

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 – 190 of 2018

Nilanjan Choudhury –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>9</u> 10.12.2019</p>	<p><i>For the Applicants : Mr. M.N. Roy, Advocate.</i></p> <p><i>For the Respondents: Mr. S. Ghosh, Mr. R.K. Mondal, Advocates.</i></p> <p><i>The instant application has been filed praying for following reliefs :</i></p> <p><i>“(a) An order do issue setting thereby aside and/or quashing the entire Charge Sheet bearing Memorandum No. 2335-WT / 12E - 10/2014 dated 9.6.2014, Enquiry report Findings of the Disciplinary Authority including the punishment order imposed upon your Applicant by the respondent authorities vide their Memo. No. 3p; 8/1(9)-WT /12E - 10/2014 dated 30.06.2017 including the non-consideration of the Review application made by your Applicant 08th.August,2017 followed by subsequent memo. No. PVD/553/2/G dated 10.8.2017;</i></p> <p><i>(b) An order do issue directing the respondent authorities to Forthwith Set aside the PUNISHMENT ORDER imposed upon your Applicant/C.O.</i></p> <p><i>(c) An order do issue directing the respondent</i></p>	

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	<p><i>authorities to transmit all the relevant records pertaining to this instant case so that the conscionable justice may kindly be rendered to your applicant."</i></p> <p><i>As per the applicant, while he was posted at Barasat R.T.O. as Motor Vehicle Inspector, he was charge sheeted on 09.06.2014 on the allegation that while working as Motor Vehicle Inspector (Non -Technical) during the period from 01.02.2007 to 30.11.2009, he registered six vehicles on 16.04.2009 and one vehicle on 21.04.2009 at the office of Regional Transport Officer, North 24-parganas at Barasat. It has been alleged that he did not enter the pollution/emission standards of those vehicles in database with ulterior motive at the time of registration though it is mandatory. Therefore, such non-action on his part has been treated as irregularities. Thus he was charge sheeted (Annexure 'A').</i></p> <p><i>In reply to this charge sheet, the applicant had submitted detail reply stating mainly referring the following:</i></p> <p><i>(1) All these vehicles as mentioned in the charge sheet were allowed for change of address but not for registration as alleged. Therefore, as per the Section 49 of M.V. Act read</i></p>	

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	<p><i>with rule CMVR, 1989 mentioning of pollution standard was not mandatory. However, it is mandatory for the purpose of registration. But in this case, he did not register the vehicle but only allowed the change of address.</i></p> <p><i>(2) As per the charge sheet, the applicant has violated the Notification No. TS-331/1(6)/3(vi)-18/2010 dt. 13.05.2010 of Transport Department, Government of West Bengal.</i></p> <p><i>From the above, it would be clear that the said Notification is not applicable as he had allowed the change of address in the year 2009.</i></p> <p><i>(3) In VAHAN database, a data of a vehicle by entry DA through a specified model designed by NIC and there are some specific fields in the module which cannot be left blank during data entry. If it is mandatory that means leaving some specific fields blanks or without any information, it is not possible to complete data entry and also further of such datas. Therefore, the "Emission Standard of Vehicle" information was not mandatory for data entry in VAHAN as alleged in the charge sheet. Therefore, according to the applicant, the charges are vague and thus it is not amounts to misconduct. During the course of the hearing, it has been further submitted by the counsel for the applicant that even no enquiry report has been served upon him however,</i></p>	

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	<p><i>disciplinary authority has inflicted punishment of withholding of one annual increment for a period of one year as well as promotion which according to the counsel for the applicant is also not valid as held by this Tribunal vide order dated 07.09.2018 passed in O.A. No. 651/2016 However, it has been submitted that since the applicant is a Group – A officer, even the punishment order has been issued by the Principal Secretary, Transport Department who is not a competent authority though charge sheet has been issued by the Governor, therefore, as per the counsel for the applicant, the entire disciplinary proceeding is bad in law and liable to be quashed and set aside.</i></p> <p><i>The counsel for the respondent has submitted that disciplinary proceeding has been rightly proceeded and punishment has been imposed.</i></p> <p><i>We have heard both the parties and perused the records. It is noted that the applicant has been charge sheeted only on the allegation that he did not put pollution/emission standards in the database, which is mandatory for registration, whereas the applicant in his reply has categorically submitted that he had allowed the change of address but not done the registration of those vehicles, which were even BS II standard vehicles at that</i></p>	

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	<p><i>point of time. There was no such mandatory provision to put the emission standard in the database in the year 2009 as the Notification was issued in 2010 only. It is also observed that though applicant is a Group – A officer but the impugned order was passed by the Principal Secretary by way of imposing punishment of penalty withholding of one annual increment for a period of one year along with debarment of promotion during this period. Further while imposing punishment, the reply of the applicant was not considered. Therefore, the punishment order is also cryptic in nature.</i></p> <p><i>In view of the above, in our considered opinion, the entire proceeding has been vitiated as the reply of the applicant has not been controverted by the department which is deemed to treated as admission on their part and in that case when mandatory provision in putting the emission standard data in the database and that too in the year 2009 whereas the Notification had come up in 2010 the change of address took place in 2009. In our considered view, the entire proceeding is liable to be quashed and set aside. Accordingly, we set aside the charge sheet, inquiry report and punishment order. The respondents are directed to refund back the amount as deducted for stoppage of</i></p>	

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A.K.P.	<p><i>increment within a period of six weeks from the date of receipt of the order. Accordingly, the O.A. is disposed of with the above observations and directions with no order as to cost.</i></p> <p>P. RAMESH KUMAR MEMBER (A)</p> <p>URMITA DATTA (SEN) MEMBER (J)</p>	