

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-307 of 2022

Gitesh Das Mahapatra. -- VERSUS – The State of West Bengal & Others.

Serial No. and
Date of order

For the Applicant

: Mr. G. Halder,
Learned counsel.

18
15.05.2025

For the State Respondents

: Ms. R. Sarkar,
Mr. S. Debray,
Mrs. A. Bhattacharya,
Mr. R. Bag,
Learned Departmental Representatives.

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.

The applicant has filed this application praying for setting aside the impugned charge-sheet issued vide Memo No. 989 dated 22.04.2022. The applicant also prays for a direction to the respondent authorities to regularise the period of suspension from 29.04.2013 to 16.04.2017 and to pay the applicant full salaries and allowances.

Mr. M. N. Roy, learned counsel appearing on behalf of the applicant presents the following points of submission in support of this application:

- (i) That the charges framed against the applicant is non est in the eyes of law for the reason that the same charges levelled against the applicant by the authorities in the earlier charge-sheet dated 08.08.2014. Those charges were challenged by the applicant before this Tribunal in OA 282 of 2017. The respondent authorities had then agreed before the Tribunal that these charges were the draft charges only.
- (ii) In view of the fact that the Tribunal had already heard and leave was not granted to file fresh set of charges against the applicant, therefore, the charges framed under Memo 989 dated 22.04.2022

Form No.

Case No. **OA-307 of 2022.**

Vs.

The State of West Bengal & Ors.

being similar charges is non-est in the eyes of law and not tenable as it is also barred by principles of constructive res judicata.

In support of his submission he relied upon following relevant judgements of the Hon'ble Apex Court after filing copies of those before the Tribunal:

- (i) Sarguja Transport Service v. State Transport Appellate Tribunal, M.P., Gwalior and Others reported in (1987) 1 SCC 5 (paragraph nos. 7 and 9);
- (ii) State of U.P. v. Nawab Hussain reported in (1977) 2 SCC 806 (paragraph nos. 3 to 5);
- (iii) Raghavendra Rao and others v. State of Karnataka and Others reported in (2009) 4 SCC 635 (paragraph nos. 12 and 13);
- (iv) Central Bank of India and Others v. Dragendra Singh Jadon reported in (2022) 8 SCC 378 (paragraph nos. 15 and 16)
- (v) Samir Kumar Majumder v. Union of India and Others reported in 2023 SCC OnLine SC 1182 (paragraph nos. 33 to 36)

Per contra, Mrs. Bhattacharya, learned counsel appearing on behalf of the State respondents made the following submissions:

- (i) The applicant's side is wrong to conclude that the present charges dated 22.04.2022 being similar to the charges framed earlier on 08.08.2014 is not tenable. It is admitted that the first charge sheet dated 08.08.2014 was a draft charge sheet issued inadvertently, which inadvertently, which in OA 282 of 2017, the Tribunal had not accepted those as proper charges. Therefore, the department was obliged to frame a new set of charges not as draft but as final charges. Hence, the argument that these charges are not proper charges or charges similar to the draft charges framed on 08.08.2014 is hardly a valid point, so it is not correct to say that the charge-sheet dated

Form No.

Case No. **OA-307 of 2022.**

Vs.

The State of West Bengal & Ors.

22.04.2022 is invalid due to res judicata.

- (ii) The State respondent had not prayed for any leave before the Tribunal in OA 282 of 2017 nor was such leave required under the law to frame a fresh set of charges against the applicant. The State is well empowered to frame charges against the charged officer which it has done by Memo No. 989 dated 22.04.2022. The State is not barred by any law prohibiting it to frame charges against the applicant. Though the Tribunal heard the matter in OA 282 of 2017, but did not pass any direction on the respondent authorities prohibiting it from framing any charges in the future against the applicant.
- (iii) Reading out the relevant part of the order of this Tribunal dated 31.03.2022 in OA 282 of 2017, it is made clear that the main subject matter was the draft charge-sheet which the Tribunal in its finding had clearly comprehended this core issue that the charge-sheet as draft which reached its finality and was not challenged by the applicant's side.
- (iv) Attention was drawn to para nos. 6.10, 6.11, 6.12 and 6.14 of the instant application as well as page no. 16 to 19 of the supplementary affidavit to the reply filed by the State respondent. The applicant himself in his application and in his own words has admitted that the charges were draft in nature and he also prayed for issuing a charge-sheet, not a draft charge-sheet.
- (v) The definition of res judicata as provided in section 11 of the Code of Civil Procedure was referred and it was argued that this Tribunal while hearing the matter in OA 282 of 2017 did not go into the merits of the charge-sheet. The main issue was whether the charge-sheets being titled as draft was a proper

Form No.

