

**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 Smt. Urmita Datta (Sen)
Member (J)**

-AND-

**The Hon'ble P. Ramesh Kumar,
Member (A)**

J U D G M E N T

-of-

Case No. O.A. - 1032 of 2014

Rajesh SinghApplicant

-Versus-

State of West Bengal & others....Respondents

**For the Applicant : - Mr. Goutam pathak Banerjee,
Advocate.**

**For the State Respondent:- Mr. Apurba Lal Basu,
Advocate.**

Judgment delivered on : 22nd August, 2019

**The Judgment of the Tribunal was delivered by :-
The Hon'ble Smt. Urmita Datta (Sen), Member (J)**

Judgement

1. The instant application has been filed praying for following relief(s):

“(A) A direction do issue upon the concerned respondent authorities to forthwith set aside/cancel/rescind/quash the impugned Final Order dated 06.11.2013 passed by the Commandant, State Armed police, 12th Battalion, Debgram, Jalpaiguri, in connection with the Proceeding No. 03/2013 dated 08.05.2013 and the observation of the Deputy Inspector General of Police (Armed Police), North Bengal, Siliguri, dated 15.01.2014 upholding and approving the same, being Annexures – ‘C’ and ‘D’ herein, together with the entire departmental proceeding and the command them to act strictly in accordance with law;

(B) A direction do issue upon the concerned respondent authorities to forthwith produce and/or cause to be produced the entire records relating to the applicant’s case and on such production being made, render conscionable justice upon perusing the same;

(C) And/or to pass such other or further Order or Orders as to this Hon’ble Tribunal may deem fit and proper.”

2. As per the applicant, while he was attached to STRACO Camp under Lalgah Police Station, on the basis of the complaint dated 18.10.2013 received from S.I. (AB) Mahabir Narjinary of S.A.P.,

12th Battalion, one Charge Sheet dated 08.05.2013 was issued to the applicant on the following allegation:

“1. It is alleged against you for extortion of money from camp personnel on the plea of sparing them unauthorisedly for home without intimation to superior.

2. You were found in intoxicated condition all the time and showed no respect for seniors in the same camp and used filthy languages against the constables.

3. On 23/04/2013 at Bn, Hqr, Debgram all the eye witnesses of the incident namely C/350 Mithun Mridha, C/438 Amit Ghosh, C/726 Dibakar Chakraborty, C/261 Upen Adhikary and C/715 Debasis Roy all of S.A.P. 12th Bn. attached to the camp were duly examined by Shri K.B. Thapa, AC-I, S.A.P. 12th Bn, Debgram, Jalpaiguri and the allegation leveled against you were found to be corroborated in the statement of the constables.” (Annexure - A)

In response to the said charge sheet, the applicant filed his detailed written statement on 31.07.2013 (Annexure – B). However, the enquiry officer without considering the same had submitted his findings before the disciplinary authority on 21.10.2013 with a finding that charge No. 2 & 3 are proved while charge No. 1 was not proved. Further, the disciplinary authority also without considering the submission of the applicant, had passed final order dated 06.11.2013 inflicting the punishment of reduction of pay of the applicant by one increment for a period of one year from (PB Rs. 9680/- + GP Rs. 3200/-) = Rs. 12,880 with

effect from 01.11.2013 without cumulative effect and this will not affect in future effect and service. Being aggrieved with, the applicant preferred an appeal before the authority on 05.12.2013. However, the Appellate Authority had confirmed the order of the disciplinary authority in a non-speaking order dated 21.01.2014 (Annexure – D). Being aggrieved with, he has filed the instant application.

As per the applicant, the findings of the enquiry authority as well as disciplinary authority are without any basis with regard to allegation of intoxication. However, as per procedural norms when the charge of intoxication brought against a delinquent, he should have been produced before the medical officer for his report to that effect after alcohol test but in the instant case, the applicant was never produced before any medical officer at any point of time. Therefore, on the basis of statement of some constables who are interested witnesses for the higher authorities charge No. 2 cannot be claimed to be proved or substantiated without any supporting evidences. As per the Regulation 857 of Police Regulation of West Bengal 1943, a major punishment includes reduction of pay which means reduction in ranking. As per the applicant, order of the disciplinary authority is illegal and vague by his punishment order though the disciplinary authority had imposed a punishment of one increment for a period of one year without cumulative effect but while doing so he rather reduced the scale of pay of the applicant with retrospective effect which is not permissible in the eye of law. The order of the Appellate Authority is non-speaking one as he did not discuss the submission made by the applicant nor had passed any reasoned order.

