

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 749 OF 2023

TAMAL BHATTACHARYA - VERSUS - THE STATE OF WEST BENGAL & ORS.

Serial No. For the Applicant : None
and
Date of For the State Respondents : Mr. S.K. Mandal,
order Advocate

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19.11.2024 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, Tamal Bhattacharya, son of the deceased employee, Tapan Bhattacharya, prayed for a direction to the respondent authorities to offer him an employment under compassionate ground after setting aside the impugned memo No.243 dated 11.07.2023, which was issued by the respondent, rejecting the prayer of the applicant. The deceased employee, father of the applicant, died-in-harness on 01.01.2014 while working as an electrician at Paschim Medinipur Electrical Division, Public Works Directorate. Soon thereafter, the applicant preferred a plain paper hand written application before the Assistant Engineer, Electrical Sub-Division, Kharagpur on 09.01.2014. Such plain paper application was followed by reminders and submission of the application in prescribed proforma on 15.12.2022. It appears that on the basis of such an application, a Three-Men-Screening-cum-Inquiring Committee was formed and the applicant was advised to be present with relevant documents on 27.09.2022 in the office chamber of the Executive Engineer, Paschim Medinipur Electrical Division. The application was examined by the competent authority and the final decision was conveyed by the Joint Secretary of the Department on 11.04.2023 to the Superintending Engineer, South-Western Electrical Circle, Public Works Directorate. The Department observed that though the deceased employee died on 01.01.2014, the proforma application was submitted much later on 15.12.2022 and thus, the prayer of the applicant was rejected on the ground of belated application.

Mrs. S. Das, learned counsel for the applicant had submitted that the respondent authority failed to acknowledge and consider the fact that just after 8 days of demise of his father, the applicant had furnished a plain paper application before the respondent authority. This fact of submission of an application in plain paper within the time limit

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was completely ignored by the respondent authority while considering his application.

Mr. S.K. Mandal, 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 8 years, 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 09.01.2014 within the stipulated time with seal and signature of the Assistant Engineer and forwarded on 10.01.2014 to the Executive Engineer. 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 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 on 07.02.2011, 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 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

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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 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

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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 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 well within the time, is but a mockery of justice. Therefore, the impugned memo No.243 dated 11.07.2023 being quashable, is quashed and set aside with a further direction to the respondent authority No.2(a), the Secretary, Public Works Department to reconsider the matter in the light of the above 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.

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

SCN.