

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 15 OF 2023**

ASIFA KHATUN - VERSUS - THE STATE OF WEST BENGAL & ORS.

Serial No. and Date of order	For the Applicant	:	Ms.Aishwarya Pathak Banerjee Advocate
<u>05</u> 23.08.2023	For the State respondents	:	None

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.

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

Despite service of notice and communication of the orders of the Tribunal, none has been appearing in this matter on behalf of the respondents. The matter was heard on 19.01.2023, 10.03.2023, 19.06.2023, 27.06.2023 and today - none appeared on behalf of the respondents.

Ms.A.P.Banerjee, learned counsel for the applicant submits that all the respondents were served with copies of the application twice. Affidavit of service filed in this application confirms that the notices along with copies of the application were served upon the respondents.

This application has been filed assailing the impugned communication No. 430 dated 18.11.2022. In this correspondence, the Joint Secretary, P.W.D. addresses the Superintendent Engineer, Western Electrical Circle and informs that the proposal for appointment on compassionate ground in favour of Asifa Khatun has been rejected. The reason for such rejection cited is as under:

“5. In the instant case; date of death-in-harness of the Govt. employee Late Anowar Hossain Molla is 04.02.2013. Date of birth of the applicant is on 03.01.1981. Therefore present age of the

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applicant is 41 years 10 months. The applicant, Miss Asifa Khatun belongs to the General Category. Condonation of excess in age was not recommended to ensure that only suitable candidates are offered for appointment on compassionate ground.”

Submission of Ms.Banerjee, is that the respondent authority was unfair and wrong in rejecting the application on the ground that at the time of consideration of the application, the applicant had reached the age of 41 years and 10 months. Submission is that the applicant had applied for compassionate employment on 27.06.2014 when she was 33 years 5 months and 24 days. Further, when she was called for interview and submission of documents on 20.10.2016, her age was 35 years 9 months and 17 days. Although West Bengal Services (Group-D Posts) Recruitment Rules, 2009 cited by the respondent is not applicable in her case, since it is an appointment under compassionate ground and not direct recruitment, however, it is not the fault of the applicant, if it took 8 years 4 months and 22 days for the respondents to process her application.

Submission of Ms.Banerjee, is that the reasoned order passed by the respondent is not tenable under any law, therefore, it should be quashed and set aside.

Ms.Banerjee further submits that the contention of the respondent authority that the applicant has crossed the age limit and thus not eligible for appointment under West Bengal Services (Group-D Posts) Recruitment Rules, 2009 is not correct. The appointment under compassionate ground is governed by Emp-Notifications issued by the Labour Department from time to time. No such Emp-Notification has a provision describing the upper age limit for appointment under compassionate ground. Therefore, submission of Ms.Banerjee, is that the reasoned order passed by the respondent is not tenable

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under any law, therefore, it should be quashed and set aside.

After hearing the submission of the learned counsel and considering the facts and circumstances of the case, it is the opinion of this Tribunal that rejection of the application on the ground of applicant being more than 41 years old is not a valid reason. As it is clear from the records, the applicant had applied for such employment when she was 33 years old. After two years of processing her documents, she had reached the age of 35 years and at the time of consideration of this application, she had reached the age of 41 years. From the records it is clear that the respondent authorities took more than 8 years to process her application, which was finally rejected on the ground that she has crossed the age limit. The Tribunal finds that due to laches of the respondents in sitting tight over the application, the applicant had crossed the age of 41 years. Had her application been timely processed, she would have been under 40 years. Since it took more than 8 years for the respondent to process and consider her application, no fault can be laid on the applicant for such delay.

On closer reading of the different notifications issued by the Labour Department relating to compassionate employment, the Tribunal has not found any mention about age limit for availing such compassionate employment. The Tribunal finds the judgement of the Hon'ble High Court in Arup Kumar Chakraborty in WPST 70 of 2017 as relevant in which, the decision of the respondent rejecting such application has been set aside where the respondent authority was sitting tight for more than 7 years. Reference is also made in the judgement of the Hon'ble Supreme Court in the matter of Syed Khadim Hossain (Supra) in which the Hon'ble Apex Court has also set aside the impugned order of rejection which was considered after more than 7 years.

In view of the above observations and the fact that the respondent authority took more than 8 years to consider her application, the rejection on

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the ground of the applicant having crossed the age limit is not a valid reason and is not tenable under any law. Therefore, the impugned order passed by Memo. 430-PW dated 18.11.2022 by the Joint Secretary is quashed and set aside with a direction to provide employment under compassionate ground to the applicant within 3 months from the date of communication of this order.

Accordingly, The application is disposed.

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

BLR