

WEST BENGAL ADMINISTRATIVE TRIBUNAL

Bikash Bhavan, Salt Lake, Kolkata – 700 091.

Present-

The Hon'ble Mrs. Urmita Datta (Sen), Member(J)

Case No. – OA-40 of 2021

Swapan Banerjee VERSUS – The State of West Bengal & Ors.

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| Serial No. and Date of order | For the Applicant | : | Mr. P. Manna, Mrs. A. Manna, Learned Advocates. |
| <u>04</u> 29.03.2022 | For the State Respondents | : | Mrs. S. Agarwal, Learned Advocate. |

The matter is taken up by the Single Bench pursuant to the order contained in the Notification No. 118-WBAT/1E-08/2003 (Pt.-II) dated 11th February, 2022 issued in exercise of the powers conferred under Section 6 (5) of the Administrative Tribunals Act, 1985.

On consent of counsel for both the parties, matter has been taken up for hearing.

The instant application has been filed praying for following relief :-

- a) To pass an order with a mandatory direction to the concerned respondent authority for joining his service under the police department immediately without any further delay;
- b) To grant an interim order to forbear from giving effect and further effect to the impugned order dated 17.08.1992 passed by the Assistant Inspector General of Police, West Bengal and to quash them all.
- c) To pass such further order or direction as to Your Lordships may deem fit and proper.

It has been submitted that the applicant was initially appointed as a constable and was absent during the period from 16.04.1988 to 25.12.1990 and was subsequently terminated on the

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ground for unauthorised absence. Thereafter, he made a representation before the authority for reinstatement/re-appointment in the rank of constable vide petition dated 12.11.1991 which was rejected vide impugned order dated 17.08.1992.

Being aggrieved with, the applicant approached the Hon'ble High Court in C.O. No. 3953 (W) of 1993 which was dismissed for default on 05.08.2003. The applicant made another representation before the authority on 28.09.2020. Thereafter, the applicant made this application before this Tribunal in the year 2021.

The counsel for the respondent has raised the preliminary objection on the ground of resjudicate. Though it has been submitted that the applicant approached the Hon'ble High Court in 1993, however, in the year 1996, this Tribunal had come to operational even then the applicant did not approached the Hon'ble High Court praying for leave to approach the Tribunal. Thereafter though the case of the applicant was dismissed for default vide order dated 05.08.2003. The applicant did not approach the Hon'ble High Court for recalling of the order with a modification of prayer to approach before this Tribunal but has filed the instant application in the year 2021 only. Since the same issue has already been rejected by the Hon'ble High Court and the applicant again approached this Tribunal on the same issue unless and until the Hon'ble High Court had granted leave or to recall the order and modify the same after granting leave, to approach this Tribunal, the case of the applicant would be barred by resjudicata.

I have heard both sides and perused the impugned order. The applicant was dismissed from service in the year 1988 thereafter he made a representation on 12.11.1991 for his re-appointment. However, it was rejected by the authority vide order dated 17.08.1992(Annexure-D). The said order was challenged before the Hon'ble High Court in C.O.

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No. 3953 (W) of 1993 and was dismissed for default vide order 05.08.2003. However, the applicant did not approach the Hon'ble Court for recalling of the rejection order and /or prayed for leave to approach before this Tribunal but only approach this Tribunal after a long gap of almost of 18 years in the year 2021 only on the self same cause of action. It is noted that the Tribunal came into operational in the year 1996 and the applicant neither take leave from the Hon'ble High Court to approach this Tribunal nor applied for recalling of the order dated 05.08.2003. Even, I have to accept the attention of the applicant that he has challenged the impugned order dated 17.08.1992 as this Tribunal presently having jurisdiction over the same, it that case also, the case is hopelessly barred by limitation.

Thus, in my considered opinion, this Court cannot adjudicate the same issue at this stage.

In view of the above, the application is dismissed.

Since the circumstances beyond control, the Registry is unable to furnish plain copies of this order to the learned advocates for the parties, the Registry is directed to upload this order on the website of the Tribunal forthwith and parties are directed to act on the copies of the order downloaded from the website.

URMITA DATTA (SEN)
MEMBER (J)

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