

ORDER SHEET  
WPO/383/2016  
IN THE HIGH COURT AT CALCUTTA  
Constitutional Writ Jurisdiction  
ORIGINAL SIDE

Aniruddha Bhattacharya.  
Versus  
The State of West Bengal & Ors.

BEFORE:  
The Hon'ble JUSTICE ANIRUDDHA ROY  
Date : 1<sup>st</sup> December, 2022.

Mr. Debdutta Basu, Adv.  
... for petitioner.

Ms. Deblina Chattaraj, Advs.  
... for respondent nos.2-5.

The writ petitioner being aggrieved by the impugned decision/order dated June 21, 2012 passed by the respondent no.3, preferred this writ petition.

The petitioner claimed that he was an employee of the respondent no.2 and had suffered a disciplinary proceeding way back in 2005. The disciplinary proceeding went against him and necessary punishment was inflicted upon the delinquent petitioner in the said disciplinary proceeding.

Being aggrieved by the said decision of the Disciplinary Authority dated January 16, 2009, Annexure P-2 to the writ petition, the writ petitioner preferred a statutory appeal. By an order dated June 1, 2009 at page 39 to the writ petition, the finding of the Disciplinary Authority was modified to the extent that one increment (next increment) of the delinquent petitioner would be withheld for three years. After three years

the same would be restored to notional effect. It was further directed that the delinquent petitioner would be entitled to normal increment after satisfactory service of one year from the date of increment, so withheld and the period actually spent under suspension as dies non.

Being aggrieved by the said order dated June 1, 2009 passed by the Appellate Authority, the writ petitioner preferred a review being Annexure P-4 to the writ petition on March 9, 2011.

By the impugned order dated June 21, 2012, the same review application was allowed with the following observation –

***“Moreover, it appears to me for the post of Personnel Administration there was an inside smearing run at that time and the applicant is the victim of departmental biasness.***

***Considering the all, and here-in stated above facts, I do hereby Order that the Punishment impose by the Managing Director vide order no. MD/OR/AB/PF/CON-116 dated 16.01.2009 is***

***Set a side and the appellant will be entitle to all benefits retrospectively as he was in service with notional effect. Hence the applicant’s fixation of service benefit may be fixed as per Official rules.***

***Thus the appeal is disposed off.”***

Mr. Basu, learned Counsel appearing for the writ petitioner, challenged the said impugned order and submitted that since the entire punishment imposed by the Disciplinary Authority being upheld by the order of the Appellate Authority dated January 16, 2009, was set aside by the order of the Reviewing Authority dated June 21, 2012, the benefits

should be granted to the petitioner by its employer viz. respondent no.2, without any further rigor or fetter. He further submitted that the Reviewing Authority under the impugned order dated June 21, 2012 held that the petitioner would be entitled to all benefits retrospectively as he was in service with **notional effect**. He submitted that all the punishments, finding of the Disciplinary Authority and finding of the Appellate Authority having been set aside, the actual benefit should have been given to the writ petitioner with no notional effect.

Ms. Chattaraj, learned Counsel for the respondent nos. 2-5 appears to defend this writ petition. On instruction she replied to the query of the Court and submitted that the employers did not challenge the said impugned order passed under review dated June 21, 2012, Annexure P-7, at any stage or in any manner. From the orders passed in this writ petition from time to time it appears that despite directions the respondent chose not to file its affidavit-in-opposition. The learned Counsel for the appearing respondents submitted that the order under review which is annexed in the writ petition, is otherwise bad in law and it did not take into consideration the order passed by the Appellate Authority.

Considering the rival contentions raised on behalf of the parties and considering the materials on record, it appears to this Court that the impugned order passed under review dated June 21, 2012 has attained

finality in so far as the respondent nos. 2-5 are concerned in absence of any challenge on their behalf. On a scrutiny of the said impugned orders it appears that though the Reviewing Authority had set aside the entire finding of the Disciplinary Authority and the corresponding finding of the Appellate Authority, it directed that the notional benefit to be given to the writ petitioner.

It is trite that once the finding of the disciplinary proceeding which was against the delinquent, as in the instant case and merged with the Appellate Authority decision against the delinquent, stand set aside by the order of the statutory Reviewing Authority, it would be presumed that the delinquent stands discharged and exonerated from all his charges on the basis whereof the disciplinary proceeding was initiated. Accordingly, the disciplinary proceeding or the charges thereunder, could have no further bearing upon the employment career of the delinquent.

In view of the above, this Court is of the firm view that the Reviewing Authority, by granting notional benefit to the petitioner, had committed an error of law. The finding of the Reviewing Authority in the impugned order dated June 21, 2012 to **the extent of granting notional benefit** to the writ petitioner, **stands set aside and quashed**. The rest of the portion of the said impugned order dated June 21, 2012 stands affirmed.

The respondent nos. 2-5 shall give all benefits to the petitioner attached with his employment career to which he is eligible strictly in accordance with law taking into account that, as if, no disciplinary proceeding was ever initiated against the writ petitioner. All such benefits including the arrears shall be granted to the petitioner and/or released and/or disbursed in favour of the petitioner by the respondent nos. 2-5 and/or the appropriate authority positively within a period of eight weeks from the date of communication of this order by the petitioner.

On the above terms, the writ petition being **WPO/383/2016** stands allowed.

(ANIRUDDHA ROY, J.)