

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

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

Case No –OA-642 of 2019.

Tarapada Roy & 19 Others. –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>4</u> 27.11.2019.</p>	<p>For the Applicants : Mr. S. Ghosh, Mr. R. K. Mondal, Advocates.</p> <p>For the Respondents : Mr. M. N. Roy, Advocate.</p> <p>Let affidavit of service filed be kept on record.</p> <p>In this application the applicants have sought for certain reliefs, the relevant portion of which is as under:-</p> <p style="text-align: center;"><i>“.....(a) An order do issue thereby directing the respondent authorities to implement the solemn order dated 13.12.2012 passed in O.A. No. 969 of 2012 (Tarapada Roy & Others-Vs- The state of West Bengal & Others) in its entirety in exercise of the power under Section 27 of the Administrative Tribunal Act, 1985.</i></p> <p style="text-align: center;"><i>(b) An order do issue directing the respondents authorities to forthwith give appointment to the applicants under land losers</i></p>	

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	<p><i>scheme in any civil post such as Clerk, Group-D, under the establishment without any further delay after condoning the age.</i></p> <p><i>(c) A further order do issue directing the concerned respondent authorities to forthwith give appointment to the applicants on compassionate ground in any civil post such as Clerk, Group-D, as soon as the same is made available."</i></p> <p>It appears that earlier the applicants had moved an application, being OA-969 of 2012, which was disposed of by order dated 13th December, 2012, the relevant portion of which is as under:-</p> <p><i>".....The State Respondent shall examine whether there was any panel for direct recruitment in the State Government including name of the present petitioners, in accordance with Law and if really there is any panel for direct appointment,</i></p>	

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	<p><i>then only, the authority shall consider the appointment of the petitioners subject to available vacancy. If the petitioners have crossed their age for recruitment in Government Service, if their case is considered for appointment, the authority shall also consider the condonation of their age bar. The application is accordingly disposed of."</i></p> <p>It appears the applicants did not pursue the matter for implementing the said order. Thereafter, the applicants had filed an application, being OA-376 of 2014 : (Srinanda Baishnab & 22 Others.-Vs-The State of West Bengal & Others.), for appointment which was disposed of by passing an order on 29th August, 2017, the relevant portion of which is as under:-</p> <p><i>".....13. It has been sought to be shown in the so called "Reply" that Atul Chandra Roy's case cannot act as a precedence in view of the Notification No. 301-Emp., 302-Emp and 303-Emp. all</i></p>	

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	<p><i>dated 21.08.2002. The Tribunal is not impressed with such stance of the Department. The decision of the Tribunal in Atul Chandra Roy's case (Supra) was arrived at on 02.09.2009 and has subsequently been given effect to by the Government. The concerned Circulars of 2002 were very much in vogue at the relevant point of time yet it did not stand in the way for implementation of the Tribunal's Order. As such, it would be very difficult to distinguish between these two cases and the Tribunal sees no reason as to why the same benefit be not given to the Applicants of the present case.</i></p> <p><i>14. The application is accordingly disposed of. Necessary steps be taken within a period of 8 (Eight) weeks from the date of communication of</i></p>	

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	<p><i>this Order."</i></p> <p>Against the said order the State preferred a writ petition, being W.P.S.T. No. 151 of 2017, which was disposed of on 16th July, 2018 by setting aside the order dated 29th August, 2017, the relevant portion of which is as under:-</p> <p><i>".....It is not in dispute that the respondent nos. 1 to 23 filed an original application on an earlier occasion in the matter of Tarapada Roy & 28 Ors. vs. The Stae of W.B. & Ors (In re:- O.A. No. 969 of 2012). Admittedly the same was disposed of with a direction upon the petitioners to consider the claim of the respondent nos. 1 to 23 in the manner recorded therein. No material is brought on record to show that further step was taken by the respondent nos.1 to 23 on the ground of non-compliance of the aforesaid directions and/or wilful disobedience of the above</i></p>	

