

**IN THE WEST BENGAL ADMINISTRATIVE TRIBUNAL
BIKASH BHAVAN, SALT LAKE CITY
K O L K A T A – 7 0 0 0 9 1**

Present :-

**The Hon’ble Mrs. Urmita Datta (Sen)
MEMBER (J)**

-AND-

**The Hon’ble Mr. P. Ramesh Kumar
MEMBER(A)**

**J U D G E M E N T
-of-
Case No. OA-1173/2015**

Shyamal Kumar Biswas.Applicant .

-Versus-

State of West Bengal & others....Respondents

**For the Applicant :- Ms. Gargi Roy,
Ld. Advocate.**

**For the State Respondent :- Mr. R.A. Chowdhury,
Ld. Advocate.**

Judgement delivered on: 15.11. 2019.

**The Judgement of the Tribunal was delivered by:-
Mrs. Urmita Datta (Sen), Member (J).**

J U D G E M E N T

1. The instant application has been filed praying for following relief:
 - (a) To set aside and quash Impugned Charge Sheet No.3895/A LWD-28/07 dated 27/30-11-2009 issued by the ADG(P) & I.G of Correctional Services, West Bengal to the applicant.
 - (b) To set aside and quash Impugned Order No.3611 dated 03/04-09-2013 issued by the I.G. Correctional Services, West Bengal to the applicant.
 - (c) To set aside and quash Impugned Enquiry Report being ALWD/28/07 dated 30-04-2013 issued by DIG (A) of Correctional Services, West Bengal.
 - (d) To set aside and quash Impugned Order No.117/EB dated 10-11-2013 issued by Superintendent, Islampore, Sub-Correctional Home, Islampore, Uttar Dinajpur.
 - (e) To set aside and quash Illegal and arbitrary action on te part of the respondent in not supplying the relied upon documents, statement of witnesses and enquiry report thereby vitiating the Departmental proceedings.
 - (f) To direct the respondents to grant the increments which has been stopped by way of punishment, with all consequential benefits.
 - (g) Any other order or orders as the Tribunal deem fit and proper.

2. As per the applicant, he was served with a show-cause notice dated 19.08.2009 (A-1) against which he filed his reply dated 28.08.2009 (A-2). Thereafter, he was served with a Charge Sheet dated 27/30.11.2009 (A-3). Though no relied upon documents was supplied to him in terms of Annexure (iii) of the said chare sheet however, he filed reply to the said Memorandum dated 18.12.2009 (A-4), wherein he denied and disputed the charges leveled against him and also prayed for supply of relied upon documents together with the examination of the same. Unfortunately, without supply of such relied upon documents, Enquiry Officer and Presenting Officer were appointed vide order dated 24.12.09 (A-5). Enquiry was conducted by Enquiring Officer though the applicants made representation dated

27.05.2013 praying for time to answer to the show cause notice. The applicant again submitted a representation dated 05.06.2013 (A-6) praying for supply of enquiry report together with the deposition of the witnesses to enable him to make submission. However, without supplying of such documents as asked for, the applicant was served with a final order dated 3/4.09.2013 (A-7) by way of inflicting a punishment of stoppage of annual increments for five years with future effect on his pay. The applicant again submitted a representation dated 08.10.2013 praying for enquiry report and deposition of witnesses followed by an appeal dated 11.12.2013 (A-9), which is still pending at the time of filing of the application.

Being aggrieved with, the applicant submitted an appeal dated 4/8.12.2013 (A/10). However, long time, the applicant was supplied with enquiry report dated 30.04.2009 along with other documents vide letter dated 23.04.14 (A/11). Subsequently, the applicant submitted a representation dated 12.06.15 (A/12) praying for withdraw and/or cancellation of punishment order dated 04.09.13 as the said order suffered with non-supply of relied upon documents/ statement of witnesses enquiry report which causes serious prejudice to the applicant. As the said representation dated 12.06.15 has not been considered by the respondent, being aggrieved with the applicant has filed the instant application.

3. During the course of hearing, the counsel for the applicant has submitted that such non-supply of relied upon documents and enquiry report amounts to clear violation of natural justice, which has caused serious prejudice to the applicant. Thus, the impugned punishment order is liable to be quashed. He has further referred the following Judgement;

(2010) 2 Supreme Court Cases 772

State of Uttar Pradesh & Others -vs- Saroj Kumar Sinha

4. The respondents have filed their reply wherein they have stated that the final order was not passed all on a sudden as show-cause notice was issued to the applicant and he was granted liberty to file reply. However, they have not denied the allegation of non-supply of documents including enquiry report and/or delayed supply of those documents after possessing of final order.

5. Heard both the parties and perused the records. It is noted that the main allegations of the applicant is that during the entire disciplinary proceedings, he was not served with a relied upon documents, statement of witnesses and enquiry report though he had repeatedly requested the authority for supply of such documents. However, the disciplinary authority without supplying such documents or giving any response to submission of the applicant, had passed the impugned final order dated 04.09.2013 by way of imposing stoppage of increment for five years with permanent effect. Being aggrieved with, he had filed appeal before the Appellate Authority for quashing of the impugned order dated 04.09.13 on the ground of non-supply of documents. Though no order was passed by the appellate authority, however the applicant was served with a relied upon documents and enquiry report. Thereafter, the applicant approached before the appellate authority for quashing of the impugned final order dated 04.09.13 which was forwarded by the Superintendent, Raiganj District Correctional Home to the Appellate Authority vide Memo dated 20.04.2015. Even there is no whisper with regard to the passing of any order against the appeal filed by the applicant.
6. However, there is no specific denial that the applicant was served with the enquiry report and other relevant documents after passing of the final order i.e. in the year 2014. Even the appellate authority did not consider or pass any order with regard to the representation of the applicant dated 20.04.2015.
7. Therefore, in our considered view, non-disclosure of documents having a potential to cause prejudice to Government servant in enquiry proceeding, which is clearly denial of reasonable opportunity to submit a plausible and effective rebuttal to the charges being incurred into against the Government servant.
8. In view of the facts and circumstances, the case of the applicant is fully covered by the decision of the Hon'ble Apex Court passed in case of Sanjay Kumar Sinha (supra.
9. Therefore, the enquiry proceeding as well as the final order is liable to be quashed for violation of natural justice. Accordingly, we quash and set aside the impugned final order dated 04.09.13, 12.09.13 as well as enquiry report dated 30.04.2013. We further direct the authority to restore and grant increments, which has stopped by way of punishment, within a period of eight weeks from the date of receipt of this order and treat the suspension period in accordance with law. However, the respondents will be at liberty to proceed with the Charge Sheet in accordance with law.

10. Accordingly, the OA is **disposed of** with above observation and direction.

P. RAMESH KUMAR
MEMBER (A)

URMITA DATTA (SEN)
MEMBER (J)

GM