

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

**The Hon'ble Justice Soumitra Pal**  
**& The Hon'ble P. Ramesh Kumar.**

**Case No –OA-880 of 2014.**

**Dalnu Barman & Another. –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>7</u> 13.12.2018</p>	<p><b>For the Applicants : Mrs. Sonali Mitra, Advocate.</b></p> <p><b>For the Respondents : Mr. Soumendra Narayan Ray, Advocate.</b></p> <p>In this application the applicant has challenged the impugned order dated 24<sup>th</sup> June, 2014 being annexure 'L' to this application and has prayed for a direction upon the respondents to complete the selection process for the post of Excise Constable in terms of the memo no. 379(41)/E(U) dated 29<sup>th</sup> June, 2006. It is submitted by Mrs. Sonali Mitra, learned advocate for the applicants that since Sanjay Bera, one of the applicants in the instant application, had moved the High Court against the order dated 30<sup>th</sup> January, 2017 passed by the Tribunal and as the High Court by order dated 2<sup>nd</sup> July, 2018 passed in W.P.S.T. 39 of 2017 while disposing of the writ petition had remanded the matter back to the Tribunal for a decision afresh, the impugned order may be set aside and quashed.</p> <p>Mr. Soumendra Narayan Ray, learned advocate appearing on behalf of the respondents submits that as the self-same selection process was under challenge in OA-380 of 2017 (Indra Kumar Roy &amp; Ors.-Vs-The State</p>	

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	<p>of West Bengal &amp; Others), which was disposed of on 29<sup>th</sup> November, 2018 wherein Mrs. Mitra had appeared and the impugned order dated 24<sup>th</sup> June, 2014 passed by the Principal Secretary to the Government of West Bengal, Department of Excise was not interfered with, no order may be passed. Mr. Roy submits that no writ petition has been filed in the High Court challenging the order dated 29<sup>th</sup> November, 2018 passed in OA-380 of 2017.</p> <p>Heard Mrs. Sonali Mitra, learned advocate for the applicants and Mr. Soumendra Narayan Ray, learned for the respondents.</p> <p>It appears that the High Court on 2<sup>nd</sup> July, 2018 while disposing of the writ petition, being W.P.S.T. No. 39 of 2017, had passed an order the relevant portion of which is as under :</p> <p style="text-align: center;"><i>“.....Since the learned Tribunal did not examine the validity of the order passed by the respondent authority discontinuing the selection process of 2006 on its merit the matter is remanded back to the learned Tribunal for its decision afresh in accordance with law expeditiously and preferably</i></p>	

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	<p><i>within a period of six months from the date of communication of this order.</i></p> <p><i>As abundant precaution, let it be observed by us that we have not examined the issue involved in the original application on its merit and all points are kept open to be decided by the learned Tribunal.</i></p> <p><i>This writ petition is, thus, disposed of....."</i></p> <p>It appears, as submitted on behalf of the respondents, the said impugned order dated 24<sup>th</sup> June, 2014 was also under challenge in OA-380 of 2017, wherein on 29<sup>th</sup> November, 2018 the following order was passed :</p> <p><i>"In this application the applicants have challenged the order dated 24<sup>th</sup> June, 2014 passed by the Principal Secretary to the Government of West Bengal annulling the process of recruitment initiated in 2006 for the recruitment to the post of Excise Constables. Though directions were issued for filing of affidavits, no</i></p>	

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	<p><i>affidavit has been filed by the respondents. It is submitted by Mr. Soumendra Narayan Ray, learned advocate for the respondents that since the State authorities have the authority to cancel the selection process at any stage prior to giving appointment, the order under challenge is just and proper.</i></p> <p><i>Mrs. Sonali Mitra, learned advocate for the applicants submits that since the selection process is over and as the applicants have crossed the age bar, direction may be given to the respondents to allow them to participate in the future selection process condoning the age bar.</i></p> <p><i>Having heard Mrs. Mitra and Mr. Ray and considering the facts and circumstances of the case, we are of the view that the order dated 24<sup>th</sup> June, 2014 passed by the Principal Secretary to the Government of West Bengal requires no interference as the state</i></p>	

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	<p><i>authority have the right to cancel the selection process in the facts and circumstances as mentioned in the order dated 24<sup>th</sup> June, 2014 which is under challenge. However, as the applicants have now crossed the age for applying in a post under the State, considering the said fact we dispose of this application by directing the State respondents to allow them to appear in the future selection process for the post of Excise Constables after condoning the age bar, if they are otherwise eligible. No order as to costs."</i></p> <p>It is needless to mention that the subject matter in OA-380 of 2017 (Indra Kumar Roy &amp; Ors.-Vs-The State of West Bengal &amp; Others) and in this Original Application are similar as noted. Mrs. Sonali Mitra had appeared in OA-380 of 2017 which was disposed of on 29<sup>th</sup> November, 2018. The instant matter was taken up on 5<sup>th</sup> December, 2018 when Mrs. Mitra did not mention about the order passed by the High Court in W.P.S.T. 39 of 2017 nor it was mentioned on 29<sup>th</sup> November, 2018 when OA-380 of 2017 was taken up</p>	

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Sourav.	<p>and disposed of. Since the issues in OA-380 no 2017 and in this application are identical and we have already on 29<sup>th</sup> November, 2018 in OA-380 of 2017 passed orders as noted and issue is covered by that order, no order can be passed on this application. The application is disposed of.</p> <p>(P. RAMESH KUMAR) MEMBER (A)</p> <p>(SOUMITRA PAL) CHAIRMAN</p>	