

**ORDER SHEET**  
**WEST BENGAL ADMINISTRATIVE TRIBUNAL**

**Present-**

The Hon'ble Mrs. Urmita Datta (Sen), Member(J)

The Hon'ble Dr. Subesh Kumar Das, Member (A)

Case No – OA- 241 of 2020Utpal Kumar Basu. Vs The State of West Bengal & Others.

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<p style="text-align: center;">02</p> <hr style="width: 10%; margin: 0 auto;"/> <p>14/08/2020</p>	<p>For the Applicant : Mr. S. Samanta, Mr. B. Samanta, Advocates.</p> <p>For the State Respondents: Mr. G.P. Banerjee, Advocate.</p> <p>The matter is admitted. As per the applicant, appointment of Inquiring Authority should be quashed and the DA should be directed to consider his written statement before appointing Inquiring Authority. It has been submitted that the present Charge Sheet dated 03.01.20 was preceded by a Show-Cause dated 20.06.18, wherein the applicant replied his explanation dated 27.6.18. Thereafter, he was also asked to appear before the Anti Corruption Wing. He duly appeared on 10.04.2019 and 17.04.2019 (Annexure A/3 collectively). Even then he was served with a Charge Sheet dated 03.01.2020 (Annexure A/1). As per the applicant, the Disciplinary Authority has directed him to file written statement before the Inquiry Authority. However, Disciplinary Authority had appointed the Enquiring Authority directly. According to the applicant, he has filed his written statement of defence.</p>	

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	<p>As per the applicant the instant disciplinary proceeding is in violation of principle of service jurisprudence on the following grounds;</p> <p>“</p> <ul style="list-style-type: none"> <li>i) Appointment of IA even before filing of written statement of defence</li> <li>ii) The failure of the DA to consider and pass a reasoned speaking order on the written statement of defence upon due application of mind to the materials on record for the purpose of arriving at a decision as to whether the enquiry proceeding is required to be proceeded with or dropped at the threshold</li> <li>iii) Proceeding with the DP inspite of the infirmities aforementioned.”</li> </ul> <p>In view of the above, the applicant has prayed for following interim protection:-</p> <p>“a) Injunction do issue upon the respondent authorities restraining them from acting in any manner or any further manner on the basis of the charge memorandum dated 03.01.2020 being Annexure “A-1” hereto and all further orders/memoranda/communications in furtherance thereof;</p>	

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	<p>b) Injunction do issue upon the Inquiring Authority restraining him from acting in any manner or any further manner on the basis of the notice dated 17.06.2020 being Annexure "A-8" hereto and all further communications in furtherance thereof;</p> <p>c) Grant any other relief to the applicant as may commence to this Learned Tribunal;"</p> <p>The counsel for the Applicant has submitted that in case of <b>V.K. Khanna</b>, the Hon'ble Apex Court has settled the law that the Disciplinary Authority should allow the concerned employee to file written statements to him before appointing any Inquiring Authority.</p> <p>It is further stated that he has also challenged the Rule 10(3) and (4) of the West Bengal Services (Classification, Control and Appeal) Rules as it is in contradiction to the judgement passed by the Hon'ble Apex Court in the case of <b>V.K. Khanna</b> supra.</p> <p>The counsel for the official respondent as well as for Advocate General, Mr. G.P. Banerjee has vehemently objected for granting any interim protection. However, he has asked for time to file reply on behalf of the Advocate General with regard to challenge of Rule 10(3) &amp; (4). It has been further</p>	

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	<p>submitted that till date the said Rule is in vogue and the applicant has been granted proper opportunity. Further the respondent has proceeded with the Disciplinary Proceeding as per the stipulated Rules; therefore, there is no question of granting interim protection as prayed for. It is further submitted that even the applicant has no prima facie case to challenge the Rule as the facts and circumstances of the case is totally different than the judgement referred by the Ld. Advocate for the applicant. Further, when there is a specific Rule in vogue and which has been followed by the authority, there is no scope of granting injunction for not to proceed by the Inquiring Authority.</p> <p>Heard both the parties and perused the records.</p> <p>It is noted that the main contention of the application in fact is that he has not been granted opportunity to make representation before the Disciplinary Authority instead of that Disciplinary Authority has directly appointed Inquiring Authority, which is in violation of the law settled by the Hon'ble Apex Court in the case of <b>V.K. Khanna</b>. However, it is observed that factually the applicant was granted opportunity for filing reply to the preliminary Show Cause Notice dated 20.06.18,</p>	

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	<p>against which he replied on 27.06.18. However, the Disciplinary Authority, not being satisfied with the reply of the applicant, has issued Charge Sheet dated 30.01.2020 after primary enquiry and subsequently appointed Inquiry authority.</p> <p>Further Rule 10(3) and (4) WBS (CC&amp;A) Rules, 1971 stipulates inter alia.....</p> <p>“ 10. Procedure for imposing penalties –</p> <p>(1).....</p> <p>(2).....</p> <p><b>(3)The disciplinary authority shall deliver or cause to be delivered to the Government employee a copy of articles of charge and the statement of imputations of misconduct or misbehaviour prepared under clause (ii) of sub-rule (2) and shall require the Government employee to submit to the inquiring authority within such time as may be specified a written statement of his defence and to state whether he desires to be heard in person.</b></p> <p><b>(4)The disciplinary authority shall in all cases for the purpose of enquiry appoint an inquiring authority and forward to it.</b></p> <p><b>(a)A copy of the articles of charge and the statement of the imputations of</b></p>	

