

WEST BENGAL ADMINISTRATIVE TRIBUNAL

Bikash Bhavan, Salt Lake, Kolkata – 700 091.

Present-

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

Case No. OA – 96 of 2022

Monojit Bagish - VERSUS - THE STATE OF WEST BENGAL & ORS.

Serial No. and Date of order	For the Applicant	: Mr. M.N. Roy, Advocates
<u>3</u> 31.03.2022	For the Respondents	: Mr. G.P. Banerjee, Advocate

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 11th 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.

The instant application has been filed praying for following relief:

I. For that the acts and deeds of the respondent authorities in not concluding the said Disciplinary Proceedings is gross abuse of the process of law and against the norms of holding disciplinary Proceedings.

II. For that the respondent authorities for the reasons best known to them are keeping tight over the issue and such your applicant is suffering in the hands of the Disciplinary Authority both in terms of mental agony as well as his future prospects in service career.

III. For that the respondent authorities failed to conclude the disciplinary proceeding that was

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initiated against your applicant with an oblique motive to harass your applicant.

IV. For that the it is well settle principles of law that justice is not only done but deemed to have done, but in the instant case the respondent authorities with an ulterior motive is delaying the conclusion of the said proceedings, which is against the landmark judgement of the Hon'ble Supreme Court of India in the case of Prem Nath Bali –Vs- The Registrar, High Court of Delhi and another reported in (2015) 16 SCC Page 415, pronounced under Article 141 of the Constitution of India, being the law and land.

V. For that the respondent authorities failed to consider the fact that the applicant herein has already submitted his Written explanation to the alleged charges that has been brought against him in a departmental proceeding vide Departmental Proceeding No. 01/2017 and has always co-operated with the enquiring authority as and when asked for, and therefore delay cannot be attributable towards the applicant herein.

VI. For that this Hon'ble Tribunal has directed the respondent no. 3 herein to conclude the departmental proceeding by passing a reasoned and speaking order, but the same was not complied with even after having full knowledge of the solemn orders.

VII. For that the applicant herein has not prayed for any accommodation and in all occasions as and when asked by the respondent authorities remained present and co-operated with them in the departmental proceeding, so initiated against him, but the same till date has not been concluded, and as such the same requires to be quashed/set-aside by a judicial pronouncement, and as such your applicant is approaching before this Hon'ble Tribunal agitating his cause.

VIII. For that time is the essence in conducting departmental proceeding, but by giving a total go-bye to the same, then that becomes punitive in nature and the same seems to be colorable exercise of administrative powers by the respondent authorities.

IX. For that in guise of pendency of the departmental proceeding so initiated against your applicant, the juniors in the gradation list are being allowed promotion superseding your applicant herein, which is practically uncalled for, consequent thereof the applicant is losing his seniority amongst them.

X. For that despite of the aforesaid proposition of law as settled by the Hon'ble Supreme Court of India, this Hon'ble Tribunal vide its solemn order dated 05.08.2021 has also further allowed time to conclude the departmental proceeding so initiated

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against your applicant within a period of six months, but the aforesaid period is also lapsed in the meantime and as such the applicant herein approaching before this Hon'ble Tribunal for quashing/setting aside of the said departmental proceeding.

XI. For that unless and until the departmental proceeding as initiated is quashed/set-aside the future prospect of service tenure of your applicant is at stake, and consequence thereof your applicant shall continue to suffer irreparable loss and injury.

XII. For that the acts and deeds of the respondent authorities are in a manner to harness the applicant.

XIII. For that the action/inaction of the respondent authorities are also otherwise bad and illegal and therefore this Hon'ble Tribunal should intervene in the matter of process of judicial review.

XIV. For that acts and deeds of the respondent authorities are Illegal, Arbitrary Bias, Malafide, Malicious, ill motivated, and also otherwise bad in law.

XV. For that it is against the principle laid down in the Constitution of India by violating Article 14, 19 and 21 as Enshrined in The Constitution of India.”

During the course of hearing, the counsel for the applicant has referred earlier order dated 05.08.2021 passed in O.A. – 340 of 2021, whereby the

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following order was passed:

“**Heard both the parties and perused the record. It is noted that the disciplinary proceeding was initiated in the year 2017. However, after laps of more than 4 years, the proceeding has not been concluded yet. Though as per rule, the respondents has to conclude the disciplinary proceeding within a period of 6 (six) months time. However, as the matter is related to disproportionate assets of the applicant, therefore, further 6 (six) months time is granted as a last chance to conclude the disciplinary proceeding. Accordingly, the respondent no. 3 i.e. Superintendent of Police, Howrah, government of West Bengal is directed to conclude the disciplinary proceeding within a period of 6 (six) months time and communicate his decision by way of reasoned and speaking order from the date of receipt of the order. The applicant is also directed to co-operate with the disciplinary authority. However, it is made clear that I have not observed anything on the merit of the case.**

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

During the course of the hearing, the counsel for the applicant has submitted that till date the disciplinary proceeding is in a stage of enquiry

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proceeding. Therefore, the entire proceeding should be quashed.

The counsel for the respondent has submitted that they have already served the copy of the earlier order dated 05.08.2021 as well as reminders to the Vigilance Commission as the Vigilance commission had enquired in to the matter. Therefore, they have asked for some time to conclude the disciplinary proceeding as the allegation against the applicant is with regard to serious charge of disproportionate assets.

Heard both the parties and perused the records. It is noted that the disciplinary proceeding was initiated on 02.03.2017 and the applicant in earlier occasion came before the Tribunal in O.A. – 340 of 2021 with a prayer to conclude the disciplinary proceeding and this Tribunal had granted 6 (six) months time to conclude the said disciplinary proceeding from the date of receipt of the order. But it seems that till date no progress has been made in this disciplinary proceeding. Since the case is involved with serious charge of disproportionate assets, therefore, a last chance is granted to the respondent no. 3 to conclude the disciplinary proceeding within another 6 (six) months and communicate the same by way of reasoned and speaking order from the date of receipt of the order, in default, the proceeding should be vitiated.

Accordingly, the O.A. is disposed of.

Since for circumstances beyond control, the Registry is unable to furnish plain copies of this order to the learned advocates for the parties, the Registry is directed to upload this order on the website of the Tribunal forthwith and parties are directed to act on the copies of the order downloaded from the website.

A.K.P.

URMITA DATTA (SEN)
MEMBER (J)