

**ORDER SHEET**

**WEST BENGAL ADMINISTRATIVE TRIBUNAL**

Bikash Bhavan, Salt Lake, Kolkata – 700 091.

**Present-**

**The Hon'ble Justice Soumitra Pal, Chairman**

**Case No. – O.A. 288 of 2016**

**SUDIPTA JANA – VERSUS- THE STATE OF WEST BENGAL & ORS.**

Serial No. and Date of order	For the Applicant	: Mr. U. K. Jana, Mr. A. K. Chakraborty, Advocates
<u>8</u> 14.06.2022	For the State Respondents	: Mr. Debabrata Koley, 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 11<sup>th</sup> February, 2022 issued in exercise of the powers conferred under section 6(5) of the Administrative Tribunals Act, 1985.

In this application, Sudipta Jana, the applicant has prayed for certain reliefs, the relevant portion of which is as under:

- “a) An order be issued upon the concerned respondent authorities directing them specially the respondent no.4 to set aside or quash the Memo No. HPA / G-331 / 2011 dated nil in 2014 issued by the respondent no.4 immediately.*
- b) An order be issued upon the concerned respondent authorities directing the respondent no.4 not to give any further effect of Memo No. HPA / G-331 / 2011 dated nil in 2014 passed by the respondent no.4 till the disposal of this instant application.*
- c) An order be issued upon the respondent authorities directing them to give compassionate appointment in favour of the applicant in accordance with the rule*

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*prevalent at the time of making application  
immediately.”*

The relevant portion of the impugned memo dated 11<sup>th</sup> November 2014, issued on behalf of the Director of Health Services, West Bengal, the respondent no.4 to the Deputy Chief Medical Officer of Health, Purba Medinipur, the respondent no.6, appearing at page 41 of the application, is as under :

*“Sub : - Prayer for employment of compassionate ground in r/o Sudipta Jana, S/o Late Sambhunath Jana, Ex-H.A. (M).*

*Ref : File No. 4582 dated 22.11.2011.*

*The prayer of the applicant has been carefully examined and found that the ex-employee died-in-harness on 26/07/2005. At the time of death of the ex-employee, the applicant was minor (His D.O.B. is 28/12/1991).*

SCN.

*As per Note (c) of clause 6 of Labour Department's Notification No. 251-EMP dated 03/12/2013, the applicant shall invariably attain the minimum age for recruitment within six months from the date of death of the concerned employee. This criterion is not fulfilled in this instant case.*

*Thus the undersigned regrets to inform that the prayer of the applicant has been rejected by the competent authority.”*

It appears that Sambhunath Jana, the father of the applicant, who was working as Health Assistant in Mugberia Block Primary Health Centre in Purba

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Medinipur expired on 26<sup>th</sup> July, 2005 leaving behind his mother, Smt. Sanak Jana, Smt. Pritikana Jana, wife and Sudipta Jana, the applicant. The applicant, on 21<sup>st</sup> November, 2011, had filed an application for appointment on compassionate ground, which was rejected by an order contained in the impugned memo dated 11<sup>th</sup> November, 2014. Hence, this application.

It is submitted by Mr. U. K. Jana, learned advocate for the applicant since the application for compassionate appointment was filed by the applicant on 21<sup>st</sup> November, 2011, it should have been considered on the basis of the law and / or order prevalent at that relevant point of time and not on the basis of law as prevalent in the year 2013 as has been done in the instant case. In this regard reliance has been placed on the judgement in "*The State of West Bengal & Ors. Vrs. Debarghya Chakraborty & Ors.*" : (2017) 5 WBLR (Cal) 244 particularly the law laid down in paragraph 6 thereof.

Mr. Debabrata Koley, learned advocate appearing on behalf of the State respondents relying on the reply filed, particularly paragraph 6 thereof, submits that the action of the impugned memo is just and proper.

There is no dispute that the application for compassionate appointment was filed by the applicant on 21<sup>st</sup> November, 2011. It was kept pending till 2013 when a new notification No. 251-EMP dated 3<sup>rd</sup> December, 2013 was issued and the matter was rejected on the basis of the said notification as evident from the impugned memo dated 11<sup>th</sup> November, 2014.

In my view, this is illegal as the case of the applicant should have been considered on the basis of the law prevalent as on 21<sup>st</sup> November, 2011 when the application for compassionate appointment was filed. The law laid down in *The State of West Bengal & Ors. Vrs. Debarghya Chakraborty & Ors. (supra)* is clear. Therefore, the impugned memo dated 11<sup>th</sup> November, 2014 appearing at page 41 of the application is set aside and quashed. The application is allowed. Accordingly, the Secretary, Department of Health and Family Welfare, Kolkata,

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the respondent no.1 is directed to consider the application for compassionate appointment of the applicant 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 the other heirs of late Sambhunath Jana, after making necessary enquiry and after verifying the records.

(SOUMITRA PAL)  
CHAIRMAN

WEST BENGAL ADMINISTRATIVE TRIBUNAL