

ORDER SHEET
West Bengal Administrative Tribunal

Present.-
The Hon'ble Justice Ranjit Kumar Bag
&
The Hon'ble Dr. Subesh Kumar Das

Case No. **OA-211 of 2011**

Subhas Chandra Koner

Versus

The State of West Bengal & Others.

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<p style="text-align: center;"><u>09</u> 20/02/2019</p>	<p><i>For the Applicant</i> : <i>Mr. S.N. Ray,</i> <i>Ld. Advocate.</i></p> <p><i>For the State Respondent</i> : <i>Mr. A.L. Basu,</i> <i>Ld. Advocate.</i></p> <p style="text-align: center;"><i>The applicant has prayed for direction upon the respondents for granting him unrevised pay scale no. 18 for completion of 20 years of service w.e.f. April 01, 1999. The applicant has filed one separate application u/s 5 of the Limitation Act praying for condonation of delay, which is not pressed by Mr. S.N. Ray, Learned Counsel for the applicant, and as such the said application u/s 5 of the Limitation Act is dismissed as not pressed.</i></p> <p style="text-align: center;"><i>The applicant has filed another application today u/s 21(3) of the Administrative Tribunals Act, 1985 praying for condonation of delay in filing the original application bearing no. OA-211/2011. Reply has also been filed on behalf of the state respondents against maintainability of the original application due to bar u/s 21 of the Administrative Tribunals Act, 1985.</i></p> <p style="text-align: center;"><i>It is contended on behalf of the applicant that he retired from service on September 30, 2002. The</i></p>	

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	<p><i>further contention of the applicant is that he was entitled to unrevised scale no. 18 on and from April 01, 1999 for completion of 20 years of service. Mr. S.N. Ray, Learned Counsel for the applicant contends that pay scale of the applicant was reduced by imposition of punishment in a disciplinary proceeding started against the applicant while he was in service. Mr. Ray has urged this Bench to consider that the applicant was not in a position to pray for granting him unrevised scale no. 18 till date of quashing of the punishment imposed on the applicant by the disciplinary authority by this Tribunal on December 12, 2006 when OA-1501/2003 filed by the applicant was disposed of.</i></p> <p><i>The applicant could have prayed for granting him unrevised scale no. 18 when the applicant prayed for quashing of the order of punishment imposed by the disciplinary authority by filing OA-1501/2003. The prayer for granting unrevised scale no. 18 to the applicant is, no doubt, consequential relief of quashing of order of punishment prayed by the applicant before the Tribunal in OA-1501/2003. Accordingly, we are unable to accept the contention made on behalf of the applicant that the applicant could not pray for granting him unrevised scale no.</i></p>	

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	<p><i>18 at the time of praying for quashing of the order of punishment in OA-1501/2003 which was disposed of on December 12, 2006. It is relevant to point out that the applicant has not placed on record the order passed by the Tribunal on December 12, 2006 in OA-1501/2003 by quashing the order of punishment imposed by the disciplinary authority of the applicant.</i></p> <p><i>Admittedly, the applicant retired from service on September 30, 2002 and the cause of action for granting him benefit of unrevised scale no. 18 arose on April 01, 1999. Even assuming of argument's sake that the said cause of action is continuing cause of action till the date of retirement of the applicant on September 30, 2002, the said continuing cause of action came to a halt on the retirement of the applicant from service on September 30, 2002. We have already observed that the applicant could have prayed for granting him benefit of unrevised scale no. 18 when the applicant prayed for quashing of the order of punishment imposed by the disciplinary authority by filing OA-1501/2003 which was disposed of on December 12, 2006. No cogent explanation is forthcoming before us as to why the applicant did not pray for granting him benefit of unrevised scale no. 18 in OA-1501/2003. The issue</i></p>	

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	<p><i>of granting unrevised scale no. 18 to the applicant could have been urged by the applicant in OA-1501/2003, but the said issue was not raised as contended on behalf of the applicant, and as such the said issue cannot be raised in the present original application being barred by Principles of constructive res-judicata.</i></p> <p><i>The admitted position is that the present original application was filed by the applicant on February 18, 2011. The order of imposition of punishment on the applicant by the disciplinary authority by reduction of pay scale was quashed by the Tribunal on December 12, 2006 in OA-1501/2003. No cogent explanation is forthcoming as to why the applicant did not approach the Tribunal after his retirement on September 30, 2002 and even after disposal of OA-1501/2003. The explanation put forward by the applicant for the inordinate delay in filing the original application to the effect that the applicant had to wait till his prayer for granting him unrevised scale no. 18 was communicated to the applicant by the Joint Secretary and OSD to the Government of West Bengal, Department of Personnel and Administrative Reforms on April 20, 2009 is not acceptable to us, as the applicant could have approached the Tribunal</i></p>	

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Csm	<p><i>long back without waiting for the response from the Joint Secretary to the Government of West Bengal, Department of Personnel and Administrative Reforms. In view of our above findings, we are constrained to hold that the applicant has miserably failed to explain the inordinate delay of almost nine (09) years in approaching the Tribunal for grant of unrevised scale no. 18. In our view, the original application is clearly barred u/s 21 of the Administrative Tribunals Act, 1985.</i></p> <p><i>In view of our above observation, we cannot persuade ourselves to go into the merit of the original application. As a result, the original application is dismissed and the application filed u/s 21(3) of the Administrative Tribunal's Act, 1985 is also dismissed.</i></p> <p style="text-align: center;">S. K. DAS MEMBER(A)</p> <p style="text-align: center;">R. K. BAG MEMBER(J)</p>	