

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 OA – 1254 of 2015**Tapan Chanda –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>15</u> 17.12.2019</p>	<p><i>For the Applicant : Mr. M.N. Roy, Mr. G. Halder, Advocates.</i></p> <p><i>For the Respondent : Mrs. S. Agarwal, Advocate.</i></p> <p><i>The instant application has been filed praying for following relief:</i></p> <p><i>“(a) An order do issue thereby setting aside/rescind/cancel/quash the entire Departmental Proceeding including the Charge vide Murshidabad District Proceeding No. 32/11 Dated 12.08.2011 D.O. No. 2179 dated 12.08.2011, findings of the Enquiry Officer, Final Order of punishment vide D.O. No. 993 dated 02.04.2015, Appellate Order vide D.O. No. 1968 Dated 15.08.2015 Railway Range Order No. 72. F 108-15 Dated 12.08.2015.</i></p> <p><i>(b) An order do issue directing the respondent authorities to give all consequential service benefits after setting aside/rescind/cancel/quash the entire Departmental Proceeding including the Charge vide Murshidabad District Proceeding No. 32/11 Dated 12.08.2011 D.O. No. 2179 dated 12.08.2011, findings of the Enquiry Officer, Final Order of punishment vide D.O. No. 993 dated 02.04.2015, Appellate Order vide</i></p>	

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Tapan Chanda

Form No.

Vs.**The State of West Bengal & Ors.**Case No. OA – 1254 of 2015

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><i>D.O. No. 1968 Dated 15.08.2015 Railway Range Order No. 72. F 108-15 Dated 12.08.2015.</i></p> <p><i>(c) An order do issue directing the respondent authorities to re-consider the quantum of punishment as the applicant as the same does not commensurate with the alleged charge as well as the other co-accused were given a lesser punishment although your applicant merely carried out the orders of his superior who are the co-accused in the said departmental proceeding.</i></p> <p><i>(d) A further order do issue directing the respondent authorities to transmit records pertaining to the instant case so that conscionably justice can be done.</i></p> <p><i>(e) Any other appropriate order/orders direction/directions as this Hon'ble Tribunal may deem fir and proper to protect the right of the applicant and in the ends of justice."</i></p> <p>As per the applicant, while discharging his duty in the capacity of constable of Kandi Police Station, Murshidabad, he was entrusted with duty to accompany his superiors to perform raid on 03.08.2011 and 04.08.2011 at the residence of Rajkumar Dey in relation with Kandi P.S. case No. 318/11 dated 03.08.2011 u/s 302/201 I.P.C. It is further submitted</p>	

ORDER SHEET

Tapan Chanda

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Vs.**The State of West Bengal & Ors.**Case No. OA – 1254 of 2015

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	<p>that he was led by SI Premasish Chatterjee along with S.I. Haralal Biswas, A.S.I, Prasenjit Banerjee, L/C - 1578 Kakali Mukherjee in the said raid team. Though on the first day i.e. on 03.08.2011, the situation of the village Jemo was fiery and the agitated mob gheraoed the house of the Rajkumar, who was absconding and his wife Mithu Dey and son Sourav Dey were in the house. All grudges of the furious villagers went on the accused person's wife Mithu and minor son Sourav, as they wanted to know the whereabouts of the accused Rajkumar from his wife and son. In the said background, the raid party brought the wife of the accused and her son to Kandi P.S. for their safety on 03.08.2011 and on the next morning they were allowed to leave P.S. on the PR Bond as furnished by their lawyer. However, on the next day i.e. on 05.08.2011 Smt. Moni Dey, daughter of Mithu Dey had asked thorough enquiry on unnatural death of wife of the accused. Thereafter, the Additional S.P. Lalbagh, Murshidabad made a preliminary enquiry in the matter and recommended to initiate disciplinary proceedings against members of the said raid party. In this background, one departmental proceedings was</p>	

ORDER SHEET

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Form No.

Vs.**The State of West Bengal & Ors.**Case No. OA – 1254 of 2015

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	<p>initiated vide Memo dated 12.08.2011 against the applicant along with other members of the said raid party on four charges as mentioned in the said charge sheet. Subsequently, the applicant had participated in the disciplinary proceedings. Though written statement of the defence and in the findings of the enquiry conducted, he had been pleaded not guilty. However, vide Disciplinary Authority's order dated 02.04.2015, the applicant was imposed with a punishment of stoppage of one increment permanently. Being aggrieved with, he has preferred one appeal before the Appellate Authority on 10.05.2015 (Annexure C). However, the Appellate Authority also confirmed the order passed by the disciplinary authority vide his order dated 12.08.2015. Being aggrieved with, he has preferred the instant application.</p> <p>As per the applicant, he has pleaded not guilty in the entire disciplinary proceedings. However, his submissions were not considered by the respondents and he has been imposed a penalty of stoppage of one increment permanently whereas all other similarly</p>	

