



**J U D G E M E N T**

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

- (A) That your Lordships be graciously be pleased to issue direction upon the State Respondents, each one of them, their servants, agents and subordinates to set aside, rescind, cancel and quash the Charge Memo No. HF/O/Vigilance/1215/9A-97/2014 dated 12-11-2014(Annexure 'A'), Final Order No. HF/O/Vigilance/1416/9A-97/2014 dated 19-01-2016 (Annexure 'D') and the entire Departmental Proceeding, including the purported Report of Inquiry and the order No. HF/O/Vigilance/1807/9A-97/2014 dated 03-05-2016 (Annexure 'F'), declining to consider the Appeal of the Applicant.**
- (B) Direction upon the State Respondents to give to the Applicant all consequential service benefits on cancellation, quashing and setting aside of the instant Departmental Proceedings.**
- (C) Direction upon the State Respondents to certify and transmit to the Hon'ble Tribunal all**

**records relating to the case for administering conscientious justice.**

**(D) To issue such other order/orders and/or direction as the Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case.**

2. According to the applicant, while she was posted as Deputy CMOH III, South 24-Parganas, she was served with a charge sheet dated 12-11-2014 (Annexure 'A') alleging inter alia :-

- (i) Lack of proper supervision in fault maintenance of Cold Chain System on her part causing huge loss of government property.
- (ii) Negligence of proper supervision and maintenance of temperature Log books for day today activities of the Coal Chain System causing huge loss of government property on 28-03-2014. Simultaneously on the same date Inquiry Officer and Presenting Officer were also appointed.

3. The applicant submitted his written statement of defence on 28-11-2014 denying the allegation in details. However, without holding any proper enquiry the disciplinary authority had passed the following impugned order dated 19-01-2016:

“NOW, THEREFORE, the Governor has been pleased to order that penalty of withholding of 2(two) annual increments in pay without cumulative effect be imposed upon Dr. Susmita Roy, and further has been pleased to direct that the said Dr. Susmita Roy, be debarred from promotion during

the currency of the penalty". Though the applicant preferred an appeal before the Principal Secretary, Department of Health and Family Welfare, Government of West Bengal on 17-03-2016, however no order was passed by the authority. Being aggrieved with, the applicant has preferred the instant application.

4. According to the applicant, the charge sheet as well as final order are liable to be quashed and set aside on the following grounds :-

**(i) The charges are fake and indefinite and not related or connected with the job responsibility of the applicant in terms of Memo No. H/SFWB/4J-1-2008/175 dated 19-02-2010 issued by the Joint Secretary(Family Welfare Department), wherein the job responsibility and accountability of the Deputy CMOH III (the applicant held this post at the relevant time) and DMCHO were demarcated. As per the applicant from the perusal of the said job responsibility, it would be evident that the responsibility of proper supervision and fault maintenance of Cold Chain System and proper maintenance of temperature for Oral Polio Vaccines was lying with DMCHO.**

**(ii) Further the then DMCHO Dr. Ranada Prasad Mallick vide his letter dated 05-03-2014 himself admitted the**

responsibility of such damage as a nodal officer of immunization which is a part of fact finding preliminary enquiry but the said DMCHO was not charge sheeted rather, even he was cited as a sole witness and was thereafter promoted also.

- (iii) Moreover, the said letter written by the then DMCHO was not even considered by the enquiry officer or disciplinary authority while imposing the punishment upon the applicant, which shows the total non-application of mind of the enquiry officer as well as disciplinary authority.
- (iv) Though the then DMCHO was cited as prosecution witness (Annexure 'iv') of the charge sheet as a sole prosecution witness, however neither he was examined nor the applicant get an opportunity to cross-examine the said witness which is clear violation of natural justice.
- (v) Furthermore no enquiry report was ever served upon the applicant nor any proper regular enquiry was held, however the Disciplinary Authority had passed the impugned order.
- (vi) The final order dated 19-01`-2016 is contrary to the Rule 8 (ii) of West Bengal Services (Classification, Control and Appeal) Rules, 1971 as the Disciplinary

**Authority impose punishment of withholding of increments as well as promotion.**

**(vii) As per the applicant, she was appointed through Public Service Commission, however while imposing punishment the Disciplinary Authority did not follow with the provision of Rule 10 (11) of West Bengal Services (Classification, Control and Appeal) Rules, 1971.**

In view of the above, as per the applicant, the disciplinary proceeding is liable to be quashed and set aside.

5. The respondents have filed their written statement wherein they have denied the allegation made by the applicant in general but no specific denial has been made.

6. Heard both the parties and perused the records. It is noted that the applicant has prayed for quashing of the charge sheet as well as final order. However according to her, neither the enquiry report was served upon her nor any regular enquiry was held by the enquiry officer, which has not been specifically denied by the respondents. However, the then DMCHO, who was cited as a sole prosecution but was not examined either by the prosecution or cross examined by the applicant. However he was promoted as per the applicant. The aforesaid fact also not denied by the respondents.

