

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 681 OF 2023

DEVTANU GHOSH - VERSUS - THE STATE OF WEST BENGAL & ORS.

Serial No. For the Applicant : Mr. S. Bhattacharjee,
and Advocate

Date of order For the State Respondents : Mr. S. Ghosh,
Advocate

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04.07.2024

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.

The prayer for an employment under compassionate ground submitted by the applicant was twice rejected by the respondent authorities. In both the impugned orders the only reason given for such rejection was that the prescribed format was submitted after expiry of the stipulated period. In the impugned order dated 13.04.2023, the delay of seven years and seven months was noted.

Subira Bose, working as a Staff Nurse, Gr-II under Murari Block Primary Health Centre (R/H), Birbhum had expired while in service on 01.11.2011. Soon thereafter on 14.12.2011, the applicant had submitted a prayer in plain paper before the B.M.O.H., Murari praying for an employment after the death of his mother. The letter was received on the same date by the office of the B.M.O.H. A couple of months later on 13.02.2012, the applicant furnished another plain paper application and the same was duly received by the office of the B.M.O.H. Having waited without any response, the applicant furnished one more plain paper application before the office of B.M.O.H. on 07.02.2017. In response to this last application, the office of B.M.O.H. favoured him with a copy of proforma application. This application in prescribed format was then forwarded by the Block Medical Officer of Health, Murari to the Director of Health Services on 26.06.2019. A couple of years later, a Three-Men Enquiry-cum-Screening Committee submitted its report on 18.11.2021 recommending an appointment to the applicant on compassionate ground. On 13.04.2023, the Additional Director (Personnel) and Special Secretary informed the Chief Medical Officer of Health, Birbhum that such a proposal could not be accepted on the ground that *“the prescribed proforma was submitted after a lapse of nearly 7 years 7 months from the expiry of the ex-employee which was needed to be submitted within two years from the expiry of the ex-employee”*. The same respondent authority communicated the same message to the C.M.O.H., Birbhum again on 09.08.2023. The applicant has filed this application praying for setting aside these two impugned references.

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The Tribunal finds the fact that the applicant had submitted his plain paper applications within the stipulated time was neither acknowledged nor accepted in the impugned responses of the authority. The respondent authority has completely missed this vital information and relied only on the fact of submission of the proforma application, which was submitted after the stipulated period of two years from the date of death of the employee. 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 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 two plain paper applications, both within the period, but a prescribed proforma was not handed over to him. When it was handed over to him on 07.02.2011, the time allowed for such submission had long passed. My attention has been drawn to clause 10 (bb) of Notification 26-Emp dated 1st March, 2016, which gives clear responsibility to the office of the respondent in guiding applicants applying for appointment on 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:

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“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 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 prayer, 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 orders

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as non est in the eyes of law and not tenable. Such impugned orders rejecting on the ground of delayed submission of proforma application, ignoring the fact that two plain paper applications were submitted by the applicant, is but a mockery of justice. Therefore, the impugned orders are quashable and are quashed and set aside with a further direction to the respondent authority No.2, Principal Secretary of Health and Family Welfare Department to reconsider the matter in the light of the observations of this Tribunal and pass a reasoned and speaking order within three months from the date of communication of this order. Such reasoned order be communicated to the applicant within two weeks thereof.

The application is disposed of.

SCN.

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

WEST BENGAL ADMINISTRATIVE TRIBUNAL