

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-881 of 2021

Md. Muntajul Rahaman -- **VERSUS** – The State of West Bengal & Ors.

Serial No. and
Date of order

For the Applicant : Mr. G.P. Banerjee, Ld. Advocate.

For the State Respondent : Mr. M.N. Roy, Ld. Advocate.

12
17.01.2024

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 counsels for the contesting parties, the case is taken up for consideration sitting singly.

As allowed by an order dated 04.07.2023, Mr. Banerjee has filed a supplementary affidavit, be kept on record. Mr. Banerjee also prays for liberty to delete para 4 of the supplementary affidavit. Allowed.

The applicant has prayed for setting aside the impugned final order dated 30.04.2019, also followed by a supplementary prayer which is for setting aside the impugned appellate order passed by the Additional Commissioner of Police (II). After completion of the disciplinary proceedings, the Disciplinary Authority, the Deputy Commissioner of Police, 5th Battalion, Kolkata Armed Police passed the dismissed employee preferred an appeal before the Appellate Authority on 13.05.2019. After considering the appeal, the Appellate Authority being the Additional Commissioner of Police (II), Kolkata passed the order upholding the punishment awarded by the Disciplinary Authority. Aggrieved by such dismissal of his appeal, the applicant preferred one representation addressed to the Commissioner of Police dated 01.10.2021. This representation was considered and decision of the Commissioner of Police was communicated to the applicant vide Memo No. 1905 dated 29.10.2021, informing to the applicant that the Commissioner of Police has regretted his prayer.

Mr. Banerjee submitting on behalf of the applicant draws attention to Regulation 12 of Chapter 19 of Police Regulations of Calcutta, 1968, Volume II. The Regulation is referred as under:

“The Government or the Commissioner may call for the proceeding of any case when no appeal lies and pass such orders as it was he may deem fit, provided that no order may under this Rule shall be made to the prejudice of any person unless he has had an opportunity of showing cause against the proposed order”.

In reading the above Regulation, Mr. Banerjee submits that, as required by

ORDER SHEET

Md. Muntajul Rahaman

Form No.

Case No. **OA-881 of 2021**

Vs.

The State of West Bengal & Ors.

the Regulation, no opportunity of hearing was extended to this applicant. Therefore, action taken by the Commissioner of Police was in deviation of the above Regulation 12. Attention has been drawn by Mr. Banerjee to the Memo No. 1905, in which it is clear that such communication regretting the revision was based on Regulation 12, Chapter 19 of Police Regulations of Calcutta, 1968, Volume I.

Responding to Mr. Banerjee's reference to Regulation 12 and his grievance that no opportunity of hearing was given to the applicant, Mr. Roy, learned counsel for the respondent authority submits that as per the Police regulations of Calcutta, 1968 and under specific Regulations 10 and 11, the respondent authority had already considered and disposed of his appeal as per proper procedure. The law does not allow any dismissed employee one more opportunity to appeal over and above the appeal under Regulation 10 and 11 of Police regulations of Calcutta, 1968. Besides, the Regulations 12 can be invoked only when the Government or the Commissioner, in absence of any appeal, prefers to review the case on its own. Here in this case, since the appeal was already disposed of, the respondent authorities were not under any obligation legally to provide an opportunity of hearing as expressed by Mr. Banerjee, to hear his representation after closure of the procedure relating to appeal.

Since reply has been filed by the respondent authority, liberty is given to the applicant's side to file rejoinder, if so wished. Such liberty is also extended to the State respondent's side to file exception to the supplementary, is so wished.

Let the matter appear under the heading "**Further Hearing**" on **05.09.2024**.

CSM/SS

SAYEED AHMED BABA
Officiating Chairperson & Member (A)