

ORDER SHEET

WEST BENGAL ADMINISTRATIVE TRIBUNAL

Bikash Bhavan, Salt Lake, Kolkata – 700 091.

Present-

The Hon'ble Justice Soumitra Pal, Chairman

The Hon'ble Sayeed Ahmed Baba, Administrative Member

Case No. - OA 126 OF 2021

RAHUL CHOUDHARY - VERSUS - THE STATE OF WEST BENGAL & ORS.

Serial No. and

Date of order

06

18.02.2022

For the Applicant

: Mrs. Sonali Mitra

Advocate

For the Respondents

: Mr. Biswa Priya Ray,

Advocate

In this application, Rahul Choudhary, the applicant, son of late Rajendra Choudhary, - who was a Mali under the office of the Deputy Inspector General of Police, Swami Vivekananda State Police Academy, Barrackpore and had expired on 10th March, 2004 - has prayed for the several reliefs, the relevant portion of which is as under:-

“(a) *An order do issue thereby setting aside/quashing the No.1197-PL/PB/2P-165/2019 dated 02.07.2020 being the rejection order issued by the respondent authorities immediately and after setting aside the rejection order direct the respondent authorities to issue appointment letter in favour of the applicant to any Group “D”/ “C” post within a stipulated time period.*”

The relevant portion of the impugned order appearing at page 17 of the original application is as under:-

“*Sub : Compassionate appointment under exempted category in respect of Rahul Chowdhury, s/o of Late Rajendra Chowdhury, Ex-Mali of SVSPA, Barrackpore to the post of Group-D in West Bengal Police.*”

Ref: *Your Memo No.224/Spl.Emp-113/2010 dated 20.05.2019.*”

“.....It appears that the candidate has not fulfilled the

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required conditions as laid down in the said Notifications for being eligible to be considered for appointment under exempted category on the following ground:

(i) *The age of the candidate was only 13 years 02 Months 17 Days old at the time of death of the deceased employee, i.e. the candidate was minor at the time of death.*

(ii) *Clause 10(aa) of Notification No.26-EMP dated 01.03.2016 of Labour Department is not also applicable in this case.*

Accordingly, I am directed to convey that the Government regrets its inability to approve this case for appointment under exempted category in the light of the guideline contained in Notification No. 251-Emp, dated 03.12.2013 of Labour Department read with subsequent amendments.

Necessary intimation to the applicant may kindly be ensured.

The case records are being sent herewith for safe preservation and further reference, if necessary."

It is submitted by Mrs. Sonali Mitra, learned advocate for the applicant that though in the order under challenge while rejecting the application for compassionate appointment the Commissioner in the Department of Home and Hill Affairs Department, Government of West Bengal, the respondent no.3 has referred to clause 10 (aa) of notification No.26-EMP dated 1st March, 2016, it has not been stated under which clause it has been rejected. In this regard our attention has been drawn to the clause "*belated request*" which gives relaxation of five years to an applicant for compassionate appointment from the date of death of the government servant. Submission is the application was dismissed also on the ground that the applicant is thirteen years, two months and seventeen days. However, as the applicant has now attained majority, he is covered by the policy

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framed by the State respondents under “*belated request*” in the notification No.26-EMP dated 1st March, 2016. In this regard our attention has been drawn to the recent judgement of the Supreme Court in Civil Appeal No. 9280-9281 OF 2014: N.C. Santhosh vs. State of Karnataka & Ors. delivered on 4th March, 2020 particularly the law laid down by the Supreme Court paragraph 20 thereof, wherein it has been held that “*our opinion on the point of issue is that the norms, prevailing on the date of consideration of the application, should be the basis for consideration of claim for compassionate appointment.*”

Mr. Biswa Priya Ray, learned advocate on behalf of the State respondents submits that the order under challenge is just and proper.

Having heard the learned advocates for the parties and considering the facts and circumstances of the case, since while passing the order the clause under “*belated request*” has not been considered and as at present the applicant has attained majority and in view of the law laid down by the Hon’ble Supreme Court in N.C. Santhosh (supra), the order under challenge cannot be sustained and is, thus, set aside and quashed. The application is allowed. Accordingly, the Additional Chief Secretary, Home and Hill Affairs Department, Government of West Bengal, the respondent no.1 is directed to consider the matter afresh in the light of the clause 10 (aa) of notification No.26-EMP dated 1st March, 2016 issued by the Labour Department, particularly, with regard to the stipulations under “*belated request*” and also considering the fact that the applicant is now major and shall pass a reasoned order to be communicated to the parties within fifteen weeks from the date of presentation of a copy of this order downloaded from the website of the Tribunal after giving an opportunity of hearing, after verifying the records and after making enquiry.

SCN.

(SAYEED AHMED BABA)
MEMBER (A)

(SOUMITRA PAL)
CHAIRMAN