

**ORDER SHEET**

**WEST BENGAL ADMINISTRATIVE TRIBUNAL**

**Bikash Bhavan, Salt Lake, Kolkata – 700 091.**

**Present-**

The Hon'ble Sayeed Ahmed Baba, Officiating Chairperson & Member(A)

Case No. – OA 844 of 2021

Susanta Kumar Das - VERSUS – The State of West Bengal & Ors.

Serial No. and Date of order	For the Applicant	: Mr. M.N. Roy, Mr. G. Halder, Ld. Advocates.
<u>16</u> 28.06.2023	For the State Respondents	: Mr. S.N. Ray, Ld. Advocate.
	For the Pr. Accountant General (A & E) W.B.	: Mr. B. Mitra, Departmental Representative.

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 23<sup>rd</sup> November, 2022 issued in exercise of the powers conferred under Section 5(6) of the Administrative Tribunals Act, 1985.

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

The prayer in this application is for setting aside the entire disciplinary proceedings, enquiry report, second show cause notice and final order of punishment imposed by the respondent by a final order No. 398-ARD-15011 (15)/6/2021 dated Kolkata the 4<sup>th</sup> March, 2021 imposing a punishment of 20% pension cut for a period of three years.

The fact of this case in brief is that the applicant posted as a Joint Director in Jalpaiguri Division Office was asked by the Director of Animal Husbandry & Veterinary Services to visit the office of the Deputy Director in Suri, Birbhum and find out the latest position of the cash book and open a new cash book from the closing balance of the locker and report.

As submitted by Mr. M.N. Roy, learned counsel for the applicant, in compliance to this order, the applicant visited the office of Dy. Director, Birbhum on 22.09.2009 and performed his duty as per the instruction of his superior, the Director. However, he was later shocked to receive a charge sheet from the Addl. Chief Secretary of the Department dated 23.07.2013 in which the following charges were levelled against the applicant :-

- i) The applicant failed to verify the cash book and Govt.

cheques/bankers cheques of the said office.

- ii) Due to failure of the applicant in verifying the records and cash, he facilitated Prasun Roy, the cashier of the office to commit defalcation of huge government money.

As required, the applicant duly submitted his statement of defence denying all the charges levelled against him.

After completion of the enquiry, the respondent issued the second show cause notice to the applicant on 12.09.2017 which proposed a punishment of 20% pension cut for a period of three years. As required, the applicant again submitted his reply in defence and denied all the charges before the respondent on 06.11.2017. After completion of the procedures, the respondent finally issued the final order on 04.03.2021 by which the punishment of 20% cut in pension for a period of three years was given.

In defence of the applicant, Mr. M.N. Roy submits the followings :-

- i) The charge against him for facilitating the cashier to defalcate Govt. money is false and absurd. As per the very enquiry report, such defalcation was committed *on or before 14.09.2009*, whereas the applicant who was the Joint Director having his office in Jalpaiguri was asked by the Director to visit the office of Birbhum on *22.09.2009*. Therefore, if such a defalcation had occurred on or before 14.09.2009, blaming it on the applicant is a miscarriage of justice.
- ii) The Dy. Director, Birbhum, who was not only the head of that office but also the Drawing and Disbursing Officer (DDO), was imposed a lesser punishment of only 10% pension cut for

only one year. As it is evident from the order of the respondent dated 21.11.2014 itself, the Dy. Director of Birbhum was charged for his negligence *“to supervise the work of Shri Prasun Roy, Cashier of his office properly”*. It further states that, *“Dr. Das Bhowmick failed to physically verify the cash book and cash balance of his office at the end of each month being the D.D.O. and head of his office, which gave indulgence to Shri Prasun Roy, Cashier to commit defalcation of huge government money amounting to Rs. 58,39,890/- (Fifty eight lakh thirty nine thousand eight hundred and ninety only) which is highly irregular thereby committed gross negligence and misconduct”*.

Submission of Mr. Roy is that by this very specific charge levelled against Dr. Das Bhowmick, it is clear that he, as the Head of his office, was not only solely responsible but also facilitated the defalcation of the Government money by the cashier. By blaming this applicant for this defalcation and imposing 20% cut in pension as punishment is unfair and palpably gross injustice.

In conclusion, Mr. Roy submits that the charges and punishment imposed to the applicant is grossly disproportionate to the alleged charge and, therefore, prays for setting aside the entire departmental proceedings and punishment imposed on the applicant.

In response to the submissions made by Mr. M.N. Roy, Mr. S.N. Ray, learned counsel appearing on behalf of the respondent authorities submits the following point :-

As per the report of the Inquiring Authority, this charged officer *“did not physically verify the Bankers’ Cheques which were inside the locker.”* Thus, he disobeyed the direction of the superior and neglected his duty by not physically counting the Banker’s cheques.

