

ORDER SHEET
WEST BENGAL ADMINISTRATIVE TRIBUNAL
Bikash Bhavan, Salt Lake, Kolkata – 700 091.

Present : **HON'BLE JUSTICE SOUMITRA PAL,** **HON'BLE CHAIRMAN.**

Case No. – OA 191 of 2017.
SARBOJIT MUKHERJEE –VS-THE STATE OF WEST BENGAL & ORS.

Serial No. and Date of order	For the Applicant	: Mr. A.K. Das Sinha, Advocate.
<u>29</u> 19.7.2022	For the State Respondents	: Mrs. S. Agarwal, Advocate.

The matter is taken up by the single Bench pursuant to the order contained in the Notification No. 118-WBAT/1E-08/2003 (Pt.-II) dated 11th February, 2022 issued in exercise of the powers conferred under section 6 (5) of the Administrative Tribunals Act, 1985.

In this application Sarbojit Mukherjee, the applicant has challenged the order contained in the memo dated 9th January, 2017 issued by the Principal Secretary to the Government of West Bengal, Public Works Department, Government of West Bengal, - the respondent no. 1 on several grounds and has prayed for the following reliefs :-

“(a) An order do issue directing the concerned authorities to withdraw, rescind and cancel the purported order dated 9th January, 2017 passed by the respondent no. 1 and further pass an order to set aside the same and direct the respondent no. 1 to grant compassionate appointment to the applicant immediately.

(b) Any other order or orders, direction or directions as Your Lordships may deem fit and proper...”.

It appears that Ranendranath Mukherjee, a Government servant employed in the Government expired on 20th July, 2006 leaving behind him his wife Jharna Mukherjee and two minor sons Sabyasachi Mukherjee and the applicant herein. On 3rd January, 2007, the mother of the applicant made an application for compassionate appointment to save and protect the family including the two minor children. During pendency of the application for compassionate appointment, as the youngest son of the deceased passed

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secondary examination in the month of February, 2010, the mother of the applicant filed an application for appointment of her younger son that is the applicant for compassionate appointment in the prescribed format. Since the application for compassionate appointment was pending, the applicant filed an application being OA 455 of 2014 which was disposed of by order dated 18th August, 2014 by the Tribunal directing the respondent to pass a reasoned order. Accordingly, the reasoned order was passed by the respondent no. 1 rejecting the said application holding that *“the applicant was minor at the time of death of the employee”*.

Aggrieved the applicant filed an application, being OA 371 of 2015, which was disposed of on 16th December, 2015 by passing an order directing the respondent no. 1 *“to redo the exercise from the initial stage and give an opportunity of hearing to the applicant....”* and to take a decision on the basis of available materials with regard to the prayer for compassionate appointment. Accordingly, the Principal Secretary, Public Works Department, Government of West Bengal, - the respondent no. 1 - passed an order dated 14th March, 2016 rejecting the application on the ground *“ that the elder son of the family being well educated who opted out (perhaps for better career options) and the family preferred the younger son to make a prayer for compassionate appointment (who is Higher Secondary qualified), creates an impression as if the provision of compassionate appointment is an alternative source of employment... ”*.

Being aggrieved, the applicant filed an application challenging the order dated 14th March, 2016 by filing OA 556 of 2016 which was disposed of by order dated 28th July, 2016 by passing an order, the relevant portion of which is as under :-

“....Accordingly, we set aside the Memo No. 200/PW/L& A/2M-189/2015 dated 14.03.2016 passed by the Principal Secretary, P.W.D. and

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now direct him to arrive at his fresh conclusion in tune with the directions passed by the Tribunal in OA-371 of 2015. The Principal Secretary, P.W.D. will take his decision not later than 6(six) weeks from the date of communication of this Order and thereafter he will have to dispatch the Order arrived at by him soon thereafter to the Applicant”.

Pursuant to the said order, the Principal Secretary to the Government of West Bengal, P.W.D., the respondent no. 1 has passed the impugned order dated 9th January, 2017, appearing at page 71 of the application, the relevant portion of which is as under :-

“In the instant case, it appears from the copy of the death certificate furnished by the applicant that at the time of death, applicant’s father’s age was 53 years and 2 months.

Further, from the application submitted by the applicant, it appears that the applicant’s father joined Government Service on 26.11.1976 and by the time of his death, he has already rendered 29 years 7 months & 25 days service.

Thus, it may be concluded that the stated facts are contrary to the stipulations of clause 2(i) of the Notification as referred to hereinabove.

Compassionate appointment is not a regular method of recruitment of employees. In any case, where there are rules for compassionate appointment the same are to be strictly adhered to. As the applicant’s case is not covered by the extant rules of relevant point of time, his prayer for compassionate appointment is rejected...”.

Mr. A.K. Das Sinha, learned advocate for the applicant submits that since the respondent no. 1 while passing the impugned order did not deal with the provision 2(ii) contained in the notification dated 9th January, 2017, the impugned order may be quashed and the respondents may be directed to consider the same in accordance with law.

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Mrs. S. Agarwal, learned advocate for the State respondents submits that since initially the mother of the applicant applied for compassionate appointment and thereafter the applicant being the son of the deceased had applied and as evident from the memo it was rejected as the applicant was minor and as the other family members had not applied, no order may be passed.

Evidently the respondent no. 1 while passing the order though has dealt with clause 2(i) of the notification dated 6th June, 2005, but has not dealt with at all with clause 2(ii). Therefore, the order contained in the impugned memo dated 9th January, 2017 cannot be sustained.

There is another aspect of the matter. The matter was admitted and directions were issued to file reply. Though subsequently it was submitted that the respondents would not file reply, in the absence of reply, the statements made in the application are deemed to be admitted by the respondents. Hence the impugned order dated 9th January, 2017 passed by the Principal Secretary to the Government of West Bengal, Public Works Department, - the respondent no. 1, is set aside and quashed. The application is allowed.

Accordingly, the respondent no. 1 is directed to consider the matter afresh, in the light of the notifications governing the field and after considering the judgement passed by the Supreme Court delivered on 20th May, 2022 passed in Civil Appeal No. 4103 of 2022 arising out of S.L.P. (Civil) No. 936/2022 Malaya Nanda Sethy – versus- State of Orissa and others, by passing a reasoned order to be communicated to the parties within eight 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 to the applicant and to other family members of the applicant, after verifying the records and after making necessary enquiry.

Skg.

(SOUMITRA PAL)
CHAIRMAN.

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