

Naparajit Mukherjee, IPS (Retd.)

Member
West Bengal Human Rights Commission
Former D.G. & I.G.P., West Bengal



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Ref. No.367/WBHRC/95&1423/SMC/17/19

Date : 12-11-2021

To
Shri H.K. Dwivedi, IAS
Chief Secretary,
Govt. of West Bengal,
'Nabanna', 325, Sarat Chatterjee Road,
Howrah - 711102.

Ref. No.349/1423/25/6/2019 dt.29/09/2021

Recommendation No.01&02/WBHRC/2021-22/1423/Gen/2019

And

Ref. No.350/95/WBHRC/SMC/17 dt.29/09/2021

Recommendation No.03&04/WBHRC/2021-22/95/SMC/2017

I would like to invite your kind attention to the above mentioned memos vide which 2 (two) recommendations have been sent to Govt. of West Bengal addressed to the Chief Secretary under signature of Hon'ble Chairperson alone.

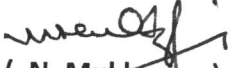
In this connection, as Member of West Bengal Human Rights Commission I have following observations. In view of the fact that the recommendation has been authenticated only by the Hon'ble Chairperson and the dissenting views of the Member has not been communicated to the government in original, my observations are as follows :-

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1. In recommendation no.03 & 04/WBHRC/2021-22/95/SMC/2017 dt.23rd September, 2021 from File No.95/WBHRC/SMC/17 at page 2 complete views and orders of Member has not been quoted by the Hon'ble Chairperson neither the same has been communicated to Government. Further more, he has alleged that the views of Hon'ble Member "are not only biased but also erroneous in law". I consider the use of word "bias" as serious allegation on my intellectual integrity and competence. Such type of comments on the part of Hon'ble Chairperson against his *brother colleague* is uncalled for, unwarranted and preposterous. There is no evidence to proof that I have biased attitude towards a particular group of police officers and no background has been quoted to level such serious allegations against me. I urge the government to take due note of the fact.
2. Traditionally, the dissenting views of the Member who has got every right to differ from the Chairperson's view, is communicated in original with his authentication. Unfortunately, in this case this has not been done as no enclosure has been indicated in the body of the recommendation or in the forwarding letter of Secretary to the Commission. In this connection I would further like to draw attention of the government to the procedure laid down for sending recommendations after enquiry u/s 18 (c)(e) of the Protection of Human Rights Act. As envisaged and decreed in the Act the entire responsibility is of the Commission and not of any individual / person of the Commission. The definition of Commission and its functioning have been clearly enumerated in Section 21 and Section 12 of the Protection of Human Rights Act respectively which will make my contention clear.

The Hon'ble Chairperson has got every right to give his own view rather than making attempt to demolish my point as this is not a Court of Law in which two advocates place their differing views to the Judge and try to demolish each others arguments. Further, in his recommendation he has tried to draw a line between prevention and detection of crime quoting Section 23 of the Police Act. Legally, Section 23 of the Police Act is not applicable to Kolkata Police which is governed by the Calcutta Police Act of 1866. Therefore, his recommendation is erroneous in law. Be that as it may, my contention here is the term prevention and detection of crime are complimentary to each other. In fact, according to criminology and police unless a crime is detected the same cannot be prevented. In the instant case police took prompt action by arresting and charge sheeting criminals for trial. Further more, in my orders (which has not been communicated in full) I have clearly mentioned, quoting from the police enquiry report of Shri Mehtab Alam, ACP, ESD as forwarded by Dy. Commissioner of Police, ESD to the Commission that the perpetrator had earlier been prosecuted in a number of criminal cases including being bound down u/s 107/110 Cr.P.C., which is a preventive section of law under the Cr.P.C. Unfortunately, this point has been totally overlooked and omitted by the Hon'ble Chairperson in his recommendation. He has quoted a number of Hon'ble Supreme Court judgements but contextuality with the instant case has not been matched, therefore, making infructuous. In respect of Recommendation No.01 & 02/WBHRC/2021-22/1423/Gen/2019 sent to you I would like to bring to your notice that my views in original have not been communicated by the Chairperson which is revealed from the lack of mention of the enclosure in the forwarding letter as well as recommendation signed by the Chairperson. You may please consider obtaining the same from the Commission.

