 22 of the West Bengal Government Services Conduct Rules, 1959, which has become obsolete after promulgation of the new Rule i.e. West Bengal Services (Duties, Rights and Obligations of the Government Employees) Rules, 1980.

During the course of the hearing, the counsel for the applicant has again submitted that even second Show Cause Notice on the self-same charges and witnesses has been issued directly by the Additional Secretary to the Government of West Bengal, Department of Women and Child Development and Social Welfare in place of the Governor, without following the Rules as there is no indication that the applicant being a Group-A Officer, the impugned Memorandum has been issued by the Governor or on behalf of the Governor.

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Therefore, the counsel for the applicant has prayed for quashing of the said Memorandum dated 23.09.2019.

The counsel for the State respondents on instruction has submitted that since the Disciplinary Authority is not expert in this regard, therefore, they have cancelled the earlier Charge-Sheet and has issued the new one by entrusting the case to the State Vigilance Commission, West Bengal.

I have heard the parties and perused the records. It is noted that the application was earlier served with the Charge-Sheet vide Memorandum dated 06.06.2019 (Annexure-A/7) on the self-same charges and witnesses and had also appointed Enquiry Officer as well as Presenting Officer.

However, from the perusal of the impugned order dated 23.09.2019, it is noted that in cancellation of earlier Memorandum dated 06.06.2019 and in compliance of the recommendations of the State Vigilance Commission, West Bengal, a fresh Memorandum of Charge-Sheet has been issued by the Additional Secretary to the Government of West Bengal, Department of Women and Child Development and Social Welfare. The Hon'ble Apex Court in the case of Nagaraj Shivarao Karjagi v. Syndicate Bank Head Office, Manipal and another reported in AIR 1991SC 1507 : 1991 AIR SCW 1263 has held *inter-alia* :

“..... 19. The corresponding new bank referred to in S. 8 has been defined under S. 2(f) of the Act to mean a banking company specified in column 1 of the First Schedule of the Act and includes the Syndicate Bank, Section 8 empowers the Government to issue directions in regard to matters of policy but there cannot be any uniform policy with regard to different disciplinary matters and much less there could be any policy in awarding punishment to the delinquent officers in different cases. The punishment to be imposed whether minor or major depends upon the nature of every case and the gravity of the misconduct proved. 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.....”

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In the instant case also, the Additional Secretary to the Government of West Bengal, Department of Women and Child Development and Social Welfare in cancellation of the earlier order had issued another Memorandum of Charge-Sheet on the self-same charges and witnesses and has clearly spelt out that it has been done as per the recommendation of the State Vigilance Commission, West Bengal which is not permissible under the law. Further, the respondents are not in a position to satisfy that why on the self-same charges and witnesses, there is a necessity to issue fresh Memorandum of Charge-Sheet.

In view of the above and in my opinion, the impugned order dated 23.09.2019 is liable to be quashed.

Accordingly, I quash and set aside the impugned order dated 23.09.2019.

Accordingly, the OA is **disposed of** with the above observations and directions with no order as to costs.

**URMITA DATTA (SEN)
MEMBER (J)**

CSM/SS