

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-736 of 2018.Proloy Kumar Chakraborty 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
01 ----- 17-09-2018	<p>For the Applicant : Mr. G. P. Banerjee, Advocate.</p> <p>For the State Respondents : Mr. S. N. Roy, Advocate.</p> <p>The instant application has been filed challenging the second show cause notice dated 28-08-2018(Annexure-E) wherein it has been stated that under Rule 8 (7) of the West Bengal Services (Classification, Control & Appeal) Rules, 1971 and subsequent amendment, he should be imposed with penalty of dismissal. According to the Counsel for the applicant, the scope of second show cause notice is to give an opportunity to the delinquent employee to give reply or explanation why the proposed punishment would not be imposed upon him but if the respondents would mention specifically that he should be punished with a specific punishment it means that the authority is pre-determined to impose the said</p>	

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	<p>punishment. Therefore, the main purpose of the second show cause notice would be defeated. In favour of his contention he has also referred one Judgement passed by the Hon'ble Apex Court in Civil Appeal No. 11169 to 11170 of 2013 arising out of SLP Nos. 35508-35509 of 2011 wherein the same situation the Hon'ble Apex Court had held that a pre-determined second show cause notice cannot sustain. Therefore, the Counsel for the applicant has prayed for an interim protection with regard to the imposition of punishment as proposed in the second show cause notice.</p> <p>The Counsel for the respondents however has objected to the same proposition. As per the Counsel for the respondents, the application is premature as he has already replied to the show cause notice and he has also prayed for time to file reply to the instant application. However the Counsel for the applicant has submitted that since the point of law is involved in this case on merit since the impugned order is also challenged on the other</p>	

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Mihir	<p>ground. Therefore filing of his reply is not a bar to the instant application.</p> <p>Heard the parties and perused the records. It is noted that in the impugned order the disciplinary authority had stipulated as follows :-</p> <p>We have also gone through the judgement placed by the Learned Counsel for the applicant since the applicant is prima facie case in his favour. Respondents are directed to file reply by 4(four) weeks, rejoinder, if any, by 2(two) weeks thereafter. However the respondents will be at liberty to consider the reply filed by the applicant and take a decision. However no final order could be passed without the leave of the Court or until further order till the disposal of the original application.</p> <p>Let the matter be listed on 19-12-2018.</p> <p>Plain copy.</p> <p>P. RAMESH KUMAR MEMBER(A)</p> <p>URMITA DATTA (SEN) MEMBER(J)</p>	

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