

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 185 of 2021

Shyam Sundar Mondal. - Versus - The State of West Bengal & Others.

Serial No. and Date of order	For the Applicant	: Mr. T. K. Majumder, Advocate.
<u>07</u> 02.08.2023.	For the State Respondents	: Mrs. S. Agarwal, Mr. B. P. Roy, Advocates.

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 counsels for the contesting parties, the case is taken up for consideration sitting singly.

Reply filed on behalf of the State respondents be kept on record.

In this application the applicant has prayed for setting aside the impugned order of the respondent rejecting his application for compassionate employment. It appears that his father, the deceased employee died on 13.06.2016, as a "Night Guard (Group-'D') in the office of the Extension Officer, Director of Textile (Sericulture), Sriniketan Sericulture Composite Union, Bolpur. Soon after the death on 26.06.2016, the mother of the applicant submitted a plain paper application seeking for an employment on behalf of her son, the applicant then a minor at that point of time. Since there was no response from the respondent, the applicant filed an application in the Tribunal in OA-51 of 2017. While disposing of the matter, the Tribunal directed the respondent no. 2 to dispose of the matter by passing a reasoned order. In compliance with the Tribunal's direction, the respondent passed a reasoned order on 25.06.2019 in which the application for compassionate employment was rejected primarily on the ground that the applicant is not in "*acute financial need*". The respondent mentioned

ORDER SHEET

Form No.

Shyam Sundar Mondal.

Case No. **OA 185 of 2021.**

Vs.

The State of West Bengal & Others.

the earning of livelihood by the applicant through running an e - Rickshaw (Toto) in Bolpur.

The learned counsel for the applicant submits that it is true that the applicant was running an e-rickshaw (Toto) which was taken on rent through an agreement with the owner. Copy of such agreement is in this record. Submission is that the said rental agreement has already expired on 05.05.2020. As a result, today the applicant neither owns a Toto nor runs one on hire. He is presently unemployed and hopeful of getting a compassionate employment to mitigate his financial woes.

Mrs. Agarwal further submits that as mentioned in para 6 of the reasoned order, that the applicant had received a total of Rs. 6,32,716/- as Death-cum-Retirement Benefit. Therefore, there was no financial need for the applicant. Besides, he is running an e-rickshaw (Toto) for livelihood.

On perusal of the reasoned order passed by the respondents, reasons for rejection has been mentioned as the family is not financially in acute crisis and thus does not deserve an appointment under compassionate ground. Such presumption of the respondent is based on the total amount of Death-cum-Retirement Benefit received by the applicant as legal heir amounting to Rs. 6,32,716/-. In concluding that Rs. 6,32,716/- as family income is sufficient for a comfortable living is not based on any prescribed Rules. The notification 251-EMP relating to conditions for compassionate employment refers at para 6 that the total monthly income of the family should be below 90% of the gross monthly salary of the deceased employee before his / her death or premature retirement. In fixing Rs. 6,32,716/- as the total amount in hand of the applicant, the respondent has failed to describe whether this amount has crossed 90% of the gross monthly salary of the deceased

ORDER SHEET

Form No.

Shyam Sundar Mondal.

Case No. **OA 185 of 2021.**

Vs.

The State of West Bengal & Others.

employee. Further, mentioning in the reasoned order of running an Auto-rickshaw (Toto), the respondent has assumed that the applicant is financially self-sufficient. The question is not whether the toto is owned by the applicant or taken on hire. The substantive question is whether by running such a public transport, total income has crossed 90% of the gross monthly salary of the deceased employee. In this account also, the respondent has failed to establish that income from running such public transport has enhanced the total income of a family over and above 90% of the gross monthly salary.

In view of the above observations, the Tribunal is of the opinion that the reasoned order passed by the respondent on 25.06.2019 is not tenable and not in conformity with the notifications relating to compassionate employment, particularly para 6 of 251-EMP. Therefore, this reasoned order is quashed and set aside with a direction to the respondent no. 1, the Principal Secretary, Department of Agriculture, Government of West Bengal to consider the matter afresh and pass a reasoned order relating to the application for compassionate employment within three (03) months from the date of communication of this order.

Accordingly, the matter is disposed of.

(SAYEED AHMED BABA)
Officiating Chairperson and Member (A)

CSM/SM