

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 – 830 of 2022

Dipankar Dhara - VERSUS - THE STATE OF WEST BENGAL & ORS.

Serial No. For the Applicant : Mr. Soumya Banerjee,
and Advocate

Date of order
7
29.01.2025 For the Respondent : 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.

The applicant has filed this application praying for setting aside the impugned decision of the Additional Chief Secretary, Public Health Engineering Department. In terms of a direction of this Tribunal in O.A. 836 of 2016, the Additional Chief Secretary passed a reasoned order in connection with the prayer of the applicant for an employment under compassionate ground. The father of the applicant, Tapan Kumar Dhara was a Helper in the office of Assistant Engineer, RWS, Hooghly who died while in service on 24.04.2009. The respondent authority took the decision of regretting such a prayer on the ground that an application for compassionate employment was made on 20.11.2009 after lapse of 6 months from the date of death of his father. The relevant paragraph of the reasoned order is as follows:

“The petitioner’s father died on 24.04.2009 but the application seeking appointment was made belatedly seven (07) months from the date of his father’s death and therefore as per Government Orders periodically the application for compassionate appointment shall be made within the time limit. The administration will be not responsible if he fails to submit his application in time and for that the application could not be processed as per Government Orders and guidelines.”

From the records, it is clear that the application for compassionate employment was earlier examined by the Public Health Engineering Directorate and Chief Engineer took a decision on 01.09.2014. The decision regretted the prayer on the ground that as per 251-EMP dated 03.12.2013, the applicant’s application was treated as belated application, which was submitted after more than 6 months from the date of his father’s death. This impugned order was set aside by the Tribunal in O.A. 836 of 2016. The Tribunal while hearing the matter had clearly recorded that as per Clause A para 10 of Notification 251-EMP, modified by subsequent Notification No. 26-EMP dated 01.03.2016, the time

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allowed for submission of such prayer has been extended to 2 years from the date of death of the employee.

The Tribunal after setting aside the impugned order of the Chief Engineer further directed the Principal Secretary of the Department to take a decision in view of the fact that the applicant's application submitted on 20.11.2009 was within 2 years from the date of death of his father and thus a valid application under the extant rules.

It is surprising to find that despite such clear direction passed the Additional Chief Secretary still held such an application as an invalid application. The reasoned order, instead of accepting the fact of submission of application within the permissible time only states that such an application "is beyond the time limit as per rule and as per the order bearing No. 36-EMP dated 02.04.2008 and 251-EMP dated 03.12.2013". The reasoned order completely ignores the Notification 26-EMP dated 01.03.2016, which allows a maximum time limit of 2 years for submission of an application. It is further surprising that the respondent authority completely ignored the observation of the Tribunal which had highlighted the fact that the amended Notification, being 26-EMP dated 01.03.2016 allows two years time for submission of an application. Such reasoned order appears to have been taken without application of mind and without taking into account the message conveyed by the Tribunal in its order. The fact of the applicant having submitted application on 20.11.2009 has not been controverted, rather accepted by the respondent authority in its reasoned order. Therefore, the Tribunal, after having considered the grounds given in the reasoned order has come to this finding that such reasoned order again rejecting the application of the applicant on the ground that such an application was made beyond 6 months from the date of death of the deceased employee is a non est in the eyes of law and an injustice to the applicant. Therefore, not being tenable, the Tribunal sets it aside with the direction to the respondent no. 1, the Principal Secretary, Department of Public Health Engineering to issue an appointment letter to the applicant, if he is otherwise eligible, within a period of four months from the date of communication of this order.

SAYEED AHMED BABA
OFFICIATING CHAIRPERSON & MEMBER(A)

A.K.P.