

ORDER SHEET

WEST BENGAL ADMINISTRATIVE TRIBUNAL

Bikash Bhavan, Salt Lake, Kolkata – 700 091.

Present-

The Hon'ble Sayeed Ahmed Baba, Officiating Chairperson and Administrative Member

Case No. - OA 442 OF 2023

SANJAY BAPARI - VERSUS - THE STATE OF WEST BENGAL & ORS.

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|---------------------------------------|---------------------------|---|--|
| Serial No. and Date of order | For the Applicant | : | Mrs. S. Agarwal, Advocate |
| | For the State Respondents | : | Mr. A.K. Das Sinha, Mr. Sankha Ghosh, Advocate |

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13.12.2024

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

In this application, the applicant, Sanjay Bapari, son of the deceased employee, Ashok Bapari, prayed for a direction to the respondent authorities to offer him an employment under compassionate ground after setting aside the reasoned order, passed by the Commissioner of Textiles & Sericulture, on 22.08.2022 in terms of the Tribunal's order. The reasoned order had rejected the application for compassionate employment mainly on the ground that such application was submitted belatedly. The respondent authority had taken such decision of belated application against the proforma application dated 24.03.2021. The father of the applicant died on 08.02.2019 while working as a Resham Karmee at Amrity Graft Nursery, Malda under the Department of Textile & Sericulture. Soon after the death of the father, the applicant on 21.06.2019 furnished a plain paper application praying for such an employment before the Deputy Director of Sericulture, Malda. From the copy of this application, it is evident that the same was received by the office of the Deputy Director of Textiles, Malda. A copy of another correspondence from the Extension Officer, Malda addressed to the Deputy Director also clearly indicates that the applicant had prayed for an employment under compassionate ground. Later the applicant submitted the application in the prescribed format which was considered by the respondent authority and the delayed submission was thus the reason for rejection.

From the examination of the records, it is evident to the Tribunal that the applicant had furnished a plain paper application before the respondent authority within a short time after the death of his father. This fact has not been covered in the reasoned order. The Notification No. 251-Emp dated 3rd December, 2013 clearly mentions that such an

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application has to be preferred by the applicant in the prescribed proforma being annexures "A" and "B". Though the reasoned order records that the proforma application was submitted on 24.03.2021, having a delay of two years one month and fifteen days, but it ignores the fact that the applicant had submitted a plain paper application on 21.06.2019 within five months from the date of death of his father. If the proforma application was submitted on 24.03.2021 and if the two years permissible time for such submission is to be counted, then the delay was of only one month and fifteen days. It is submitted that after the COVID-19 lockdown period, the applicant went to the office of the respondent authorities to know the fate of the application but the respondent's office denied to provide such Proforma Application.

Mr. S. Ghosh, learned counsel for the respondents had submitted that as per clause 10(b) of Notification No.251-Emp, the applicant was required to submit his application within the time-limit in the prescribed proforma and it was submitted after a gap of two years one month and fifteen days, which led to rejection of the prayer for compassionate employment.

The Tribunal finds it a fact that the applicant had submitted his plain paper application dated 21.06.2019 within the stipulated time having the seal and signature of the Extension Officer (Sericulture), State Grainage, Amrity, Malda and the office of the Deputy Director of Textiles (Seri.), Malda. The respondent authority has completely missed this vital information of COVID-19 pandemic and submission of plain paper application within time and relied only on the fact of submission of the proforma application, which was submitted after delay of only one month and fifteen days after counting the two year permissible time. As is the norm and as stated by the applicant in the application, the legal heir of the deceased employee first submits a plain paper application for compassionate employment. After preliminary examination and only after satisfaction of the local officials, a copy of the application in prescribed form is handed over to the applicant/legal heirs. The applicants usually do not have access to such prescribed form, this being the reality more in rural areas. In this case, though the applicant had submitted his plain paper application within the period but a prescribed proforma was not handed over to him. When it was handed over to him, the time allowed for such submission had long passed. My attention has been drawn to clause 10 (bb) of Notification No.26-Emp dated 1st March, 2016, which gives clear responsibility to the office of the respondent in guiding applicants applying for appointment on

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compassionate ground. The relevant part is as under:-

“The concerned authority in the department/office should meet the members of the family of the deceased Govt. Servant immediately after his death to advise and assist them in getting appointment on compassionate ground. The applicant should be called in person at the very first stage and should be advised in person about the requirement and formalities to be completed by him. A record of such meeting should be kept with the office of the controlling authority and appointing authority”.

Though the notification as cited above expresses sympathy for the legal heirs of the deceased employee, but in this case, such noble words were not translated into action. The applicant was left at the mercy and sweet will of the respondents and it was only much later the applicant was favoured with the copy of the prescribed proforma. Given this back ground, can we blame the applicant and reject his application on the ground that he submitted his proforma application after delay of more than seven years? In a similar case the Hon’ble Supreme Court in (2012) 7 SCC 248 in the matter of “Shreejith L. Vrs. Deputy Director (Education) Kerala and Others” observed a very important point in a similar situation. The relevant part of the judgement is as under:

“23. Mr. Rajan, learned Senior Counsel, argued that the first application submitted by Respondent 4 for compassionate appointment on 2-5-1990 was no doubt within the time prescribed but the same was not in proper format. It was, argued the learned counsel, essential that the application should be not only within the time stipulated for the purpose but also in the prescribed format. Inasmuch as that was not so in the instant case the application must be deemed to be non est.

24. We regret our inability to accept that submission. The manager of the school had on receipt of the application from Respondent 4 not only acknowledged the request for appointment but also recognised that Respondent 4 possessed the requisite qualification for appointment as a Hindi teacher. The request was not, however, granted as no vacancy in the cadre was available in the school at that time. What is noteworthy is that the Manager did not reject the application on the ground that the same was not in the prescribed format or that the application was deficient in disclosing information that was essential for consideration of the prayer for a compassionate appointment. If the authority concerned before whom the application was moved and who was supposed to consider the request, did

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not find the format of the application to be a disabling factor for a proper consideration thereof, it could not be set up as a ground for rejection of the payer, by the beneficiary of the appointment made in derogation of the rights of Respondent 4. At any rate, what was important was the substance of the application and not the form. If the application in substance conveyed the request for a compassionate appointment and provided the information which the Manager required for considering the request, the very fact that the information was not in a given format would not have been a good reason to turn down the request. We need to remind ourselves that the scheme is meant to be a beneficial scheme aimed at helping those in need of assistance on account of an untimely demise in the family. Inasmuch as the Assistant Educational Officer and even the High Court found Respondent 4 to be eligible for appointment and directed the Manager to make such an appointment, they committed no error to warrant our interference under Article 136 of the Constitution. The civil appeal is, therefore, liable to be dismissed.”

Having heard the submissions of the learned counsels and considering the facts and circumstances of the matter, the Tribunal does not hesitate in considering the impugned order as a non est in the eyes of law and not tenable. Such impugned order rejecting on the ground of delayed submission of proforma application, ignoring the fact that the plain paper application was submitted by the applicant was well within the time is but a mockery of justice. Therefore, the impugned memo No.493 dated 22.08.2022, being quashable, is quashed and set aside with a further direction to the respondent authority No.2(a)(ii), the Commissioner of Textile & Sericulture to reconsider the matter in the light of the above observations of this Tribunal and provide the applicant a suitable employment under compassionate ground after ignoring the one month and 15 days delay, if he is otherwise eligible within 6 (six) months from the date of communication of this order.

The application is disposed of.

(SAYEED AHMED BABA)
OFFICIATING CHAIRPERSON
and MEMBER (A)

SCN.