

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 – 811 of 2022

Modassar Hoque - VERSUS - THE STATE OF WEST BENGAL & ORS.

Serial No.

and

Date of order

9

13.12.2024

For the Applicant

: Mr. G.P. Banerjee,

Advocate

For the Respondents

: Mr. S.N. Ray,

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 23rd November, 2022 issued in exercise of the powers conferred under Section 5(6) of the Administrative Tribunals Act, 1985.

By filing this application, the applicant has prayed for setting aside the reasoned order under Memo 4516 dated 05.12.2022. By this reasoned order, the Director of Animal Husbandry and Veterinary Services after citing a reason, rejected the application of the applicant for an employment under compassionate ground. The primary reason for such rejection was that his mother was working as an Assistant Teacher in a Primary School.

Before we dwell into the merits of the case, let us briefly cover the facts of the case. One Manjur Hoque, father of the applicant working as a Lower Division Assistant in the office of Livestock Development Assistant, District – Malda had died in harness on 18.04.2007. The applicant's mother, Smt. Renu Sarkar had superannuated from her service as an Assistant Teacher on 30.09.2012. In terms of a direction of this Tribunal in O.A. 8331 of 2008, the respondent authority passed a reasoned order on 03.04.2009, which was also communicated to the applicant. The last paragraph and the most relevant part of the reasoned order passed by the Director is as under:

“WHEREAS all relevant records/files in this regard were carefully considered, also the submission so made by Modassar Hoque was considered and considering all aspects and after application of mind, it appears that it is a fit case, which deserves consideration for employment on compassionate ground. But in this Directorate, there are series of cases pending. So, this Directorate processing prayers for employment on compassionate ground strictly following the date of death of ex-employee.

At present, upto 2008 cases were processed. So, the prayer of the Petitioner, will

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be processed according to its serial in due course, with this the matter is thus disposed of.”

A clear impression gathered by this Tribunal after perusing this reasoned order and in particular, the paragraph quoted above is that, the applicant was eligible for an employment under compassionate ground. Though such eligibility was stated clearly by the Directorate but due to a large number of pending cases, the case of the present applicant could not be taken up. Further, it goes on to add that his case will be processed in due course of time. The applicant also informs that as per his information, the Directorate / Department had recommended a total number of 134 cases as on 04.05.2015 but his case was not taken up. In the second round of litigation an application filed by the applicant before this Tribunal, being O.A. No. 1223 of 2015, the Director passed another reasoned order dated 05.12.2022. Though it quotes the earlier reasoned order, in which the case of the applicant was considered as a “fit case, which deserves consideration for employment on compassionate ground”, but mentions that his mother had worked as an Assistant Teacher of Torabalitola Primary School, Manikchak, Malda and receiving her pension. The case of the applicant thus after giving the ground of his mother’s service as a Assistant Teacher and receiving family pension was rejected.

In the reply filed by the State respondents, apart from mentioning that the mother of the applicant is a recipient of pension of her service as a teacher in a Government School, the reply also indicates that father of the applicant had died at the age of 59 years, just one year before his normal superannuation. The reply also relies on the observations of the Committee which had inquired into the financial condition of the family members of the deceased Government employee. It comes to the conclusion that the family was not in need of immediate financial assistance.

Having heard the submissions of the learned counsels during the days of hearing the matter and after examination of the records available in this application, the Tribunal has observed few things, important once being :-

- (i) While considering the case of this applicant, the Director in his reasoned order dated 03.04.2009 was clear in his finding that the proposal was a “fit case which deserves consideration for employment on compassionate

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ground”. From close reading of this reasoned order, it leaves a strong impression in the mind that, though the applicant was eligible and being recommended for such an employment but due to large pendency of similar cases, his case could not be taken up at that point of time. It further goes on to convey the message that his case will be taken up in due course of time.

- (ii) In the second reasoned order passed on 05.12.2022, the applicant’s proposal has now been rejected primarily on the ground that his mother is a recipient of pension.
- (iii) In the Notification 251 EMP dated 3rd December, 2013 appearing at (6) Eligibility – it has been made clear that the applicant has to fulfil the condition that the family’s monthly income has fallen below 90% of the gross monthly salary of the deceased employee. In this case, however, though the reasoned order regrets the proposal on the ground that his mother receives pension, but the respondent authority has failed to elaborate that such pension and other incomes of the family has crossed above 90% of the gross monthly salary of the deceased employee.
- (iv) In terms of the same Notification, as pointed out above, the final decision for accepting or rejecting a proposal for compassionate employment is vested with the Head of the Department. In this case, however, the Director himself took upon his shoulders the responsibility of rejecting the application; the reasoned order does not convey the message that such rejection of the proposal has the approval of the Head of the Department. Another point in the reasoned order for rejection is that the family was not in need of immediate financial assistance. But details of the family’s present source of income and a calculation to show that it has exceeded 90% of the gross salary of the deceased employee has not been presented. It is obvious that the Director rejected this application only on the assumption that the mother of the applicant receives her pension. No evidence has been presented to prove that the income of the family has exceeded the 90% ceiling. The reply of the State respondents also mentions about formation of a Committee to inquire into the financial aspects of the family but neither

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the Committee's report has been presented nor any remark made by the Committee is shown in the reply. Such omission leaves a big gap while taking the decision. The reply also has another serious deficiency. In the last paragraph of its page no. 4, it relies on a Notification No. 30 EMP dated 02.04.2008, in which such employment was conditional only if the deceased employee had at least two years of service left before superannuation. The reply has forgotten that Notification No. 251 EMP which came in force from 3rd December, 2013 was in supersession of all previous Notifications relating to compassionate appointment. By relying on an outdated and nonexistent Notification, the Director has made a serious error.

In view of the above observations, the Tribunal finds the Reasoned Order – 4516 dated 05/12/2022 a non est in the eyes of law, and therefore, being untenable, it is quashed and set aside. In the light of above observations, the Respondent No. 1, Addl. Chief Secretary is directed to examine the prayer of the applicant for an appointment under compassionate ground and offer him such an appointment, if he fulfils other eligible criterias, within a period of four months from the date of communication of this order. A copy of his decision be communicated to the applicant within 2 (two) weeks thereof.

This application is disposed of.

SAYEED AHMED BABA
OFFICIATING CHAIRPERSON & MEMBER(A)

A.K.P.