

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

The Hon'ble Justice Ranjit Kumar Bag
& The Hon'ble Subesh Kumar Das

Case No – OA 1195 OF 2015

ANIRBAN JANA 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>10 07.05.2018</p>	<p>For the Applicant : Mr. J.N. Manna Learned Advocate</p> <p>For the State Respondent: Mr. Sankha Ghosh Learned Advocate</p> <p>The applicant has prayed for setting aside letter dated June 12, 2015, issued by the respondent No. 2 (Annexure I to the original application), by which prayer of the applicant for compassionate appointment was rejected.</p> <p>It appears from the materials on record that one Vivekananda Jana died on February 23, 2007 while he was working as a Clerk under Public Works Department, Government of West Bengal. The contention of the applicant is that the applicant being the son of the deceased employee immediately submitted application for compassionate appointment. The further contention of the applicant is that the applicant had to approach this Tribunal by filing O.A. 669 of 2013 as the claim of the applicant for compassionate appointment was not considered by the respondents. On January 10, 2014 this</p>	

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	<p>Tribunal disposed of O.A. 669 of 2013 by directing the Executive Engineer, Public Works Department (Roads), Tamluk to consider the application to be submitted by the applicant in prescribed format within fifteen days from the date of the order. Accordingly, the application submitted by the applicant in prescribed format in the year 2014 was considered by the respondents, but the claim of the applicant for compassionate appointment was rejected on the ground that the applicant was minor at the time of death of his father.</p> <p>Relying on decision of the Supreme Court in “Syed Khadim Hussain v. State of Bihar and Others” reported in (2006) 9 SCC 195, Learned Counsel for the applicant contends that prayer of the applicant cannot be rejected on the ground of minority when the application was submitted by the applicant in time. On the other hand, Learned Counsel representing the State respondents has referred to notification No. 97-Emp dated June 6, 2005 issued by the Labour Department, Government of West Bengal and submitted that the deceased employee completed twenty years of service and died after attaining 50 years of age and as such, the applicant is not entitled to get compassionate appointment.</p> <p>Having heard Learned Counsel representing both parties and on consideration of the materials on record, we</p>	

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	<p>find that the father of the applicant died on February 23, 2007 while he was in service. The cause of action for getting compassionate appointment by one of the dependants of the deceased employee arose in the month of February, 2007. So, the claim of the applicant for compassionate appointment will be governed by the provisions of notification No. 97-Emp dated June 6, 2005 issued by the Labour Department, Government of West Bengal which was in force at the relevant point of time. By virtue of the said notification one of the dependants of the deceased employee will be offered appointment on compassionate ground, subject to fulfilment of the following conditions :</p> <p style="padding-left: 40px;">(i) if the employee died before completion of 20 years of service or before attaining age of 50 years, whichever is earlier;</p> <p style="padding-left: 40px;">(ii) if there is need of immediate financial assistance to the members of the deceased family.</p> <p>In the instant case, the deceased employee joined service on May 30, 1984 and thereby the deceased employee completed twenty years of service and he died after attaining fifty years of age. Now, we would like to consider whether the second condition of the Notification is fulfilled in the instant case. Learned Counsel for the</p>	

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	<p>applicant has referred to series of copy of applications (Annexure “A” to the original application) in order to impress upon us that the mother of the applicant submitted application immediately after the death of the father of the applicant. On perusal of copy of those informal applications, we find that there is no endorsement of receiving those applications by the office of the respondents. In the absence of any endorsement of receiving the said applications by the office of the concerned respondents, we are unable to accept the contention made on behalf of the applicant that the applicant submitted applications before January 10, 2014 when this Tribunal gave direction for submission of application in the prescribed format. Since the applicant or the mother of the applicant waited for long seven years without submitting any application for compassionate appointment, we are constrained to hold that there was no immediate financial crisis in the family of the deceased employee for giving compassionate appointment. In view of non-fulfilment of the conditions laid down in notification No. 97-Emp dated June 6, 2005 issued by the Labour Department, the applicant is not entitled to get compassionate appointment.</p> <p>In “Syed Khadim Hussain v. State of Bihar and Others” (Supra) the application of minor applicant was rejected after six years without giving compassionate</p>	

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	<p>appointment. The Hon'ble Supreme Court gave direction to the authorities for consideration of claim of the applicant for compassionate appointment on the ground that the minor applicant attained majority on the date of rejection of prayer for compassionate appointment. In this reported case, the State of Bihar did not make any specific provision in the Rules as to what should be done in case the dependants are minors. A person can claim compassionate appointment on the basis of the scheme floated by the State or Rules / Notifications issued by the State for giving compassionate appointment. We have already observed that the claim of the applicant for compassionate appointment will be governed by the notification issued by the Labour Department in the year, 2005. The conditions enumerated in Notification No. 97-Emp dated June 6, 2005 have not been fulfilled in the instant case and as such, the applicant is not entitled to get compassionate appointment, even if we hold that the minority of the applicant should not have been considered for rejection of claim for compassionate appointment. Since the case of the applicant will be governed by the notification issued by the Labour Department, Government of West Bengal, and since the reported case dealt with the Rules applicable to the employees of State of Bihar, the ratio of the said reported case cannot have any bearing on the facts of the present case.</p>	

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SCN.	<p>In view of our above findings, we cannot persuade ourselves to intervene in the order of rejection of the prayer of the applicant for compassionate appointment as communicated by the Joint Secretary, Public Works Department on June 12, 2015.</p> <p>The application is, thus, dismissed.</p> <p>Let a plain copy of the order be supplied to both parties.</p> <p>(S.K. Das) MEMBER (A)</p> <p>(R.K. Bag) MEMBER (J)</p>	