

**WEST BENGAL ADMINISTRATIVE TRIBUNAL**

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

**Present-**

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

**Case No. OA – 850 of 2021**

**Dr. Kamalakanta Saha - VERSUS - THE STATE OF WEST BENGAL & ORS.**

Serial No. For the Applicant : Mr. M.N. Roy,  
and Advocate

Date of order  
5  
17.05.2022

For the Respondents : Mr. S.N. Ray,  
Advocate

For Pr. A.G. (A & E),  
West Bengal : Mr. B. Mitra,  
Departmental Representative

The matter is taken up by the Single Bench pursuant to the order contained in the Notification No. 118-WBAT/1E-08/2003 (Pt. – II) dated 11<sup>th</sup> February, 2022 issued in exercise of the powers conferred under Section 6(5) of the Administrative Tribunals Act, 1985.

With the consent of both the parties, the matter has been taken up for hearing.

As per the applicant, he was charge sheeted on 23.07.2013. He was subsequently retired on 31.01.2014. The applicant had participated in the disciplinary proceedings by way of filing written statement of defence on 05.08.2013 (Annexure 'B'). The applicant was served with a Second Show Cause Notice on 27.11.2020 (Annexure 'D'), against which, he had already replied by letter dated 04.01.2021. However, as no final decision was communicated to the applicant and the applicant is not getting his pension and pensionary benefit. Being aggrieved with, he had approached this Tribunal in O.A. – 7 of 2021, which was disposed of vide order dated 10.02.2021 directing the respondent No. 2 to take final decision with regard to the disciplinary proceeding of the applicant and communicate the same within a period of six months, in default, the proceeding deem to be dropped. The said order was communicated by the counsel for the applicant and was received by the department on 24.02.2021. As per the applicant, even then neither the respondent had concluded the disciplinary proceeding within six months (though

**ORDER SHEET**

Form No.

**Dr. Kamalakanta Saha**

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Case No. **OA – 850 of 2021**

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

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reply to the Second Show Cause Notice was already submitted on 04.01.2021) nor they had approached this Tribunal for modification of the order and extension of time. Even they have not preferred a writ petition against the order. Being aggrieved with, the applicant has preferred this application praying for quashing of the entire disciplinary proceedings. It has been further submitted by the applicant that though in the Second Show Cause Notice, there is a proposal of 25% cut in pension as he retired in 2014 and was not allowed to commute his pension since 2014, he has already suffered financially for such delay in making payment of pension and payment of commuted value of pension. Therefore, he has submitted that even he has already suffered financially as a punishment. Thus, he has prayed for quashing of the disciplinary proceedings and also order dated 21.04.2022 in O.A. 739 of 2021 and asked for extension of benefit of the said.

The Departmental Representative of the A.G. has placed one letter dated 19.04.2022, whereby reminder has been sent to the Assistant Secretary, Animal Resources Development Department stating that as certain observation are not complied with, the A.G. is not in a position to make payment of provisional pension. Therefore, they cannot issue any sanction for continuation of provisional pension. The Departmental Representative of A.G. has submitted that they are not the sanctioning authority for making payment of provisional pension. Let a copy of the order be kept on record.

Today the counsel for the respondent has admitted that till date no final order has been served upon the applicant. He has further submitted, on instruction, that he has been severed with one letter dated 05.05.2022, wherein the Secretary, Department of Animal Resources Development had referred the disciplinary proceedings to the Secretary, Public Service Commission for their

Form No.

Dr. Kamalakanta Saha

Case No. **OA – 850 of 2021**

Vs.  
THE STATE OF WEST BENGAL & ORS.

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consultation. On query, the counsel for the respondent has admitted that neither any application for extension of time or modification of order has been filed nor they have preferred any writ petition against order dated 10.02.2021.

Heard all the parties and perused the records. It is noted that for earlier occasion, the applicant had approached this Tribunal in O.A. No. 7 of 2021, which was disposed of by this Tribunal directing inter alia:

*“In view of the above, as more than seven years time has lapsed to conclude the disciplinary proceedings and the applicant also retired in the year 2014, therefore, for the ends of justice, I direct the respondent no. 2 to take final decision with regard to the disciplinary proceedings of the applicant and communicate the same by way of reasoned and speaking order within six months from the date of receipt of the order, in default, the proceedings deem to be dropped.*

*Accordingly, the O.A. is disposed with no order as to cost.”*

Thereafter, the applicant had communicated the said order to the respondent which was received on 25.02.2021. Even then the respondent neither concluded the disciplinary proceedings by way of passing final order. Further reply to the Second Show Cause Notice was already submitted vide letter dated 24.02.2022. Therefore, the respondents have to take the final decision only within six months of time. Even then neither they have concluded the proceedings nor had approached this Tribunal for extension of time or praying for modification of the order as earlier order clearly stipulated to conclude the disciplinary proceedings within six months of time as the disciplinary proceedings was initiated in 2013, in default, the proceedings deem to be dropped as the applicant is getting provisional pension only.

Form No.

