

**WEST BENGAL ADMINISTRATIVE TRIBUNAL**

**Bikash Bhavan, Salt Lake, Kolkata – 700 091.**

**Present-**

**The Hon'ble SAYEED AHMED BABA, Member (A)**

**Case No. – OA-213 of 2021**

**Chandana Dutta & Anr. VERSUS – The State of West Bengal & Ors.**

Serial No. and Date of order	For the Applicant	:	Mr. A.K. Niyogi, Learned Advocate.
<u>08</u> 23.06.2022	For the State Respondent	:	Mr. A.K.Das Sinha, Learned Advocate.

In this application, the applicant Sri Siddhartha Dutta was the another son of the deceased employee Arup Kumar Dutta who died on 04.04.2003. Earlier the elder brother based on his application was considered and offered job on compassionate ground. Unfortunately, he died in the meantime. The younger son of Late Arup Kumar Dutta who was only 11 years old at the time of death of his father. He applied for job on compassionate ground on 23.02.2007 but it was not considered for the reason that the application was not in the prescribed format and the applicant was 15 year's old at the time of submitting the application for compassionate employment. No reason was given for rejection though he applied after three years and ten months from the date of death of his father when he was also under age.

After necessary correction, the applicant Sabyasachi Dutta applied again in prescribed format as per rule which was forwarded to the Chief Engineer, Housing Directorate on 07.06.2011. The respondents found that this application was made after more than 8 (eight) years from the death of his father. The respondents rejected his application on 14.07.2016 after five years from the date of submitting of his application in prescribed format.

Learned advocate for the applicant submits that as per Notification dated 01.03.2016 issued by the Labour Deptt. In which at Note (c) under Para 6(c) of Notification No. 251-Emp dated 03.12.2013 states that :-

*"The dependent member shall invariably attain the minimum age for recruitment within six months from the date of death or incapacitation of the concerned employee ----- Deleted."*

Counsel for the applicant has submitted that now the said clause has already been deleted by the said notification so question of minor at the time of death of the father of the applicant does not arise.

That after the said demise of the elder son , the mother made a representation for consideration of the case of her younger son, Sabyasachi Dutta which was received by the respondents on 06.04.2006 and 07.06.2009. However, his case was rejected vide memo dated 30.11.2016 under Clause 10 (aa) of Notification No. 251-Emp dated 03.12.2013 as well as 26 Emp dated 01.03.2016. Being aggrieved with the applicant had moved this application before this Tribunal which was OA-551 of 2017. The Division Bench after perusing the records and considering the facts and circumstances had set aside the rejection order dated 29.11.2016 with the direction that the Respondent No. 1 has to reconsider the case as per rules.

The respondents in compliance with the direction of the Tribunal in OA-551 of 2017 considered the application afresh and rejected on the main ground that the applicant Sabyasachi Dutta was only 11 years 2 months and 28 days old at the time of death of his father which is under age to have a government service. For this reason, the prayer of Sabyasachi Dutta was also rejected.

Learned Advocate for the applicant contested the above reason for rejection of his application by referring the Notification of Labour Deptt. No. 26 Emp- dated 01.03.2016 para 6 (c) of Notification No. 251-Emp dated 03.12.2013. This para 6(c) which earlier required to attain the minimum age of recruitment within six months has been done away with.

Learned advocate for the respondent refers to para 10 (aa) of the said Notification where a new para has been added which is related to exceptional case such as i) on death during action or ii) where none in his family is eligible etc, the Deptt. can consider requests for compassionate appointment even where the death or retirement on medical grounds of the Govt. Servant took place upto five years ago.

Let the matter appear for “Orders” on **20.09.2022**.

SAYEED AHMED BABA  
MEMBER (A)

SC