

**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. - 142 of 2019**

**Amarendra Kumar Singh .....Applicant**

**-Versus-**

**State of West Bengal & others....Respondents**

**For the Applicant : - Mr. Manujendra Narayan Roy,  
Advocate.**

**For the State Respondent:- Mr. Sankha Ghosh,  
Mr. Ranjit Kumar Mondal,  
Advocates.**

**Judgment delivered on : 4<sup>th</sup> February, 2020**

**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) An order do issue thereby setting aside / quashing the entire Departmental Proceeding including the Charge sheet vide Memorandum No. 131-E (Vig) dated 25.05.2016, findings /Report of the Inquiring Officer, findings of the Disciplinary Authority after conclusion of the departmental proceeding, Show Cause notice vide Order No. 311-E (Vig) Dated 10.11.2016, Second time Second Show Cause Notice vide Order No. 298-E (Vig) Dated 18.07.2017, final order of punishment vide Order No. 689-E (Vig) dated 18.12.2018 by the Principal Secretary, Public Works Department, West Bengal and after setting aside the entire proceeding give all accrued service benefits to your applicant herein within a stipulated time period.**

**(b) An order do issue thereby setting aside/quashing the findings/Report of the Inquiring Officer as the same is hit by the maxim Nemo Judgex Causa Sua (No person can be judge of his own cause) as no witnesses were called in during the course of conducting the departmental proceeding, and further set aside/quash the Show Cause notice vide Order No. 311-E(Vig) Dated**

**10.11.2016, Second time Second Show Cause Notice vide Order No. 298-E(Vig) Dated 18.07.2017 with immediate effect.**

**(c) A further order do issue directing the respondent authorities to transmit records pertaining to the instant case so that conscionably justice can be done.**

**(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, while he was officiating in the capacity of Executive Engineer, National Highways Division No. –X, he was served with a Charge Sheet dated 25.05.2016 without mentioning any name of the witnesses by whom the proposed charges would be proved. He has alleged with the charges of intentional negligent in carrying out the advice of the Superintending Engineer (Technical) and Ministry of Road Transport & Highways regarding deployment and use of key plant and equipment in three National Highway works. On the same day, the Disciplinary Authority had appointed Enquiry Officer as well as Presenting Officer vide order dated 25.05.2016 (Annexure “B”). However, subsequently vide one Corrigendum dated 01.08.2016, the Disciplinary Authority rectified the Memo dated 25.05.2016 (Annexure “C”). In reply to the said show cause notice, the applicant had submitted his written defense on 21.06.2016 (Annexure “D”) denying the allegations. However, the enquiry authority without examining any witnesses had submitted his enquiry report dated 03.08.2016 holding him guilty for all three charges, which is a clear violation of natural justice. Subsequently, the applicant was served with a Second Show

Cause Notice vide order dated 10.11.2016 along with the findings of the disciplinary authority and report of the enquiry authority (Annexure 'F'). However, subsequently again the applicant was served with a second show cause notice proposing a penalty of withholding of two annual increment for one year without cumulative effect vide order dated 18.07.2017 (Annexure 'G'). Thereafter, the applicant was served with a final punishment order dated 18.12.2018, whereby the applicant was imposed with a penalty of withholding of two annual increments without cumulative effect. Further he was also directed to be debarred from promotion during the period of his penalty. Being aggrieved with, the applicant has preferred this application.

3. As per the applicant, the charge sheet itself is liable to be quashed as neither there is any mentioning of any witnesses by whom the alleged charges have to be proved nor the enquiry officer had examined or cross-examined any witnesses to prove the charges. Thus, the enquiry report also has been vitiated for non-examination of any witnesses. It has been further submitted that the punishment order is also liable to be quashed and set aside as this Tribunal vide judgement dated 07.09.2018 passed in O.A. No. 651 of 2016 (Dr. Susmita Roy -Vs- State of West Bengal & Others) held that both the withholding of increment and debarment of promotion cannot be imposed under Rule 8(ii) of West Bengal Services (Classification, Control and Appeal) Rules, 1971.
4. During the course of the hearing, the counsel for the applicant has also referred the following judgement:
  - (i) State of Uttar Pradesh and Others –Vs- Saroj Kumar Sinha
  - (ii) Roop Singh Negi –Vs- Punjab National Bank and Others.

5. The respondents have not filed any reply. However, the counsel for the respondents has submitted that the disciplinary authority has rightly imposed punishment and there is no violation of natural justice as the applicant was granted opportunity to prove his case.
6. We have heard the parties and perused the documents and judgements. From the perusal of the charge sheet, it is observed that there is no name of any witnesses by whom the charges have to be proved. Even the enquiry officer did not examine or cross-examine any witnesses to prove the charges. However, she has submitted the enquiry report on the basis of available documents.
7. In the case of Roop Singh Negi (supra), the Hon'ble Apex Court has observed inter alia:

**“14. Indisputably, a departmental proceeding is a quasi-judicial proceeding. The enquiry officer performs a quasi-judicial function. The charges levelled against the delinquent officer must be found to have been proved. The enquiry officer has a duty to arrive at a finding upon taking into consideration the materials brought on record by the parties. The purported evidence collected during investigation by the investigating officer against all the accused by itself could not be treated to be evidence in the disciplinary proceeding. No witness was examined to prove the said documents. The management witnesses merely tendered the documents and did not prove contents thereof. Reliance, inter alia, was placed by**

the enquiry officer on the FIR which could not have been treated as evidence.

