

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-950 of 2015.Dr. Tuhin 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
<p style="text-align: center;">22</p> <p>-----</p> <p>28-11-2019</p>	<p>For the Applicants : Mr. J. B. Ghosh, Advocate.</p> <p>For the State Respondents : Mr. A. L. Basu, Mr. S. Bhattacharjee, Advocates.</p> <p style="text-align: center;">The instant application has been filed praying for the following reliefs :-</p> <p style="text-align: center;"><b>(a) Order or orders be passed, and/or direction or directions be given by quashing the impugned Memorandum of Charges followed by the Article of Charges issued under Memo No. 757-Vig/CON- 14/14 dated 19<sup>th</sup> May, 2014 being Annexure P-5 hereof;</b></p> <p style="text-align: center;"><b>(b) Necessary directions be given to the concerned State Respondents not to proceed with the purported disciplinary action contemplated</b></p>	

**ORDER SHEET**

Dr. Tuhin Chakraborty.

Form No. ....

**Vs.****The State of West Bengal & Others.**Case No. OA-950 of 2015

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><b>against the applicant in pursuance of th said Memorandum of Charges dated 19<sup>th</sup> May, 2014 and/or to give any effect and/or further effect to the same;</b></p> <p><b>(c) Order or Orders be passed to place of relevant records before this Learned Tribunal for rendering conscionable justice to the applicant;</b></p> <p><b>(d) Costs of and incidental to this application be paid by the respondents;</b></p> <p><b>(e) Such further or other order or orders be passed as to this Learned Tribunal may think fit and proper, inter alia, on the grounds set forth hereinbefore.</b></p> <p>As per the applicant, while he was working at Padmaja Naidu Zoological Himalayan Park at Darjeeling, the applicant wants to participate in a training programme commencing from 3<sup>rd</sup> July, 1998 to 7<sup>th</sup> July,</p>	

**ORDER SHEET****Dr. Tuhin Chakraborty.**

Form No. ....

**Vs.****The State of West Bengal & Others.**Case No. OA-950 of 2015

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>1998 and in this regard he made an application before the authority. The training programme scheduled to be held in Stadt Burn, Switzerland. For the purpose of such visit, the applicant was provided with an advance of Rs. 55,000/- only by the then Director of the said Padmaja Naidu Zoological Himalayan Park at Darjeeling and after completion of training programme and coming back to India the applicant was provided with further fund of Rs. 8,240/-, thereby, he received a sum of Rs. 63,240/- in total as an advance (Annexure-PI). However the Director of Padmaja Naidu Zoological Himalayan Park at Darjeeling vide his letter dated 22-06-1999 had asked the applicant to pay back the entire sum of Rs. 63,240/- failing which such advance sum was proposed to be recovered from the pay bill of the applicant from July 1999 onwards (PI). As per the applicant, the said entire amount was realized through the pay slips of the applicant during the relevant period as has also been certified by the then Director of the said zoo at a later stage.</p>	

**ORDER SHEET**

Dr. Tuhin Chakraborty.

Form No. ....

**Vs.****The State of West Bengal & Others.**Case No. OA-950 of 2015

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>Subsequently, the applicant was released from the post of Deputy Director of the said zoo on 01-03-2000 and joined his parent department i.e. Animal Resources Development Department as an Assistant Superintendent of Livestock.</p> <p>However, on or about on 31-01-2014, the District Vigilance Officer, Darjeeling vide Memo dated 31-01-2014 (Annexure-P4) requested the Joint Director, ARD Department to held an enquiry against the applicant in pursuance to the allegation made by Anti Corruption Unit, Darjeeling.</p> <p>Following the said request, the Secretary to the Government, ARD Department issued a Memorandum of Charges vide Memo dated 19-05-2014 alleging that the applicant obtained an advance sum of Rs. 63,240/- from the department towards T.A. advance for the purpose of the aforesaid tour, he did not refund the same or any part thereof at any later point of time and that he was otherwise also not</p>	

**ORDER SHEET**

Dr. Tuhin Chakraborty.

Form No. ....

**Vs.****The State of West Bengal & Others.**Case No. OA-950 of 2015

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>entitled to such sum from the government exchequer (Annexure-P5). In response to these charges, the applicant submitted his reply to the Anti Corruption Department, wherein he has referred one letter dated 03-11-1999 issued by the Director of the said zoo wherefrom it would be seen that till the date of issuance of the letter dated 31-01-2014, the aggregated sum of Rs. 50,449/- only had been recovered from the applicant and the balance sum of Rs. 12,000/- was proposed to be recovered from the salary bill of the applicant (Annexure-P/6).</p> <p>As per the applicant, the only charge in the charge sheet is that he did not refund the advance of travelling allowance. However, according to the applicant such amount has already recovered by them. Subsequently the applicant was served with a charge sheet dated 19-05-2014. Being aggrieved with, he has filed the instant application by challenging the charge sheet. As per the applicant, the charge is liable to be quashed on the ground of being stale charges. As per the applicant, from the</p>	

**ORDER SHEET**

Dr. Tuhin Chakraborty.