ORDER SHEET

Tapan Chanda

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	<p>situated persons were either imposed with stoppage of one increment for one year or otherwise any lesser punishment of black mark, which is as follows:</p> <table border="1"> <thead> <tr> <th data-bbox="312 701 619 734">SL.</th> <th data-bbox="625 701 900 734">Name of the C.O.</th> <th data-bbox="906 701 1027 734">Punishment</th> <th data-bbox="1034 701 1201 734">Imposed by</th> </tr> </thead> <tbody> <tr> <td data-bbox="312 757 347 790">(i)</td> <td data-bbox="354 757 600 790">SI, Haralal Biswas</td> <td data-bbox="705 757 909 864">One increment of Pay stopped for one Year</td> <td data-bbox="970 757 1201 790">SP, Murshidabad</td> </tr> <tr> <td data-bbox="312 869 347 902">(ii)</td> <td data-bbox="354 869 705 902">ASI/102Prasenjit Banerjee</td> <td data-bbox="769 869 833 902">-do-</td> <td data-bbox="1066 869 1129 902">-do-</td> </tr> <tr> <td data-bbox="312 907 347 940">(iii)</td> <td data-bbox="354 907 737 940">L/C 1578, Kakali Mukherjee</td> <td data-bbox="769 907 833 940">-do-</td> <td data-bbox="1066 907 1129 940">-do-</td> </tr> <tr> <td data-bbox="312 945 347 978">(iv)</td> <td data-bbox="354 945 715 978">L/C 27, Satabdi Majumder</td> <td data-bbox="769 945 833 978">-do-</td> <td data-bbox="1066 945 1129 978">-do-</td> </tr> <tr> <td data-bbox="312 983 347 1016">(v)</td> <td data-bbox="354 983 667 1016">SI, Premasish Chattaraj</td> <td data-bbox="737 983 890 1016">Black Mark</td> <td data-bbox="1018 983 1171 1016">SP, Purulia</td> </tr> </tbody> </table> <p>Whereas the applicant has been punished with a major punishment of one increment permanently which is nothing but discriminatory and the said punishment is harsh in nature. Therefore, he has prayed for aforesaid reliefs.</p> <p>During the course of the hearing, the counsel for the applicant has also referred the following judgement: Life Insurance Corporation of India - Vs- Triveni Sharan Mishra reported in (2014)10 SCC 346.</p> <p>The respondents have filed their reply. As per the respondents, it has been submitted that on receipt of a complaint lodged by one Mani Dey, daughter of the accused on the allegation that on 04.08.2011 Rajkumar Dey, the applicant along with other personnel raid party forcibly again conducted the raid</p>	SL.	Name of the C.O.	Punishment	Imposed by	(i)	SI, Haralal Biswas	One increment of Pay stopped for one Year	SP, Murshidabad	(ii)	ASI/102Prasenjit Banerjee	-do-	-do-	(iii)	L/C 1578, Kakali Mukherjee	-do-	-do-	(iv)	L/C 27, Satabdi Majumder	-do-	-do-	(v)	SI, Premasish Chattaraj	Black Mark	SP, Purulia	
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Tapan Chanda

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	<p>in indisciplined way and Smt. Mithu Dey (wife of the accused person) thereafter on 05.08.2011 morning committed suicide at her residence and over this incident, daughter of the applicant asked for a thorough enquiry of her mother's unnatural death. It has been further submitted that there was an allegation that the local police slapped Smt. Mithu Dey, as per the report of the Additional S.P., Lalbagh the responsibility fixed up on constable Tapan Chanda as the applicant was identified by the witness Sourav Dey (son of the deceased person), therefore, from the enquiry, it has been proved that due to his abnormal behaviour and using slang languages created a terrific mental pressure upon the deceased which leads her to commit suicide. Therefore, as per the respondents, he has been rightly imposed with the punishment of stoppage of one increment permanently.</p> <p>Though the respondents in their reply had stated that due to his misbehaviour, the wife of the deceased committed suicide. However, there is no such charge against the applicant in the charge sheet. Even from the perusal of the findings of the enquiry, it would be clear that the minor son of the deceased lady (Sourav</p>	

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	<p>Dey) never appeared before the Enquiry Officer. Therefore, there is no scope of coming into any finding on the basis of his statement.</p> <p>Therefore, we are unable to accept the contention of the counsel of the applicant and contention of the respondent at the time of filing of reply since they have not charge sheeted on this ground.</p> <p>We have heard the parties and perused the records. It has been noted that the applicant was charge sheeted on four charges vide D.O. dated 12.08.2011 and from the perusal of the said charges, we find that though there was an allegation of indisciplined behaviour along with others. However, there is no charge of harassing the lady, which led the said lady to commit suicide. As per settled law, the court has a little scope to interfere with the disciplinary proceedings unless there is a clear violation of natural justice or the order has been passed by the incompetent authority and the findings are perverse. In this case, there is no violation of natural justice as the applicant has granted enough opportunity to defence his case. However, we find that the punishment imposed on the applicant is</p>	

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A.K.P.	<p>disproportionate and discriminatory with regard to the other accused persons, who were in the same raid party and mere charge sheeted on self-same charges. However, they were imposed punishment of stoppage of increment for one year or black mark which are in a nature of minor penalty whereas the applicant has been imposed a punishment of stoppage of one increment permanently, which is major in nature. Therefore, we have no other alternative to interfere with the punishment imposed upon the applicant and we quash and set aside the punishment order dated 02.04.2015 and remand back the matter with respect of imposing of penalty only and direct the disciplinary authority to reconsider the case of the applicant after taking into account the punishment imposed upon the other similarly situated persons of the same said raid party and to impose punishment. Accordingly, the O.A. is disposed of.</p> <p style="text-align: center;">P. RAMESH KUMAR MEMBER (A)</p> <p style="text-align: center;">URMITA DATTA (SEN) MEMBER (J)</p>	