

ORDER SHEET

WEST BENGAL ADMINISTRATIVE TRIBUNAL

Bikash Bhavan, Salt Lake, Kolkata – 700 091.

Present-

THE HON'BLE SAYEED AHMED BABA, OFFICIATING CHAIRPERSON AND ADMINISTRATIVE MEMBER,

Case No. - OA 295 OF 2024

LATIP MARDI - Vs - THE STATE OF WEST BENGAL & OTHERS

Serial No. and
Date of order

03
21.11.2024

For the Applicant : Mrs. M.Ghosh Dey
Advocate

For the State Respondents : Mrs.Sunita 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 counsels for the contesting parties, the case is taken up for consideration sitting singly.

Jogen Mardi, the father of this applicant died on 03.06.2017 while working as a GDA attached to Tapan BPHC, Dakshin Dinajpur. After the death of his father, the applicant furnished an application for employment under compassionate ground before the respondent authorities on 05.01.2018. As part of the process while preferring a proposal, the Chief Medical Officer of Health, Daskshin Dinajpur asked the applicant to submit relevant documents, which were duly submitted by the applicant. However, the Additional Director (Personnel) & Special Secretary, Health and Family Welfare Department considered the matter and conveyed his decision in the impugned order dated 01.02.2023. The only ground taken by the respondent authorities while rejecting his prayer was that such an application was submitted belatedly after two years and two months from the expiry of the deceased employee. The contention of the applicant side is that the respondent authority failed to appreciate the fact that the applicant had furnished a plain paper application before the Block Medical Officer of Health on 05.01.2018 within less than two years time from the date of death of his

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father. Ms.M.Ghosh Dey, learned counsel appearing on behalf of the applicant submits that, as is commonly known, and is the convention, particularly in the rural districts that after accepting a plain paper application and only after being satisfied, the blank proforma application is given by the local office to the applicant. In this case, despite several requests, the respondent authority and the local office took their own sweet time to share a copy of the blank proforma application to the applicant.

The Tribunal has very closely examined this matter and perused the documents in this application and is satisfied with the contention of the applicant's side that the respondent authority ignored the fact that the applicant had within the permissible time furnished a plain paper application praying for an employment under the compassionate ground. A copy of this plain paper application addressed to the BMOH dated 05.01.2018 is available in this application and a signature with a seal of Bock Medical Officer of Health, Tapan Rural Hospital appears clearly.

Having examined this application, the Tribunal does not hesitate to agree that the applicant indeed filed a plain paper application within the time praying for an employment under the compassionate ground. The Tribunal is also convinced of the statement made by the applicant in this application and submitted by his learned counsel that the delay in filing the proforma application was due to the fact that the local office did not provide such a proforma to the applicant within time. It is often the case, especially in the districts when the legal heirs of deceased Group-D employees approach to seek help and guidance for making an application, the respondent officials do not attach much importance and only after a lot of persuasion, such blank proforma applications are provided to the legal heirs of deceased employees. In this case, the father

of the applicant was a humble Group-D staff and serving at the bottom of hierarchy. It is convincing to the Tribunal that his son may have faced some difficulties in persuading officials and getting a copy of the proforma application. The Tribunal does not expect this applicant living in a remote area of the State to have means and resources to manage a copy of black proforma application on his own.

My attention has been drawn to clause 10 (bb) of Notification No.26-Emp dated 1st March, 2016, which gives clear responsibility to the office of the respondent in guiding applicants applying for appointment on compassionate ground. The relevant part is as under:-

“The concerned authority in the department/office should meet the members of the family of the deceased Govt. Servant immediately after his death to advise and assist them in getting appointment on compassionate ground. The applicant should be called in person at the very first stage and should be advised in person about the requirement and formalities to be completed by him. A record of such meeting should be kept with the office of the controlling authority and appointing authority”.

Though the notification as cited above expresses sympathy for the legal heirs of the deceased employee, but in this case, such noble words were not translated into action. The applicant was left at the mercy and sweet will of the local respondents and it was only much later the applicant was favoured with the copy of the prescribed proforma. Given this background, can we blame the applicant and reject his application on the ground that he submitted his proforma application after delay of more than two years? In a similar case the Hon’ble Supreme Court in (2012) 7 SCC 248 in the matter of “Shreejith L. Vrs. Deputy Director

(Education) Kerala and Others” observed a very important point in a similar situation. The relevant part of the judgement is as under:

“23. Mr. Rajan, learned Senior Counsel, argued that the first application submitted by Respondent 4 for compassionate appointment on 2-5-1990 was no doubt within the time prescribed but the same was not in proper format. It was, argued the learned counsel, essential that the application should be not only within the time stipulated for the purpose but also in the prescribed format. Inasmuch as that was not so in the instant case the application must be deemed to be non est.

24. We regret our inability to accept that submission. The manager of the school had on receipt of the application from Respondent 4 not only acknowledged the request for appointment but also recognised that Respondent 4 possessed the requisite qualification for appointment as a Hindi teacher. The request was not, however, granted as no vacancy in the cadre was available in the school at that time. What is noteworthy is that the Manager did not reject the application on the ground that the same was not in the prescribed format or that the application was deficient in disclosing information that was essential for consideration of the prayer for a compassionate appointment. If the authority concerned before whom the application was moved and who was supposed to consider the request, did not find the format of the application to be a disabling factor for a proper consideration thereof, it could not be set up as a ground for rejection of the payer, by the beneficiary of the appointment made in derogation of the rights of Respondent 4. At any rate, what was important was the substance of the application and not the form. If the application in substance conveyed the request for a compassionate appointment and

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provided the information which the Manager required for considering the request, the very fact that the information was not in a given format would not have been a good reason to turn down the request. We need to remind ourselves that the scheme is meant to be a beneficial scheme aimed at helping those in need of assistance on account of an untimely demise in the family. Inasmuch as the Assistant Educational Officer and even the High Court found Respondent 4 to be eligible for appointment and directed the Manager to make such an appointment, they committed no error to warrant our interference under Article 136 of the Constitution. The civil appeal is, therefore, liable to be dismissed.”

Having heard the submissions of the learned counsels and considering the facts and circumstances of the matter, the Tribunal does not hesitate in considering the impugned order as a non est in the eyes of law and not tenable. Such impugned order rejecting on the ground of delayed submission of proforma application, ignoring the fact that the plain paper application was submitted by the applicant well within the time, is but a mockery of justice. Therefore, the impugned Memo No.1036/1 dated 01.02.2023 and Memo. 2594/1 dated 19.04.2024 being quashable, is quashed and set aside. In the peculiar facts and circumstances of this case, the respondent No.1, the Principal Secretary, Department of Health and Family Welfare is directed to consider the application of the applicant and give him suitable appointment within a reasonable time, preferably within six months from the date of communication of this order, if other eligibility criterias have been fulfilled by the applicant.

The application is disposed of.

BLR

(SAYEED AHMED BABA)
OFFICIATING CHAIRPERSON AND MEMBER (A)