

WEST BENGAL ADMINISTRATIVE TRIBUNAL

Bikash Bhavan, Salt Lake, Kolkata – 700 091.

Present-

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

Case No. –OA 821 of 2021

Jayanti Mukhopadhyay - Versus - The State of West Bengal & Others.

Serial No. and Date of order	For the Applicant	: Mr. S. Ghosh, Mr. M. N. Roy, Mr. B. Nandy, Learned Advocates.
<u>04</u> 14.09.2022.	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. 536-WBAT/2J-15/2016 dated 26th August, 2022 issued in exercise of the powers conferred under Section 5 (6) of the Administrative Tribunals Act, 1985.

The instant application has been filed praying for following reliefs:-

(a) “An order do issue quashing/setting thereby aside the entire Disciplinary Proceeding so initiated against the applicant vide Memo No. 1568-F.T FTO/1E-17/2015 Regn. Dated, Howrah, the 10th September, 2015, the Inquiry Report dated 05.09.2017, the Findings of the Disciplinary Authority and the Second Show Cause Notice being No. 1917-FT/O/1E-17/15 Regn. Dated 31.10.2017, as the respondent authorities have miserably failed to conclude the departmental proceeding in terms of the solemn order dated 26.02.2021 passed in O.A. No. 70 of 2020 by invoking the “Default” clause.

ORDER SHEET

Form No.

Jayanti Mukhopadhyay

Case No. **OA 821 of 2021**

Vs.

The State of West Bengal & Others.

(b) An order do issue directing the respondent authorities to allow your applicant all the consequential service benefits upon quashing of the impugned Departmental Proceedings which includes the benefit of 16 Year's CAS and restoration of seniority in the post of District Registrar, which have been given to her juniors, but, not to her due to the pendency of the Departmental Proceeding.

(c) An order do issue directing the respondent authorities to immediately produce the entire records pertaining to the case of the applicant, so that after perusal of the same, this Hon'ble Tribunal may be pleased to pass appropriate orders upon the respondent authorities quashing thereby any decision which affects the entitlement of the applicant.

(d) Any other appropriate order/orders direction/directions as this Hon'ble Tribunal may deem fit and proper to protect the right of the applicant and in the ends of justice.”

As per the applicants, she was served with a Memorandum of Charge Sheet dated 10.09.2015 and had participated in the said Departmental Proceeding. Therefore, she was served with Second Show Cause Notice dated 31.10.2017 proposing tentative punishment against which reply was filed on 22.12.2017. However, the respondents did not

concluded the Departmental Proceeding till 2020. Being aggrieved with, he had approached this Tribunal in OA No. 70 of 2020, which was disposed of by vide Order dated 26.02.2021, holding inter alia :

“Heard the parties and perused the record. It is noted that the Show Cause Notice was already issued on 10.09.2015 even Second Show Cause notice was issued on 31.10.2017 against which the applicant had submitted his reply on 22.12.2017 but till date no final decision has been communicated. Therefore, I direct the Respondent No. 2 to conclude the Departmental Proceedings and to take a final decision by way of passing a speaking and reasoned order as per rules and communicate the same within six months from the date of receipt of the order. In default, the proceedings should be vitiated. Accordingly, OA is disposed of. Parties are directed to act on the Web Copy of the order.”

As per the applicant, though the applicant already filed reply against the Second Show Cause Notice on 22.12.2017. However, the Disciplinary Authority even after granting six months time to conclude the disciplinary proceeding did not concluded the same nor had asked for any extension of time to conclude the said disciplinary proceeding before expiry of six months stipulated time though the Tribunal has specifically directed that if the disciplinary proceeding would not be concluded within six months time then the Disciplinary Proceeding would be vitiated. Therefore, the counsel for the applicant has vehemently submitted that the disciplinary proceeding has been vitiated as per Order dated 26.02.2021.

ORDER SHEET

Form No.

Jayanti Mukhopadhyay

Case No. **OA 821 of 2021**

Vs.

The State of West Bengal & Others.

As no final order was communicated within six months time being aggrieved with, the applicant has filed one representation dated 01.10.2018 (Annexure-E) for redressal of his grievances and subsequently filed the instant application on 29.11.2021 and prayed for a declaration that in view of the default clause, the entire proceeding should be treated as vitiated.

The respondents have filed their reply enclosing one Final Order dated 11.05.2022 and has submitted that since they have passed the final order, the disciplinary proceeding cannot be treated as vitiated. It has been further submitted that the departmental proceeding was initiated in the year 2015 and subsequently Second Show Cause Notice dated 31.10.2017 was served upon him and thereafter the applicant filed the reply to the Second Show Cause Notice on 22.12.2017. After considering the reply of the applicant, the Disciplinary Authority vide. Memo. No. 1483-F.T./FT/O/1E-17/15 Regn. Dated 09.10.2018 had sent the proposal of imposing penalty to the Secretary, PSC, WB as per rules for due consultation. Subsequently, the PSC, WB had returned the file seeking service particulars of the charged office, which were duly provided to the PSC, WB on 05.07.2019 under Memo. No. 1123-F.T./FT/O/1E-17/15 and ultimately, the PSC, WB through its letter under Memo. No. 512-P.S.C. dated 21.07.2020, had referred the matter back to the Disciplinary Authority seeking clarification on certain points with a request to refer the matter again to the Commission. Since late March, 2020, the pandemic had severely affected the daily functioning of offices and offices were run with reduced strength of staff in a truncated mode addressing mainly the essential services, the queries raised by the PSC, WB which required extensive clarification by the Inquiring Authority, could not be completed during the first and the

Form No.

