7 **08.1.2021**

gd/ssd

WPST 90 of 2020
(Through Video Conference)

Binod Kumar Jha
Vs.
The State of West Bengal and Ors.

Ms. Pampa Dey (Dhabal) with
Ms. Sangita Banerjee, Advocates
..for the Petitioner. Present in Court.

M/s. Joytosh Majumder,
Raja Saha and Biswabrata Basu Mullick, Advocates
..for the State. Present in Court.

The order dated January 15, 2020 passed by the West Bengal Administrative Tribunal (for short 'the Tribunal') in OA 1260 of 2016 has been challenged by the petitioner before this Court. Before the Tribunal, order dated 17.10.2016 passed by the Deputy Commissioner of Police, South Division, Kolkata was under challenge. Vide aforesaid order the petitioner was dismissed from service. He was enrolled as a Constable in West Bengal Police from July 6, 1987. As per Rule 10 of the Police Regulation Calcutta, 1968, an order of dismissal passed by the Deputy Commissioner of Police is appellable to the Commissioner. Rule 11 provides for 30 days period during which appeal can be filed. In the case in hand after the order of dismissal was passed against the petitioner, he submitted a

representation dated 15.11.2016 to the Joint Commissioner of Police (STF), Kolkata. There is a postal receipt. The same was sent by registered post on 17.11.2016. The receipt thereof has been placed on record.

At the time of hearing, the learned counsel for the respondents submitted that, the Joint Commissioner of Police (STF) is the appellate authority having been delegated the power to hear appeal against the order passed by the Deputy Commissioner of Police.

At the time of hearing the learned counsel for the petitioner submitted that prayer was made before the Tribunal to allow the petitioner to pursue his remedy before the appellate authority. However, the same was not accepted and before this court as well the same prayer has been made.

It was further pointed out that subsequent to the filing of the aforesaid representation by the petitioner the appellate authority has been changed. The powers of the Commissioner to hear the appeals against the order passed by the Deputy Commissioner of Police has been now conferred upon Additional Commissioner of Police-II. The appeal shall now be considered by the present appellate authority.

We find the prayer to be reasonable. Once there is a remedy for appeal provided in the Disciplinary

Proceedings and Punishments Rules, 1866 (for short 'the Rules'), the petitioner who has been dismissed from service from 17.10.2016 should be permitted to avail that remedy. It is not in dispute that the petitioner had filed a communication in the form of a representation within period permitted for filing the appeal. Against the order of dismissal though the same was not in a proper format as the appeal should have been filed but still in effect who has been dismissed from service should not be remediless only because of the technicalities for filing the appeal. The communication dated 15.11.2016 sent by the petitioner to the appellate authority shall be treated as an appeal filed by him. However, he shall be at liberty to supplement the same with more grounds challenging the order of his dismissal. Let a representation should be made within four weeks. The petitioner shall appear before the appellate authority on March 1, 2021 at 12 noon. In case he wishes to represent in person in support of his appeal, it is made clear that no separate notice shall be issued to the petitioner for hearing of the appeal. In case he fails to appear on the date fixed, the appellate authority shall be at liberty to consider the record and pass order in terms of the grounds raised by the petitioner.

By setting aside the order passed by the Tribunal,

we allow the writ petition filed by the writ petitioner. The same is disposed of in terms of the aforesaid order.

(Rajesh Bindal, J.)

(Aniruddha Roy, J.)

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