

**IN THE WEST BENGAL ADMINISTRATIVE TRIBUNAL
BIKASH BHAVAN, SALT LAKE CITY
K O L K A T A – 7 0 0 0 9 1**

Present :-

**The Hon’ble Mrs. Urmita Datta(Sen)
MEMBER (J)**

-AND-

**The Hon’ble Mr. P. Ramesh Kumar
MEMBER(A)**

J U D G E M E N T

-of-

Case No. OA-1381 of 2013

Dhiraj Kumar Mondal.....Applicant.

-Versus-

State of West Bengal & others....Respondents

**For the Applicants :- Mr. Goutam Pathak Banerjee,
Learned Advocate**

**For the State Respondents :- Mr. Manujendra Narayan Roy,
Mr. Gourav Halder,
Learned Advocates.**

Judgement delivered on :

**The Judgement of the Tribunal was delivered by :-
Hon’ble Mrs. Urmita Datta (Sen), Member(J)**

J U D G E M E N T

The instant application has been filed praying for the following reliefs :

- (a) An order quashing and setting aside the impugned charge sheet issued by Disciplinary authority on 28-09-2012 which is Annexure "A" to this application.**
- (b) Any further order or orders as Your Lordships may deem fit and proper.**
- (c) To quash and set asides the impugned order which is Annexure "C" to the Original Application by which the prayer of the applicant for taking assistance of a lawyer has been rejected and direction upon the respondents to forthwith allow the applicant to defend his case by engaging a lawyer of the applicant of his own choice.**

According to the applicant, he joined the police force as a constable on 01-03-1981. Subsequently he was promoted to the post of Assistant Sub Inspector of Police in the year 2011 and at the time of his promotion no Disciplinary Proceeding was pending against him. However, all of a sudden on 28-09-2012, he was served with a charge sheet with regard to some alleged issues occurred between 1994 to 1999 (Annexure A).

The applicant thereafter filed representation against the charge sheet denying the charges and prayed for copies of certain relevant documents in order to defend his case(Annexure B).

According to the applicant the charge sheet is not maintainable as the charge sheet has been issued in the year 2012 with regard to some allegation during the period of 1994 i.e. about after 13 years. Being aggrieved with, he has filed the instant application challenging the issuance of charge sheet. As per the applicant, with regard to the purchase of land by his wife, he submitted in his annual property declaration in the year 2000 and according to the applicant the said property was purchased out of the income of his wife which means that the respondents were very much aware of such property. However the charge sheet has been issued in the year 2012 only. Further with regard to the second allegation that he had procured on property without the prior sanction of the authority. It has been submitted by the applicant that the Hon'ble High Court in the case of Ram Gopal Bhattacharjee , had already considered Rule 15 (2) and was of the opinion that the 'Knowledge' as per the Rule 15 (2) cannot be equated with the word permission and there is no provision in Rule 15 (2) for granting any sanction or permission.

The respondents have filed their reply, wherein they are more or less reiterated the alleged charges made in the charge sheet. The respondents were directed to file supplementary reply to bring on record the reasons for delay in initiation of charge sheet or disciplinary proceeding since 1999 to 2012. In supplementary reply, they have stated that the Joint Secretary, State Vigilance Commission had sent a letter to the Superintendent of Police, North 24-Parganas vide letter dated 03-07-2012 for initiation of Departmental Proceeding against the applicant (Annexure S1) and thereafter on 28-09-2012 the Departmental Proceeding was initiated against the applicant. The applicant had submitted for a prayer for open enquiry on 06-10-2012 and thereafter the Enquiry Officer was appointed. However, as the applicant approached this Tribunal and this Tribunal vide their order dated 10-06-2015 had restrained the respondents to conclude the proceeding and final order should not be passed till the further order, therefore the case is still pending.

We have heard both the parties and perused the records. It is noted that the applicant was served with the charge sheet dated 28-09-2012 for the following 2(two) charges :-

“(1) The applicant, during the period from the year 1994 to 1999, acquired assets to the tune of Rs. 7,81,118/- by way of purchase of a residential house in the name of his wife Smt. Amala Mondal under Barasat Municipality, holding No. 33/F/1/A, Plot No. 5 Ward No. 1, measuring 1 Khata, 12 Chhataks, investment in UTI, excess deposits over withdrawals in UCO Bank, Barasat Branch, A/c No. 11828 and in Bank of India, Barasat Branch A/c No. 27989.

Out of the said sum, an amount of Rs. 4,53,572/-, for which no cogent explanation has been given, which appears to be assets disproportionate to the known sources of income by the applicant during the said period.

(1) That during the year 1994 to 1999 and while functioning in the aforesaid district as a Constable of Police, he purchased a double storied building @ Rs. 3,35,000/- measuring 1 Khata 12 Chhataks being Plot No. 55 Khatian No. 362 under Barasat Municipality on 12-12-1997 vide Deed No. 5390/97 registered of A.D.S.R. Office, Barasat.

But it transpires that he did not obtain any sanction from Appointing Authority Prior to the purchase of the said building, which is highly irregular and displays gross misconduct”.

According to the applicant, he declared all the details of his acquired assets in his Annual Declaration Form in the year 1998. Therefore, the respondents were having knowledge of the said purchase way back in

1998. Therefore, the charge sheet is liable to be quashed and set aside on the ground of delay and laches on the part of the respondents. Further under Rule 15 (2), there is no provision of taking permission/sanction from the authority as held by the Hon'ble High Court. In support of his aforesaid contention, the Counsel for the applicant has referred the following judgements :-

(1) (2005) 6 Supreme Court Cases 636

P. V. Mahadevan
-Vs.-
MD, T. N. Housing Board

(2) AIR 1976 Supreme Court 1766

The Regional Manager and Another
-Vs.-
Pawan Kumar Dubey

(3) Calcutta High Court

Ram Gopal Bhattacharyya
-Vs.-
The State of West Bengal & Others

We have also perused the Vigilance File, wherefrom it transpires that the applicant had declared about the procurement of his properties in the year 1998. Therefore the said fact was already within the knowledge of the respondents since 1998. It is noted that the Vigilance Commission have started investigation in the year 2006 and ultimately the department issued the charge sheet on 28-09-2012 i.e. after 13 years from the knowledge of the department. However, no such cogent reason has been shown for such delay in initiation of the proceedings.

- It is noted that the irregularities, as alleged, were subject matter of the enquiry and said to have been taken place between the year 1994 to 1999. However, it is not the case of the department that they were not aware of the said irregularities, if any, and come to know it about only in 2012. It is further noted that the applicant already declared the assets within 1998. Therefore, it is not acceptable that the

respondents had taken more than 13 years time to initiate the disciplinary proceeding. Moreover, no satisfactory explanation or cogent reason has been shown for such inordinate delay in issuing the charge memo. The Hon'ble Apex Court in the case of P. V. Mahadevan supra following the judgement passed in State of M.P. Vs. Bani Singh 1990 Supply SCC 738 has held that inordinate delay in initiating the departmental enquiry without any convincing explanation after a distant period of time cannot be allowed. Therefore, we are of the opinion that it will be unfair to allow the departmental enquiry to be proceeded with at this stage. In view of the above, we quash and set aside the Charge Sheet dated 28-09-2012.

Accordingly, the O.A is disposed of with the above observations and direction with no order as to cost.

P. RAMESH KUMAR
MEMBER (A)

URMITA DATTA(SEN)
MEMBER(J)