

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

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

Case No – OA 528 OF 2015

AYAN MUKHERJEE 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>9</p> <hr/> <p>27.03.2018</p>	<p>For the Applicant : Mr. Santipada Pahari Learned Advocate</p> <p>For the State Respondent: Mr. S.N. Ray Mr. Sankha Ghosh Learned Advocate</p> <p>The applicant has prayed for quashing of the order conveyed to the applicant by the respondent No. 2 under letter dated November 18, 2014 (Annexure “D” to the original application) and praying for direction upon the respondents to give appointment to the applicant on compassionate ground.</p> <p>The contention of the applicant is that one Ajit Kumar Mukherjee, father of the applicant died on January 9, 2012 while he was working as Health Assistant (Male) at Panagarh Block Primary Health Centre in the District of Burdwan. On March 12, 2012 the mother of the applicant, Nupur Mukherjee submitted one application before the respondent No. 2 praying for compassionate appointment of her son i.e. the applicant. Ultimately, the claim of the applicant for compassionate appointment was rejected by the respondent No. 2 and the said fact was communicated to the applicant by letter dated November 18, 2014, which</p>	

ORDER SHEET

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>is under challenge in the present application. The prayer of the applicant was considered by the respondent No. 2 in accordance with the provisions of Labour Department Notification No. 251-Emp dated December 3, 2013. The application for compassionate appointment was rejected on the ground of delay of 21 months in submission of the application from the date of death of the employee. The other ground of rejection of application for compassionate appointment was that the mother of the applicant was also government employee at the time of death of the father of the applicant, and thereby there was no acute financial crisis in the family of the deceased employee.</p> <p>Relying on decision of Hon'ble Division Bench of the High Court at Calcutta in "Rabin Routh v. State of West Bengal & Ors." reported in 2009 (4) CHN 748, Mr. Pahari, Learned Counsel for the applicant submits that the order of rejection of prayer of the applicant is liable to be set aside on two grounds : first, the prayer of the applicant for compassionate appointment should not have been considered in accordance with notification No. 251-Emp dated December 3, 2013 issued by the Labour Department, Government of West Bengal as the said notification cannot have any retrospective effect and secondly, the mother of the applicant is living separately from the applicant and thereby the applicant is deprived of any financial assistance from his mother, who happens to</p>	

ORDER SHEET

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>be a government employee.</p> <p>In “Rabin Routh v. State of West Bengal & Ors.” (supra) the Hon’ble Division Bench dealt with a case where the mother of the applicant was government employee at the time of death of the father of the applicant and the applicant had to take up the responsibility of maintaining his three siblings without any care and assistance from the mother, who enjoyed the entire retirement benefits of her husband. In the instant case, the mother of the applicant Nupur Mukherjee has been residing at Qrs. No. Z / 5, Sankharipukur Housing Estate, P.O. Sripally, P.S. & District – Burdwan, PIN – 713 103, as reflected from the application submitted by the mother of the applicant before the respondent No. 2 on March 12, 2012 (Annexure “C” to the original application). The present applicant is also residing in the same address as reflected from the verification made by the applicant in connection with the present application. Moreover, the applicant has categorically mentioned in his formal application for compassionate appointment dated October 31, 2013 that the mother, Nupur Mukherjee has been living with the applicant. The contents of the formal application submitted by the applicant (Annexure A to the original application) disclose that the mother of the applicant is not living separately, but with the family. The said formal application also indicates that the mother of</p>	

ORDER SHEET

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>the applicant was not only employed but she used to receive Rs. 24,017/- (Rupees twenty four thousand and seventeen only) as salary per month as government employee. In view of the fact that both the applicant and his mother are living in the same address and in view of furnishing of information by the applicant that both the applicant and her mother have been living with the family, we are unable to accept the contention made on behalf of the applicant that the applicant has been living separately from her mother and that her mother is not taking care of the applicant. Since in the present case the applicant has been living with her mother, and since in the reported case of “Rabin Routh v. State of West Bengal & Ors.”(supra) the applicant had to maintain his three siblings without any care and financial assistance from her mother and the mother was living separately from the applicant, we are of the view that the facts of the present case are clearly distinguishable from the facts of “Rabin Routh v. State of West Bengal & Ors.”(supra). The natural corollary is that the ratio of “Rabin Routh v. State of West Bengal & Ors.”(supra) has no manner of application in the facts of the present case.</p> <p>On consideration of the impugned order under challenge in the present application we find that the application for compassionate appointment was considered by the respondent No. 2 on the basis of</p>	

ORDER SHEET

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>Notification No. 251-Emp dated December 3, 2013 which is not applicable in the present case as the father of the applicant died on January 9, 2012 when the said Notification was not in force. By considering the case of the present applicant for compassionate appointment on the basis of Notification No. 30-Emp dated April 2, 2008 issued by the Labour Department, Government of West Bengal, which was in force at the time of death of the father of the applicant, we find that the applicant is not entitled to be considered for compassionate appointment, as there was no acute financial crisis in the family of the deceased employee due to employment of the mother of the applicant at the time of death of his father. Accordingly, we do not find any merit in the submission made on behalf of the applicant.</p> <p>Since the applicant has taken the plea that his mother is living separately and he is not getting any financial assistance from her mother, though the applicant and her mother have been living in the same accommodation and since the applicant has specifically disclosed in the formal application for compassionate appointment that both the applicant and her mother have been living with the family, we are constrained to hold that the applicant has tried to mislead the Tribunal by taking the plea that he has been living separately from her mother for the purpose of getting compassionate</p>	

ORDER SHEET

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
SCN.	<p>appointment. In our view, the present application is frivolous and the same is liable to be dismissed with exemplary cost.</p> <p>In view of our above findings, the original application is dismissed with cost of Rs. 5,100/- (Rupees five thousand and one hundred only) to be paid by the applicant to the respondent No. 2 within a period of four weeks from the date of this order.</p> <p>Let 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>	