

WEST BENGAL ADMINISTRATIVE TRIBUNAL

Bikash Bhavan, Salt Lake, Kolkata – 700 091.

Present-

The Hon'ble Mrs. Urmita Datta (Sen), Member(J)

Case No. – CCP-16 OF 2020(OA-47 of 2016)

Debnath Ghosh VERSUS – The State of West Bengal & Ors.

Serial No. and Date of order	For the Applicant	:	Mr. A. Zaman, Md. Salahuddin, Learned Advocates.
<u>06</u> 29.06.2022	For the State Respondents	:	Mr. S.K. Mondal, Learned Advocate.

The matter is taken up by the Single Bench pursuant to the order contained in the Notification No. 118-WBAT/1E-08/2003 (Pt.-II) dated 11th February, 2022 issued in exercise of the powers conferred under Section 6 (5) of the Administrative Tribunals Act, 1985.

On consent of both the sides, matter has been taken up.

The counsel for the applicant today has filed one supplementary affidavit enclosing the reasoned order passed by the Director of Health Services, West Bengal on 07.02.2022 in pursuance to the order dated 04.03.2020 passed in OA-47 OF 2016 and has submitted that the observation and direction of the Court has been clearly flouted by the authority while passing the reasoned order.

Heard the parties and perused the reasoned order dated 07.02.2022. The D.H.S., vide his order dated 07.02.2022 has passed the following order :-

"Whereas, in complying the solemn order of the Hon'ble WBAT, a three men enquiry committee was reconstituted, and its report was taken into consideration.

Whereas in complying with the Judgement of OA Case No. 47 of 2016 as directed by the Hon'ble Court, principles laid down in Balbir Kaur & Another Vs. SAIL & Ors. Passed on 5th May, 2000 was taken into deep consideration and the family benefit scheme received by the applicant on the death of the deceased was not assessed in determining the financial status of the applicant.

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Whereas, the principle laid down by the Apex Court for grant of appointment on compassionate ground in the recent case laws namely (N.C. Santosh Vs. State of Karnataka & Ors, SCC 617, (2020) has also been taken into utmost consideration which categorically states compassionate appointment is an exception to the general rule and upholds that no aspirant has right to compassionate appointment and it can be made only on the norms laid down by the state's policy and/or satisfaction of the eligibility criteria as per the policy.

Whereas, now the state authority is constrained in allowing the prayer of the applicant dated 24.04.2001 and further rejects the same as was done in earlier occasions for giving him appointment on compassionate ground.

Thus the prayer of the applicant stands rejected. “

However, this Tribunal in its judgement dated 04.03.2000 had observed inter alia :-

a) We have gone through all the relevant documents and averments made in the application and found that as the family received terminal benefits to the tune of Rs.3.94 lakhs and mother was receiving a family pension and already 11 ½ years have been lapsed, the Director of Health felt that there is no immediate financial hardship and hence application was rejected. But as per the applicant's advocate in the case of BALBIR KAUR AND ANOTHER VS STEEL AUTHORITY OF INDIA LTD. AND OTHERS Hon'ble Supreme Court has held that the retiral benefit should not have been taken while calculating the financial distress of a particular family after the death of

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bread earner.

In the instant case, the three-men enquiry committee was very clear in explaining the financial condition of the family. We felt that if the Director was not convinced with the enquiry committee report, he should have opted for re-enquiry with regard to the financial condition by reappointing a fresh Enquiry Committee at least after High Court's Order. Instead of that, he himself has become Judge ignoring the fact that the terminal benefits are not supposed to be taken into consideration while calculating the financial status of the family and rejected the prayer . Further delay of 11 years is not due to the fault of the applicant as he applied within time, but due to delay on the part of the respondent to take decision. Hence, we find that this reasoned order is against the existing principles of law. Therefore, we quash and set aside the reasoned order of the Director of Health Services with a direction that if the Government feels that re-enquiry is necessary for assessing the financial capability of the family, it may do so and keeping in view Hon'ble Supreme Court Judgement in the case of BALBIR KAUR AND ANOTHER VS. STEEL AUTHORITY OF INDIA LTD. AND OTHERS as well as Enquiry Report. The entire exercise should be completed within three months from the date of receipt of this order and to take decision and communicate the same by way of reasoned and speaking order.

Accordingly, the OA is disposed of with the above observation and direction with no order as to costs.

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From the perusal of both the Tribunal's order as well as order passed by the DHS, it is ascertained that DHS has rejected the case of the applicant on the same issue, which is contrary to the findings of the Tribunal. In my opinion, the order of this Tribunal has not been complied with. However, DHS is granted another chance to file compliance report. Let the matter appear on **18.08.2022**.

URMITA DATTA (SEN)
MEMBER (J)

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