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	<p><i>order. No material is produced before the Court to show that there was a fresh cause of action to file an original application on the selfsame cause of action once again.</i></p> <p><i>We find substance in the submissions made on behalf of the petitioners before us that the filing of second original application was not permissible on the selfsame cause of action. Rather the original application which gives rise to this writ application was filed by the respondent nos. 1 to 23 on the selfsame cause of action after expiry of about 2 years. Therefore, the original application which gives rise to this writ application should have been dismissed on the aforesaid sole ground.</i></p> <p><i>That apart a belated claim lodged afresh after introduction</i></p>	

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	<p><i>of a new scheme by virtue of the notification nos. 301/302/303 EMP dated August 21, 2002 could not be entertained.</i></p> <p><i>With regard to the decision of Maharaj Krishan Bhatt & Anr. (supra) we find that the same relates to scope to perpetuate illegality. In view of the distinguishable facts and circumstances of this case the same does not help the respondent nos. 1 to 23.</i></p> <p><i>Similarly, in the matter of C. Lalitha (supra) the issue was not to examine scope of initiating a proceeding taking into consideration the principle of constructive res judicata.</i></p> <p><i>In the matter of K. C. Sharma & Ors. (supra) the above issue was not under consideration. Therefore, none of the aforesaid cases helps the respondent nos. 1 to 23 in view</i></p>	

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	<p><i>of the distinguishable facts and circumstances and the issue involved in the original application.</i></p> <p><i>In view of the discussions and observations made hereinabove, the order impugned to this writ application stands quashed and set aside.</i></p> <p><i>This writ application is, thus, disposed of accordingly.</i></p> <p><i>There will be, however, no order as to costs.</i></p> <p><i>Urgent photostat certified copy of this judgment, if applied for, be given to the parties, on priority basis."</i></p> <p>Aggrieved the applicants filed a Special Leave Petition before Hon'ble Supreme Court which was dismissed on 22nd October, 2018. Thereafter, the applicants had filed a Review Application before the High Court, being RVW 72 of 2019 for reviewing the order dated 16th July, 2018 passed in W.P.S.T. No. 151 of 2017 which was dismissed by order dated 12th July, 2019,</p>	

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	<p>the relevant portion of which is as under:-</p> <p><i>“.....the main grounds for review are that there is a clear error apparent on the face of the judgment and order and that the Court erred in fact and in law while holding that no relief could be given to the applicants (being the review applicants herein) as the relief they sought for was barred by the principle of res judicata.</i></p> <p><i>Even a bare perusal of the impugned judgment and order reveals that the Court look into consideration that the respondent nos. 1 to 23 had filed an original application on an earlier occasion in the matter of Tarapada Roy & 28 Ors. vs. The State of West Bengal & Ors. (In re: O.A. No. 969 of 2012).</i></p> <p><i>Admittedly, the same was disposed of with a</i></p>	

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	<p><i>direction upon the petitioners to consider the claim of the respondent nos. 1 to 23 in the manner recorded therein. No material was brought on record to show that further step was taken by the respondent nos. 1 to 23 on the ground of non-compliance of the above directions and/or wilful disobedience of the above order. No material was produced before the Court to show that there was a fresh cause of action to file an original application on the self-same cause of action once again.</i></p> <p><i>Under such circumstances as stated above, the Court proceeded to pass the judgment and order dated 16th July, 2018, by quashing the order impugned in the writ petition and setting it aside.</i></p>	

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Sourav.	<p style="text-align: center;"><i>We have not noticed any of the ingredients present in the judgment and order dated 16th July, 2018, which would bring the same within the scope of being reviewed following the principles analogous to Order XLVII of the Code of Civil Procedure, 1908.</i></p> <p style="text-align: center;"><i>We, therefore, do not find any merit in the review, which is liable to be dismissed and is accordingly dismissed along with CAN 3513 of 2019</i>"</p> <p>Since we find that the issue was dealt with by the High Court in W.P.S.T. No. 151 of 2017 and thereafter, the matter was before the Hon'ble Supreme Court, the Tribunal has no jurisdiction to re-open the issue. Therefore, the application is dismissed.</p> <p>(P. RAMESH KUMAR) MEMBER (A)</p> <p>(SOUMITRA PAL) CHAIRMAN</p>	

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