

**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 818 OF 2021**

**INDRAJIT BARMAN – VERSUS- THE STATE OF WEST BENGAL & ORS.**

Serial No. and Date of order	For the Applicant	:	Mr. G.P. Banerjee, Mr. S. Bhattacharjee, Advocates
<u>15</u> 21.03.2024	For the State Respondents	:	Mr. Sankha Ghosh, Advocate

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 23<sup>rd</sup> November, 2022 issued in exercise of the powers conferred under section 5(6) of the Administrative Tribunals Act, 1985.

On consent of the learned counsels for the parties, the case is taken up for consideration sitting singly.

The applicant has prayed for setting aside the impugned Memo No. 1144/1(1)/E dated 29<sup>th</sup> April, 2021. By passing this impugned memo, the respondent authority rejected the application of the applicant for appointment on compassionate ground. The impugned memo rejecting the application declares the applicant to be “Unfit for the post of group-D”. However, it does not explain how the applicant has become unfit. No details of such reason has been recorded in the impugned memo.

The deceased employee, Dharendra Kumar Barman was a Constable in West Bengal Police, who died on 24.07.2011. The applicant made an application on 14<sup>th</sup> September, 2005 for appointment to the post of Constable under compassionate ground. Thereafter, the applicant made a series of representations before the authorities for consideration of his case for appointment in Group D post.

Mr. Banerjee, learned counsel appearing on behalf of the applicant draws attention of the Tribunal to memo No.1250/HC/PO dated 27.08.2019. This memo appears to be an intimation to the applicant and similar other candidates to appear for a test to be conducted on 30.08.2019. For the Group-D candidates, the applicant being one, the memo informs that the test will be conducted on speaking/writing/reading in

**ORDER SHEET**

Form No.

**INDRAJIT BARMAN**

Vs.

Case No. - OA 818 OF 2021

**THE STATE OF WEST BENGAL & ORS.**

Bengali / English.

Submission is that the applicant had appeared for such test on the stated date and time. The next memo drawing my attention is memo No. 322 dated 17.02.2021. By this memo a number of candidates including this applicant, have been declared “unfit” for the post of Group-D under the test conducted on 30.08.2019. Submission is that no matter how poorly the applicant may have fared in the test, but without assigning any valid reason, his candidature cannot be rejected by just one word “unfit”. The respondent authorities are bound to explain why the applicant was considered “unfit”. Mr. Banerjee has also touched upon another important area of this matter. He submits that the applicant was tested and declared unfit against his application for employment on compassionate ground. This was not a regular recruitment test for constables in the uniform service. Since he had applied for such employment after the demise of his father, who was a government employee, therefore, by testing the applicant through this process, the respondent authority has violated the principles of natural justice and the Rules governing compassionate employment. Further, as per the provision of notifications, in particular, the main notification No. Emp-251 of the Labour Department, an application for compassionate employment does not require a test to be held to qualify the applicant to be eligible for such employment in a post of Group ‘D’.

Mr. Banerjee also argues that the officer in the rank of Superintendent of Police rejecting his application by declaring him unfit in the test did not have such authority; the authority to consider and take the final decision relating to compassionate employment is only with the Head of the Department. By exercising such power without any authority, the Superintendent of Police has rejected his application for compassionate employment.

Mr. Ghosh, however, submits that the applicant was properly tested for his basic knowledge in speaking / writing / reading in Bengali / English. Since he has not qualified in this basic test, therefore, he was not found fit and suitable for the post of Group-D.

It is also observed that by Memo No. 552/Spl./Emp-252/2015 dated 13.06.2017, the respondent authority had referred this application as an application for

**ORDER SHEET**

Form No.

**INDRAJIT BARMAN**

**Vs.**

**Case No. - OA 818 OF 2021**

**THE STATE OF WEST BENGAL & ORS.**

compassionate employment. Also in Memo No. 1559-PL/PS/2P-17/16 dated 12.04.2017, the respondent authority had referred this application as an application for compassionate employment.

Since no reason has been given in the reply as to why the applicant was declared unfit in the test, Mr. Ghosh assures that on the next date, he will submit relevant documents pertaining to the test before this Tribunal.

Let the details of the result for the test participated by the applicant be presented before this Tribunal on the next date. Matter to appear under the heading "Hearing" on 21.08.2024.

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

SCN.

WEST BENGAL ADMINISTRATIVE TRIBUNAL