

ORDER SHEET

WEST BENGAL ADMINISTRATIVE TRIBUNAL

Present-

**The Hon'ble Justice Ranjit Kumar Bag
& The Hon'ble Dr. Subesh Kumar Das**

Case No – OA 951 OF 2011

Amitava Sen Vs The State of West Bengal & Ors.

Serial No. and Date of order. 1	Order of the Tribunal with signature 2	Office action with date and dated signature of parties when necessary 3
11 <hr/> 15.03.2018	<p>For the Applicant : Mr. S. Chattopadhyay, Learned Advocate.</p> <p>For the Respondents : Mr. M.N. Roy, Learned Advocate.</p> <p>The applicant has prayed for quashing of the order dated May 25, 2011 passed by the Deputy Commissioner of Police, 1st Battalion, Kolkata Armed Police and for appointment of the applicant in the post of Constable in Kolkata Police Force by filing the original application under section 19 of the Administrative Tribunals Act, 1985.</p> <p>The backdrop of filing the original application by the applicant before the Tribunal is as follows : The applicant participated in the selection process for recruitment to the post of Constable of Kolkata Police Force in the year of 2000 on the basis of recruitment procedure which was modified by Notification dated July 4, 1994. One Yasin Molla who was not successful in the physical efficiency test for recruitment to the post of Constable in Kolkata Police Force approached the Tribunal by filing OA No. 1538 of 1997, by which he challenged the Notification dated 4th July, 1994 as violative of the provisions of Police Regulation of Calcutta of 1968. Yasin Molla got the favourable order of appointment to the post of Constable from the</p>	

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Tribunal, which was ultimately affirmed by the Hon'ble High Court on July 24, 2003 in WPST 352 of 1999. The order of the Hon'ble High Court was unsuccessfully challenged before the Hon'ble Supreme Court of India by the State of West Bengal by filing SLP (Civil) which was dismissed on January 19, 2004. Ultimately, the said Yasin Molla got appointment to the post of Constable in Kolkata Police Force.

Many unsuccessful candidates approached the Tribunal by filing series of original applications after being inspired from the appointment of Yasin Molla in the post of Constable of Kolkata Police. The said unsuccessful candidates did not get any favourable order from the Tribunal. Some of the unsuccessful candidates who approached the Tribunal challenged the order of the Tribunal by filing series of writ petition being WPST 1301 of 2001 with WPST 669 of 2007 with WPST 655 of 2007 with WPST 661 of 2007 with 652 of 2007 with 660 of 2007 with 662 of 2007 with WPST 659 of 2007 with WPST 252 of 2007 with WPST 282 of 2007 with WPST 326 of 2007 with WPST 327 of 2007 with WPST 328 of 2007 with 643 of 2007 with WPST 645 of 2007 with WPST 656 of 2007 with WPST 667 of 2007 with WPST 668 of 2007 with WPST 670 of 2007 with WPST 644 of 2007 with WPST 700 of 2007 with WPST 687 of 2007 with WPST 657 of 2007 (Badiuzzaman v. State of West Bengal and others along with other connected matters) which were disposed of

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by one common judgment by the Hon'ble Division Bench of High Court at Calcutta on December 5, 2007. The above judgment of the Hon'ble Division Bench of the High Court was affirmed by the Hon'ble Supreme Court on January 6, 2011 in SLP (Civil) No. 10313 of 2008. By following the ratio of the said judgment of "Badiuzzaman" referred to hereinabove, the Hon'ble Division Bench of High Court at Calcutta has laid down in "Surajit Das v. State of West Bengal and others" (WPST 2019 of 2008 and other connected matters decided on 06.09.2012) (page 133 of reply filed by the state respondents) that the delay of two years in approaching the Tribunal will be condoned and appropriate relief will be given to the applicants who approached the Tribunal within two years from the date when selection was made. It was categorically observed in the said judgment that no relief will be granted to the applicants who approached the Tribunal after lapse of two years from the date when selection was made.

The present applicant and others approached the Tribunal and were not successful in getting favourable order from the Tribunal. The order of the Tribunal was challenged by the applicant and others before the Hon'ble Division Bench of High Court at Calcutta by filing WPST 1234 of 2007 which was disposed of on December 20, 2007. Relying on "Badiuzzaman" (supra), the Hon'ble Division Bench of High Court at Calcutta has pointed out in the order dated December

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20, 2007 that the present applicant approached the Tribunal almost after five years and the applicant was sitting tight over the matter and watching the development and having found the news item of a case of this nature took a chance by approaching the Tribunal and as such the claim of the applicant is hopelessly barred by limitation. The applicant did not give up the hope and was zealous enough to file one CAN 6424 of 2010 in connection with WPST 1234 of 2007 which was disposed of on December 20, 2007. The Hon'ble Division Bench of High Court at Calcutta passed an order on February 22, 2011 in CAN 6424 of 2010 that the applicant can submit representation before the authority concerned for consideration in accordance with law.

By virtue of the above order passed by the Hon'ble Division Bench of High Court at Calcutta, the applicant submitted one representation before the Commissioner of Police, Kolkata and the Deputy Commissioner of Police (Headquarters), Kolkata on April 2, 2011, which was considered by the respondent no. 4 by passing reasoned order on May 25, 2011. Learned Counsel representing the applicant submits that the said impugned order dated May 25, 2011 was not passed by the respondent no. 4 in accordance with law. On the other hand, Learned Counsel representing the state respondents has specifically urged this Tribunal to consider that the case of the applicant for

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	<p>appointment in the post of Constable of Kolkata Police cannot be considered afresh, as the applicant did not approach the Tribunal within a period of two years from the date when the selection was held. In view of the order passed by the Hon'ble Division Bench of High Court at Calcutta on December 20, 2007 in WPST 1234 of 2007 wherein the applicant was a party, the claim of the applicant for appointment to the post of Constable of Kolkata Police cannot be entertained as the applicant approached the Tribunal after long lapse of five years from the date of selection. By virtue of the above order of the Hon'ble Division Bench of the High Court, the applicant is estopped from challenging the validity of the Notification dated July 4, 1994 on the basis of which recruitment was done in the post of Constable of Kolkata Police Force. Moreover, on consideration of the impugned order dated May 25, 2011, we find that the applicant obtained 32 and ½ marks out of total 100 marks, while the minimum qualifying marks required for empanelment was 50 out of total 100 marks. The said impugned order dated May 25, 2011 also indicates that no appointment was given to any of the candidates who participated in the selection process and secured less marks than the present applicant. In our view, there is no illegality or arbitrariness in passing the impugned order dated May 25, 2011. Accordingly, we are unable to accept the contention made on behalf of the applicant that the representation of the applicant has not been considered by the respondent no. 4 in</p>	
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accordance with law.

In view of our above findings, we do not find any merit in the present application and as such the application is dismissed.

Let a plain copy of this order be supplied to both the parties.

(S.K. DAS)
MEMBER(A)

(R. K. BAG)
MEMBER (J)

Sanjib