

(2023) 03 CAL CK 0072
In the Calcutta High Court
Case No : WPST No. 2 Of 2023

State Of West Bengal & Anr.

APPELLANT

Vs

Basudeb Mukherjee

RESPONDENT

Date of Decision : 20-03-2023

Acts Referred:

West Bengal Services (Classification, Control and. Appeal) Rules, 1971 — Rule 8, 10, 10(3), 10(16)19

Citation : (2023) 03 CAL CK 0072

Hon'ble Judges : Harish Tandon, J;Prasenjit Biswas, J

Bench : Division Bench

Advocate : Biswabrata Basu Mallick, Sanjib Das, Bikash Ranjan Neogi, Soma Chakraborty, Ananya Neogi, Guddu Singh

Final Decision : Dismissed

Judgement

Prasenjit Biswas, J

1. The instant writ application is filed challenging the impugned order dated 02.09.2022 passed by the State Administrative Tribunal in O.A. No.1460 of 2013, whereby the Tribunal set aside and quashed Order no. 30-P & AR (Vig.) dated 11.01.2008.

The matter was remanded back by the Tribunal to the disciplinary authority with a direction to serve the copy of the Public Service Commission advice to the respondent before passing of final order.

Being aggrieved by and dissatisfied with the impugned order passed by the Tribunal the petitioners have preferred this instant application.

The facts and circumstances giving rise to this case are that the respondent while was in Government Service faced a criminal case and was arrested and detained in police custody which resulted his suspension. Against the continuation of suspension, this respondent knocked the door of the Tribunal by filing application which was disposed of by giving direction upon the present petitioners to initiate

departmental proceedings. This respondent was served with a notice dated 31.01.2007 with direction upon him to appear before the Enquiry Authority. The respondent appeared and submitted that he was not supplied with the copy of memorandum of charge-sheet. Consequent to that charge sheet was handed over to him and he participated in the said enquiry proceeding. On 29.11.2007, this respondent was served with a notice along with the copy of the enquiry report directing him to show cause as to why he would not be dismissed from service and ultimately he was dismissed from service vide order dated 06.12.2006 by the disciplinary authority.

The respondent preferred an appeal before the Governor against the said order of dismissal and the order was affirmed by the appellate authority. The respondent again knocked the door of the Tribunal which was disposed of by remanding back the matter to the appellate authority with a direction to dispose of the same in compliance to the Rule 19 of CCA Rule, 1971. An application was taken out by the respondent with a prayer to rehear the appeal afresh on the ground that the Governor was no longer an appellate authority with effect from 20.02.2008 and the said application was disposed of on 13.07.2012 with a direction that the application would be hard by the Tribunal on merit. Thereafter an application has been filed by the respondent before this Court challenging the order dated 13.07.2022 in WPST No. 1 of 2013 which was disposed of by remanding back the matter to the Tribunal holding that M.A. No. 150 of 2011 should be hard by the two members who passed the order dated 29.07.2010 and quashed order of Tribunal dated 13.07.2012. In compliance with the direction passed by this Court the Tribunal disposed of the application with the liberty given to the respondent to file a fresh application and accordingly, the application has been preferred before the Tribunal and the said application has been disposed of by passing the impugned order.

The respondent took plea that the copy of the recommendation of the Vigilance Commission as well as Public Service Commission was not supplied before passing of the final order and the copy of advice of Public Service Commission was only supplied to him along with the final order of dismissal which is a clear violation of law.

It is profitable to quote the relevant provisions of the West Bengal Services (Classification, Control and Appeal) Rules, 1971. Sub Rules 14, 15 and 16 of Rule 10 entails that-

(14) On receipt of the advice of the Commission the disciplinary authority shall consider the representation, if any, made by the Government employee as aforesaid and the advice given by the Commission and determine what penalty, if any, should be imposed on the Government employee and pass appropriate orders on the case.

(15) In any case in which it is not necessary to consult the Commission, the disciplinary authority shall consider the representation, if any, made by the

Government employee in response to the notice under clause (b) of sub-rule (12) and determine what penalty, if any, should be imposed on the Government employee and pass appropriate orders in the case.

(16) Orders passed by the disciplinary authority under sub-rule 9 or sub-rule 10 shall be communicated to the Government employee who shall also be supplied with a copy of the report of the enquiring authority and a statement of its findings together with brief reasons for this agreement, if any, with the findings of the enquiring authority, unless they have already been supplied to him and also a copy of the advice, if any, given by the Commission and where the disciplinary authority has not accepted the advice of the Commission, a brief statement of the reasons for such non-acceptance.

The provisions in Rule 10 lay down the procedure to be followed for imposing penalties as specified in Rule 8 thereof. In terms of Rule 10, the disciplinary authority of a delinquent employee is required to draw up a charge-sheet containing the substances of the imputations of misconduct or misbehaviour, statement of imputations of misconduct or misbehaviour in support of each article of charge, a list of documents by which and a list of witnesses by whom the charge(s) are supposed to be sustained. Sub-rules (3) to (16) of Rule 10 mandates further steps which the disciplinary authority is required to take for culmination of the disciplinary proceedings, according to law. Such Sub-rules, in effect, contain appropriate safeguards so that any inquiry initiated on the basis of a charge-sheet does not suffer from the vices of unfairness, unreasonableness or arbitrariness and the delinquent employee is granted adequate and sufficient opportunity to defend himself.

It appears from the impugned order of dismissal that the Public Service Commission, West Bengal had recommended that the delinquent officer be dismissed from service and being aggrieved with the recommendation and advice made by the Public Service Commission disciplinary authority imposed a punishment of dismissal upon the respondent. So it is clear to us that recommendation of Public Service Commission has not been supplied to the respondent before passing an order of dismissal which is a clear violation of the provisions as referred above. The disciplinary authority failed to appreciate that before passing of the final order recommendation and the advice of Public Service Commission should be given to the delinquent respondent enabling him to submit his representation. Non-supply of the recommendations of the Public Service Commission being contrary to the requirements of the Service Rules, any further proof of prejudice was not required. Once the procedural Rule had been violated, prejudice would be presumed.

In view of observation made above we do not find any infirmity or illegality in the impugned order dated 02.09.2022 passed by the Tribunal in quashing the order dated 11.01.2008 and remanding back the matter to the disciplinary authority with a direction to serve the copy of the Public Service Commission advice to the respondent before passing final order.

Writ petition is thus dismissed.

The impugned order dated 02.09.2022 passed by the Tribunal in Case No. O.A. 1460 of 2013 is hereby affirmed.

The disciplinary authority is directed to pass a reasoned order within two months from the date of this order after giving opportunity of being heard to the respondent.

No order as to costs.

Urgent Photostat certified copies of this judgment, if applied for, be made available to the parties subject to compliance with requisite formalities.

I agree.