

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 160 of 2019.

MD. HANNAN – Vs- THE STATE OF WEST BENGAL AND OTHERS.

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>10</p> <hr/> <p>26.2.2020.</p>	<p>For the Applicant : Mr. A.K. Lahiri, Advocate.</p> <p>For the State Respondents : Mr. M.N. Roy, Advocate.</p> <p>In this application Md. Hannan, the applicant has prayed for certain reliefs, the relevant portion of which is as under :-</p> <p><i>“(A)A direction upon the Respondent to withdraw and/or rescind and/or cancel and/or revoke the letter no. 1965-SP dated 21st November, 2017 issued by the Deputy Secretary to the Government of West Bengal, Governor’s Secretariat and to act in accordance with law.</i></p> <p><i>(B) A direction upon the Respondents to consider the representation of the applicant dated 19th May, 2016 and to give appointment to the applicant in a suitable post after relaxing the age bar....”.</i></p> <p>It appears from the original application that the District Employment Exchange had requisitioned the name of the applicant for the post of Constable under Kolkata Police for the year 1990. The applicant appeared before Kandi Employment Exchange and in the physical measurement test he was found fit. The applicant was sent to District Police Line, Berhampore and it was</p>	

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	<p>followed by an interview. In the interview the applicant was not found suitable and was not given appointment. The applicant thereafter, had filed an application being OA 1671 of 2000, Md. Hannan & 02 others – vs- State of West Bengal & Others. It was heard along with application being OA 1311 of 2000 and were dismissed by judgement delivered on 21st November, 2008. Being aggrieved the applicant filed an application, being WPST No. 642 of 2009, which was disposed of by a common order on 23rd November, 2012 along with WPST No. 214 of 2009, WPST No. 215 of 2009, the relevant portion of which is as under :-</p> <p style="text-align: center;"><i>“.....The petitioners in these Writ Petitions have raised the same question of law as raised in WPST No. 2019/08 regarding the power vested with the Commissioner of Police, Calcutta to issue a notification changing or amending the recruitment rules for recruiting persons to the post of constable.</i></p> <p style="text-align: center;"><i>The petitioners preferred Original Applications before the West Bengal Administrative Tribunal in the years 2000 and 2001 challenging the selection process which was conducted in 1990. The applications were</i></p>	

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	<p><i>dismissed on 18th August 2000 on the ground of delay as the Tribunal refused to condone the delay in preferring the Original Applications. Being aggrieved by the orders of the Tribunal the petitioners in all these petitions preferred writ petitions before this Court. An order was passed by this Court setting aside the order of the Tribunal and directing it to hear the applications on merits. The Tribunal has disposed of these petitions by an order dated 21.11.08.</i></p> <p><i>Accordingly the applications were remanded to the Tribunal and they have been heard on merit.</i></p> <p><i>Since the delay has been condoned by this Court by an earlier order the applications would have to be treated to be filed within the period of limitation.</i></p> <p><i>Petitioner no.3 Dilip Kr. Paul in WPST No. 642 of 2009 failed the selection because he does not possess the requisite physical measurements. Therefore, the petition filed by him is dismissed.</i></p> <p><i>As regards the other petitioners in these petitions they have failed in the interview. We have held in W.P.S.T. No. 2019 of 2008 and other connected matters that the interview and physical efficiency test were</i></p>	

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	<p><i>illegally introduced in the selection process by the notification issued by the Commissioner of Police on 4th July 1994. All these persons have crossed the age of 45 years today. It is not possible for us to direct the State to appoint them as constables at this late age. There is no doubt that the petitioners have been excluded from the recruitment process due to no fault of theirs and now with the passage of time would be unsuitable for appointed as constables. In our considered view therefore the ends of justice would be sub served by directing the State to pay compensation quantified at Rs. 1,00,000/- (Rupees One Lakh) to each of the petitioners. The petitions are allowed accordingly. The compensation shall be paid to the petitioners within 8 (eight) weeks from today....”.</i></p> <p>It appears that the applicant had filed a review application, being R.V.W. 317 of 2014, in W.P.S.T. 642 of 2009 which was dismissed by the High Court by passing an order, the relevant portion of which is as under :-</p> <p><i>“...The review application has been filed after a delay of 803 days as apparent from the office noting.</i></p>	

