

**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. - 494 of 2017

Sanjoy Kumar DuttaApplicant

-Versus-

State of West Bengal & others....Respondents

**For the Applicant : - Mr. Apurba Lal Basu,
Mrs. Sunita Agarwal,
Advocates.**

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

Judgment delivered on : 11th January, 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 mandatory directing and commanding the concerned respondent authorities to cancel, rescind, and/or withdraw the Charge Memo No. 286-E(Vig) dated 06.11.2013, Order No. 336-E(Vig) dated 22.09.2015, report of the further Enquiry dated 14.08.2015 and the Final Order No. 175-E(Vig) dated 26.04.2017 and not give any effect or further effect to the said Memos/Orders and to release all consequential benefits to the applicant and to act in accordance with law:

(b) An order directing the respondent authorities to certify and transmit the records of this case to this Hon’ble Tribunal so that conscionable justice may be administered on perusal of 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. The case of the applicant is as follows:

(i) As per the applicant, he was initially selected for the post of Assistant Engineer and was appointed in the year 1991. Being posted as Executive Engineer, Burdwan Highway Division III, PW (Roads) Directorates, he was entrusted with three repair works of PW (Roads) (which was severely

damaged in rains and flood thus created obstruction for movement as well as traffic). The applicant completed the said work as entrusted upon him after observing all the necessary formalities for which he was also highly appreciated by the Engineer-in-Chief, PW and PW (Roads) Department, Govt. of West Bengal vide certificate dated 29.09.2014 (Annexure A).

- (ii) It is further stated that as there was severe pressure from the Administration to restore the Roads from traffic obstruction caused by the damage and therefore the applicant being Executive Engineer had to attend several meetings called by the Administration, more particularly, the District Magistrate along with Sabhadhipati, Zilla Parishad in presence of Superintending Engineer and other office bearers of the said Zilla Parishad, wherein decision was unanimously taken in presence of all the higher authority for repairing the Roads to avoid public resentment. Accordingly, he was instructed to invite tender and after completing all necessary formalities, the works were allotted to the tenderer and after completion of works, final bills were drawn up in respect of two Roads. Subsequently, payments were made. In the mean time, the applicant was transferred from Burdwan Highway Division III to Nadia Highway Division II.
- (iii) However, while posted as Executive Engineer, Malda PMGSY Division, the applicant was served with a Charge Memo dated 06.11.2013 with three allegations i.e.
- “(i) that the applicant had taken up and executed works of three Roads without obtaining prior approval from the higher authorities.

(ii) The applicant had committed to Rs. 100 Lack for the works in question without obtaining approval of the department.

(iii) The applicant while functioning as authorized Executive Engineer, had paid the fund to the extent of Rs. 62,96,560/- for the work from the non plan head without prior approval of the department.”

The applicant, however, had denied all the allegations by way of filing reply dated 28.04.2014 to the said Charge Memo (Annexure D). Thereafter, the Enquiry Authority submitted his enquiry report (Annexure E) dated 27.05.2015 holding not found guilty of all the three Charges. However, the Disciplinary Authority vide his second Show-Cause Notice dated 22.09.2015 had stipulated that though he did not found him guilty for Charge I & III but was found guilty in respect to Charge II and thus proposes for imposing of a penalty of withholding of two annual increments without cumulative effect (Annexure F).

- (iv) In response to the said second Show-Cause Notice dated 22.09.2015, the applicant vide his letter dated 05.10.2015 (Annexure G) denied the said Charges. Subsequently another Enquiry Report (Annexure H) dated 14.08.2015 was submitted without holding a fresh enquiry in respect to Charge No. II and without serving the same report to the applicant. Subsequently, Disciplinary Authority vide order dated 26.04.2017 imposed a punishment with penalty of withholding of two annual increments without cumulative effect by way of holding the applicant as guilty of Charge No. II. Being aggrieved with, he has filed the instant application.

- (v) As per the applicant, the entire disciplinary proceedings has been vitiated due to the biased and non-application of mind as well as perverse finding of the Enquiry Officer and Disciplinary Authority. Though in the first enquiry report dated 27.05.2015, the concerned Enquiry Officer Mr. Moloy Ghosh specifically found him not guilty of Charge No. II with proper reasoning. However in his second Enquiry Report as per the direction of the Disciplinary Authority he found the applicant guilty of the Charge No. II without giving any reason for alteration of earlier findings or the subsequent finding i.e. simply by mentioning of violation of Rule 3(2) of the West Bengal Services (Duties, Rights & Obligations of the Govt. Employees) Rule 1980 which is self-contrary and thus findings are not only result of non-application of mind but also perverse. The Disciplinary Authority also did not apply his mind or had given any reason for non-acceptance of the earlier Enquiry Report or reasons for acceptance of the subsequent Enquiry Report submitted by the same person. It has been further submitted by the applicant that the punishment of withholding of increment as well as debarment for promotion during the said penalty in terms of explanation defined as West Bengal Services (Classification, Control & Appeal) Rules, 1971, amounts to double punishment, which has been held by this Tribunal Judgement dated 07.09.2018 passed in O.A. No. 651 of 2016.
- (vi) Though the respondents were granted enough opportunity to file reply, however, no reply has been filed till the date of final hearing. However, the counsel for the respondent has submitted that the Disciplinary Authority has rightly imposed penalty after following due process of law as per the provisions of Service Rule.

