

**IN THE WEST BENGAL ADMINISTRATIVE TRIBUNAL
BIKASH BHAVAN, SALT LAKE CITY
K O L K A T A – 7 0 0 0 9 1**

Present :-

**The Hon'ble Mrs. Urmita Datta (Sen)
MEMBER (J)**

-AND-

**The Hon'ble Mr. P. Ramesh Kumar,
MEMBER(A)**

J U D G E M E N T

-of-

Case No. MA-134 of 2017 (OA-194 of 2015)

Kajal Kar.....Applicant .

-Versus-

State of West Bengal & Others.....Respondents

**For the Applicant :- Mr. Ashok Kumar Das Sinha,
Learned Advocate.**

**For the State Respondents :- Mr. Subit Kumar Mondal,
Learned Advocate.**

Judgement delivered on: 2nd April, 2019.

The Judgement of the Tribunal was delivered by :-

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

MA-134 OF 2017 (OA-194 OF 2015)

J U D G E M E N T

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

- a) An order directing the respondent authorities to regularize the service of the applicant as per the Hon'ble Tribunal's order dated 09.03.2010 from 1996;
- b) Issuance of any other order or orders and/or direction as this Hon'ble Tribunal may deem fit and proper.

As per the applicant, his name was sponsored in the year 1979 by the Employment Exchange as Master Roll Khalasi and subsequently, he had worked up to the year 1996 as Khalasi under the respondent authority.

In the year 1996, the Executive Engineer vide his letter dated 07.08.1996 had requested the District Medical Officer for medical examination of the applicant as to whether the applicant found fit for absorption in the post of Khalasi or not. Though the applicant appeared before the District Medical Officer on the date fixed and also found medically fit. However, as one criminal case was pending against the applicant, his service was not regularized.

In the meantime, the applicant approached this Tribunal in OA-9418 of 2008 with a prayer for granting of regularization which was finally disposed of by this Tribunal on 09.03.2010 with a direction to the respondent authority to issue necessary order for regularization of the applicant immediately (Annexure-A). Thereafter, vide office order dated 23.02.2012, the applicant was appointed as a Khalasi under regular establishment with effect from the date he joins the post. The applicant joined the

said post. Subsequently, as per the applicant, one demand notice was served by the counsel of the applicant to the Superintending Engineer on 28.11.2014 (Annexure-C) asking for absorption of the service of the applicant with effect from the year 1996 as per the order dated 09.03.2010 passed in OA-9418/2008. As no decision has been taken by the respondents, being aggrieved, the applicant has filed the instant application.

The applicant has also filed one MA for condonation of delay as the instant original application has been filed after 3 (three) years. The applicant has submitted that as he was expecting a favourable order, thus the delay has occurred.

Though the respondents have not filed any reply. However, counsel for the respondent has vehemently objected for allowing condonation of delay as the applicant was regularized vide order dated 23.02.2012 and thereafter without any objection, he joined the said post and subsequently after two years from the aforesaid office order dated 23.02.2012, one demand notice was being served, as claimed by the applicant, though there is no such proof of receipt of any such demand notice. Further this Tribunal in the earlier occasion also never directed the respondents to regularize the applicant from the year 1996. Therefore, the counsel for the respondents has prayed for dismissal of both MA and OA.

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 been regularized 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 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 excesses 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.

P. RAMESH KUMAR
MEMBER (A)

URMITA DATTA(SEN)
MEMBER (J)