

J U D G E M E N T

1. The instant application has been filed praying for following reliefs:
 - a) An order do issue directing the concerned respondent authorities to forthwith revoke/cancel and/or withdraw the impugned suspension order vide Order No.1397-F.T. Dated Howrah, the 19th August,2014 issued by the Deputy Secretary, Finance (Revenue) Department, Government of West Bengal against the applicant herein, for his alleged involvement in a criminal case in connection with Durgapur Coke Oven P.S.Case No. 99/14 dated 19.07.2014 under section 384/385 of the Indian Penal Code and section 7/8/9 of Prevention of Corruption Act, 1988, immediately and to allow the applicant to join his service and moreover till date no departmental proceeding has been initiated against him even after lapse of 03 years and 01 month from the date of issuance of Suspension order.
 - b) A further order to issue directing the concerned respondent authorities to allow the applicant to join service immediately by forthwith revoking/ cancelling and/or withdrawing the impugned suspension order vide Order No.1397-F.T. Dated Howrah, the 19th August, 2014 issued by the Deputy Secretary, Finance (Revenue) Department, Government of West Bengal which was issued to him only because his detention Jail custody for more than 48 hours.
 - c) A further order to issue directing the concerned respondent authorities to allow the applicant to join his service and to give him his pay and allowances with retrospective effect till date.
 - 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.
2. As per the applicant, he was put under suspension vide order dated 19/08/2014 issued by the Deputy Secretary, Government of West Bengal, Finance (Revenue Department) under Sub Clause a of Sub Rule 3 of Rule 7 of West Bengal Services (CCA) Rules 1971 (Annexure A). According to the applicant, he was falsely implicated in a criminal case by Durgapur Coke Oven P.S.Case No. 99/14 dated 19.07.2014 under section 384/385 of the Indian Penal Code and section 7/8/9 of Prevention of Corruption Act, 1988. However, the Additional Sessions Judge, Durgapur vide order dated 5.9.14 had granted bail to the applicant (Annexure B). Thereafter, the applicant made representation before the respondent authority stating the fact that he had already been granted bail vide letter

dated 18.02.2016. In the said representation he had also prayed for revocation of suspension and to allow him to join the duties (Annexure C). It has been submitted by the applicant that the applicant was suspended under sub rule 3 of Rule 7 of West Bengal Services (CCA) Rules 1971. However, after lapse of more than three years neither any disciplinary proceeding has been initiated nor the suspension order has been revoked. Therefore, being aggrieved with he has filed the instant application praying for revocation of the suspension order. It is further submitted that since the criminal proceeding is still pending and he has already been granted bail by the criminal court, therefore, keeping him under suspension without any departmental proceeding does not serve any purpose. In support of his contention he has referred the following judgement:

(i) AJAY KUMAR CHOUDHARY -VERSUS- UNION OF INDIA AND ANOTHER

Reported in (2015) 7 SCC 291

(ii) UNION OF INDIA & OTHERS -VERSUS- DIPAK MALI reported in (2010) 2 SCC 222

We have heard both the parties and perused the records as well as the judgements. 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;

Rule 7(3): “A Government employee who is detained in custody for a period 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 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.”

From the perusal of the suspension order dated 19.08.2014 as well as Rule 7(3) of West Bengal Services (CCA) Rules 1971, it transpires that the applicant was suspended on the ground that he was arrested under Prevention of Corruption Act, 1988 on 19.07.2014 for taking bribe and was detained in police custody for four days. Therefore, as per Rule 7(3)

of West Bengal Services (CCA) Rules, 1971, the Government employee, who was detained under custody for a period exceeding 48 hours shall be deemed to have been suspended with effect from his detention and shall remain suspended until further orders. Therefore, the applicant has been rightly suspended under Rule 7(3) of West Bengal Services (CCA) Rules 1971. Moreover, in the aforesaid Rule, the employee shall remain suspended until further orders though the counsel for the applicant has submitted that the suspension order should be revoked as after lapse of more than three years no disciplinary proceeding have been initiated. However, from the perusal of the WBS (CCA) Rules, 1971, it is noted that if any employee would have been placed under suspension under Rule 7(1) i.e. in contemplation of disciplinary proceeding and departmental enquiry against the said Government employee. However, there is no such provision under Rule 7(3). Moreover, if any employee would be suspended under Rule 7(3) and no disciplinary action would be initiated against him in that case his suspension could be reviewed and/or revoked if he would be exonerated from criminal case.

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 would have been challenged by the applicant, the applicant may be put under suspension under 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. Further the case of **Ajay Kumar Chowdhury Supra** is also distinguishable as the applicant in the aforesaid case was suspended in contemplation of disciplinary proceeding, which was not done after a long time.

In view of the above, we decline to interfere with impugned order of suspension. However, the respondents will be at liberty to review the suspension order, as considerable time has lapsed. Accordingly, the OA is **disposed of** with above observation with no order as to cost.

P. RAMESH KUMAR
MEMBER(A)

URMITA DATTA (SEN)
MEMBER (J)

I agree with the observation/view of the Hon'ble Judicial Member, as outlined in para 16 of her Judgement above, that the impugned punishment order dated 7th March, 2011 is liable to be set aside on the ground of violation of natural justice as the Respondents served no charge sheet upon the Applicant before initiation of disciplinary proceeding against him. Accordingly, we set aside the impugned punishment order. The Respondents, however, shall be at liberty to take appropriate action as per rules, if they so desire.

2. Let the application be disposed of with the above direction.

3. I am, however, of the view that there is no substance in the contention of the Applicant in the present case that the punishment imposed on him amounts to double punishment. The position in this regard is well settled by the judgement dated 28th February, 1995 of the Hon'ble Apex Court in *State of Tamil Nadu vs. Thiru K.S. Murugesan & Ors.* (Appeal [civil] 3432-33 of 1995) wherein it has been observed by the Hon'ble Court that when promotion is under consideration, the previous record forms basis and when the promotion is on merit and ability, the currency of punishment based on previous record stands as an impediment. Unless the period of punishment gets expired by efflux of time, the claim for consideration during the said period cannot be taken up. Otherwise, it would amount to retrospective promotion which is impermissible under the Rules and it would

be a premium on misconduct. Accordingly, the Hon'ble Court held that the doctrine of double jeopardy has no application in such cases and non-consideration for promotion during the currency of the punishment is neither violative of Article 21 nor Article 14 read with Article 16 of the Constitution of India. Therefore, in the light of the aforementioned judgement of the Hon'ble Court, the withholding of promotion in the instant case during the currency of the punishment of stoppage of increments is only a consequential event and in no way amounts to double jeopardy.

(DR. A. K. CHANDA)
MEMBER(A)