

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-818 of 2021

Indrajit Barman -- VERSUS – The State of West Bengal & Ors.

Serial No. For the Applicant : Mr. G.P. Banerjee, Ld. Advocate.

and : Mrs. S. Agarwal, Ld. Advocate.

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

16
21.08.2024

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.

An error has been detected in the order dated 21.03.2024. Appearing at 3rd line of the 4th paragraph, instead of 14th September, 2005, it should have been 14th September, 2015. Let this mistake be corrected as pointed above and let this be part of the original order dated 21.03.2024.

In this application, the applicant has prayed for setting aside the impugned Memo No. 1144/1(1)/E dated 29th 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 and father of the applicant, Dharendra Kumar Barman was a Constable in West Bengal Police, who died while in service on 24.07.2011. The applicant made an application on 14th September, 2015 for an appointment 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 to test their skills on speaking/writing/reading in Bengali / English.

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 was rejected by just one word “unfit”. The respondent

Form No.

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

Vs.

The State of West Bengal & Ors.

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 applicant for compassionate employment does not require to be tested to qualify 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 lies only with the Head of the Department. By exercising such power without any authority, the Superintendent of Police has exceeded his brief.

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 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 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.

In continuation of the submissions made by the learned counsels on the last day of hearing, today, Mr. S. Ghosh, learned counsel appearing on behalf of the State respondents presents a copy of the Test Report held on 30.08.2019 and has submitted that the applicant had not succeeded in the test for the post of Group-D. The report also mentions that the applicant is proficient in spoken and written Bengali, however, he is not proficient in English language.

Having heard the submissions of the learned counsels and on examination of the records, the Tribunal has observed that for an employment under compassionate

Form No.

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

Vs.

The State of West Bengal & Ors.

ground in terms of Notification No. 251-Emp. dated 03.12.2013, no prior test is required, as an eligible criteria, for the post of Group-D. However, in this case, the respondent authority, to be precise, the Superintendent of Police, Jalpaiguri had conducted a “requisite test” to determine the applicant’s fitness for the post of Group-D. The test report which was read out by Mr. Ghosh enlightens that the applicant, though proficient in Bangla, was not successful in written and spoken English. This was the only reason why his prayer for a compassionate employment for the post of Group-D was rejected by the Superintendent of Police. The Tribunal is aware of the fact that the Head of the Department is the competent authority to take the final decision in matters relating to compassionate employment and not the Superintendent of Police. As evident from the impugned order, it is clear that, instead of the competent authority, the Superintendent of Police had taken the responsibility of declaring the applicant unfit and, therefore, ineligible for an employment under compassionate ground.

In view of the above observations, the Tribunal finds the impugned order conveyed by the Superintendent of Police to the applicant in its correspondence no. 1144 dated 29.04.2021 untenable and not within the realms of the law. Therefore, finding it quashable, it is quashed and set aside with a direction to the respondent no. 2 (iv), the Superintendent of Police, Jalpaiguri to reconsider the entire proposal in terms of Notification No. 251-Emp. dated 03.12.2013 and Notification No. 26-Emp. dated 01.03.2016 and communicate his views to the Principal Secretary, Home & Hill Affairs Department who is the competent authority in such matters. Such report to the Department should be submitted within three (03) months from the date of communication of this order. The Superintendent of Police shall also let the applicant be known by a message when such proposal has been submitted before the Department.

Accordingly, this application is **disposed of**.

SAYEED AHMED BABA
Officiating Chairperson & Member (A)

CSM/SS