

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

**The Hon'ble Justice Soumitra Pal.
& The Hon'ble Dr. Subesh Kumar Das.**

Case No – OA 186 of 2018.

Dipak Mallick -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>02 23.07.2018.</p>	<p>For the Applicant : Mr. A.K. Das Sinha, Mrs. M. Dhar Chowdhury, Advocates.</p> <p>For the State Respondent : Mr. G.P. Banerjee, Advocate.</p> <p>At the outset, the supplementary application to the Original Application No. 186 of 2018 praying for condoning delay of 4 years 5 months and 10 days in moving the Original Application is taken up for hearing.</p> <p>Heard Mr. A.K. Sinha, learned advocate for the applicant appearing with Mrs. M. Dhar Chowdhury, learned advocate and Mr. G.P. Banerjee, learned advocate of the State Respondent.</p> <p>Perusing the statements in the supplementary application, particularly paragraph 8 thereof, and the only annexure, that is the medical certificate, we are of the view that a case has been made out for condoning the delay. Therefore, the delay in moving the Original Application is condoned. The supplementary application is allowed.</p> <p>The Original Application being OA 186 of 2018 is taken up for hearing.</p>	

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	<p>The facts are that in the year 1979 the applicant, was selected and was appointed permanently in the post of Sweeper under the Directorate, Government of West Bengal, Housing Construction Division, Calcutta. During the year 1980, he was transferred and was posted as Helper to Plumbing Mistry in the Rental Housing Estate in Calcutta. In the year 1983, the applicant was arrested by the police in a criminal case being ST 1(2) of 1988 (State –Vs- Dipak Mallick) under section 302 of the IPC and was detained in police custody. He was suspended from service. Thereafter, the applicant was convicted with life imprisonment and had served the jail sentence till 30th December, 2012. According to the applicant since without taking recourse to disciplinary proceeding he was dismissed, the order of dismissal is illegal. Submission is for a direction upon the respondents to allow him to resume his duty as Plumber with all consequent service benefit.</p> <p>It is submitted by Mr. Sinha, the learned advocate for the applicant that the applicant may be allowed to resume his duties after consideration of his representation. In support of his submission, he has relied on a judgement of the Hon'ble Supreme Court of</p>	

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	<p>India in Himachal Pradesh State Electricity Board Ltd –Vs- Mahesh Dahiya reported in (2017)1 SCC 768.</p> <p>Mr. G.P. Banerjee, learned advocate appearing for the State submits that in view of Article 311 (2)(a) of the Constitution of India once a person is convicted , he gets automatically dismissed from service. Though not prayed for it is submitted on instruction that as the applicant served for only four years he is only entitled to GPF and the same has been disbursed.</p> <p>Heard Learned Advocate for the parties.</p> <p>Admittedly, the applicant had joined in the service in the year 1979 and had working till 1983 when he was arrested. Subsequently, he was convicted. He suffered life imprisonment and was released on 30th December, 2012. In the instant case, it appears that the petitioner has prayed for “ <i>A Direction upon the respondents to reinstate the applicant or to direct the respondents to allow the applicant to resume his duty as plumber helper forthwith, with all consequences service benefit.....</i>”.</p> <p>In our view, since the applicant was convicted, in view of Article 311 (2)(a) of the Constitution of India he is not entitled to be reinstated. The judgement of the</p>	

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Skg.	<p>Hon'ble Supreme Court of India in Himachal Pradesh State Electricity Board Ltd. –Vs- Mahesh Dahiya (Supra) is distinguishable on facts as therein the writ petitioner was not convicted in a criminal proceeding and had worked for a considerable length of time.</p> <p>Hence, for the reasons as aforesaid, there is no merit in this application and is thus dismissed.</p> <p>(Subesh Kumar Das) Member (A)</p> <p>(Soumitra Pal) Chairman.</p>	

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