Case No. **OA-307 of 2022.**

Vs.

The State of West Bengal & Ors.

and valid charge-sheet or not. The Tribunal had not made any comments on the merit of the draft charge-sheet. Therefore, once draft charge-sheet has been issued and later withdrawn, a new set of charge sheets issued with similar charges does not become res judicata in terms of section 11 of Code of Civil Procedure.

In support of her submission she relied upon following relevant judgements of the Hon'ble Apex Court after filing copies of those before the Tribunal:

- (i) Devendra Pratap Narain Rai Sharma v. State of Uttar Pradesh and others reported in 1961 SCC online SC 90 (paragraph no. 8)
- (ii) Anand Narain Shukla v. State of Madhya Pradesh reported in (1980) 1 Supreme Court Cases 252 (paragraph no. 3)
- (iii) Union of India and Others v. Mohd. Ibrahim reported in (2004) 10 Supreme Court Cases 87 (paragraph no. 2)
- (iv) State of Punjab and Others v. Chander Mohan reported in (2005) 13 Supreme Court Cases 81 (paragraph no. 4)

Mr. M. N. Roy, learned counsel for the applicant has again made it clear that the applicant is challenging the charge-sheet only on the ground of issuing a fresh round of charge-sheets after the draft charge-sheet was withdrawn.

Having heard the submissions of the learned counsels of both sides and after perusing the reply, rejoinder, supplementary affidavit to the reply as well as exception to that supplementary affidavit and after going through the judgments of Hon'ble Apex Court so relied upon by the applicant as well as by the State Respondents, the Tribunal has come to its conclusion that it is well on record in the order dated 31.03.2022 of this Tribunal passed in OA 282 of 2017 that the Memo dated 08.08.2014 vide which the

Form No.

Case No. **OA-307 of 2022.**

Vs.

The State of West Bengal & Ors.

applicant was charge sheeted was a draft one for which he initially challenged the impugned draft charge sheet dated 08.08.2014 on the ground that the said charge sheet was issued in a draft stage. Since the respondents did not want to proceed with the draft charge sheet dated 08.08.2014, same became infructuous and accordingly the OA 282 of 2017 was disposed of being infructuous.

In that said order, submission of the counsel for the applicant was also specifically recorded that the subsequent final Article of Charges and Statement of misconduct was not received by him.

Such submission of the applicant clearly indicated that as per him the Memo dated 08.08.2014 was not a charge sheet but a draft of the charge sheet. Applicant cannot go beyond such stand taken in OA 282 of 2017 because he is barred by principles of estoppel. This stand does not lend support to his proposition that charges framed under Memo 989 dated 22.04.2022 being similar charges is non est in the eyes of law and not tenable as it is also barred by principles of constructive res judicata.

It is well apparent that the Tribunal in disposing of the earlier application being OA 282 of 2017 did not go into merit of the charges. It is also fact that the Hon'ble Apex Court of India in plethora of judgements has settled the principle that if first enquiry or proceedings or final order is vitiated and thus set aside on technical ground, a fresh departmental enquiry on the same old charges can be initiated or held on merit.

The Hon'ble Apex Court of India has also made it clear in its judgement reported in (2006) 12 SCC 28 that if any person has been exonerated in a charge through enquiry by competent authority, then the second enquiry would not be maintainable on that very charge. But in this case the applicant was not exonerated either by the competent authority or by this Tribunal in OA 282 of 2017 which was only disposed of on technical ground as infructuous, hence there is no irregularity in formally

Form No.

Case No. **OA-307 of 2022.**

Vs.

The State of West Bengal & Ors.

issuing of impugned charge sheet vide memo no. 989 dated 22.04.2022 as question of double jeopardy will not arise here.

Regarding his second prayer in the matter of regularising the period of suspension from 29.04.2013 to 16.04.2017 and to pay the applicant full salaries and allowances, it will be subject to the result of the present disciplinary proceeding initiated vide charge sheet dated 22.04.2022.

Thus, this Tribunal does not find any merit in this application and therefore, this instant application is disposed of without passing any order.

SAYEED AHMED BABA
Officiating Chairperson & Member (A)

S.M.