

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-55 of 2023

Pratip Rudra. -- **VERSUS** – The State of West Bengal & Others.

Serial No. and
Date of order

For the Applicant

: Mr. G. Halder,
Learned counsel.

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15.05.2025

For the State Respondents

: Mr. G. P. Banerjee,
Learned counsel.

For the Public Service
Commission, West Bengal.

: Mr. S.Bhattacharjee,
Learned counsel.

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 prayer in this application is for setting aside the entire departmental proceeding including the punishment imposed upon the applicant. Mr. M.N. Roy, learned counsel for the applicant submits that the entire departmental proceeding as well as the punishment imposed was in violation of the established Service Rules. In particular, he relies on his submission that the Disciplinary Authority before imposing the punishment did not consult the PSC, WB. The applicant, Pratip Rudra as a Superintending Engineer belongs to a Group-A post and as per Rule 10(13) of West Bengal (Classification, Control and Appeal) Rules, 1971, it was mandatory on the part of the authority to consult the PSC, WB since the applicant is a Group-A officer before imposing the punishment.

Mr. G. P. Banerjee, learned counsel for the State respondent refers to para 7(iv) of the reply submitted by the respondent in which the respondent has stated that the authority took the decision to impose penalty on his own volition without being influenced by the advice of the PSC, WB. The respondent also mentions that the function of PSC, WB is purely advisory in nature and such advice is not binding on the respondent authority.

In the rejoinder, the applicant has refuted the contention of the

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respondent with regard to the advice of PSC, WB since the applicant belongs to Group-A officer before passing the final order of the punishment. Such consultation was mandatory before passing the final order of punishment as per Rule 10(13) of West Bengal (Classification, Control and Appeal) Rules, 1971. Therefore, such action on the part of the respondent was violation of establishment norms.

The punishment imposed upon him is not disproportionate to the charges in the disciplinary proceedings. The punishment was reasonable and very much within the realm of Law.

The primary charge against the charged officer was his failure to give any cogent explanation for possessing an amount of Rs. 75,66,657.00 during the period 01.01.2014 to 31.12.2016 in terms of Rule 3(2) of the West Bengal Services (Duties, Rights & Obligations of the Government Employees) Rules, 1980. The article of charge mentions a total of Rs. 76,54,744.00 is spent by the charged officer during the period 19.04.2010 to 31.12.2016. The article of charge also shows that during this period the total income of Pratip Rudra through known sources of income was only Rs. 61,87,248.00. The charged officer has given his replies to the charges which after examination we are not found to be satisfactory by the disciplinary authority. The disciplinary authority in the article of charges has shown the details of earnings through salary and other known sources of income and also the expenses made by Pratip Rudra which are in record. All the figures shown about his acquiring the assets both movable and immovable are supported by proper documents. The enquiry was conducted by Shri Biswarup Bandyopadhyay, W.B.H.J.S., Commissioner for Departmental Enquiries, State Vigilance Commission, West Bengal, the Inquiring Authority after conclusion of the enquiry recorded the following in the report :-

“Therefore, on careful appreciation of entire evidence on record with the touchstone of preponderance of probability I am of the considered view that the argument advanced by the C.O. claiming benefit of income to the tune

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of Rs. 65,19,413/- in total is not tenable in the eye of law. It is established with sufficient evidence that during the check period the CO acquired assets to the tune of Rs. 76,54,744/- and had income to the tune of Rs. 61,87,248/- and incurred expenditure to the tune of Rs. 60,99,161/- during the same period as a result of which an amount of Rs. 75,66,657/- is found to be disproportionate to the known sources of income of the CO. In that context it is needless to mention that the judgement of Hon'ble Supreme Court in Krishnanand Agnihotri's Case (supra) relied upon by the CO is not applicable. It appears that the prosecution has successfully proved the Article of Charge with ample evidence and accordingly the charged officer Sri Pratip Rudra is found guilty in respect of the charge named against him by the Disciplinary Authority."

The enquiry report of the Inquiring Authority was accepted by the Principal Secretary and the Disciplinary Authority. After given opportunity to the charged officer to respond to the proposed punishment of lowering five stages of his current pay band for a period of five years. The final order imposing such punishment was passed vide Memo. 4181 dated 14th December, 2022.

Although, the applicant as the charged officer does not disagree that the entire disciplinary proceedings was conducted following due process of law but since he belongs to the Group-'A' service and as per Rule 10 of West Bengal Services (Classification, Control & Appeal) Rules, 1971, the advice of the West Bengal Public Service Commission was not obtained or if obtained, it was not communicated to him. The main emphasis of his counsel was also on this point only. The Rule 10 of West Bengal Services (Classification, Control & Appeal) Rules, 1971 relying on for such argument is as follows :-

"10.(13) In every case in which it is necessary to consult the Commission, the record of the inquiry together with a copy of the notice given under clause (b) of sub-rule (12) and the representation, made in response to such notice, if any, shall be forwarded by the disciplinary authority to the Commission for its advice.

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(14) On receipt of the advice of the Commission the disciplinary authority shall consider the representation, if any, made by the Government servant as aforesaid, and the advice given by the Commission and determine what penalty, if any, should be imposed on the Government servant and pass appropriate orders on the case.

(15) In any case in which it is not necessary to consult the Commission, the disciplinary authority shall consider the representation, if any, made by the Government servant in response to the notice under clause (b) of sub-rule (12) and determine what penalty, if any, should be imposed on the Government servant and pass appropriate orders on the case.

(16) Orders passed by the disciplinary authority under sub-rule (9) or sub-rule (10) shall be communicated to the Government servant who shall also be supplied with a copy of the report of the enquiring authority and, a statement of its findings together with brief reasons for disagreement, if any, with the findings of the enquiring authority, unless they have already been supplied to him, and also a copy of the advice, if any, given by the Commission and, where the disciplinary authority has not accepted the advice of the Commission, a brief statement of the reasons for such non-acceptance."

Mr. Roy also relied on a judgement of the Hon'ble Supreme Court while arguing that consultation with the West Bengal Public Service Commission is mandatory.

However, Mr. Banerjee, learned counsel argued that the disciplinary proceedings being a quasi-judicial process in which the disciplinary authority has to act in a free and fair manner such advice was not felt essential.

Thus, from the above observations, the Tribunal has come to the conclusion that at a very vital point of the disciplinary proceedings, the disciplinary authority failed to observe a legal requirement by not seeking the advice of the Public Service Commission before imposing the punishment upon the charged officer. If such advice was obtained and received, it was also obligatory on the part of the disciplinary authority to supply a copy of the

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advice to the charged officer. Upon receipt of such advice, the charged officer gets another opportunity to file a representation stating his submissions relating to the specific punishment. Since no such advice was obtained, therefore, no such copy was supplied to the charged officer, hence an opportunity was also denied to the charged officer.

In view of the above observations, the Tribunal quashes and sets aside the final order passed by the disciplinary authority upon the charged officer vide Memo-4181 dated 14.12.2022 with a direction to the disciplinary authority to seek advice of the Public Service Commission, West Bengal and once in receipt of such advice, communicate a copy to the charged officer. Such advice of the Commission be sought within four weeks from the date of communication of this order. Once receiving a copy of the Commission's advice, if the charged officer wishes to furnish a representation before the respondent authority, he may do so within two weeks from receipt of such advice. If the representation is submitted by the charged officer, the same may be accepted and after giving an opportunity of hearing, the final order be passed within the period of 60 days from the date of submission of such representation.

The interim order dated 19.04.2023 passed by this Tribunal stands vacated.

SAYEED AHMED BABA
Officiating Chairperson & Member (A)

S.M.