

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 - 285 of 2018

Partha Pratim Dey –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>10</u> 06.01.2020</p>	<p><i>For the Applicant : Mr. G. Halder, Advocate.</i></p> <p><i>For the Respondents: Mr. G.P. Banerjee, Advocate.</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 impugned order of suspension issued vide No. 1383-FT FT/O/1E-41/2016 S.T. Dated, Howrah, the 16th September, 2016 being Annexure “A” herein, and to allow the applicant to resume his duties as usual in service in accordance with law, with all consequential benefits within a stipulated time period.</i></p> <p><i>(b) A direction do issue upon the concerned respondent authorities, herein to forthwith rescind/cancel/withdraw/revoke the impugned order of suspension issued vide No. 1383-FT FT/O/1E-41/2016 S.T. Dated, Howrah, the 16th September, 2016 being Annexure “A” herein, and to allow the applicant to resume his duties as usual in</i></p>	

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	<p><i>service in accordance with law within a stipulated time period.</i></p> <p><i>(c) A direction do issue directing the respondent authorities to produce and/or cause to be produced the relevant records in connection with the instant application for proper adjudication of the same.</i></p> <p><i>(d) Any other appropriate order/orders direction/directions as this Hon'ble Tribunal may deem fit and proper to protect the right of the applicant and in the ends of justice."</i></p> <p><i>As per the applicant, while working as Commercial Tax Officer, he was placed under suspension with effect from 01.09.2016 as he was suspended under Sub Rule 7(3) of the West Bengal Services (CCA) Rules, 1971 vide impugned order dated 16.09.2016 (Annexure 'A') in connection with the ACB P.S. case No. 07/16 dated 02.09.2016 u/s 13 (1)(d) of the Prevention of Corruption Act, 1988 read with section 120B/34 of the I.P.C. on the alleged charge of taking bribe and was detained in police custody for more than 48 hours. As till date he is under suspension, being aggrieved with, he has filed the instant application. The applicant has referred the judgement of</i></p>	

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	<p><i>Hon'ble Apex Court: Union of India and Others -vs- Dipak Mali reported in (2010) 2 SCC 222.</i></p> <p><i>During the course of the hearing, the counsel for the respondent has submitted that the case of the applicant was reviewed along with others vide order dated 17.09.2019 and the suspension order has been continued. However, subsistence allowance has already been enhanced as per rules. As per the counsel for the respondent, under Rule 7(3) West Bengal Services (CCA) Rules, 1971, the respondents are empowered to keep their employee under suspension without any disciplinary proceedings.</i></p> <p><i>In this regard, the counsel for the respondent has referred the judgement dated 12.12.2018 passed in O.A. No. 890 of 2017 by this Bench. It is noted that the applicant was suspended under sub Rule 3 of Rule 7 of West Bengal Services (CCA) Rules 1971 which stipulates inter alia:</i></p> <p><i>Rule 7(3): "A Government employee who is detained in custody for a period of exceeding 48 hours under any law providing for preventive detention or as a result of a proceeding either on a criminal charge or otherwise, shall be deemed to have been suspended, by an order of the</i></p>	

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	<p><i>appointing authority, with effect from the date of his detention and shall remain under suspension until further orders. A Government employee who is undergoing a sentence of imprisonment shall also be dealt with in the same manner, pending a decision on the disciplinary action to be taken against him."</i></p> <p><i>From the perusal of the suspension order dated 16.09.2016 as well as Rule 7(3) of West Bengal Services (CCA) Rules 1971, it transpires that the applicant was suspended being arrested by Anti Corruption Branch P.S. (West Bengal) on 01.09.2016 in connection with the ACB P.S. case No. 7/2016 dated 02.09.2016 u/s 13(1)(d) of the Prevention of Corruption Act, 1988 read with Section 120B/34 of the I.P.C. on the alleged charge of taking bribe and has been detained in police custody for more than 48 hours. Therefore, as per Rule 7(3) of the West Bengal Services (CCA) Rules, 1971, the Government employee, who was detained under custody for a period of exceeding 48 hours shall be deemed to have been suspended with effect from his detention and shall remain suspended until further orders. Therefore, the suspension order cannot be quashed on the ground of non-initiation of disciplinary proceedings</i></p>	

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A.K.P.	<p><i>as his suspension could be reviewed and/ or revoked if he would be exonerated from the criminal case.</i></p> <p><i>Further, the case of Dipak Mali Supra is not applicable as the applicant in the aforesaid case was suspended under Rule 10 CCS (CCA) Rules, 1965 as amended by Notification dated 23.12.2003, wherein under Sub Rule 6 & 7, there is a specific provision under Rules to review the suspension order, before expiry of 90 days from the date of suspension. However, in the instant case, the applicant has been suspended under Rule 7(3), where there is a specific provision for suspension under certain situation until further order. Moreover, the applicant has not challenged the said Rules. Therefore, until the Rules are challenged by the applicant, the applicant may be put under suspension until further order as per provision of the Rule. Therefore, the aforesaid judgement is quite distinguishable under the fact which was not applicable in the instant case.</i></p> <p><i>In view of the above, we decline to interfere with the impugned order of suspension. Accordingly, the O.A. is dismissed being devoid of merit with no order as to costs.</i></p> <p>P. RAMESH KUMAR MEMBER (A)</p> <p>URMITA DATTA (SEN) MEMBER (J)</p>	

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