

**ORDER SHEET****WEST BENGAL ADMINISTRATIVE TRIBUNAL****Present-**

Hon'ble Justice Soumitra Pal, Hon'ble Chairman.  
& Hon'ble Mr. P. Ramesh Kumar, Administrative Member.

Case No. OA 1106 of 2017.  
**SANDIP GARAI – VS- THE STATE OF W.B. & 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
<p style="text-align: center;">7</p> <hr/> <p>6.9.2018.</p>	<p>For the Applicant : Mr. S. Ganguly, Mr. S. Maity, Advocates.</p> <p>For the State Respondent : Mr. M.N. Roy, Advocate.</p> <p>In this application Sandip Garai, the applicant, who had applied for the post of constable in Kolkata Police, has prayed for a direction upon the respondents, – particularly on the Kolkata Police, - to issue appointment letter after setting aside the order passed by the Joint Commissioner of Police (Headquarters) Kolkata Police appearing at pages 70 to 76 of the application.</p> <p>Mr. S. Ganguly, learned advocate appearing on behalf of the applicant relying on the statements in the application and in the rejoinder submits that since it is evident that the applicant while filling up the verification roll for being appointed as a Constable had clearly stated that though charge sheet has been filed, he has not been convicted, as evident from page 44 of the application, and as it is evident from the judgement</p>	

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	<p>delivered on 14<sup>th</sup> September, 2017 by the learned Additional District &amp; Sessions Judge, Katwa, Burdwan in State of West Bengal – Vs- Sandip Garai &amp; Ors in Sessions Case No. 117 of 2008, Sessions Trial No. 55 of 2009 that the applicant , who was an accused in the said criminal proceeding has been honourably acquitted, an appropriate order may be passed directing the respondents to appoint the petitioner as constable in Kolkata Police. Relying on the principles of law laid down by the Supreme Court in Avtar Singh – Vs- Union of India: AIR 2016 SC 3598, particularly paragraph 30 sub paragraph 6 thereof, it is submitted that as the applicant has truthfully declared in the verification roll the details of the criminal case and as subsequently he has been honourably acquitted in the criminal case without any iota of doubt, appropriate order, as prayed for, may be passed.</p> <p>Mr. M.N. Roy, learned advocate appearing on behalf of the respondent relying on the reply filed and the judgement of the Hon'ble High Court passed in the case of the applicant in WPST No. 129 of 2016, Sandip Garai –Vs- State of West Bengal on 26<sup>th</sup> August, 2016, submits that as the judgement dated 21<sup>st</sup> September,</p>	

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	<p>2015 passed by the Tribunal in OA 1530 of 2013 (Sandip Garai –Vs- State of W.B. &amp; Ors) was set aside directing the respondent to consider the petitioner’s representation on 22<sup>nd</sup> May, 2013 through his learned advocate and as the Joint Commissioner of Police (Headquarters), Kolkata by a reasoned order appearing at pages 70 to 75 of the application had cancelled the candidature of the petitioner and as mere acquittal in a criminal case does not automatically gives right to be appointed, no order may be passed. In support of his submission he has relied on the principles of law passed in Commissioner of Police, New Delhi –Vs- Mehar Singh : (2013) 7 SCC 685, particularly paragraph 35 thereof.</p> <p>Evidently, the applicant had applied for the post of Constable in Kolkata Police. While filling up the verification roll he had stated that he had not been convicted. However he gave details of the charge sheet, as evident from page 44 of the application. Thereafter, in the trial the applicant along with others were found not guilty. The relevant portion of the said judgement passed by the learned Additional District and Sessions Judge,</p>	

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	<p>Katwa,Burdwan annexed to this application, is as under:-</p> <p><i>“.....These are all evidences before this court. In the instant case most of the relatives of the deceased have deposed about alleged torture upon deceased victim Rupali but there is no mentioning about date, time and mode and manner of torture and surprisingly in the instant case the husband of the deceased has not been made an accused and in the instant case there is also no date on which alleged demand of dowry has been made upon the victim and from the version of P.W.-11 it appears that due to using some abusive language the victim committed suicide in a close room locking the door from inside and from the version of the witness, Doctor who has conducted PM examination has detected thick ligature mark thyroid cartilage and he has detected saliva from the mouth. In his cross examination that witness has admitted that these are the symptoms of suicidal hanging and no external injury has been detected on the person of the deceased and that apart there was no definite opinion about the doctor regarding the death and in criminal jurisprudence surmise and conjecture cannot take the place of proof and while allegation of torture without any mode and manner and date, place</i></p>	

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	<p><i>and time cannot support the prosecution case and I hold prosecution has not been able to bring home the charge of offence punishable u/s 498 A/ 304B IPC against the accd who are the in-laws of the deceased excepting husband and I have no hesitation to hold that the accd are entitled to get an order of acquittal and be acquitted of the said charges.</i></p> <p><i>Hence, it is .....</i></p> <p style="text-align: center;"><b><u>ORDERED</u></b></p> <p><i>That the accused persons namely, Sandip Gorai, Manika Gorai , Nema Gorai and Sima Gorai are found not guilty of the charge punishable u/s. 498A/304B of I.P.C. in view of the provision of Section 235 Cr.PC. and the accused persons be discharged from their respective bail bonds. Seized alat (if any) be destroyed after the statutory period of appeal.....”.</i></p> <p>It is evident that the learned Judge had no hesitation in holding that the accused persons which included the applicant, were entitled to get an order of acquittal as there was no mention of date, time and mode and manner of torture upon the deceased victim and were acquitted of the charges. In this regard, it is appropriate to refer to paragraph 30 sub-paragraph 6 in</p>	

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	<p>the judgement in Avtar Singh (supra) wherein it was held</p> <p style="text-align: center;"><i>“.....In case when fact has been truthfully declared in character verification form regarding pendency of a criminal case of trivial nature, employer, in facts and circumstances of the case, in its discretion may appoint the candidate subject to decision of such case.....”</i></p> <p>The principles of law laid down in Commissioner of Police –vs- Mehar Singh (supra) are not applicable as it is evident from the judgement passed by the learned Additional District &amp; Sessions Judge that the applicant has been honourably acquitted.</p> <p>In our view, as the applicant had made a true declaration in the character verification roll that he was never convicted and had given details of the charge sheet and the learned Additional District and Sessions Judge, had passed an order of acquittal, this application should succeed.</p> <p>Thus, the reasoned order passed by the Joint Commissioner of Police (Headquarters) appearing at pages 70 to 75 of the application stands quashed. Therefore, for the reasons as aforesaid, as the applicant</p>	

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Skg.	<p>has been acquitted in the criminal case, he is entitled to the orders as prayed for. Hence, the Joint Commissioner of Police (Headquarters), Kolkata Police, Kolkata – Respondent no. 4 shall issue appropriate order for appointing the petitioner in the post of Constable of Kolkata Police within ten weeks from the date of presentation of a copy of the certified copy of this order after verifying the records and also after verifying whether any appeal or other judicial proceedings are pending against the applicant and after compliance of other formalities by the applicant, if any, including medical examination. The application is allowed.</p> <p style="text-align: center;">Urgent Photostat certified copy of this order, if applied for, be furnished on priority basis.</p> <p>(P. Ramesh Kumar) Member (A)</p> <p style="text-align: right;">(Soumitra Pal) Chairman.</p>	

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