3. We have heard both the parties and perused the records. It is noted that the applicant was charge sheeted for three charges, basically on the allegation that the applicant did not obtain approval of the Higher Authorities while executing the repair work or making any commitment of Rs. 100 lakh or making payment. The said three charges were enquired by the Enquiry Officer Shri Moloy Ghosh, who also at first instance vide his first Enquiry Report dated 27.05.2015 found him not guilty of any of the three charges, wherein with regard to Charge No. II, the Enquiry Officer held inter alia:-

“After going through the documents and arguments put forward by both the sides, it is found that –

That statement does not bear the characteristics of an official communiqué. Nothing is found in the statement which demonstrates conclusively that it was drawn up as a commitment. Also, had it been a commitment, the Zilla Parishad should have officially revised their Resolution dated 19.03.2008 in respect of funding arrangement for the three works in question and communicated that to all concerned. The context behind mentioning Rs. 100.00 lakhs as Departmental contribution, as described by the Charged Officer, is found plausible because had it been related to the Departmental fund, why approval from Sabhadhipati and NABARD would be mentioned in the proviso. Thus, the proviso – ‘To be approved by the Sabhadhipati and

NABARD’ – alone demonstrates beyond doubt that he made no commitment towards providing Rs. 100 lakhs out of departmental fund. It was merely an indication of probable arrangement whereby, if approved by the Sabhadhipati and NABARD, the fund might be arranged from some other source that required approval of the Sabhadhipati and NABARD”

However, though the Disciplinary Authority agreed with the findings with regard to the Charge No. I & III but he disagreed with the findings with regard to the Charge No. II and had directed the same Enquiry Authority to conduct fresh enquiry with respect of the Charge No. II by way of Second Show-Cause Notice dated 22.09.2015 and in pursuance to the said direction, the same Enquiry Authority again submitted another Enquiry Report dated 14.08.2015 holding inter alia:

“After going through the original document i.e. financial statement signed by the said Executive Engineer on 12.09.2008 and submitted to the authority committing Rs. 100 Lakh will be given by Public Works Roads Directorate without obtaining the Departments approval, it is found that this is violative of Rule 3(2) of the West Bengal Services (Duties, Rights & Obligations of the Govt. Employees) Rule 1980. (herein after referred to as the said Rules) and therefore, in the event of infringement of any of the said Rules, the Govt. Employee is liable by Rule of the said Rules to penal action within the meaning of Rules of the West Bengal

**Services (Classification, Control & Appeal)
Rules, 1971.”**

After perusal of both the Enquiry Reports, it is noted that the same Authority, though in his first report with regard to Charge No. II specifically stated the reasons for not found him guilty of Charge No. II as there was a clear provision that the said proposal have to be approved by the Sabhadhipati and NABARD whereas in the subsequent Enquiry Report no such reasoning has been given as to why he has found the applicant as guilty for violation of Service Rules. The Enquiry Authority simply found the applicant guilty on the ground that he had not taken approval of higher authority. Further even the Enquiry Officer never cancelled or had given any reasons for his alteration of view with regard to the Charge No. II. Moreover, though the applicant in his reply to Second Show-Cause Notice had clearly referred the provision of approval of Sabhadhipati and NABARD, however, the Disciplinary Authority in his punishment order did not consider such submission or recorded any reasoning for giving to the conclusion or contrary findings made by the same Enquiry Officer. Therefore, it shows the clear biased and non-application of mind of the Disciplinary Authority which amounts to perverse finding without any reason.

Moreover, in the punishment order the Disciplinary Authority has imposed the following penalty

**“Withholding of 2 (two) annual increments
without cumulative effect.**

**The Charged Officer is debarred from
promotion during the period of his undergoing
the said penalty in terms of ‘Explanation’ as
defined at para (iii) of Rule 8 of the W.B.S
(C.C.A.) Rules, 1971”**

From the perusal of the above, it is noted that the aforesaid issue has already been considered by this Tribunal in O.A. No. 651 of 2016, wherein in Judgement dated 07.09.2018, this Tribunal held inter alia:

“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 the following penalty :-

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 instant case is quite different from the facts of the aforementioned judgement”.

Further the explanation as defined in para (ii) of Rule 8 of the West Bengal Services (Classification, Control & Appeal) Rules, 1971, but while undergoing such penalty if somebody would not get any promotion due to the currency of the punishment then the afore-mentioned explanation would be applicable. But in the instant case the Disciplinary Authority had clearly stated that the applicant would be debarred from promotion along with the withholding of two annual increments without cumulative effect. Therefore, in our opinion, the authority cannot pass any order contrary to any provision of Rules as prescribed.

In view of the above, the disciplinary proceedings is liable to be quashed as the entire proceedings has been vitiated by the non-application of mind as well as biased and perverse findings of the Enquiry Officer as well as Disciplinary Authority. Therefore, we are constrained to quash and set aside the charge sheet dated 06.11.2013, Enquiry Report dated 14.08.2015 and Final Order dated 26.04.2017. Accordingly, the O.A. is allowed with above observations and direction with no order as to costs.

P. RAMESH KUMAR
MEMBER (A)

URMITA DATTA (SEN)
MEMBER (J)