

ORDER SHEET

**WEST BENGAL ADMINISTRATIVE TRIBUNAL**

Bikash Bhavan, Salt Lake, Kolkata – 700 091.

Present-

**The Hon'ble Sayeed Ahmed Baba, Officiating Chairperson & Member (A)**

**Case No. OA – 441 of 2020**

**Sarama Kar & Another - VERSUS - THE STATE OF WEST BENGAL & ORS.**

Serial No.

and For the Applicants : None.

Date of order

22 For the Respondents : Mr. M.N. Roy,  
10.01.2025 Advocate

The matter is taken up by the Single Bench pursuant to the order contained in the Notification No. 638 – WBAT / 2J-15/2016 dated 23<sup>rd</sup> November, 2022 issued in exercise of the powers conferred under Section 5(6) of the Administrative Tribunals Act, 1985.

The prayer in this application is for a direction to setting aside the impugned order passed by the respondent No. 1 on 19.06.2019 rejecting the application for appointment on compassionate ground. The reasoned order rejected the application on the ground that the applicant was only 11 years 5 months and 6 days old at the time of death of deceased employee. Therefore, as per Labour Department's Notifications, the applicant is not eligible for such appointment.

Submission of Mr. Niyogi, learned counsel for the applicant was that the respondent failed to follow the provisions of 26-EMP dated 01.03.2016 in which appearing at Clause 10 (aa) the revised provision allows the dependent member to qualify for such appointment at the time of consideration. Mr. Niyogi quoted the relevant para of Clause 10 (aa) which is as follows:

*“Dependent member must invariably attain the minimum age of appointment at the time of consideration.”*

Submission is at the time of consideration of his application by the respondent the applicant had attained the minimum age of appointment, therefore, the impugned order be quashed and set aside with a direction to offer an employment under compassionate ground.

Responding on behalf of the respondent authority, Mr. M.N. Roy, learned counsel, however, insisted that the reasoned order was correct in rejecting the application on the ground that the applicant was a minor at the time of death of his father, the deceased employee. At that point of time, the applicant was only 11 years 5 months and 6 days old. As per 6 (c)(c) of Notification No. 251-EMP dated 03.12.2013 which is as under, the applicant was not eligible.

*“Dependent member shall invariably attain the minimum age for recruitment within 6 months from the date of death or incapacitation of the concerned employee.”*

Mr. Niyogi had submitted that the ground relied on by the impugned order giving reason of the applicant as a minor at the time of death of the employee is erroneous because they relied on the Notification 251-EMP which was published on 3<sup>rd</sup> December, 2013 when the deceased

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employee had died on 22<sup>nd</sup> December, 2000. This Memo not being in force, therefore, relying of this Memo at the time of consideration is arbitrary. Such rule which came into force subsequently cannot be applied for an event which occurred much earlier. Mr. Niyogi also recalled a judgment of Madhya Pradesh and Others – Vs- Amit Shrivastava, reported in (2000) 10 SCC 496. He also relies on the Supreme Court judgement's paragraph 23. Mr. Niyogi has also submitted that while considering the application, the respondent authority ignored the economic condition of the family which was actually in dire need of such an employment. He is also of the opinion that the Scheme for compassionate employment is meant for the family members of deceased employee whose economic conditions have deteriorated after the death of their earning member. Referring to the report of the Three-Men-Screening-Enquiring-Committee, Mr. Niyogi submitted that the Committee after a physical inspection of the household of the family had reported the dire condition of the family and accordingly recommended such an employment to the applicant. The competent authority ignored such report and their recommendation and instead they stuck to a mere technicality of the applicant being a minor at the relevant point of time.

Mr. Roy emphasised that in terms of the Scheme of compassionate employment it is clear that EMP-251 and in its very opening sentence makes it clear that this Notification will be in supersession of all previous Notifications relating to compassionate employment. Therefore, the stand taken by the applicant side that the previous Notification should have been considered is not correct. Mr. Roy has also submitted that since the applicant and his family were able to tide over the situation after death of the employee for so long, therefore, no immediate need of financial assistance was noticed.

Having heard the submissions of the learned counsels and considering the facts, it is very clear to this Tribunal and not in dispute that the present applicant who had applied for a compassionate employment and whose application was not accepted, was a minor of 11 years 6 months 5 days only at the time of death of the employee. As per the Scheme guideline, any eligible family member so entitled for this kind of employment is allowed a maximum time limit of 2 years from the date of death of the employee to apply before the respondent authority in the promissa application. It is also not in dispute that the applicant applied for himself only in 2008 when he attained the age of appointment. The contention of Mr. Niyogi was that Notification 251-EMP is not applicable in the case on the ground that it was not in force at the relevant point of time is also not acceptable. As pointed out by Mr. Roy and the Tribunal has

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itself observed that this Notification which came in force from 3<sup>rd</sup> December, 2013 was in supersession of all previous such Notifications relating to compassionate employment. At the time of consideration of his application, this particular Notification 251-EMP was in force, and therefore, it was applied while considering the prayer of the applicant. The Enquiring Committee may have recommended such an employment in favour of the applicant after its visit and interview but the final decision in such matters is vested with the competent authority. In this case, the competent authority considered the matter and regretted the same giving the reasons in terms of the Notification 251-EMP.

In view of the above findings, the Tribunal has come to the conclusion that the respondent authority had taken a correct decision in regretting the prayer of the applicant on the ground that he was a minor at the time of death of the deceased employee. Therefore, finding no merit in the prayers of this application, it is disposed of without passing any orders.

**SAYEED AHMED BABA**  
**OFFICIATING CHAIRPERSON & MEMBER(A)**

A.K.P.