

ORDER SHEET

**WEST BENGAL ADMINISTRATIVE TRIBUNAL**

Bikash Bhavan, Salt Lake, Kolkata – 700 091.

Present : **HON'BLE JUSTICE SOUMITRA PAL,**      **HON'BLE CHAIRMAN.**

Case No. – OA 390 of 2019.

KAJAL KAR -Versus- THE STATE OF WEST BENGAL & ORS.

Serial No. and Date of order	For the Applicant	: Mr.A.K. Das Sinha, Advocate.
<u>16</u> 8.8.2022	For the State Respondents	: Mr. M.N. Roy, Advocate.
	For the Principal Accountant General (A & E) W.B.	: Mr. B. Mitra, Departmental Representative.

The matter is taken up by the single Bench pursuant to the order contained in the Notification No. 496-WBAT/1E-08/2003 (Pt.-II) dated 4<sup>th</sup> August, 2022 issued in exercise of the powers conferred under section 6 (5) of the Administrative Tribunals Act, 1985.

In the application Kajal Kar, the applicant has prayed for several reliefs, the relevant portion of which is as under :-

*“...a) Pass an order directing the respondents authority to consider the past service rendered by the applicant for allowing pension in favour of the applicant.*

*b) Pass an order directing the respondents to release the Pension & Pensionary benefits with effect from 01.03.2019 by condoning the shortfall of service in favour of the applicant...”*

It appears from the application that the applicant had superannuated on 28<sup>th</sup> February, 2019. It is an admitted fact that the applicant was engaged as Master Roll Khalashi/M R-worker on seasonal basis in the year 1979. According to the applicant since 1987 he worked as a perennial type of worker upto 1996 under the respondents. Though the applicant was implicated in a criminal case, on 13<sup>th</sup> May, 2003 he was acquitted. Thereafter, the applicant was allowed to continue his service without any break. However as his service was not regularised, the applicant moved an application, being OA No. 9418 of 2008, before the Tribunal, which was disposed of on 9<sup>th</sup> March, 2010 by directing the appropriate authority to issue necessary order for regularisation

-Vs-

THE STATE OF WEST BENGAL & ORS.

---

Case No. OA 390 of 2019.

of his service preferably within a period of three months from the date of communication of the said order. Thereafter, on 23<sup>rd</sup> February, 2012, according to the petitioner, instead of regularisation of his service, an office order was issued appointing the applicant as Khalasi under the regular establishment in terms of the order dated 9<sup>th</sup> March, 2010 which was not only arbitrary but also contrary to the order passed by the Tribunal. Aggrieved an application, being OA 194 of 2015, was filed by the applicant, which after hearing the learned advocates for the parties was dismissed by a judgement delivered on 2<sup>nd</sup> April, 2019, the relevant portion of which is as under :-

*“.....We have heard both the parties and perused the record. It is noted that the applicant was working as Master Roll Khalasi though the respondents had taken some initiation for regularization of the applicant. However, he was not being regularised on the ground that one criminal case was pending against the applicant.*

*However, after a long time in the year 2008, he approached this Tribunal praying for regularization of his service as in the meantime he has been acquitted from the criminal case. It is further observed that as the respondents was also agreeable to consider his case for regularization, this Tribunal in their order dated 09.03.2010 had directed inter alia:-*

*“On hearing both Mr. Sinha and Mr. A. Dasgupta, we dispose of this application by directing the appropriate authority to issue necessary order for regularization of the petitioner immediately preferably within a period of three months from communication of this order.*

*We also made it clear that a question may arise due to age bar of the petitioner and having regard to the peculiar background of this case, the age bar should be condoned and **the authority should determine the exact date of absorption after taking all circumstances into consideration.** With this observation, the application stands disposed of.”*

*From the above, it is observed that this Tribunal never directed the*

-Vs-

THE STATE OF WEST BENGAL & ORS.

---

Case No. OA 390 of 2019.

*respondents to grant regularization or absorb the applicant since 1996 rather the authority was directed to determine the exact date of absorption after considering the circumstances. Thereafter the Superintending Engineer vide his order dated 23.2.2012 has stipulated that :-*

*“Sri Kajal Kar, S/o Late Aditya Nath Kar is hereby appointed as Khalasi under regular establishment in terms of case disposed under W.B.A.T. No. OA-9418/2008 Sl. No. 02 dated 09.03.2010 and Asstt. Secretary, Govt. of W.b I & W Deptt's No. 216-1E/21/5/09 dated 10.02.2011 communicated vide D.P. & Ex-Officio Chief Engineer's U.O. No. 19(1)-CI dated 22.02.2012.*

*Sri Kar posted in the office of the Executive Engineer, Suburban Drainage Division, I & W Directorate, Govt. of West Bengal with effect from the date on which he joins his appointment until further order. His excess in age over the prescribed limit is hereby condoned in terms of Rule-8 of W.B.S.R. (Part-I).”*

*Further in the office order also it was subsequently stipulated that if the applicant is willing to accept the appointment, he should report himself for duty within stipulated period of time and as the applicant has joined the said post without any objection, therefore, he cannot challenge the date of regularization after a long lapse of time. Therefore, in our considered view there is no scope for condonation of delay as the applicant had knowingly accepted the absorption order. Accordingly, both MA & OA is dismissed being devoid of merit with no order as to costs.”*

Mr. A.K. Das Sinha, learned advocate appearing on behalf of the applicant, relying on the judgement delivered on 11<sup>th</sup> November, 2010 in WPST 184 of 2010, submits since in a similar matter appropriate order has been passed by the High Court, orders as prayed for may be passed.

Mr. M.N. Roy, learned advocate appearing on behalf of the State respondents submits since after the Tribunal had passed the order on 9<sup>th</sup>

**ORDER SHEET**

Form No.

KAJAL KAR.

---

-Vs-

THE STATE OF WEST BENGAL & ORS.

---

Case No. OA 390 of 2019.

March, 2010 in OA 9418 of 2008, the respondent authorities had issued the letter of appointment by office order dated 23<sup>rd</sup> February, 2012, which was accepted by the petitioner and as thereafter the applicant was unsuccessful in OA 194 of 2015 and as the issue has been settled, no order may be passed.

Having heard the learned advocates for the parties since the applicant had accepted the order of appointment dated 23<sup>rd</sup> February, 2012 and had joined service without protest and thereafter was unsuccessful in view of the judgement delivered on 2<sup>nd</sup> April, 2019 in MA 134 of 2017 (OA 194 of 2015), no order is passed on the application. The application is dismissed.

(SOUMITRA PAL)  
CHAIRMAN.

Sk.