

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

06
29.02.2024

For the Applicant

: Mr. M.N. Roy,
Mr.G. Halder,
Learned Advocates.

For the State Respondents

: Mr. G.P. Banerjee,
Learned 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.

The prayer in this application is for setting aside the final order of the disciplinary authority imposing the 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 with the laid down procedures and rules. For instance, the Disciplinary authority being 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 such final order. Thus, the Disciplinary Authority violated the laid down procedures by seeking approval of the final

ORDER SHEET

Form No.

SABIR ALI MONDAL.

Case No. OA 706 of 2023.

-Vs-
THE STATE OF WEST BENGAL & ORS.

order from his superior 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) Concluding his submission, Mr. Roy points 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. 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 the 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.

Further submission is that though there is no specific rule enabling the DIG/Appellate Authority to remand back the case to the Disciplinary authority but it is an accepted administrative practice. In this case, the higher authority

ORDER SHEET

Form No.

SABIR ALI MONDAL.

Case No. OA 706 of 2023.

-Vs-

THE STATE OF WEST BENGAL & ORS.

having found some procedural inconsistency in the final order, the same was pointed out to the Disciplinary Authority. As the Appellate Authority, he can take such action but he cannot assume the responsibility of the Disciplinary Authority. Therefore, the Disciplinary Authority was required to pass a revised final order and there is nothing illegal about this. It is also submitted by Mr. Banerjee that had the Charged Officer seriously felt that there was a procedural lapse, he could have mentioned the same before the Disciplinary Authority during the personal hearing. Such observation could have also been mentioned in his appeal. But no such point was mentioned by him. Having stated the above, Mr. Banerjee also informs that the punishment imposed in the final order has already been executed.

Disagreeing with what Mr. Banerjee has submitted above, Mr. Roy, however, emphasizes that as per the Memo No. 104-GAC (Vig.) dated 14.03.1972, it is only the Vigilance Commission who has been empowered to move the Government, if so desired for review of such order. But, in this case, instead of the Commission, the DIG as the Appellate Authority took upon himself the power to review and remand the case back to the Disciplinary Authority.

After hearing the submission and perusal of records, the Tribunal has observed the followings :-

The Superintendent of Police being the disciplinary authority and empowered to initiate, conclude and impose a penalty on the charged officer has admitted in the second final order No. 2210 dated 23.6.2023 that upon "Instruction" from the Deputy Inspector General of Police, Burdwan Range, a fresh final order had to be passed. It is clear that the Deputy Inspector General of Police, being superior in rank and also being the appellate authority has exercised excessive power by directing the disciplinary authority for modification of the first final order passed by him. In a disciplinary proceedings, the position of the disciplinary authority and the appellate authority are separate and are not complementary to each other. Being the appellate authority, he could not exercise any power directing the disciplinary authority how to draw the final order and impose what quantum of punishment to the charged officer. The rules and responsibilities of both disciplinary authority and the

ORDER SHEET

Form No.

SABIR ALI MONDAL.

Case No. OA 706 of 2023.

-Vs-
THE STATE OF WEST BENGAL & ORS.

appellate authority are exclusive and separate. Therefore, by issuing such an instruction to the disciplinary authority, the appellate authority has exceeded his powers. Having received such a direction from his superior authority, the Superintendent of Police, could not perhaps ignore such orders from his superior.

The Tribunal is also aware that it is not irregular to modify any final order as the disciplinary authority after following the procedures. However, in this case, it is an admitted fact that the first final order passed on 15.9.2022 was completely modified under the direction of the appellate authority. The appellate authority in this capacity could have disagreed with the final order passed by the disciplinary authority may or may not have agreed with the quantum of punishment imposed by the disciplinary authority; he would have been in his right to impose any other kind of penalty upon the charged officer after giving reasons. Unfortunately, in this case, instead he chose to rather direct the disciplinary authority on what kind of punishment was proper.

It is also the observation of this Tribunal that a charged officer cannot be issued multiple final orders for the same charges with varying punishments. It is clear that the entire case record relating to the disciplinary proceedings was processed and presented by the disciplinary authority before his superior officer as a routine administrative matter and not as a quasi judicial matter.

In view of such serious procedural lapses, it is the finding of the Tribunal that the second final order issued on 23-06-2023 is a nonest in the eyes of law and is quashable and thus it is quashed and set aside with a direction to the Respondent no. 4 – Superintendent of Police, Purba Bardhaman to reconsider and pass a fresh order in the light of above observations and after giving an opportunity of hearing to the applicant within three months from the date of passing of this order and to communicate the fresh order to the applicant within one month thereafter.

With the above observation, this application is disposed of.

Skg.

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

ORDER SHEET

Form No.

SABIR ALI MONDAL.

Case No. OA 706 of 2023.

-Vs-

THE STATE OF WEST BENGAL & ORS.

WEST BENGAL ADMINISTRATIVE TRIBUNAL