Jayanti Mukhopadhyay

Case No. **OA 821 of 2021**

Vs.

The State of West Bengal & Others.

second waves of the raging pandemic. Soon after the situation improved the Disciplinary Authority, vide Memo. No. 180-FT/FT/O/1E-17/2015 Regn. Dated 11.01.2021 had referred the matter to the Vigilance Commission, West Bengal in terms of the said letter of the PSC, WB dated 21.07.2020, in turn the said Authority send a letter under Memo. No. 1146-V/FIN-04/2013 (S-V) dated 30.07.2021 with an observation to the effect that 'to ignore the proposal of P.S.C., W.B. as they have not stated the Rule/Provision for review/re-examination of the report of the I.A.'. However, after receiving the same the Disciplinary Authority had submitted a letter under Memo No. 1062-F.T/FT/O/1E-17/15 regn. Dated 22.09.2021 before the said Commission requesting them to reconsider the matter again as per the clarification sought for by the PSC, WB so that the Departmental proceeding may be concluded with the advice of the PSC, WB. Thereafter, a reminder letter was also issued under Memo. No. 1061-F.T./FT/O/1E-17/15 Regn. Dated 22.09.2021 but to no response, whereupon in such a situation when the proceeding was struck in a stalemate, the Disciplinary Authority had decided to take up the three Statements of Defence so submitted by the Charged Officer for examination with a view to address the query raised by the PSC, WB and after considering the same in its correct perspective, the said Authority came to a conclusion that as no new material fact came to light, no new findings could be made which may affect the penalty proposed earlier and accordingly, referred the matter to PSC, WB on 25.03.2022 under Memo No. 484-F.T./FT/O/1E-17/15 Regn. Requesting the said Authority to furnish their views on the proposed punishment. Thus, the contention of the applicant that the Disciplinary Authority had sat tight on the matter and/or that the Disciplinary Authority had no intention of completing the proceeding initiated against her is unfounded and deserves to be dismissed. After receiving such views of the

Form No.

Jayanti Mukhopadhyay

Case No. **OA 821 of 2021**

Vs.
The State of West Bengal & Others.

Commission, the Disciplinary Authority has proceeded to pass final order vide Memo. No. 763-FT dated 11.05.2022. Thus, the proceedings initiated against the applicant herein stands concluded.

Therefore, as per the respondents as the conclusion of Departmental Proceeding is not in their hands alone, as they have to approach different authorities for the same, therefore, they could not complete the Disciplinary proceeding within stipulated period of time. Therefore, the Default Clause mention is not applicable in the instant case.

The applicant had filed his rejoinder and vehemently opposed the contention of the respondents. It has been further submitted that if the Disciplinary Authority could not complete the disciplinary proceeding within six months time in that case also they could have approached this Tribunal for extension of time for conclusion of disciplinary proceeding before the expiry of six months time, which he did not do. Thereafter, obviously after six months time, the Default Clause would be operative automatically.

I have heard the parties and perused the record. It is noted that the disciplinary proceeding was initiated way back in 2015. Even on 28.12.2017, the Disciplinary Authority have received the reply to the Second Show Cause Notice. Therefore, he has only to pass the final order taking into account reply to Show Cause Notice and after consult the PSC as per settled principle of law. In the instant case, no advice of PSC was served upon the applicant along with Second Show Cause Notice and only on 09.10.2018 i.e. almost after one month from receiving the reply to the Second Show Cause Notice. The Disciplinary Authority referred the matter to the Secretary of WB, PSC and subsequently there was a conflicting views between the PSC and the

Vigilance Commission and as per the Disciplinary Authority, due to such situation, he could not conclude the disciplinary proceeding. Even, if, the said situation has to be accepted, in that case also the Disciplinary Authority did not approach this Tribunal before expiring of six months time as stipulated by this Tribunal, nor the respondent had filed any writ petition challenging the order dated 26.02.2021. In the meantime, the applicant has approached this Tribunal in the month of November 20-2, whereas the final order was passed on 11.05.2022 along with copy of advice of Public Service Commission.

In the instant case, further it has been observed that the applicant has approached this Tribunal in OA No. 70 of 2020 which was disposed of vide order dated 26.02.2021, wherein this Tribunal had directed the respondent authority to conclude the departmental proceedings and communicate his decision within a period of six months from the date of receipt of the order as the charge sheet was issued on 10.09.2015 even the reply to second Show Cause Notice was completed by 22.12.2017. Therefore, the respondent has only to pass a final order and therefore six months time was granted to them to conclude the said disciplinary proceeding even then they did not complete the disciplinary proceeding within six months of time nor had approached before this Tribunal praying for extension of time to conclude the disciplinary proceeding. Whereas in the said order dated 26.02.2021, there was a specific default clause that in default to conclude and communicate final order within six months time from the date of receipt of the order, the proceeding would be vitiated. The default clause shall become effective automatically due to lapse of the term set forth in the order and in the instant case, six months time was granted to conclude and communicate the final order to the applicant with a stipulation that in-default, the fulfill such

ORDER SHEET

Form No.

Jayanti Mukhopadhyay

Case No. **OA 821 of 2021**

Vs.

The State of West Bengal & Others.

obligation/direction by the respondents , the disciplinary proceeding would vitiated.

In view of the above, I have no alternative but to quash and set aside the impugned order dated 11.05.2022. Consequently, the disciplinary proceedings has also automatically vitiated as per Order dated 26.02.2021. Further the respondents are directed to grant consequential benefit thereof also.

Accordingly, OA is disposed of with above observation and direction with no order as to costs.

URMITA DATTA (SEN)
Officiating Chairperson and Member (J)

H.S.