

ORDER SHEET

WEST BENGAL ADMINISTRATIVE TRIBUNAL

Bikash Bhavan, Salt Lake, Kolkata – 700 091.

Present-

Mr. Sayeed Ahmed Baba, Officiating Chairperson and Hon'ble Member (A).

Case No. – OA 706 of 2023.

SABIR ALI MONDAL – VERSUS-THE STATE OF WEST BENGAL & ORS

Serial No. and
Date of order

01
13.10.2023

For the Applicant : Mr. M.N. Roy,
Mrs. P. Sasmal,
Ld. Advocates.

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.

On consent of the learned counsel for the contesting parties, the case is taken up for consideration sitting singly.

Let affidavit of service filed today be kept on record.

The prayer in this application is for setting aside the final order of penalty dated 23.6.2023 and also the order of the appellate authority dated 27.9.2023. The prayers have also been followed by another prayer for interim order restraining the respondent authorities from giving effect to the revised order dated 23.6.2023 as well as the appellate authority's order dated 27.9.2023 till the disposal of this application.

Submitting on behalf of the applicant, Mr. M.N. Roy, learned counsel lays down the following points :-

- 1) That the entire procedure followed by the authorities were not in conformity lying with the laid down procedures and rules. For instance, the Disciplinary authority, the Superintendent of Police, Purba Burdwan has clearly indicated in the revised final order that the approval of the DIG (Burdwan Range) was sought for passing the final order. Disciplinary Authority violated the laid down procedures by seeking approval of the final order from his superior

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authority.

- 2) Secondly, by seeking the revised opinion of the State Vigilance Commission, the Disciplinary Authority has not only abdicated his authority but also failed to apply his own mind in this matter without being influenced by others. As the Disciplinary authority, he had the discretion to either accept in full or part or reject the views of the Vigilance Commission. But, in this case, it is clear that though being the Disciplinary Authority, he relied completely on the Commission to impose punishment on the charged officer.
- 3) Mr. Roy concludes his submission by pointing out that by passing the final order dated 23.6.2023 without modification or cancellation of the earlier final order passed on 15.2.2022, the Disciplinary Authority has violated the laid down procedures. This disciplinary proceeding ought to have been concluded by passing one final order and not multiple final orders. In this case, without cancelling the first final order on 15.9.2022, the second final order was passed on 23.6.2023. The applicant by passing such a second final order, the quantum of punishment was also enhanced disproportionately from lowering of one increment to demoting him from the post of ASI to Constable for a period of five years.

Mr. G.P. Banerjee, learned counsel appearing on behalf of the State respondent submits that second final order was passed, perfectly under the legal frame work and was required to be so passed as per direction of his superior authority as explained at page 91 of the second final order.

Disagreeing with Mr. Roy's observation on the revised opinion sought by the disciplinary authority from the Vigilance Commission, Mr. Banerjee submits that the Disciplinary Authority was in his legal right to seek such revised opinion from the Vigilance Commission.

Mr. Banerjee assures that on the next date, he will bring to light the specific rule by which approval of the DIG for imposing such a punishment was sought for by the Superintendent of Police, the Disciplinary Authority in this

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matter.

Let this matter continued to be heard along with prayer for interim direction on 02nd December, 2023 in a special session of this Tribunal.

(SAYEED AHMED BABA)
Officiating Chairperson and Member (A).

Skg.

WEST BENGAL ADMINISTRATIVE TRIBUNAL