Form No. ....

**Vs.****The State of West Bengal & Others.**Case No. OA-950 of 2015

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>perusal of the letter dated 03-11-1999, it would be evident that the issue involve in the case was already known to the applicant at that point of time and the applicant has also refunded back the substantial amount during that period. Therefore the issuance of charge sheet dated 19-05-2014 is liable to be quashed on the ground of delay and latches on the part of the respondents. In support of his contention, the applicant has also referred judgements of :-</p> <p style="text-align: center;"><b><u>AIR 2006 SUPREME COURT 2007</u></b>  <b>1.P. V. Mahadevan</b>  <b>-Vs-</b>  <b>M. D. Tamil Nadu Housing Board</b></p> <p style="text-align: center;"><b><u>AIR 1990 SUPREME COURT 1308</u></b>  <b>2. State of Madhya Pradesh</b>  <b>-Vs-</b>  <b>Bani Singh</b></p> <p style="text-align: center;">That the Director of Padmaja Naidu Zoological Himalayan Park at Darjeeling, West</p>	

**ORDER SHEET****Dr. Tuhin Chakraborty.**

Form No. ....

**Vs.****The State of West Bengal & Others.**Case No. OA-950 of 2015

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>Bengal under his letter No. 1277/VIC/PNHZP/13-14, dated 20-02-2014</p> <p>[page 62 of the application] has clearly mentioned that there is nothing to claim as the amount as indicated has been recovered from the applicant and in such a situation, it is not precisely proves that the entire amount has been recovered from the applicant as claimed by him. However they have not given any explanation for delay of 14 years for issuance of charge sheet.</p> <p>We have heard both the parties and perused the records. The instant application has been filed mainly challenging the charge sheet on the ground of delay and latches on the part of the respondents. From the perusal of the letter dated 03-11-1999 issued by the Director of Padmaja Naidu Zoological Himalayan Park at Darjeeling, it is noted that the T.A. advance of Rs. 55,000/- has already been recovered from his salary from June, 1999 onwards on the following manner :-</p>	

**ORDER SHEET**Dr. Tuhin Chakraborty.  
.....

Form No.

**Vs.****The State of West Bengal & Others.**Case No. OA-950 of 2015

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>1. Salary for June, 99 - Rs. 15,021.00</p> <p>2. Salary for July/August,99 -Rs. 19,180.00</p> <p>3. Salary for Sept./Oct., 99 - <u>Rs. 16,248.00</u></p> <p style="text-align: right;"><u>Total Rs. 50,449.00</u></p> <p>Further from the perusal of the aforesaid letter it is evident that the payment/non-payment of the said amount was known to them. In that scenario, the respondents are not even in a position to give any explanation why they have taken 14 years time to serve the charge sheet.</p> <p style="text-align: center;">Hon'ble Apex Court in the case of Bani Singh (supra) has observed inter alia :-</p> <p>“..... The irregularities which were the subject-matter of the enquiry is said to have taken place between the years 1975-1977. It is not the case of the department that they were not aware of the said irregularities and the investigations were going on since then. If that is so, it is unreasonable to think that they</p>	



**ORDER SHEET**

Dr. Tuhin Chakraborty.

Form No. ....

**Vs.****The State of West Bengal & Others.**Case No. OA-950 of 2015

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>would have taken more than 12 years to initiate the disciplinary proceedings as stated by the Tribunal. There is no satisfactory explanation for the inordinate delay in issuing the charge memo and we are also of the view that it will be unfair to permit the departmental enquiry to be proceeded with at this stage. In any case there are no grounds to interfere with the Tribunal's orders and accordingly we dismiss this appeal.....”</p> <p>The aforesaid principal was followed by the Hon'ble Apex Court in all other cases including us on different occasions. In the instant case, the respondents are also aware of any irregularities of non-refunding the aforesaid amount if any, long 14 years ago, however they have no explanation for such delay in issuance of charge sheet. Therefore in our considered view, the applicant is entitled to get the benefit of the aforesaid judgments, as in our considered opinion, the charge sheet is hopelessly barred by delay and latches on the part of respondents.</p>	

**ORDER SHEET**

Dr. Tuhin Chakraborty.

Form No. ....

**Vs.****The State of West Bengal & Others.**Case No. OA-950 of 2015

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
Mihir	<p>Hence the charge sheet dated 19-05-2014 is set aside and quashed. Accordingly the OA is disposed of with the above observations with no order as to cost.</p> <p>Original Departmental File and original Service Book has been handed over to the Learned Advocate for the respondents Mr. Sourav Bhattacharjee.</p> <p><b>P. RAMESH KUMAR</b> <b>MEMBER(A)</b></p> <p><b>URMITA DATTA (SEN)</b> <b>MEMBER(J)</b></p>	