

ORDER SHEET**WEST BENGAL ADMINISTRATIVE TRIBUNAL****Present-**

The Hon'ble Mrs. Urmita Datta (Sen), Member (J)

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

Case No – OA-530 of 2019.**Ganesh Chandra Mondal Vs The State of West Bengal & Others.**

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<p>02</p> <p>-----</p> <p>01-08-2019</p>	<p>For the Applicant : Mr. M. N. Roy, Advocate.</p> <p>For the State Respondents : Mr. G. P. Banerjee, Advocate.</p> <p>Affidavit of service has been filed be kept on record.</p> <p>The instant application has been filed challenging the communication dated 21-05-2019, whereby the Joint Secretary to the Govt. of West Bengal Personal & Administrative Reforms Department had decided to continue the enquiry with a new Enquiry Officer. As per the applicant, he was served with a Memo of Charge dated 25-11-2014 with allegation of having disproportionate assets to the tune of Rs. 36,66,742/- as well as incomplete and misleading information to suppress the material particulars during declaration of assets. Subsequently one enquiry officer was</p>	

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	<p>also appointed to conduct enquiry, wherein the applicant had participated and the enquiry officer had submitted his report. However, the applicant was served with Memo dated 13-02-2018, whereby a fresh enquiry authority was appointed without serving the erstwhile enquiry report as well as disagreement note of the Disciplinary Authority to the applicant. Being aggrieved with, he preferred one OA-1033 of 2018. The aforesaid OA was heard in presence of both the parties and was disposed of by order dated 28-01-2019 whereby the Memo dated 13-02-2018 was quashed and set aside with a direction to the authority to serve the disagreement note if any along with erstwhile enquiry officer report and to take appropriate steps as per Rules.</p> <p>However, as per the applicant, instead of supplying any disagreement note, erstwhile enquiry report dated 24-08-2017 was served upon him vide Memo dated 21-05-2019, wherein the Disciplinary Authority again decided to continue with a new enquiry</p>	

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	<p>authority in violation of the order of this Tribunal as no disagreement note has been served upon him stating the reasons of appointing the new enquiry authority. Being aggrieved, he has filed the instant application.</p> <p>During the course of the hearing, the Counsel for the applicant has submitted that such action of the Disciplinary Authority was not only contrary to the direction of this Tribunal but also against settled principle of law as enumerated by the Apex Court in the judgement of Punjab National Bank & Others Vs. Kunjbehari Mishra reported in (1998) 7 SCC 1984. Therefore the Counsel for the applicant has vehemently prayed for interim protection against the said impugned order dated 21-05-2019, by way of restraining the Disciplinary Authority to proceed with other proceeding with regard to the Charge dated 25-11-2014 with new enquiry authority.</p> <p>The Counsel for the respondent has vehemently objected for any interim protection.</p>	

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	<p>The Counsel for the respondent has submitted that the applicant could have avail an alternative remedy by filing reply to the said Memo.</p> <p>However, the Counsel for the applicant has submitted that there was no scope of filing reply as the Disciplinary Authority again appointed new enquiry authority without serving disagreement note to him. As per the Counsel for the applicant, if any he would have been served with disagreement note, he could have some opportunity to file reply. Therefore at present no question for appointment of a new enquiry authority.</p> <p>Heard both the parties and perused the records. It is noted that on the earlier occasion we have passed the following order :-</p> <p>“We have heard both the parties and perused he records. It is observed that the erstwhile enquiry officer has already submitted his equiry report. However the Disciplinary Authority may be not agreeable</p>	

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	<p>to such findings and have disagreed with the findings of the enquiry report has ordered for appointment of fresh enquiry officer, who has to enquire into the matter de novo. It is the settle principle of law that such action on the part of the Disciplinary Authority, by not serving the erstwhile enquiry report as well as disagreement note before directing for de novo enquiry by a new enquiry officer, violates the settle principle of natural justice Therefore, we quash and set aside the impugned order dated 13-02-2018 by which the new enquiry officer was appointed to enquire into the charges of de novo and remanded back the order to the Disciplinary Authority with a direction to serve the disagreement note if any along with the erstwhile enquiry officer report and to take appropriate steps as per Rules as well as settle law. The applicant is also directed to cooperate with the authority.</p> <p>Accordingly, the OA is disposed of</p>	

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	<p>with the above observations and direction with no order as to cost.”</p> <p>However, the Disciplinary Authority had again passed the following order :-</p> <p>“In compliance of above referred Order of Hon’ble WBAT on the subject cited above, I am directed to serve a copy of enquiry report of the Inquiring Authority as received from State Vigilance Commission in c/w departmental proceedings against the above noted officer. I am further directed to inform you that on consideration of the report of SVC, the Disciplinary Authority has decided to continue the enquiry with a new I.A.”</p> <p>From the above, it is clear that though presently, in pursuance to our order dated 28-01-2019, the Disciplinary Authority has</p>	

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Mihir	<p>served the erstwhile enquiry report to the applicant. However he had again appointed fresh enquiry authority without serving any disagreement note to the applicant.</p> <p>Therefore in our considered view that the applicant has a prima facia case for interim protection. Thus the respondents are directed to file their reply, in the interim, Respondent No. 1 i.e. Disciplinary Authority is directed not to proceed with the new enquiry officer. Interim protection would continue till the next date. Let the matter be listed on 01-11-2019 under the same heading.</p> <p>P. RAMESH KUMAR MEMBER(A)</p> <p>URMITA DATTA (SEN) MEMBER(J)</p>	