15. We have noticed hereinbefore that the only basic evidence whereupon reliance has been placed by the enquiry officer was the purported confession made by the appellant before the police. According to the appellant, he was forced to sign on the said confession, as he was tortured in the police station. The appellant being an employee of the bank, the said confession should have been proved. Some evidence should have been brought on record to show that he had indulged in stealing the bank draft book. Admittedly, there was no direct evidence. Even there was no direct evidence. The tenor of the report demonstrates that the enquiry officer had made up his mind to find him guilty as otherwise he would not have proceeded on the basis that the offence was committed in such a manner that no evidence was left.”

8. In the case of Saroj Kumar Sinha, Hon’ble Apex Court has observed inter alia:

“28. An enquiry officer acting in a quasi-judicial authority is in the position of an independent adjudicator. He is not supposed to be a representative of the department/disciplinary authority/Government. His function is to examine the evidence presented by the

Department, even in the absence of the delinquent official to see as to whether the un rebutted evidence is sufficient to hold that the charges are proved. In the present case the aforesaid procedure has not been observed. Since no oral evidence has been examined the documents have not been proved, and could not have been taken into consideration to conclude that the charges have been proved against the respondents.

29. Apart from the above, by virtue of Article 311(2) of the Constitution of India the departmental enquiry had to be conducted in accordance with the rules of natural justice. It is a basic requirement of the rules of natural justice that an employee be given a reasonable opportunity of being heard in any proceedings which may culminate in punishment being imposed on the employee.
30. When a departmental enquiry is conducted against the government servant it cannot be treated as a casual exercise. The enquiry proceedings also cannot be conducted with a closed mind. The inquiry officer has to be wholly unbiased. The rules of natural justice are required to be observed to ensure not only that justice is done but is manifestly seen to be done. The object of rules of natural justice is to ensure that a government servant is treated fairly in proceedings which may culminate in

**imposition of punishment including dismissal/removal from service.”**

9. With regard to the imposing of punishment of both withholding of increments as well as promotion, it is noted that under Rule 8 (ii) of West Bengal Services (Classification, Control and Appeal) Rules 1971 stipulates :

**“Rule 8: The following penalties may, for good and sufficient reasons and as hereinafter provided, be imposed on a Government employee, namely;**

**(i) Censure;**

**(ii) With holding of increments or promotions;**

**(iii) Recovery from pay of the whole or part of any pecuniary loss caused to the Government by negligence or breach of orders;**

**(iv) Reduction to a lower stage in the time-scale of pay for a specified period with further direction as to whether or not the Government employee will earn increments of pay during the period of such reduction and whether on the expiry of such period the reduction will or will not have the effect of postponing the future increments of his pay;**

**(v) Reduction to a lower time-scale of pay, grade, post or service which shall ordinarily be a bar to the promotion of the Government**



**employee to the time-scale of pay, grade, post or service from which he was reduced, with or without further directions regarding conditions of the restoration to the grade or post or service from which the Government employee was reduced and his seniority and pay on such restoration to that grade, post or service;**

**(vi) Compulsory retirement**

**(vii) Removal from service which shall not be a disqualification for future employment;**

**(viii) Dismissal from service which shall ordinarily be a disqualification for future employment under the Government.”**

From the above, it is noted that the legislature has prescribed certain specific penalty and Rule 8(ii) has specifically prescribed penalty of either withholding of increment or promotion. It is further noted that there is no separate provision for imposition of penalty as withholding of increment and debarment of promotion rather the both the punishments have been stipulated as an alternative to one another. Therefore, in our considered opinion since the intention of the legislature is clear by putting “or” between two different types of punishments, the authority has to impose any of the alternative possibilities of punishment instead of imposing both the punishments at a time otherwise, the legislature while stipulating the punishment would have used the word “and/or” in place of simple “or” and in that case both the punishments could have been imposed at a time. Accordingly, in

our view the authority cannot impose both the punishment at a time as it is beyond the scope of the prescribed punishment as per Rule.

However, consideration of the penalty of withholding of increment subsequently at the time of consideration of promotion is different subject matter, which can be dealt with separately while considering promotion as held by the Hon'ble Apex Court in the case of **State of Tamil Nadu –vs- Thiru K.S. Murigason & Others 1995(02) SCR 386**. In the aforesaid judgement the delinquent employee was punished with stoppage of three increments with cumulative effect initially by 06.12.1982 and subsequently, on appeal the same punishment order was imposed since 1984. However, subsequently at the time for consideration of promotion to the post of Deputy Director for the period 1983-84, the name of the concerned delinquent employee was not included in the approved list and being aggrieved with, he filed one OA 138 of 1991, which was subsequently appealed before the Hon'ble Apex Court and the Hon'ble Apex Court in the given situation had held that non-consideration for promotion during the period of punishment cannot be treated as a double jeopardy. But, unfortunately in the instant case the authority while passing the impugned order had imposed both the punishment which has been specifically stipulated as alternative to each other. Therefore the instant case is quite different from the facts of the aforementioned judgement.

10. In view of the above, we are of the opinion that the impugned order has been passed in violation of the West Bengal Services (Classification, Control and Appeal) Rules, 1971. Even the charge sheet and enquiry report is liable to be quashed as without the absence of examination and cross-examination of witnesses, the entire proceedings has been vitiated. Accordingly, we quash and

set aside the charge sheet dated 25.04.2016, findings of the enquiry officer, final punishment order dated 18.12.2018. Further respondents are directed to grant consequential benefit of the said period. However, the respondents will be at liberty to proceed against the applicant as per Rules, if so advised.

**P. RAMESH KUMAR**  
**MEMBER (A)**

**URMITA DATTA (SEN)**  
**MEMBER (J)**