

**ORDER SHEET****WEST BENGAL ADMINISTRATIVE TRIBUNAL****Present-****The Hon'ble Smt. Urmita Datta (Sen), Member (J)****& The Hon'ble P. Ramesh Kumar, Member (A)****Case No MA-102 of 2018 (OA – 1034 of 2017)****Chanchal Kundu –Vs- The State of West Bengal & Others.**

Serial No. and Date of order. 1	Order of the Tribunal with signature 2	Office action with date and dated signature of parties when necessary 3
<p style="text-align: center;"><u>1</u> 03.07.2018</p>	<p><b>For the Applicant : Mr. S. Samanta, Mr. P.K. Mondal, Advocates.</b></p> <p><b>For the Respondents : Mr. S.K. Mondal, Advocate.</b></p> <p>The instant M.A. has been filed praying for following relief:</p> <p><i>“a) DIRECTION do issue quashing and/or setting aside the Memo dated 03.08.2017 being Annexure “A-9” hereto and the charge sheet dated 11.07.2001 being Annexure “A-2” hereto as well as the order of suspension dated 08.08.1997 being Annexure “A-1” hereto and thereupon directing the respondent authorities to reinstate the applicant in service with all consequential benefits with payment of salaries and allowances in accordance with rules along with all arrears as if there had never been any departmental proceeding against the applicant and further to command them to act and proceed strictly in accordance with law;</i></p>	

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	<p><i>b) INJUNCTION do issue upon the respondent authorities restraining them from acting in any manner or any further manner on the basis of the Memo dated 03.08.2017 being Annexure "A-9" hereto and the charge sheet dated 11.07.2001 being Annexure "A-2" hereto as well as the order of suspension dated 08.08.1997 being Annexure "A-1" hereto, and thereupon to allow the applicant to resume duties forthwith;</i></p> <p><i>c) DIRECTION in the nature of certiorari do issue upon the respondent authorities directing them to produce and / or cause to be produced the entire records of the case and thereupon to pass necessary orders for rendering conscionable justice;</i></p> <p><i>d) Costs and costs incidental hereto;</i></p> <p><i>e) And / or to pass such other or further order or orders as to your Lordships may seem fit and proper;"</i></p> <p>According to the counsel for the applicant, applicant was implicated in criminal case being</p>	

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	<p>Bidhannagar North Police Station Case No.180/1997 u/s 467/468/471/420/120B of I.P.C. and was detained in the custody for the period exceeding 48 hours. It was alleged that he joined the service on the basis of some fraudulent documents and as he was under custody more than 48 hours, he was put under deemed suspension vide order dated 08.08.1997, which is continuing till today. Thereafter, he was served with charge sheet dated 11.07.2001 on the self-same cause of action, against which he preferred one O.A. No. 1089/2001, wherein one interim order was granted on 08.08.2001 by way of staying the departmental proceedings till next date and the said interim order was extended on subsequent dates and was modified on 25.02.2104 directing inter alia</p> <p style="text-align: center;"><i>“There is an interim order regarding stay of the departmental proceeding. Now Mr. Sil submits that let the departmental proceeding be allowed to continue, but final order would not be passed till the disposal of the application.</i></p> <p style="text-align: center;"><i>In view of the submissions advanced by ld. Advocates of both sides, the interim order so passed is slightly modified to the effect that</i></p>	

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	<p><i>the departmental proceeding may continue, but final order could not be passed without the leave of the court."</i></p> <p>Being aggrieved with, the applicant approached before the Hon'ble High Court in COST No. 10/2004 which was disposed of vide order dated 27.09.2004 with following direction:</p> <p><i>"In response to the submissions made by the learned counsel for the state-authority and having regard to the nature and gravity of the case the Tribunal is requested to dispose of the case as expeditiously as possible"</i></p> <p>Thereafter, in the light of the High Court's order this Tribunal on 18.04.2005 had passed the following order :</p> <p><i>"In such situation, hearing the parties before us the only order that could be passed by this Tribunal at this stage to stay the departmental proceeding till conclusion of the criminal trial of the appropriate criminal court. Liberty be given to both the parties to mention for its inclusion before this Tribunal depending on</i></p>	

