

ORDER SHEET

WEST BENGAL ADMINISTRATIVE TRIBUNAL

Bikash Bhavan, Salt Lake, Kolkata – 700 091.

Present-

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

Case No. OA – 358 of 2020

Debabrata Singha - VERSUS - THE STATE OF WEST BENGAL & ORS.

Serial No. For the Applicant : Mr. A. K. Niyogi,
and Advocate

Date of order

17

15.09.2022

For the State : Mr. G.P. Banerjee,
Respondents Advocate

The matter is taken up by the Single Bench pursuant to the order contained in the Notification No. 536 – WBAT / 2J-15/2016 dated 26th August, 2022 issued in exercise of the powers conferred under Section 5(6) of the Administrative Tribunals Act, 1985.

Though on 24.01.2022, the respondent was granted six weeks time to file reply on the point of law that without reinstating the applicant, whether they can issue Charge Sheet but till date, no reply has filed. Further it has been submitted by the counsel for the applicant that even the respondents have not follow the direction of the Hon'ble High Court, whereby the Hon'ble High Court had affirmed the order of this Tribunal only with modification after giving them a chance to issue Charge Sheet within a stipulated period of time and conclude the same within that stipulated period of time. However, without reinstating the applicant, the respondent had issued Charge Sheet and passed the final order beyond the stipulated period granted by the Hon'ble High Court. Mr. G. P. Banerjee appearing for the respondent and has submitted that if they have flouted any order of the court, the applicant may approach before the High Court, Calcutta for implementation of the order of the High Court order dated 13,11,2019 passed in WPST No. 123 of 2019. Further the counsel for the respondent has prayed for one chance to file their reply.

I have heard the parties and perused the records. It is noted that the applicant has basically challenged the final order dated 30.09.2020 and has submitted that he should be reinstated first as per this Tribunal's order as well as Hon'ble High Court's order. From the perusal of the High Court's order it is noted that the Hon'ble High Court has observed, inter alia:

*“22. In the present case we are not called upon to examine whether the reasons given by the Director of Health Services either satisfied the test of fairness or reasonableness, for, there are no reasons at all in the reasoned order as to why the Director did not consider it reasonably practicable to dispense with inquiry. **It is on this short ground that we share the view expressed by the tribunal that the order dated 27th June 2014 is illegal and bad.***

23. Having held so, we are also of the view particularly having regard to the seriousness of the allegation against the original applicant, that the tribunal ought to have extended to the respondents before it one final opportunity to proceed against the original applicant by issuance of a charge-sheet in terms of Rule 10 of the CCA Rules.

24. While upholding the order of the tribunal setting aside the order dated 27th June 2014, we direct/observe as follows:

(i) If so advised, the relevant disciplinary authority of the original applicant may issue charge-sheet to him for any misconduct/misdemeanour on his part, within a

fortnight from date;

(ii) the original applicant shall have a week's time to deny the charges;

(iii) if the original applicant denies the charge, an inquiry officer shall be appointed to inquire into the charges levelled against the original applicant;

(iv) the inquiry on charge(s) not admitted shall be conducted strictly in accordance with the provisions of Rule 10 of the CCA Rules;

(v) the original applicant shall cooperate with the inquiry officer and shall not seek any unnecessary adjournment;

(vi) if an adjournment is at all considered necessary, the same shall not be granted in excess of two days and it shall be granted only once;

(vii) having regard to the time-line we propose to impose, it would be preferable to have the inquiry conducted on day to day basis;

(viii) the inquiry, if initiated, shall be completed by 30th April, 2020;

(ix) if the report of inquiry is adverse to the interest of the original applicant, the same shall be furnished to him by the disciplinary authority for inviting comments thereon;

(x) the original applicant shall have a fortnight's time from receipt of the inquiry report to give his comments thereagainst; and

(xi) within a further period of a fortnight thereafter, the

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disciplinary authority shall proceed to take an appropriate final decision on such representation bearing in mind the evidence that is collected in course of inquiry and thereby terminate the proceedings.

Since the provisions relating to second show-cause which were earlier available in Article 311 of the Constitution have been done away with, but such procedure still exists in the CCA Rule, we have consciously not directed compliance with such procedure in view of the decision in Managing Director, BCII, Hyderabad v. B. Karunakar : AIR 1994 SC 1074.

25. It is made abundantly clear that should the charge-sheet be not issued to the original applicant within a fortnight from date and/or the inquiry is not completed by 30th April, 2020, it shall be deemed that the petitioners before us are no longer interested in proceeding against the original applicant and in such a case, the proceedings shall be deemed to have lapsed with the result that the order of the tribunal regarding consequential benefits shall become operative.”

From the perusal of the above, it is note that as per Hon’ble High Court, if the State respondent could not complete the enquiry by 30.04.2022, it would be deemed that they are no longer interested in proceeding against the original applicant and in such a case, the proceedings shall be deemed to have lapsed with the result that the order of the Tribunal regarding consequential benefits shall become operative.

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However, as the respondent wants to file reply to both the O.A. and M.A. Therefore, last chance is granted to file reply both the M.A. & O.A. Let the matter be listed on **25.11.2022** under the heading '**Reply, Rejoinder and Objection**' before the Registrar Bench..

URMITA DATTA (SEN)
Officiating Chairperson and Member (J)

A.K.P.