3. The respondents have filed their reply wherein they have stated that the charges against the applicant were corroborated by the

statement of the constables. As per the respondents, after going through the deposition of P.W.s, contents of the exhibits, written statement of defense and all other related documents, it was ascertained that on 11.03.2013 the Charged Officer had a hot altercation with the complainant i.e. S.I. (AB) of S.A.P., 12th Battalion, Mahabir Narjinar, S.A.P., 12th Bn. Lalgah Camp and used filthy languages at the time of night role call which was corroborated by the statement given by the A.S.I. (AB), S.A.P., 12th Bn. Further the charge of intoxication has been corroborated by the statement given by the C/350, C/438, C/726, C/261 and C/715 i.e. constables of S.A.P., 12th Bn. Thereafter being aggrieved with the findings of the enquiry officer and after applying mind judiciously and taking the merits of documents into consideration and the gravity of the chargers as well as past service records of the Charged Officer an order was passed by the disciplinary that the pay of A.S.I. be reduced by one increment for a period of one year with effect from 01.11.2013 without cumulative effect and that will not affect his future increment and service. The aforesaid decision was further approved and upheld by the D.I.G. (AP) NB, Siliguri. Therefore, the respondents have prayed for rejection of the instant application.

The applicant has filed rejoinder and denied disputed contention of the respondents. It has been submitted that though there is a charge of intoxication and extortion of money was there in the charge sheet but it had been admitted by the S.I. (AB), Mahabir, Narjinar, Camp-in-charge that such misconduct was never entered in the Camp G.D. Therefore, all the constables who are the junior and subordinate to the complainant S.I., are obviously supported the contention of the S.I. (AB). Thus, the charge sheet is baseless and vague being afterthought and motivated as the applicant being Camp Major had no role to receive and forward the leave application in respect of any

incumbent and the complainant is the authority to sanction the leave.

4. We have heard the parties and perused the records. As per the applicant though he is basically charged with two charges i.e. was intoxicated during the duty time as well as asking for money from the colleagues for granting of permission of station leave. However, neither any complaint was lodged for taking money by the authority nor any medical examination was conducted to establish the charge of consumption of alcohol, however, on the basis of some statements of some of his colleagues who were lower in rank from the complainant charges were claimed to be proved. Even his submission was not properly considered by the disciplinary authority as well as Appellate Authority. Further the disciplinary authority while imposing punishment had reduced his pay scale / rank in the name of stoppage of one increment. From the perusal of impugned order, it is noted that the disciplinary authority had imposed the following punishment :

“After applying my mind judiciously and taking the merits of all documents into consideration and considering the gravity of the charge as well as past service records of the charged officer, I pass an order that the pay of the Charges ASI be reduced by one increment for a period of 01 (one) year from (PB – Rs. 9680/- + GP – Rs. 3200/- = Rs. 12,880/-) to (PB – Rs. 9300/- + GP – Rs. 3200/-) = Rs. 12,500/-) w.e.f. 01/11/2013 without cumulative effect and this will not affect his future increment and service.

I further order that the period of his suspension w.e.f. 30/04/2013 pm for 07 (seven) days is confirmed and he will not get anything

more than he had already drawn during the period of suspension.”

After perusal of the afore-mentioned punishment order, it is noted that though there was a direction of reduction of one increment for one year that may be stoppage of one increment for one year without cumulative effect on future increment and service. However, in doing so the disciplinary authority had also reduced his pay scale from (PB – Rs. 9680/- + GP – Rs. 3200/-) = Rs. 12,880/- to (PB – Rs. 9300/- + GP – Rs. 3200/-) = Rs. 12,500/- w.e.f. 01.11.2013 i.e. with retrospective effect whereas the final order was passed on 06.11.2013. Therefore, in our considered view, the disciplinary authority’s punishment is self-contradictory. Even the said order was subsequently confirmed by the Appellate Authority. Further it is observed that the disciplinary authority as well as Appellate Authority did not consider the submission made by the applicant in his defense statement as well as appeal. In view of the above, we quash and set aside the disciplinary authority’s order dated 06.11.2013, Appellate Authority’s order dated 21.01.2014 and remand back the order to the Disciplinary Authority to consider the case of the applicant afresh and to pass a reasoned and speaking order after granting him appropriate opportunity and communicate the same within a period of twelve 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.

P. RAMESH KUMAR
MEMBER (A)

URMITA DATTA (SEN)
MEMBER (J)