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	<p><i>the situation itself."</i></p> <p>Thereafter, TR No. 49/2006 arising out of G.R. No. 1478/2005 was disposed of on 10.08.2006 withholding inter alia:</p> <p><i>"In the Ratio of R.K. Mishra -Versus - State of Bihar (06) C. Cr. L. R. (S.C.) 552 it was held pure sanction is necessary to enuntiate the criminal proceeding. The Hon'ble court putting embargo to entertain the proceeding further held "a court therefore is precluded from entertaining the complaint of taking notice of it or exercising the jurisdiction, if it is in respect of a public servant, who is accd. of an offence alleged to have been committed during the discharge of his official duty. "</i></p> <p><i>To sum up all the proposition of law settled by the Hon'ble Apex Court of India I am constrained to hold that the accd. should be discharged as there is no prospect or further to entertain this case for further period. Accordingly the accds. are discharged and freed from bail bond. The case stands dismissed. Surety are discharged."</i></p>	

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	<p>Thereafter, as per the applicant, he made representation before the authority for withdrawing of his suspension and finalising of his disciplinary proceedings vide letter dated 10.02.2006 and lastly on 11.05.2017 (Annexure A/7). However, subsequently the respondents issued one Memo dated 03.08.2017 whereby they had appointed enquiry authority. Being aggrieved with, the applicant had filed the instant OA in No. 1034/2017 mainly on the ground of delay and laches. As per the counsel for the applicant since filing of the instant OA, none appeared for the respondents. However, MA application has been filed praying for staying for challenging the second show cause notice and also staying for further action from passing any final order as per the enquiry report.</p> <p>The counsel for the respondents has submitted that it was not possible for the department to know about the fate of the criminal case. Therefore, it was the duty of the applicant to inform them about the outcome of the criminal case. According to the counsel for the respondent, he came to know about the charges</p>	

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	<p>about his criminal case in the year 2017 only.</p> <p>Therefore, he has prayed for some time to file reply and he has also opposed for passing of any interim order in this regard.</p> <p>The counsel for the applicant has prayed for interim protection since he is in the apprehension that the authority may impose punishment during the pendency of this O.A. The counsel for the applicant has one judgement passed by the Hon'ble High Court in CPAN 1224/2003 (WPST No. 612/2003) wherein it has been held:</p> <p><i>“There is ample authority for the proposition that in a situation when the respondent on getting notice from the petitioner, that an injunction petition will be moved before a Court, hurries up things in an effort to circumvent the impending Court proceedings or rushes to overreach the Court by anticipating its order with a view to stealing a march over the opponent, the Court can, in a appropriate case, by issuing an injunction order in a mandatory form, nullify the steps</i></p>	

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	<p><i>hurriedly taken by the respondents after the notice was received."</i></p> <p>The counsel for the applicant has further vehemently submitted that he has challenged the appointment of enquiry authority, who has been appointed after a lapse of long time, before this Tribunal in the instant OA. Though the respondents never appear but they have hurriedly proceeded with the disciplinary proceedings by way of issuance second show cause notice indicating the punishment of dismissal from service which has been served upon him on 12.06.2018. Therefore, the respondent may be granted time to file reply but they should be stopped from passing any final order during pendency of the OA.</p> <p>Heard the parties and perused the case, it is noted that as per the applicant he was discharged from the criminal case in the year 2006 and intimated the department in the year 2006 onwards. Respondents are directed to file reply both in MA and OA by four weeks, rejoinder, if any, two weeks thereafter.</p>	



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A.K.P.	<p>However, as the applicant has challenged the disciplinary proceedings itself therefore the respondents are directed not take further action in this regard till the disposal of O.A.</p> <p>Accordingly, the M.A. is <b>disposed of</b>.</p> <p>Let the matter be listed on <b>14.08.2018</b>.</p> <p><b>P. RAMESH KUMAR</b>                      <b>URMITA DATTA (SEN)</b> <b>MEMBER (A)</b>                              <b>MEMBER (J)</b></p>	