

**ORDER SHEET****WEST BENGAL ADMINISTRATIVE TRIBUNAL****Present-****The Hon'ble Smt. Urmita Datta (Sen), Member (J)****& The Hon'ble P. Ramesh Kumar, Member (A)****Case No OA - 191 of 2016****Jiaul Hoque -Vs- The State of West Bengal & 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 style="text-align: center;"><u>15</u> 04.01.2019</p>	<p><i>For the Applicant : Mr. A.K. Das Sinha, Advocate.</i></p> <p><i>For the Respondents: Mr. M.N. Roy, Advocate.</i></p> <p><i>The instant application has been filed praying for quashing of the dismissal order dated 30.05.2003, where by the applicant was dismissed from the service. According to the applicant, he was served with a charge sheet dated 22.07.1997 on the allegation of unauthorised absence for the period from 28.06.1994 to 12.12.1994 i.e. for 150 days unauthorised absence. Thereafter Disciplinary Authority had passed one order dated 08.01.2003 whereby he was found guilty of unauthorised absence and over stale of leave and was punished of withholding of two increments with cumulative effect for future purpose also. Subsequently the applicant filed against which the applicant filed appeal before the Appellate Authority. However, the Appellate Authority by exercising his revisional power and had issued a second Show-Cause Notice to the applicant by granting him an opportunity for further reply. However, ultimately the Appellate Authority had dismissed him from the service on the ground of proven unauthorised absence vide order</i></p>	

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	<p><i>dated 30.05.2003. However, according to the applicant subsequently he was acquitted from the said criminal case on 29.08.2015. Therefore, as per the applicant, he has acquitted from the criminal case on 29.08.2015. Therefore, as per the applicant, he has acquitted from the criminal case. His dismissal order should be recalled by the Authority since nothing has been done. Being aggrieved with, he has filed this instant application.</i></p> <p><i>As per the applicant since he was in jail custody during the concerned period therefore he was absent during that period and already been acquitted from the said charges.</i></p> <p><i>The counsel for the respondent has raised preliminary objection on the point of limitation. However, the counsel for the respondent has further submitted that the dismissal order was passed in 2003. However, the applicant never taken this plea that he was in jail custody for the said period and he was absent during the charge period. Even after being acquitted by the criminal case he never approached before the Authority for revocation of the dismissal order. Therefore, the instant application is hopelessly barred by limitation.</i></p>	

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	<p><i>Heard both the parties and perused the record. It is noted that the dismissal order was passed on 30.05.2003 on the ground of unauthorised absence and the instant application has been filed in the year 2016 only. It is a settled principle of law that both the disciplinary proceedings and criminal proceedings can go side by side as issues are different in both the proceedings. Even the applicant never approached the Authority after being acquitted by the criminal court though both the proceedings are different issues.</i></p> <p><i>During the course of the hearing the counsel for the applicant has submitted that in reply to the second Show-Cause Notice, whereby the order for dismissal was proposed by the Appellate Authority, he had taken the plea since he was in jail custody during the said period, he could not be present but that issue was not considered by the Appellate Authority while passing the order. It is observed that the applicant stated in his reply against the Second Show-cause Notice dated 24.03.2003 in paragraph (i), (ii), (iii), (iv), (v), (vi) &amp; (vii). It is further observed that paragraph (vii) of the said reply the applicant stated inter alia:</i></p> <p><b><i>“With regard to article of charge No. 1 I beg to submit it is not a denying fact that</i></b></p>	

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	<p><i>I have been made accused in criminal case and that Cr. Case is still pending only because I have been implicated in Cr. Case in my humble submission I cannot be punished. I submit since I was made accused in a Criminal Case but I was granted anticipatory bail from the Hon'ble High Court Calcutta and as such my absence from duty was not intentionally."</i></p> <p><i>From the above, we do not find any submission with regard to his unauthorised absence due to the jail custody rather it has been stated he was granted anticipatory bail from the High Court and as such his absence from the duty was not intentional. Therefore, the submission of the counsel for the applicant is contrary to the reply, filed by the petitioner and it is also noted that the Appellate Authority while passing the order of dismissal had already considered the reply of the applicant and since there was no whisper of his jail custody during that period therefore there is no question of non-consideration of plea of the applicant on this ground. Accordingly, we do not find any reason to entertain the application which is hopelessly barred by</i></p>	

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A.K.P.	<p><i>limitation and being devoid of merit. Accordingly, the O.A. is dismissed with no order as to cost.</i></p> <p><b>P. RAMESH KUMAR</b> <b>MEMBER (A)</b></p> <p><b>URMITA DATTA (SEN)</b> <b>MEMBER (J)</b></p>	