It is further noted that Rule 10 (11) of West Bengal Services (Classification, Control and Appeal) Rules, 1971 stipulates as follows :-

“Rule 10(11):-if the disciplinary authority having regard to its findings on the charges, is of opinion that any of the penalties specified in clauses (i) to (ii) of rule 8 should be imposed it shall pass appropriate orders on the case.

Provided that in every case in which it is necessary to consult the Commission, the record of the enquiry shall be forwarded by the disciplinary authority to the Commission for advice and such advice taken into consideration before passing the orders”.

From the perusal of the above, it is observed that consultation with Public Service Commission before passing the final order is mandatory. However, according to the applicant Public Service Commission was not consulted before imposing of punishment, which was also not denied by the respondent authorities.

7. With regard to the imposing of punishment of both withholding of increments as well as promotion, it is noted that under Rule 8 (ii) of West Bengal Services (Classification, Control and Appeal) Rules 1971 stipulates the following penalty :-

“The following penalties may, for good and sufficient reasons and as hereinafter provided, be imposed on a Government employee, namely;

- (i) Censure;
- (ii) With holding of increments or promotions;
- (iii) Recovery from pay of the whole or part of any pecuniary loss caused to the Government by negligence or breach of orders;
- (iv) Reduction to a lower stage in the time-scale of pay for a specified period with further direction as to whether or not the Government employee will earn increments of pay during the period of such reduction and whether on the expiry of such period the reduction will or will not have the effect of postponing the future increments of his pay;
- (v) Reduction to a lower time-scale of pay, grade, post or service which shall ordinarily be a bar to the promotion of the Government employee to the time-scale of pay, grade, post or service from which he was reduced, with or without further directions regarding conditions of the restoration to the grade or post or service from which the Government employee was reduced and his seniority and pay on such restoration to that grade, post or service;
- (vi) Compulsory retirement
- (vii) Removal from service which shall not be a disqualification for future employment;
- (viii) Dismissal from service which shall ordinarily be a disqualification for future employment under the Government.

From the above, it is noted that the legislature has prescribed certain specific penalty and Rule 8(ii) has specifically prescribed penalty of either withholding of increment or promotion. It is further noted that there is no separate provision for imposition of penalty as withholding of increment and debarment of promotion rather the both the punishments have been stipulated as an alternative to one another. Therefore, in our considered opinion since the intention of the legislature is clear by putting “or” between two different types of



punishments, the authority has to impose any of the alternative possibilities of punishment instead of imposing both the punishments at a time otherwise, the legislature while stipulating the punishment would have used the word “and/or” in place of simple “or” and in that case both the punishments could have been imposed at a time. Accordingly, in our view the authority cannot impose both the punishment at a time as it is beyond the scope of the prescribed punishment as per Rule.

However, consideration of the penalty of withholding of increment subsequently at the time of consideration of promotion is different subject matter, which can be dealt with separately while considering promotion as held by the Hon’ble Apex Court in the case of **State of Tamil Nadu –vs- Thiru K.S. Murigason & Others 1995(02) SCR 386**. In the aforesaid judgement the delinquent employee was punished with stoppage of three increments with cumulative effect initially by 06.12.1982 and subsequently, on appeal the same punishment order was imposed since 1984. However, subsequently at the time for consideration of promotion to the post of Deputy Director for the period 1983-84, the name of the concerned delinquent employee was not included in the approved list and being aggrieved with, he filed one OA 138 of 1991, which was subsequently appealed before the Hon’ble Apex Court and the Hon’ble Apex Court in the given situation had held that non-consideration for promotion during the period of punishment cannot be treated as a double jeopardy. But, unfortunately in the instant case the authority while passing the impugned order had imposed both the punishment which has been specifically stipulated as alternative to each

other. Therefore instant case is quite different from the facts of the aforementioned judgement”.

8. It is observed that admittedly the disciplinary authority has passed the order in violation of provision of the West Bengal Services (Classification, Control and Appeal) Rules, 1971 as well as there is violation of natural justice also. Further no regular enquiry has been conducted though enquiry officer and presenting officer was appointed. Moreover, the sole witness and his statement was not examined or cross examined or considered by the disciplinary authority, while imposing the punishment order.

9. In view of the above, we quash and set aside the final order dated 19-01-2016 and remand back the matter to the disciplinary authority to hold the disciplinary proceeding as per Rules after granting the applicant proper opportunity and to pass a reasoned and speaking order within a period of 3(three) months from the date of received of the order and applicant is also directed to cooperate with the respondents.

10. Accordingly, the OA 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)**