In view of above, I leave the matter to the prudence of the Government and a request to note the preposterous allegation of "bias" made against me by the Hon'ble Chairperson without any foundation. I am taking the liberty of enclosing my recommendations in original to you for due consideration along with this letter.


(N. Mukherjee)
Member
12/11/2021

Encl : Copies of recommendations.

NOTE SHEET

File No.95/WBHRC/SMC/17

Suo motu cognizance taken by Hon'ble Chairman and Hon'ble Member (J) Shri M.S. Dwivedy on a news item of Ananda Bazar Patrika captioned "গুন্ডামির সিডিকেট".

This news item has been submitted by own correspondent (no names of the reporter published). Further, the entire story is based on briefing by police and local sources. The reporter admits that police briefed him about the action taken by them as well as details of the incident. ^{but has made the headlines apparently to Run-down police administration} The news item admitted that police have already arrested two persons in connection with this case. I have since perused the report of Dy. Commissioner of Police, E.S.D., Kolkata which was enquired into by Shri Mehtab Alam, ACP, ESD, Kolkata.

The report has stated that in this connection Entally P.S. Case No.75 dt.04/3/2017 u/s 326/324/34 IPC was registered and Section 307 IPC later on added. A total of five persons were arrested and charge sheet no.97/2017 submitted. Case is under trial in F.T.C., Sealdah. The accused no.1 has a total of 21 criminal cases pending against him in various cases and was also bound down u/s 107/110 Cr.P.C. Police have taken adequate and appropriate action. Therefore, I feel that there is no need for providing any compensation as individual protection cannot be granted by the police at each and every stage.

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Moreover, this was a rivalry over construction business popularly as syndicate. I am of the view that matter be filed.

Hon'ble Chairman

N. Mukherjee
(N. Mukherjee)
Member
20/7/21

Failure to provide protection
is denial of right to life. Compensation
is payable. Hon'ble Member may give
his formal opinion by 16th Aug 2021. Matter
be placed before me on 20/8/21.
J 26/7/21.

N. Mukherjee
NAPARAJIT MUKHERJEE
IPS RETD. (FORMER DGP, WB)
MEMBER
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I stand by whatever I had opined
earlier. ~~As such, I do not consider it to be~~
~~in of. Police protection cannot be~~
provided to each & every individual.
As such, I do not consider it to be
a failure to protect. In any case
the police have done their duty
as provided by legislature under
IPC/CrPC by registering case/investigating
same and CS/which is unethical
Thus in my opinion there is no failure
on part of police authority
Hon'ble Chairman *J*

4-10-2021

N. Mukherjee
NAPARAJIT MUKHERJEE
IPS RETD. (FORMER DGP, WB)
MEMBER
WEST BENGAL HUMAN RIGHTS COMMISSION
20/8/21

Reference orders of Hon'ble Chairman dt.06/4/2021.

The matter was re-examined at my end and I have following observations. The report submitted by Addl. S.P., Cooch Behar, namely, Siddharth Dorji, has following laches which needs clarification before we take any further decision on the matter.

