

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 QA-116 of 2013**Ashim Kumar Halder –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;">22 09.07.2019</p>	<p><i>For the Applicant : Mr. B. R. Neogi, Mr. A.K. Niyogi, Advocates.</i></p> <p><i>For the Respondent : Mr. A.L. Basu, Advocate.</i></p> <p><i>The instant application has been filed praying for following relief:</i></p> <p style="padding-left: 40px;"><i>“(a) An order quashing and setting aside the Revisional/Appellate Order passed on 28.9.12 and for a further direction to reinstate the applicant in service and to pay all arrears of salaries and allowances;</i></p> <p style="padding-left: 40px;"><i>(b) Issuance of any other order or orders and/or direction as this Hon'ble Tribunal may deem fit and proper.”</i></p> <p><i>As per the applicant, he was charge sheeted for some alleged misconduct on 26.09.2011. However, the applicant had participated the disciplinary proceedings and final order has been passed by the Disciplinary Authority on 26.06.2012 by way of withholding annual increment for a period of three consecutive years but without cumulative effect. Being aggrieved with, the applicant preferred the</i></p>	

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	<p><i>appeal before the Deputy Inspector General of police, Railways on 23.07.2012 i.e. within 37 days as per Rules. However, instead of passing any order as an Appellate Authority, the Appellate Authority issued show-cause dated 03.08.2012 by way of invoking Revisional power and had passed the Revisional/Appellate order on 28.09.2019 by way of imposing punishment of dismissal from service while the appeal is pending before him. Being aggrieved with, the applicant has filed the instant application as he has no scope for filing any revision petition against the said order. As per the applicant, under Regulations 883 and 884 of P.R.B., 1943, when the appeal is pending before the Appellate authority, he cannot invoke the power of Revisional Authority without passing any order on appeal which is totally contrary to the stipulated Rules as prescribed in the statute. Therefore, he has prayed for quashing of the impugned Appellate/Revisional order.</i></p> <p><i>The respondents have filed their reply. As per the respondents, the Appellate Authority i.e. D.I.G., Railways had granted opportunity to the charge officer and after carefully examining the documents, had only enhanced the punishment by removing him from service. Therefore, according to the counsel for the respondents, the application</i></p>	

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	<p><i>has no merit.</i></p> <p><i>The applicant has filed his rejoinder denying and disputing the contentions of the respondents.</i></p> <p><i>Heard both the parties and perused the records as well as the Rules.</i></p> <p><i>Regulations 883 and 884 stipulates as follows:</i></p> <p><i>"883. Period of appeal and procedure. [§ 7, Act V, 1861, read with §243 of the Government of India Act, 1935] -</i></p> <p><i>Petitions of appeal or for revision shall be presented to the officer against whose order the appeal is preferred, within 37 days of the date of receipt of the order by the petitioner. Every petition of appeal or for revision shall be accompanied by certified copies of the charges made, of the written statement of the defence, if any, and of the order appealed against. Such officer when transmitting such petition to the Appellate Authority shall send the proceedings, service book or role and confidential report book of the appellant</i></p>	

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	<p><i>together with a covering letter. Only relevant papers shall be sent and they shall be properly flagged for reference.</i></p> <p><u>884.</u> <i>Right to call for records. [§ 7, Act v, 1861, read with § 243 of the Government of India Act, 1935] – The Inspector General or the Deputy Inspector-General may call for the proceedings of any case, even where no appeal lies, and pass such orders as may seem fit provided that no order under this regulation shall be made to the prejudice of any person unless he has had an opportunity of showing cause against the proposed order. If he so desires he shall be granted a personal hearing and this fact should be recorded in the proceedings."</i></p> <p><i>From the perusal of the afore-mentioned Regulations, it is clear that the power of revision can only be exercised when the appeal preferred by a party has to come to an end and the Appellate Authority has passed an order. So long the time for preferring an appeal does not expire, the Revisional power cannot be exercised because applicant would be deprived of his statutory right to prefer an appeal</i></p>	

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	<p><i>in the instant case. The Superintendent of Police being the disciplinary authority against the said order appeal lies before the D.I.G. A revision may be made by the Inspector General thereafter waiting for the statutory period of appeal. Even if D.I.G. can invoke Revisional power, if no appeal preferred before him within statutory period.</i></p> <p><i>But in the instant case, D.I.G. had invoked the power of Revisional Authority being Appellate Authority only and that too when the appeal is pending before him. It is observed that the purpose of exercise of power in revision by D.I.G. before the expiry of the period to prefer an appeal or when the appeal is pending before him will not only amount to deprivation of the statutory right to prefer an appeal but also deprivation of opportunity to get the Appellate order revised by the Inspector General of Police because once a Revisional power is exercised by the Deputy Inspector General, there cannot be any further revision of the Revisional order.</i></p> <p><i>In view of the above, we are of the considered view that there is clear violation of provisions stipulated as per the Police Regulations Act, 1985. Therefore, we quash and set aside the impugned order dated 28.9.12 and remand back</i></p>	

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A.K.P.	<p><i>to the Appellate Authority to consider the case afresh as per the Rules as well as observation made by the Tribunal, by a reasoned and speaking order after granting him a personal hearing within a period of eight weeks from the date of receipt of this order. Accordingly, the O.A. is allowed with the above observations and directions with no order as to cost.</i></p> <p>P. RAMESH KUMAR MEMBER (A)</p> <p>URMITA DATTA (SEN) MEMBER (J)</p>	