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	<p><i>No application for condoning the delay has been filed. The learned advocate for the petitioners seeks leave to file such an application for condoning the delay.</i></p> <p><i>In our opinion, such a prayer need not be granted at this stage. The judgement and order of which review is being sought is dated 6th September, 2012 and 23rd November, 2012 which dealt with several writ petitions including the one filed by the petitioners being W.P.S.T. 642 of 2009. The petitioners moved the Supreme Court by filing S.L.P (Civil) No. 13295 of 2013. The petition was dismissed on 15th April, 2013 by the Supreme Court. No leave was granted by the Supreme Court to file a review petition before the High Court. Therefore, in our opinion, there is no need for us to permit the petitioners to file an application for condoning the delay.</i></p> <p><i>In any event, once the Supreme Court has dismissed the S.L.P. without granting leave to file a review petition, there is no need for us to entertain the same. Furthermore, no new fact or error apparent on the face of the record has been pointed out by the learned Advocate for the petitioners for us to review the judgement and order passed in W.P.S.T. 642 of 2009.</i></p>	

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	<p style="text-align: center;"><i>The review application is dismissed...".</i></p> <p>It is to be mentioned that the other applicants had filed the Special Leave Petition before the Supreme Court of India being No(s) 13038/2013 (from the judgement and order dated 23/11/2012 in WPST No. 215/2009 of The High Court of Calcutta) which was dismissed on 15th April, 2013.</p> <p>It appears that in the meantime, pursuant to the order of the High Court, the Central Reserve Officer, Kolkata Police had addressed a memo dated 23rd September, 2013 requesting the applicant to attend office of the Kolkata Police to collect a cheque amounting to Rs. one lakh in his favour as directed by the High Court. The applicant did not accept the said cheque. It also appears that the applicant had filed a representation on 19th May, 2016, being annexure 'A' to the original application, for relaxation of age and to appoint him to the post of constable of Kolkata Police. According to him, as he has been deprived of his right to appointment to the post of constable, he should be given appointment to any post equivalent to the post of constable after relaxing the age which may be done in the light of Rule 3A of the</p>	

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	<p>West Bengal Service Rules, Part-I. It was followed by representations on his behalf. Subsequently a reply was given on 21st November, 2017, being annexure 'F' to the original application, intimating "<i>.....that the prayer of the applicant is unreasonable with regard to the verdict of the Hon'ble Apex Court passed on 07.05.2013 and 15.04.2013....</i>".</p> <p>Mr. A.K. Lahiri, learned advocate appearing on behalf of the applicant submits that as in this case discretion of the authorities was not properly exercised while rejecting his prayer for appointment to the post of constable or any other post after relaxing the age, the application is maintainable.</p> <p>Mr. M.N. Roy, learned advocate for the State respondent relying on the reply filed on behalf of the respondent submits that as the High Court had directed the police authority to give appointment to the candidates who were below forty years of age and as the High Court had also directed to pay compensation of Rs. 1 lakh to those who have crossed the age of forty years as on the date of judgement and as the applicant did not succeed even after filing of review application and as the</p>	

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	<p>issue was settled by the order of the Supreme Court, the same issue cannot be reopened in a circuitous way.</p> <p>Heard learned advocates for the parties.</p> <p>Admittedly it is evident from the application that the grievance of the applicant regarding wrongful denial of employment was raised before the Tribunal. The Tribunal had dismissed the application filed by the applicant and others. Aggrieved, the applicants along with others filed writ petitions which were disposed of by the High Court directing the State authority to pay compensation of Rs. 1 lakh to the applicants who had crossed 40 years of age. Incidentally Special Leave Petitions filed by other similarly situated candidates were dismissed. The applicant who was above 40 years of age did not accept Rs. 1 Lakh and had filed this application. It is submitted on behalf of the applicant since the discretion covering the issue was not exercised by the highest authority of the State in a proper manner, an appropriate order may be passed giving him appointment as constable or to any other post after relaxing the age bar.</p> <p>In our view, since the issue regarding the</p>	

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Skg.	<p>employment of the applicant has been decided by the Division Bench of the High Court as well as by the Supreme Court, it has reached its finality. Therefore, no order is passed on the application. The application is dismissed.</p> <p>(P. Ramesh Kumar) Member (A)</p> <p>(Soumitra Pal) Chairman.</p>	