**Dr. Kamalakanta Saha**

Case No. **OA – 850 of 2021**

Vs.  
THE STATE OF WEST BENGAL & ORS.

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Today the counsel for the respondent has admitted that till date no final order has been served upon the applicant rather from the perusal of the letter dated 05.05.2022 stated inter alia:

***“I am to refer the subject under reference and to state that by the memo under reference, a punishment of pension cut of 25% permanently has been proposed by the SVC against the Charged Officer, Dr. Kamalakanta Saha, Ex-Advisor & Ex-Officio Principal Directorate, AH & VS, Directorate of AR & AH, West Bengal.***

***In terms of Rule 10 (1) (d) of the West Bengal Services (DCRB) Rule-1971, before issue of the final order, PSC, W.B. needs to be consulted.***

***Hence, the matter is being referred to the PSC, W.B. seeking statutory consultation in this regard.”***

From the above, it is clear that only on 05.05.2022 that too without the leave of the court, the respondents have sent it to Public Service Commission. It is very surprising that Second Show Notice was issued on 27.11.2020 without advice of the Public Service Commission. As per settled principle of law, in case of Group A Officer, before imposing any punishment, Public Service Commission has to be consulted and the Second Show Notice be served upon the applicant along with advice of the Public Service Commission.

In view of the above, I failed to understand the role of the Public Service Commission after issuance of the Second Show Cause Notice as reply has already been filed by the applicant against such Second Show Cause Notice. However, it is clear that the respondents did not take any steps after passing of the order of this Tribunal dated 10.02.2021.

Form No.

Dr. Kamalakanta Saha

Case No. **OA – 850 of 2021**

Vs.  
THE STATE OF WEST BENGAL & ORS.

---

It is further noted that the Senior Accounts Officer in Audit Accounts Department, A.G.(A & E), West Bengal vide his letter dated 19.04.2022 had communicated the following which is as follows:

*“In this connection it may also be mentioned that authority for pensionary benefits in respect of Dr. Saha was issued from this end as per sanction accorded by the Pension Sanctioning Authority under letter no. 1400-AR & AH/3P-04/2012 dated 17.07.2013. However, in returning the advice copies of RG and CVP, the Assistant Secretary under letter no. 1799-AR & AH/3P-04/2012 dated 14/09/2018 intimated that a Proceedings was pending against Dr. Saha at the end of State Vigilance Commission. In response, a letter under no. Pen.X/448(A)/13-14/1200302449/Ch-2/345795(ii)/202686 dated 11/10/2018 was issued with the request to consider desirability of sanctioning Provisional Pension in favour of Dr. Saha. But no such proposal for provisional pension has been received in this office till date. It is also seen from the application no. O.A. 850 of 2021 that provisional pension is being paid to Dr. Saha. In terms of Finance Department Memo No. 691-F dated 30/01/1981 WBS(DCRB) Rules 1971, has to be obtained from Accountant General, West Bengal. As no such admissibility report has been issued from this end in favour of Dr. Saha, how the said provisional pension has been paid to Dr. Saha is not understood at this end. The matter may be clarified. The matter was intimated under this office letter No. Pen.X/448(A)/13-14/LC/21-22/245/Ch-2/Out-312 Dt. 20/01/2022. However reply to the same is yet to receive in this office.*

*It is, therefore, requested once again to look into the matter and forward the proposal for pensionary benefits alongwith the details of provisional pension paid, if the said proceedings has been concluded at your end in compliance with the order dated 10/02/2021 of the Hon’ble WBAT in O.A. No. 7 of 2021.”*

**ORDER SHEET**

Form No.

**Dr. Kamalakanta Saha**

Case No. **OA – 850 of 2021**

Vs.  
THE STATE OF WEST BENGAL & ORS.

From the above, it not clear when the Departmental Representative of A.G. has submitted that no authority has been issued by A.G. for sanctioning provisional pension then how the applicant is receiving the provisional pension.

In view of the above, it is noted that the respondents are not at all interested to conclude the disciplinary proceedings which is pending since 2013 and even after granting six months time vide order dated 10.02.2021. From the perusal of Charge Sheet also it is noted that the only charge against the applicant is that the applicant had failed to physically verify cash book and cash balance and other Govt. Cheques/Bankers' Cheques of the said office. Even Sri Prasun Roy, Cashier was held responsible for the defalcation of Govt. money. However, there is no charge that the applicant was involved in such defalcation. However, due to the pendency of the disciplinary proceedings since 2013, he has already suffered. Further, as the order dated 10.02.2021 has neither been modified nor any application has filed for extension of time within six months. Even no writ petition has been preferred against the said order. Therefore, the earlier order dated 10.02.2021 has attained finality. Thus, I have no alternative to quash and set aside the Disciplinary Proceedings as initiated vide Memo dated 23.07.2013 and direct the respondent to make payment of admissible pension and retiral pensionary benefit within a period of eight weeks from the date of receipt of the order. Accordingly, the O.A.is disposed of.

URMITA DATTA (SEN)  
MEMBER (J)

A.K.P.