

**ORDER SHEET****WEST BENGAL ADMINISTRATIVE TRIBUNAL****Present-**

**Hon'ble Justice Soumitra Pal, Hon'ble Chairman.**  
**& Hon'ble Dr. Subesh Kumar Das, Administrative Member.**

CASE No. OA 412 of 2018.

ALOKE CHANDRA SAHANA -Vs- THE STATE OF W.B. & ORS.

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;">7</p> <hr/> <p>12.3.2019.</p>	<p>For the Applicant : Mr. S.K. Nandi, Advocate.</p> <p>For the State Respondent Nos. 1 &amp; 2 : Mr. S. Ghosh, Advocate.</p> <p>For the Principal Accountant General (A &amp; E) W.B. : Mr. B. Mitra, Departmental representative.</p> <p>In this application the applicant, who was appointed as Peon temporarily in the office of the Junior Land Reforms Officer and subsequently confirmed and promoted to the post of Lower Division Clerk on 1<sup>st</sup> July, 1998 and again promoted as Upper Division Clerk and thereafter subjected to disciplinary proceedings, has prayed for certain reliefs, the relevant portion of which is as under :-</p> <p style="padding-left: 40px;"><i>“...a) An order and/or direction be passed to cancel, withdraw, rescind and/or set aside the order dated 11.10.2010 passed by the District Magistrate and Collector, Hooghly, contained in the appeal being Annexure “A”.</i></p> <p style="padding-left: 40px;"><i>b) An order and/or direction be passed to cancel, withdraw, rescind the Memo No. 933/E dated</i></p>	

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	<p><i>13.06.20017 and further restrain the Respondents and each of them from making any further recovery :</i></p> <p><i>c) An order and/or direction be issued to forthwith release the retriral benefits and also the pension in accordance with law:</i></p> <p><i>d) An order and/or direction be issued to forthwith dispose of the appeal filed by the applicant on 22.12.2010 as contained in Annexure "A"....".</i></p> <p>As noted disciplinary proceedings were initiated against the applicant by issuing show cause notice which was replied to on 30<sup>th</sup> April, 2007. The Disciplinary Authority on 26<sup>th</sup> July, 2007 passed an order, the relevant portion of which is as under :-</p> <p><i>".....that Sri Alope Chandra Sahana now working at Excise Department, in District Magistrate &amp; Collector Office, Hooghly is treated as retired on superannuation on 31.12.2003 in the afternoon and further ordered that his pension is permanently stopped under rule 10 of West Bengal Services (Death-Cum-Retirement) Rules, 1971 and that his retiral dues are forfeited to the State towards recouping and recovery of the monetary loss incurred in the meantime by the State.</i></p>	

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	<p><i>Inform Sri Sahana and all concerned...".</i></p> <p>Aggrieved the applicant filed an application being OA 7599 of 2007, which was disposed of by the Tribunal by passing an order dated 17<sup>th</sup> June, 2010, the relevant portion of which is as under :-</p> <p><i>"....Mr. Ghosh frankly submits that order of the District Magistrate &amp; Collector, Hooghly, dated 26<sup>th</sup> July, 2007 on the face of record , does not appear to be legally correct. But he prays for liberty to modify such order in accordance with Rule.</i></p> <p><i>On hearing the Ld. Advocates of both the sides, we find that the petitioner entered into service in the State government in the year 1966 and after almost 3 decades, a proceeding was initiated against him on the allegation that by procuring a false certificate regarding his date of birth and by procuring a false certificate regarding his educational qualification, he entered into service and, subsequently, obtained promotion. After a thorough enquiry in which the petitioner participated, the enquiring authority found the petitioner guilty of charges and the Disciplinary Authority District Magistrate &amp; Collector, Hooghly, thereafter, passed the impugned</i></p>	

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	<p><i>order.</i></p> <p><i>We find that the impugned order is not sustainable in law as the power vested by Rule 10 of the DCRB Rule 1971, can be exercised only by the Governor and not by any other authority and from that view point, the order of the Disciplinary Authority is vitiated.</i></p> <p><i>Now, after considering the entire background of the present case, we like to dispose of this application by directing the Disciplinary Authority :-</i></p> <p><i>(1)First to consider sympathetically whether once the petitioner was directed to go on superannuation as per the date of birth accepted by the Disciplinary Authority, he can be penalized by stoppage of full pension and whether he can be granted the benefit of pension and other retiral benefits, treating his superannuation on 31<sup>st</sup> December, 2003 which has been accepted by the authority,</i></p> <p><i>(2)If the Disciplinary Authority does not accept the above position , our next suggestion would be to pass appropriate order under Rule 8 of the DCRB Rules, 1971 after complying all the provisions and in that case, if any adverse order is passed, touching the pension of the</i></p>	

