

ORDER SHEET

WEST BENGAL ADMINISTRATIVE TRIBUNAL

Bikash Bhavan, Salt Lake, Kolkata – 700 091.

Present-

The Hon'ble Justice Soumitra Pal, Chairman

The Hon'ble Sayeed Ahmed Baba, Administrative Member

Case No. – OA 297 of 2019

BABLU SINGHA ROY & ANR - VERSUS - THE STATE OF WEST BENGAL & ORS.

Serial No. and Date of order	For the Applicants	: Mr. G.P. Banerjee, Advocate.
<u>16</u> 27.04.2022	For the state respondents	: Mr. S. Ghosh, Advocate.

In this application, Mr. Bablu Singha Roy, the applicant no. 1 on 26th October, 2009 had applied before the Joint Director of Health Services for absorption of his son Ashis Singha Roy on compassionate category. Due to inaction on behalf of the state respondents, the applicants moved the original application being OA 1051 of 2012 which was disposed of by judgment delivered on 18th January, 2016 by passing an order, inter alia, directing as under :

At the outset, we find that the Applicant No. 1 was due to retire on 31.03.2015. As such, he still had much time ahead before his retirement. Secondly, we find the stipulations as extracted in the Memo. dated 24.11.2011 also requires to be seen from a different angle. The Applicant No. 1 retired prematurely on being declared permanently incapacitated on 26.08.2009 i.e. more than 5 years before his normal date of retirement. Therefore, even if, he had exhausted all kinds of leave, he would have had still more than 2 years of service before retirement. In view of the position, we are of the opinion that application of the two conditions disjunctively is a purely mechanical approach and we are not in a position to endorse such mechanical approach. Under these circumstances, we set aside the Memo. No. HPA/G-218/2010/A dated 24.11.2011 and dispose of this Application with a direction on the Director of Health Services to take a

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fresh decision in respect of the prayer for compassionate appointment of the Applicant No. 2 within a period of six weeks from the date of communication of the order. He will thereafter intimate his decision forthwith.

Before parting with the case, we would like to observe that in case of employment on compassionate ground of the dependant of an employee who dies in harness, there is no such stipulation that there should be no leave at the credit of the Government employee at the time of his death, but, there is such a stipulation only in case of employment on compassionate ground of the dependant of an employee who retires prematurely on being declared permanently incapacitated for further service. This, in our opinion, is discriminatory. We would request the Principal Secretary of the Labour Department, Government of West Bengal to review the matter in the light of the observations made hereinabove.

Pursuant thereto, a reasoned order has been passed on 10th February, 2017 by the Director of Health Services, the relevant portion of which is an under :

It is a well known fact that the all the schemes relating to employment on compassionate ground is framed by the Labour Department, Government of West Bengal and all the Government Departments of West Bengal have to follow these guidelines made for this purpose. I, being an administrative authority also have no option but to abide by the rules made for the purpose of compassionate appointment.

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Thus I express my helplessness to appreciate the spirit of the explanation made by the Hon'ble Tribunal as prevailing Government Rules regarding employment on compassionate appointment does not give me liberty to go beyond the rules framed therein rather to stay for any active revision of the clause 6 (b) (ii) of Notification No. 251-Emp dated 03/12/2013 by the Labour Department.

Hench the application of Sri Asish Singha Roy, s/o Sri Bablu Singha Roy is rejected due to non-compliance of existing rules.

Perused the order under challenge. Evidently the State respondent is aggrieved by the order passed by the Tribunal. Had the State respondents been aggrieved by the order dated 18th January, 2016 passed in OA No. 1051 of 2012, they should have challenged the order before the Hon'ble High Court, Calcutta. Without challenging the order passed by the Tribunal, the Director of Health Services has made certain comments which are uncalled for and is deprecated. Hence, the reasoned order is set aside and quashed. The application is allowed.

Accordingly, the Additional Chief Secretary (now re-designated as Secretary), Department of Health & Family Welfare, Government of West Bengal, is directed to consider the matter afresh and shall pass a reasoned order to be communicated to the parties within 15 (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 uninfluenced by the order dated 10th February, 2017 passed by the Director of Health Services.

(SAYEED AHMED BABA)
MEMBER (A)

(SOUMITRA PAL)
CHAIRMAN

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