

**WEST BENGAL ADMINISTRATIVE TRIBUNAL**

Bikash Bhavan, Salt Lake, Kolkata – 700 091.

Present-

The Hon'ble Justice Soumitra Pal, Chairman

Case No. –OA 2 of 2020

*Sourabh Dey* - VERSUS - THE STATE OF WEST BENGAL & ORS.

Serial No.	For the Applicant	: Mr. G.P. Banerjee,
and		Mrs. S. Agarwal,
Date of order		Advocates.
<u>12</u>	For the State Respondent	: Mr. S. Ghosh,
24.08.2022		Advocate.

The matter is taken up by the single Bench pursuant to the order contained in the Notification No. 496-WBAT/1E-08/2003 (Pt.-II) dated 4<sup>th</sup> August, 2022 issued in exercise of the powers conferred under section 6 (5) of the Administrative Tribunals Act, 1985.

In the application, Sourabh Dey, the applicant, has challenged the order contained in the memo dated 18<sup>th</sup> July, 2019 issued by the Additional Director of Health Services (Personnel) and Ex-Officio Special Secretary, Department of Health and Family Welfare, Government of West Bengal, the respondent no. 3 on several grounds. It appears from the application that Amiya Dey, father of the applicant, was a Group-D employee in the Department of Health and Family Welfare and was posted at Jawaharlal Nehru Memorial Hospital, Kalyani. Amiya Dey expired on 27<sup>th</sup> February, 2009 while in service. Since the applicant was a minor at the time of death of his father, Alo Dey, his mother submitted an application on 10<sup>th</sup> July, 2009 before the Superintendent of the said Hospital for appointment on compassionate ground as she was in financial difficulty and had to maintain a deaf and dumb daughter and a minor son with no movable and immovable property and no income from any other sources. The applicant, who at that relevant point of time was a minor, passed Madhyamik examination in 2010 and subsequently graduated in 2015. It appears that the applicant on attaining the majority filed an application on 25<sup>th</sup> September, 2012 for compassionate appointment. It appears that by order contained in the memo dated 1<sup>st</sup> April, 2014, the respondents had rejected the said application on the ground that the applicant was a minor and for non-fulfillment of the provisions



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Submission is accordingly the impugned order contained in the memo dated 18<sup>th</sup> July, 2019 be set aside and direction be issued by the respondent to consider the matter regarding compassionate appointment to the applicant afresh.

Mr. S. Ghosh, learned advocate appearing on behalf of the State respondents relying on the reply filed, submits that as the applicant at the time of death of his father on 27<sup>th</sup> February, 2009 was a minor, the order of rejection dated 1<sup>st</sup> April, 2014 for employment of the applicant on compassionate ground appearing at page 33 of the application, is just and proper. Submission is that the impugned order dated 18<sup>th</sup> July, 2019 is correct as the Notification No. 251-EMP. dated 3<sup>rd</sup> December, 2013 encompasses all the cases of appointment on compassionate ground. Referring to the reply filed, it is submitted that in the annexure it has been clearly shown that the applicant has sufficient income to sustain his family.

Heard learned advocates for the parties. Perusing the impugned order contained in the memo dated 18<sup>th</sup> July, 2019, I find though it has been rejected on the ground that the applicant does not fulfil the criteria as laid down in the existing government rules, however, there is no mention about the rules at all. There is no discussion in the impugned order how the Rules are applicable. I find that the reply filed is not even sketchy. The statements made in paragraphs 2 to 6 of the reply are not sufficient to help the case of the State respondents as Mr. Ghosh has referred to Annexure-X1 of the reply in support of his submission. Though it has been stated in the original application that the mother of the applicant has received an amount of Rs.1,63,438/- as gratuity and not Rs.2,17,917/- as evident from Annexure-X1 to the reply, there is no cogent submission in this regard on behalf of the State respondents. It is also evident from the said Annexure that though it has been stated "*So, the financial condition of the family after the death of the ex-employee does not fulfil the*

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*criteria as laid down in existing government rules,*” it does not state to which rule it refers to. There is also no discussion how the rules are relevant. The reply filed on behalf of the State respondents is no reply at all as nothing has been stated and pleaded. As the mother of the applicant has received gratuity of Rs.1,63,438/-, it negates the submission on behalf of the State respondents that she has received death gratuity of Rs.2,17,917/- and as the memo dated 1<sup>st</sup> April, 2014 is cryptic and as the impugned memo dated 18<sup>th</sup> July, 2019 does not deal with the existing government rules at all, the order contained in the memo dated 1<sup>st</sup> April, 2014 and the order contained in the impugned memo dated 18<sup>th</sup> July, 2019 are set aside and quashed. The application is allowed.

Accordingly, the Additional Chief Secretary, Department of Health and Family Welfare, Government of West Bengal, Kolkata, now designated as Secretary, Department of Health and Family Welfare, Government of West Bengal, Kolkata, the respondent no. 2 (i) is directed to consider the matter regarding appointment of the applicant on compassionate ground afresh by passing 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 to the applicant and to his mother, after verifying the records and after considering the government rules which were prevalent at the time of filing of the application for compassionate appointment by the applicant.

**(SOUMITRA PAL)**  
**CHAIRMAN**

CSM/SS