

ORDER SHEET

WEST BENGAL ADMINISTRATIVE TRIBUNAL

Bikash Bhavan, Salt Lake, Kolkata – 700 091.

Present-

Mr. Sayeed Ahmed Baba, Officiating Chairperson and Hon'ble Member (A).

Case No. – OA 277 of 2020.

ANINDITA BOSE – VS- THE STATE OF WEST BENGAL & ORS.

Serial No. and
Date of order

4
03.8.2023

For the Applicant : Mr. M.N. Roy,
Mr. R.K. Mondal,
Advocates.

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

This is an application for compassionate employment where the deceased employee was an Upper Division Clerk in the office of the Executive Engineer, Kolkata North Division under Superintending Engineer, Eastern Circle, Public Works Department. The employee died-in-harness on 31.10.2013 leaving behind his wife, Mithu Bose and two daughters-Anindita Bose and Suparna Bose.

Earlier Suparna Bose applied for compassionate employment in a plain paper on 08.4.2014 and later in proforma application on 31.12.2015 which were duly received by the concerned authority. Unfortunately, on 30.11.2016, the applicant Suparna Bose met a critical accident, due to this, the present applicant, Anindita Bose made a representation on 23.05.2017 praying for compassionate employment in place of her sister, Suparna Bose. No Objection from the earlier applicant Suparna Bose was also submitted. Thereafter, the Joint Secretary, Public Works Department, West Bengal asked the applicant to submit all relevant documents for verification which

ORDER SHEET

Form No.

ANINDITA BOSE .

Case No. OA 277 of 2020.

-Vs-

THE STATE OF WEST BENGAL & ORS.

were submitted. The applicant also submitted an order dated 16.11.2016 in connection with MAT Suit No. 780 of 2016, U/s. 27 of the Special Marriage Act, 1954 passed by the learned Additional District & Sessions Judge, Barrackpore in which the marital tie of the applicant was dissolved by a decree of divorce. After considering the application, Joint Secretary, Public Works Department, West Bengal vide Order No. 985-PW/O/W(ECG)/3P-69/2016 dated 10.09.2018 passed a reasoned order rejecting the prayer of the applicant. The impugned order citing the ground that the application was not submitted within the stipulated period and the divorce occurred long after the death of her father. On 27.09.2019, the Tribunal after being approached, directed the respondents to consider and pass a reasoned order. In pursuance to the Tribunal's order, the respondent considered and rejected citing several reasons on 14.01.2020.

Now, challenging the both the impugned orders, the applicant has approached the Tribunal by filing this application (OA 277 of 2020).

Mr. M.N.Roy, learned advocate for the applicant submits that the divorced couple were leaving separately since 28.06.2013 which is prior to the death of the father of the applicant. This is an observation also made by the Learned Judge in the divorce decree which came into effect from 16.11.2016.

After hearing the learned advocates and considering the facts and circumstances, it appears that the following three issues are relevant and important for passing any order by this Tribunal. The three issues are as follows :-

1. Whether the application made more than three years after the death of applicant's father is maintainable as a valid application for compassionate employment or not.
2. Whether the dissolution of marriage of the applicant which was decreed on 16.11.2016, after three years from the father's death will still make the applicant eligible for consideration of her compassionate employment. In other words, the applicant was not

ORDER SHEET

Form No.

ANINDITA BOSE .

Case No. OA 277 of 2020.

-Vs-

THE STATE OF WEST BENGAL & ORS.

separated at the time of death of her father.

3. Besides, since the compassionate scheme is to provide immediate assistance by means of a government job, it is to be seen whether the applicant has been living in economic hardship and therefore, in urgent need for a government employment.

Continuing the submissions from the previous date, Mrs. Agarwal submits that the question of hardship is not relevant because for two years and seven months she was a married woman and not dependent on the father's income. Hardship is one of the most important indicators to understand whether a compassionate employment is really needed by the family of the deceased employee, as stipulated in all the Emp. Notifications. Finally, Mrs. Agarwal questions the very maintainability of this application on the ground that this impugned order passed on 10.9.2018 is being challenged after filing this application in the year 2020, thus after a gap of more than two years. Therefore, due to limitation point also, this application is not maintainable.

After detailed submissions and reference to relevant documents, some clarity has emerged for answering the three issues raised above. As to the question of whether an application made after more than three years from the death of the deceased employee is a valid application or not, the Tribunal has examined Notification No. 26-Emp dated 01st March, 2016 in which clause 10(aa) allows belated request upto five years from the date of the death of the employee. In this case, the applicant applied on 31.5.2017 about four years after the death of her father on 31.10.2013. However, this clause for belated request is conditional to the effect that the three member screening cum enquiry committee should enquire and submit its report. In this case, such a committee does not seem to have been formed and therefore, no report of the committee has been filed. Enquiry by a three member screening cum enquiry committee is also mandatory as per the parent Notification 251-Emp.

Since to enquire in this application, no such enquiry committee appears to have been formed and no such report has been considered, it is the Tribunal's view

ORDER SHEET

Form No.

ANINDITA BOSE .

Case No. OA 277 of 2020.

-Vs-

THE STATE OF WEST BENGAL & ORS.

that the reasoned order passed by the respondent is incomplete and flawed. Decision arrived at by the respondent appears to be on the basis of only records without basing the order or any report by three member screening cum enquiry committee.

Another reason cited by the respondent authority rejecting the application is about divorce decree which was issued on 16.11.2016 well after the death of the deceased father on 31.10.2013. The Tribunal finds in Notification No. Labr/419/Law dated 4.11.2022 that the earlier provision of unmarried daughter has been replaced by the word "Daughter", implying that even daughters, irrespective of their marital status, are now entitled for compassionate employment. Therefore, the question does not arise whether the applicant was a married or unmarried or divorced daughter. So far the current law is concerned, the applicant as daughter is eligible for compassionate employment.

As regards the financial hardship of the family and their need for assistance in the form of a Government employment, the reasoned order had simply rejected the application assuming that the family is not in immediate financial support, without basing such assumption on any real field enquiry. Since this part was to be enquired in the field by visiting the family and neighbourhood and since no screening cum enquiry committee was formed for this purpose, it is the Tribunal's view that rejection on this ground was superficial and not based on field enquiry by such a committee.

In view of the above observations, the Tribunal comes to this conclusion that the reasoned order passed was not only incomplete but flawed and such decision tantamounts to injustice to the applicant and her family. Therefore, this reasoned order passed by the respondent authority – Additional Chief Secretary, Public Works Department on 14.01.2020 and the Joint Secretary to the Government of West Bengal, Public Works Department on 10.9.2018 is quashed and set aside with a direction to enquire into the application for employment under compassionate ground through a three member screening cum enquiry committee and pass a speaking reasoned order afresh within a period of twelve weeks from the date of

ORDER SHEET

Form No.

ANINDITA BOSE .

Case No. OA 277 of 2020.

-Vs-
THE STATE OF WEST BENGAL & ORS.

communication of this order.

The application is disposed of.

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

Sk.

WEST BENGAL ADMINISTRATIVE TRIBUNAL