- i. Date of retirement of ASI Kali Pada Roy. Whether his full pension has been released along with gratuity and the date of release.
- ii. In the report of Addl.S.P., Cooch Behar (reference page 2, portion marked 'A') the culpability of ASI, Kali Pada Roy so far as violating the Human Rights of the petitioner has not been projected factually i.e. all the facts relating to H.R. violation has not been reported. In the report "*further I also consulted the record of the police station and duty roster and it is came to light that on 30.04.2019 ASI Kali Pada Roy was detailed for the duty. However the visiting of the petitioner along with her husband on 30.04.2019 and on duty officer ASI Kali Pada has some bearing on the fact of non-acceptance of the complaint.*"

Herein, following facts are required :

- (a) The duty hours of ASI Kali Pada Roy on 30/4/2019.
- (b) When did the petitioner and her husband visit the P.S. along with time and date.
- (c) What actually happened between the petitioner and the ASI when the petitioner went to lodge FIR, as in the petition itself

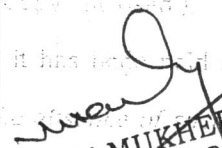
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the petitioner has nowhere mentioned any names of police officer, far less ASI Kali Pada Roy.

(d) In the petition dt.06/5/2019 submitted by the petitioner with her L.T.I. (LTI not verified by anybody). It is mentioned that on 30/4/2019 she and her husband lodged an FIR at Haldibari Thana. She has nowhere complained that the police had refused to lodge complaint, on the contrary her allegation was regarding delay in investigation. In view of above these points need clarification.

iii. Reference the judgement of Hon'ble Supreme Court in Criminal Appeal No.629 of 2010 passed by Hon'ble Judges Swatanter Kumar and Gyan ^{Dr.} Sudha Misra. I humbly submit that in the case of Dev Prakash Tewari versus U.P. Co-operative Institutional, Civil Appeal No.(s) 5848-49 of 2014 arising out of SLP(c) No.s29550 - 29551 of 2010. The Hon'be Judges T.S. Thakur and C. Nagappan have passed the order "*once the appellant had retired from service on 31/3/2009, there was no authority vested with the respondents for continuing the disciplinary proceeding even for the purpose of imposing any reduction in the retiral benefits payable to the appellant. In the absence of such an authority it must be held that the enquiry had lapsed and the appellant was entitled to get full retiral benefits.*" (Copy enclosed).

iv. Para 7 of the judgement it has been held by the Hon'ble Judges that "*In view of the absence of such a provision in*


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the above said regulations, it must be held that the Corporation had no legal authority to make any reduction in the retiral benefits of the appellant. There is also no provision for conducting a disciplinary enquiry after retirement of the appellant and nor any provision stating that in case misconduct is established, a deduction could be made from retiral benefits. Once the appellant had retired from service on 30/6/95 there was no authority vested in the Corporation for continuing the departmental enquiry even for the purpose of imposing any reduction in the retiral benefits payable to the appellant. In the absence of such an authority, it must be held that the enquiry had lapsed and the appellant was entitled to full retiral benefits on retirement." (Dev Prakash Tewari Vs. U.P. Co-operative Institutional). Emphasis has, therefore, been laid to follow the regulations of the government organization with regard to the disciplinary enquiry after retirement.

In a West Bengal specific case, Gour Chandra Sarkar Vs. The State of West Bengal & others W.P.S.T. 185 of 2010 Hon'ble Judges, Pranab Kumar Deb and Pranab Kumar Chattopadhyay have held "In the present case, even in absence of any charge of causing pecuniary loss to the Government, continuation of the disciplinary proceedings after retirement is not at all permissible."


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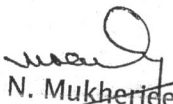
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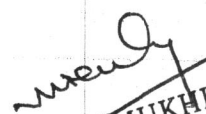
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"With the retirement of an employee, the employee relationship snaps. Therefore, unless there is an allegation of Government suffering financial loss account of the misconduct or negligence of the retired employee, the departmental proceedings after retirement cannot continue." (Copies of judgement are enclosed.)

Therefore, I am of humble opinion that subsequent judgements have laid emphasis on Regulations / Rules framed by Govt. in regard to service / retiral/ disciplinary proceeding matters and to act according to the frame-work of such Rule [In respect of WB; DCRB Rules 10(1)].

Hon'ble Chairman


(N. Mukherjee)
Member
12/4/2021


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Up loaded