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	<p><i>petitioner, the petitioner shall have the power to appeal as provided in the said Rule of DCRB Rule, 1971.</i></p> <p><i>Finally, we direct the Disciplinary Authority to dispose of the matter in either of the way within a period of 3 months by giving personal hearing to the petitioner and also to communicate his decision to the petitioner within 4 weeks after disposal of matter as per our order....”.</i></p> <p>Pursuant to the said order, the disciplinary authority had passed an order on 11<sup>th</sup> October, 2010 the relevant portion of which is as under :-</p> <p><i>“.....On this point Ld. West Bengal Administrative Tribunal had observed that the power vested by Rule 10 of the DCRB Rule 1971, can be exercised only by the Governor and not by any other authority.</i></p> <p><i>In light of the above, I , <u>Order</u> that Sri Alope Chandra Sahana who worked at the Excise Department under the District Magistrate and Collector office, Hooghly be treated as retired on superannuation on 31.12.2003 in the afternoon as Group ‘D’ Employee and his promotion to the post of L.D.C. in 1982 and thereafter from L.D.C. to U.D.C. in 1998 is hereby cancelled ab-initia</i></p>	

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	<p><i>and his service period from 01.04.2004 to 30.07.2007 be treated as overstayal.</i></p> <p><i>He will be entitled for receiving pension as per rule from 1.1.2004 and retiral benefit as entitled for Group 'D' employee. Excess payment causing the promotional benefit and duty period from 1.1.2004 to 30.7.2007 for rendering his office duty will be recovered from his retiral benefit.</i></p> <p><i>Inform Sri Sahana and all concerned....”.</i></p> <p>Being aggrieved by the said order dated 11<sup>th</sup> October, 2010, the applicant filed an appeal which was subsequently withdrawn as evident from the letter dated 1<sup>st</sup> June, 2011 appearing at page 65 of the application. Thereafter the Superintendent of Excise, Hooghly and Joint Commissioner of Excise had issued a memo dated 13<sup>th</sup> June, 2017, the relevant portion of which is as under:-</p> <p><i>“.....With reference to above, this is to inform that the recovery of Rs. 54824/- from GPF is lying pending as the final payment of GPF is yet to be settled. Recovery from retiring gratuity of Rs. 99776/- and leave salary of Rs. 61470/- (revised) have been made as per your memo</i></p>	

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	<p><i>no. PenV/2241211712/4/1015073933/P/15/10/85035A dated 28.08.15 (copy enclosed) and memo no. Pen V /16/1015073933/107824 dtd 16.03.2016 (copy enclosed).</i></p> <p><i>Now, you are requested to issue of fresh order regarding recovery of the remaining amount of the overdrawals towards pay &amp; allowances (Rs. 4,60,792/-) and GPF (Rs. 3,02,933/-) from pension so that we may issue the clearance certificate to the pensioner....”.</i></p> <p>Mr. S.K. Nandi, learned advocate for the applicant submits that as no order has been passed by the appellate authority regarding withdrawal of appeal, entire proceeding leading to the issue of memo of 13<sup>th</sup> June, 2017 cannot be sustained and be set aside. According to him, his promotion and the benefit arising out of it have been illegally curtailed.</p> <p>Mr. S. Ghosh, learned advocate appearing on behalf of the State respondents submits that the challenge to the order passed on 11<sup>th</sup> October, 2010 by the disciplinary authority is not maintainable as it is hit by the limitation prescribed in Section 21(1)(a) of the Administrative Tribunals Act, 1985 and the order contained in the memo dated 13<sup>th</sup> June, 2017 is in</p>	

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Skg.	<p>consequence of the order dated 11<sup>th</sup> October, 2010. Submission is had appeal been pending, pension in favour of the applicant would not have been released. Submission is the applicant is now drawing pension. Since the applicant has accepted pension, the application is without merit.</p> <p style="text-align: center;">Heard Mr. Nandi, Mr Ghosh and Mr. B. Mitra, the departmental representative.</p> <p>In our view the order dated 11<sup>th</sup> October, 2010 cannot be challenged by filing this application in 2018 as it is hit by the limitation prescribed under section 21(1)(a) of the 1985 Act. So far as the memo dated 13<sup>th</sup> June, 2017 is concerned, it is in consequence to the order dated 11<sup>th</sup> October, 2010. Moreover, the applicant is now drawing pension and thus in effect has accepted the order dated 11<sup>th</sup> October, 2010 and the order contained in the memo dated 13<sup>th</sup> June, 2017. Hence, no order is passed on this application. The application is dismissed.</p> <p style="text-align: center;">(Subesh Kumar Das) Member(A).</p> <p style="text-align: center;">(Soumitra Pal) Chairman.</p>	



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