

**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 198 of 2018.

MD. ABDUL KARIM – VS- THE STATE OF WEST BENGAL & 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>5</p> <hr/> <p>30.1.2019.</p>	<p>For the Applicant : Mrs. S. Agarwal, Advocate.</p> <p>For the State Respondent : Mr. G.P. Banerjee, Advocate.</p> <p>Though by orders passed on 4<sup>th</sup> October, 2018 and 19<sup>th</sup> December, 2018 directions were issued to file reply, no reply has been filed by the State. It is submitted by Mrs. S. Agarwal, learned advocate for the applicant that in the absence of reply as facts are deemed to be admitted, the matter may be taken up for hearing.</p> <p>Mr. G.P. Banerjee, learned advocate for the State respondents submits that though basic facts are admitted, however, as legal issues emerge, the matter may be heard.</p> <p>In this application, the applicant who worked as attendant to a minister from 6<sup>th</sup> February, 2010 till 1<sup>st</sup> March, 2011, has prayed for a direction upon the State respondents to give appointment to him as a Group D staff in view of the Labour Department circular dated 12<sup>th</sup> October, 2004 and Home Department circular dated 2<sup>nd</sup> December, 2004 after setting aside the order dated 30<sup>th</sup></p>	

**ORDER SHEET**MD. ABDUL KARIM.  
.....

Form No.

**Vs.**

STATE OF W.B. &amp; ORS.

Case No. **OA 198 of 2018.**  
.....

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>June, 2017 issued by the OSD &amp; E.O. Special Secretary to the Government of West Bengal which was pursuant to the order dated 29<sup>th</sup> March, 2017 passed in OA 583 of 2015 filed by the applicant. The grievance of the applicant is that since he had completed one year of service, in view of the memorandum dated 12<sup>th</sup> October, 2004, particularly the directions contained in paragraph 1 thereof, appropriate order directing appointment may be passed.</p> <p>Mrs. Agarwal, learned advocate for the applicant, on the point of limitation, submits that as the original application was filed in 2015, appropriate order may be passed directing the respondents to appoint or absorb the applicant after setting aside the impugned order dated 30<sup>th</sup> June, 2017 as completion of one year of continuous service fulfils the stipulation contained in the said memorandum dated 12<sup>th</sup> October, 2004.</p> <p>Mr. G.P. Banerjee, learned advocate for the State respondent referring to the impugned order dated 30<sup>th</sup> June, 2017 submits that the State authorities had</p>	

**ORDER SHEET**

MD. ABDUL KARIM.

Form No.

.....

**Vs.**

STATE OF W.B. &amp; ORS.

Case No. **OA 198 of 2018.**

.....

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>never denied or disputed that the applicant had worked continuously from 6<sup>th</sup> February, 2010 to 1<sup>st</sup> March, 2011. However, as the cause of action arose in the year 2011 and the applicant had moved the Tribunal in the year 2015, it is hit by Section 21 of the Administrative Tribunals Act, 1985. Moreover the order dated 23<sup>rd</sup> July, 2017 passed in OA 583 of 2015 directing the authorities to take a decision, cannot override the provisions in section 21(1) stipulating a period of limitation. As the cause of action arose in 2011, the decision taken as reflected from the impugned order is in consonance with section 21 of the Act. Moreover, the 2004 memorandum is inapplicable in view of the judgement of the Supreme Court in State of Karnataka &amp; Ors –V- Uma Devi (3) : (2006) 4 SCC 1.</p> <p style="text-align: center;">Heard Mrs. Agarwal and Mr. Banerjee, learned advocates for the parties.</p> <p style="text-align: center;">It is evident from the impugned order dated 30<sup>th</sup> June, 2017 that the authorities have rejected the claim of the applicant on the ground that the department is not in a position to consider the regular appointment of</p>	

**ORDER SHEET**

MD. ABDUL KARIM.

Form No. ....

**Vs.**

STATE OF W.B. &amp; ORS.

Case No. **OA 198 of 2018.**  
.....

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>the applicant after a lapse of six years. Admittedly the applicant had worked from 6<sup>th</sup> February, 2010 to 1st March, 2011 that is more than one year. The applicant did not file any application before the Tribunal ventilating his grievances within one year from the date when the cause of action arose in 2011. Admittedly he had moved the application in 2015 that is after four years. On 29<sup>th</sup> March, 2017 the Tribunal while disposing of the application had directed the authorities to take a “decision” in respect of the prayer on the basis of “representation” made on 16<sup>th</sup> September, 2012 and consequently the authorities had passed the order dated 30<sup>th</sup> June, 2017 pursuant to the order of the Tribunal which is under challenge. Since Section 21 (1) (b) postulates “...in a case where an appeal or representation such as is mentioned in clause (b) of sub-section(2) of section 20 has been made and a period of six months had expired thereafter without such final order having been made, within one year from the date of expiry of the said period of six months...” and as no application was moved before the Tribunal within one year from the date of expiry of six months and as the applicant had filed the</p>	

**ORDER SHEET**MD. ABDUL KARIM.  
.....

Form No.

**Vs.**

STATE OF W.B. &amp; ORS.

Case No. **OA 198 of 2018.**  
.....

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
Skg.	<p>application in 2015, it is hit by the statutory period of limitation as prescribed in the Act. The position of law becomes clear on a reading of section 21(2)(a) and (b) of the Act. The said position of law cannot be altered even in the absence of reply by the State. Hence, no order can be passed on this application. Therefore, the application is dismissed.</p> <p>(P. Ramesh Kumar) Member(A).</p> <p>(Soumitra Pal) Chairman.</p>	