

**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 1304 of 2013.

RAM CHANDRA GARAI – 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>20 31.1.2019.</p>	<p>For the Applicant : Mr. R. Banerjee, Mr. S. Roy Chowdhury, Advocates.</p> <p>For the State respondent : Mr. M.N. Roy, Advocate.</p> <p>In this application the applicant, who had applied for the post of constable/sepoy in Kolkata Police, has prayed for a direction upon the authorities to follow the recruitment process in terms of the advertisement dated 14<sup>th</sup> January, 2009. It has been stated in the application that the applicant appeared before the selection board constituted for recruitment to the post of constable/sepoy in Kolkata Police. The applicant was empanelled in constable/sepoy in Kolkata Police. Allegation is though it was notified that there were 1247 posts vacant, however after the selection process, the department prepared a panel of 7193 candidates giving a go-bye to the notified vacancy of 1247 posts. It has been stated that several applications were moved before the Tribunal regarding filling up of such vacancies, one of them being OA 224 of 2011 Rakibul Hasen Mondal –vs- Secretary, Home, Government of West Bengal, which was disposed of on 4<sup>th</sup> January, 2012 by passing an order, the</p>	

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	<p>relevant portion of which is as under :-</p> <p><i>“.....On hearing both Mr. P. Sarkar and Mr. P. Das, I find that self-same question was already examined by this Tribunal and an order was recorded in connection with OA -65 of 2011.</i></p> <p><i>The decision, taken in that case, is still binding for all the parties as that decision has not been altered or modified by the Hon’ble High Court.</i></p> <p><i>But, for the present when the petitioners were informed by the Department about existence of vacancy and when there is nothing before me to hold that the earlier panel has been cancelled or it has outlived its utility, I hold that the authority may consider to accommodate the eligible petitioners in view of available vacancy, if no fresh recruitment process has been started.</i></p> <p><i>It goes without saying that mere inclusion of panel never confers any right of employment and it also goes without saying that the authority, even if vacancy is available, may not like to exhaust the panel and may go for further recruitment process and there is nothing wrong in such attempt.</i></p> <p><i>In view of above discussion, the matter is</i></p>	

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	<p><i>forwarded to the authority for taking a policy decision whether the available vacancy can be filled up subject to the eligibility and merit position of the petitioners, who were included in the panel. The authority shall decide on this issue within 2 months from communication of this order.</i></p> <p><i>The application is accordingly disposed of....”.</i></p> <p>It has been alleged that though orders were passed by the Tribunal, the department did not take initiative to fill up the vacancies in the posts of constable/sepoy in Kolkata Police. It has been alleged that the respondents not only ignored the order passed by the Tribunal but on the other hand had discriminated the applicant.</p> <p>Mr. R. Banerjee, learned advocate appearing on behalf of the applicant submits that though 1247 posts of constable/sepoy for Kolkata Police were vacant, however a list of 7193 was prepared, which was not in consonance with the rules and thus giving a go-bye to the notification. Submission is that out of the said panel appointment were not only made in violation of the statutory norms but also in violation of the principles of</p>	

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	<p>law laid down by the Supreme Court in Shankarsan Dash –v- Union of India : AIR 1991 SC 1612, particularly the law laid down in paragraphs 7 and 8 thereof.</p> <p>Mr. M.N. Roy, learned advocate appearing on behalf of the State respondents submits that on similar issues several applicants were moved. From the order passed in OA 1130 of 2010 Md. Rakiul Hossain and others –vs- The State of W.B., the applicants had filed an application under Article 227 of the Constitution of India challenging the order dated 4<sup>th</sup> January, 2012 before the High Court, being COST No. 1 of 2012, which was dismissed on 2<sup>nd</sup> February, 2012. Aggrieved a Special Leave Petition was moved before the Supreme Court which was dismissed on 16<sup>th</sup> August, 2012.</p> <p>Heard Mr. Banerjee and Mr. Roy, learned advocates for the parties.</p> <p>The High Court in COST 1 of 2012 had dismissed the application by holding interalia as follows:-</p> <p><i>“.....Having regard to the number of vacancies available, the authorities fixed up cut off marks or benchmarks for general category candidates, scheduled caste candidates and other backward classes</i></p>	

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	<p><i>candidates. The department, also, followed the procedure if two or more candidates obtain the same benchmark, the older among them shall be given employment. The petitioners failed to get benchmarks and, therefore, could not be appointed.</i></p> <p><i>The tribunal, however, disposed of the original application by directing that in view of the available vacancies the writ petitioners should be considered for appointment provided no fresh recruitment process has started.</i></p> <p><i>Mr. Surajit Samanta, learned advocate appearing for the petitioners, is aggrieved because fresh recruit process has commenced.</i></p> <p><i>We do not find any merit in this writ application in as much as a panel cannot be kept alive for an indefinite period, particularly, when a new recruitment drive has been initiated.</i></p> <p><i>We, therefore, dismiss the writ application.</i></p> <p><i>However, dismissal of this writ application shall not prevent the writ petitioners to try their luck in the new recruitment process.</i></p> <p><i>We make no order as to costs....”.</i></p>	

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Skg.	<p>Evidently in a similar matter the High Court had dismissed the application by holding that there was no merit in the said writ application and the panel cannot be kept alive for an indefinite period when a new recruitment process had been initiated. The High Court had observed that the writ application shall not prevent the writ petitioners to try their luck in the new recruitment process. Since Special Leave petition was dismissed, the said judgement is binding on each of the applicants similarly situated. It is to be noted that the principles of law laid down in Shankarsan Dash –versus- Union of India (supra) are to be read in the light of the facts stated therein. In the case in hand when the High Court had dismissed the writ application and the Supreme Court had rejected the Special Leave Petition there is no merit in the application. Hence for the reasons as aforesaid, the application is dismissed.</p> <p>(P. Ramesh Kumar) Member(A).</p>	(Soumitra Pal) Chairman.