After hearing the submissions of the learned counsels and perusing the

available materials on record, the following facts have emerged :

- i) This applicant was instructed by his superior authority to visit the office of Deputy Director at Suri, Bhirbhum and find out the latest position of the Cash Book and open a new Cash Book from the closing balance of the locker and report.

Subsequently, the departmental proceeding was initiated against the applicant and he was charged for having “failed to physically verify the Cash Book, liquid cash and other Govt. Cheques/Bankers’ Cheques of the said office, which facilitated Shri Prasun Roy, Cashier of the said office to commit defalcation of huge Govt. money amounting to Rs. 58,85,500.00/- displaying gross negligence and dereliction of duty.”

In terms of the above charge, the final order imposed the punishment upon the charge officer of 20% of pension cut for a period of three years.

- ii) During the period of incidence of defalcation, Dr. Das Bhowmick was the *head of the office* as the Deputy Director and also the Drawing and Disbursing Officer of the said office. He was also charged for such negligence and was punished with a 10% pension cut for 1 year.

- iii) Although the instruction was to the effect that the applicant should find out the latest position of the cash book and open a new cash book from the closing balance of the locker, however, even from the admission of the applicant, he did not physically verify the cash/cheques which were inside the locker.

- iv) Since no copy of the report to be submitted by the applicant after his visit is available in the record, it is presumed that *no such report* was submitted by the applicant of his findings during his visit to the office of Deputy Director, Birbhum.

- v) The inquiry report submitted by the Inquiring Authority reveals that such a defalcation of Rs. 58,85,500.00/- was committed on and before 14.09.2009, well before the date of the inspection on 22.09.2009. Thus, the applicant as the Charged Officer was not a party to such defalcation directly. The statement “Had the charged officer acted diligently during his inspection, such defalcation would have been detected on the day of inspection” contradicts the statement made earlier in the same paragraph that such defalcation occurred on and before 14.09.2009.

From the submissions and the records, the Tribunal notes down the following important observations :-

The applicant was charged for his negligence in carrying out the instructions of the Director in checking and verifying the cash book. The final order of punishment alleges that the applicant failed to physically verify the cash book, liquid cash and the cheques which facilitated one Prasun Roy, the cashier to commit such defalcation. Therefore, the applicant has been penalised for his “gross negligence and dereliction of duty”. In the Tribunal’s view, although the respondent authority may be correct in pointing out some negligence on the part of the applicant, however, the Deputy Director in charge of the office had more responsibility and was directly answerable for such defalcation of Government money in his own office. Statutes and rules are very clear and specific about the responsibility of the HOD/DDO in proper maintenance of Government fund through cash books and other ledgers. Physical verification of such cash books and cheques are to be done on regular basis. It is not understood why a visiting officer visiting the office

for a day was charged for negligence in maintaining the cash book. Therefore, the charge that such negligence and dereliction of duty facilitated one Prasun Roy, the cashier to defalcate the Government money to the tune of Rs. 58,85,500/- is not only unfair, but also not sustainable in the eyes of law. In the opinion of this Tribunal, the Deputy Director of the office in which such defalcation took place bears a direct responsibility rather than the applicant who was a visiting officer visiting the Deputy Director's Office for only one day. The punishment imposed on the applicant is not sustainable for the reason that for defalcation committed in the office of the Deputy Director, the same Deputy Director was imposed a lesser punishment of only 10% pension cut for one year; whereas the applicant was charged 20% pension cut for three years! Mr. S.N. Ray's stating the reason for higher punishment to the applicant being due to his higher pay scale is completely preposterous and unacceptable.

In view of the above observations, this Tribunal has come to the conclusion that the Order dated 4<sup>th</sup> March, 2021, issued by the Additional Chief Secretary to the Government of West Bengal, Animal Resources Development Department imposing a punishment of 20% pension cut for three years on the applicant, Susanta Kumar Das is nonest in the eyes of law and is therefore quashed and set aside.

The Additional Chief Secretary to the Government of West Bengal, Animal Resources Development Department, Kolkata, - the respondent no. 2 is directed to pass a fresh order in the light of the above observations of the Tribunal. If any amount has been deducted from the applicant, in terms of the order dated 4<sup>th</sup> March, 2021, the same shall be refunded to the applicant.

**ORDER SHEET**

Form No.

Susanta Kumar Das.

---

Case No. OA 844 of 2021

**Vs.**  
THE STATE OF WEST BENGAL & ORS.

---

The entire exercise in passing a fresh order in view of the Tribunal's directions and refunding the deducted amount to the applicant should be completed within three months from the date of communication of this order.

Accordingly, the application is disposed of.

SAYEED AHMED BABA  
Officiating Chairperson & MEMBER (A)

H.S,SCN,SKG.