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	<p style="text-align: center;"><b>misconduct or misbehaviour;</b></p> <p style="text-align: center;"><b>(b) A copy of statement for witness, if any;</b></p> <p style="text-align: center;"><b>(c) Evidence proving the delivery of the documents referred to in sub-rule (2) to the Government employee.</b></p> <p><b>5. ....”</b></p> <p>After going through aforesaid Rule, it is noted that there is a specific stipulation in the aforesaid rules for appointment of Inquiry Authority and in the instant case except the allegation of appointment of Inquiring Authority, there is no such other allegations of biasness or violation of natural justice and otherwise. Therefore, in our opinion as the Inquiring Authority has been appointed as per the prescribed Rules in vogue and until and unless the Rules would be quashed and declared ultra virus and/or modified by the authority, prima facie there is no scope to stall the proceedings of Inquiry Authority.</p> <p>We have perused the case of <b>V.K. Khanna</b> supra and in the aforementioned case the respondent, Sri V.K. Khanna, had actually challenged the issuance of the charge sheet against him alleging that the said charge sheet is a direct outcome of the reference of two cases to the CBI</p>	

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	<p>against two senior IAS Officers.</p> <p>In the aforesaid case, the dispute was with regard to some action taken at the last phase of the earlier government in the State of Punjab and the first phase of the present government of the said state, wherein the former Chief Secretary (Mr.V.K. Khanna) upon obtaining approval from the then Chief Minister of Punjab initiated proceeding against two senior colleagues in the State of Punjab for the charge of acquiring assets beyond the known source of income and ultimately on the note of the said erstwhile Chief Secretary Mr. V.K. Khanna, the Chief Minister had ordered for referring this case to the CBI for further investigation. However, subsequent Government had charge sheeted Mr. V.K. Khanna for taking hasty decision, thus Mr. Khanna had challenged the said charge sheet on the ground of bias and malafide intention. In the aforesaid background, the Hon'ble Apex Court had observed that <b>“if hasty decision is a question of mala fide motive on the part of Sri V.K. Khanna, we wonder as to whether the same can also be attributed to the appellant herein .....</b>”</p> <p>Further Hon'ble Apex Court had also observed inter</p>	

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	<p>alia;</p> <p><b>“.....The dispute in the appeals pertain to the last phase of the earlier Government and first phase of the present Government in the State of Punjab; Whereas the former Chief Secretary of the State of Punjab upon obtaining approval from the then Chief Minister of Punjab initiated proceedings against two senior colleagues of his in the Punjab State Administration but with the new induction of Shri Prakash Singh Badal as the only Chief Secretary had to walk out of the administrative building but a number seventeen officer in the hierarchy of officers of Indian Administrative Service and working in the State of Punjab as a bureaucrat, was placed as the Chief Secretary and within a period of 10 days of his entry at the Secretariat.....A worthwhile recapitulation thus depict that a Government servant in the Indian Administrative Service being charged with acquiring assets beyond the known source of income and while one particular Government initiates an enquiry against such an acquisition, the other Government within 10 days of its installation withdrawn the notification, is this fair? “</b></p>	



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	<p>Accordingly the appeal filed by the State of Punjab was dismissed by the Hon'ble Apex Court.</p> <p>From the above, it is clear that the case of V.K. Khanna supra is factually totally different than the instant case as the basis of interference of the Hon'ble Court, with regard to the appointment of Inquiring Authority, is bias and malafide action on the part of the State of Punjab. Whereas in the instant case, the applicant never alleged about any biasness and or mala fide or otherwise against the respondents. Further, the applicant was granted opportunity to file his representation or submission before the Disciplinary Authority by way of filing reply to the Show-Cause Notice and the Disciplinary Authority, after not being satisfied, had issued Charge Sheet and appointed Inquiring Authority.</p> <p>Therefore, we are of the considered opinion that the aforementioned case of V.K. Khanna is quite distinguishable with regard to the instant case.</p> <p>Therefore, we do not think it proper to pass any interim direction at this stage as he has been already granted opportunity of filing reply to the show-cause and Inquiry Authority has been appointed as per Rules. The applicant has to</p>	

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GM	<p>follow the enquiry process.</p> <p>Moreover, as the Rule has been challenged, in our considered opinion, the State should be given some opportunity to make proper submission with regard to the authority of the Rule.</p> <p>Advocate General is directed to file reply with regard to the validity of the Rule as until and unless we will decide the validity of the rule first we cannot proceed further. Reply be filed by the respondents within six (6) weeks and Rejoinder, if any, two (02) weeks thereafter. Let the matter be listed on <b>09.10.2020</b>.</p> <p style="text-align: center;"><b>(SUBESH KUMAR DAS)                      URMITA DATTA(SEN)</b> <b>MEMBER(A)                                      MEMBER(J)</b></p>	