

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 367 of 2020

Kabiruddin Sk. - Versus - The State of West Bengal & Others.

Serial No. and Date of order	For the Applicant	: Mr. M. Bhattacharjee, Advocate.
<u>06</u> 27.04.2023.	For the State Respondents	: Mr. G. P. Banerjee, 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.

In support of the claim of the applicant for compassionate employment, Mr. M. Bhattacharjee, learned counsel for the applicant had relied on the following facts during the last day of hearing:-

- (i) That the applicant's father – deceased employee had received benefits under Career Advancement Scheme (CAS) after completion of sixteen years of service.
- (ii) As a proof of being a regular employee, the pension paper of deceased employee had the words "Government employee".
- (iii) Besides, as a regular employee, the father of the applicant had performed two election duties also, and
- (iv) In the family pension documents, the words "Pay Band" has been mentioned to substantiate the fact that the deceased employee was under regular establishment.

Relying on the above grounds, Mr. Bhattacharjee had submitted that the applicant, was thus entitled for compassionate employment.

In response to the above submissions, Mr. G. P. Banerjee, learned

ORDER SHEET

Form No.

Case No. **OA 367 of 2020.**

Kabiruddin Sk.

Vs.

The State of West Bengal & Others.

counsel for the State respondents had submitted that :-

- (i) Entitlement and receiving CAS benefit has no connection with compassionate employment. Compassionate employment is a separate scheme and is covered under a set of separate Government policies issued through Notifications. In none of such Notifications, it is stipulated that beneficiaries of CAS are entitled for compassionate employment.
- (ii) Again, receiving family pension does not entitle a family member to receive compassionate employment because as stated above, compassionate employment is a separate scheme covered by a separate set of rules.
- (iii) That performing election duty, does not confer any right to a legal heir for compassionate employment. During the conduct of election, even part time workers and casual workers are also deployed for election duty.
- (iv) Mr. G. P. Banerjee, learned counsel for the State respondents refers that the application in which the petitioner has himself admitted that despite his father's 22 years of service, the authority was reluctant to regularize his service into regular establishment.

In response to above, Mr. Bhattacharjee refers to page 13 of the application, which appears to be an office order issued by the Superintending Engineer, State Highway Circle-III, P. W. (Roads) Directorate, Murshidabad on 03.06.2004 in which five work-charged employees were given new assignment and posted as work guard and roller cleaners respectively as reflected in Annexure 'A' of the Original Application against "existing vacancies". The relevant portion of the order is as under :-

ORDER SHEET

Form No.

Case No. **OA 367 of 2020.**

Kabiruddin Sk.

Vs.

The State of West Bengal & Others.

“ Sahauddin Sk., Work Guard, Date of entry into the service shown on 20.08.1993 and confirmed on 01.06.2004 has been shown”.

After hearing the submissions of learned counsels of both sides and considering the facts and circumstances of the case, the following observations are recorded :-

- (i) Though the applicant's deceased father had received CAS benefit, his family receiving the family pension, his pension papers mentions the word “Government Employee” and having performed election duties, it is the opinion of the Tribunal that these do not confer any right on the applicant for compassionate employment.
- (ii) The applicant's deceased father was appointed on 20.8.1993 as a work guard post under regular establishment of P.W.(Roads) Directorate, Berhampore, Murshidabad. As stated in his application, despite twenty-two years, the deceased employee was not regularised into permanent service. The order which Mr. Bhattacharjee, learned counsel for the applicant refers that on 03.06.2004 vide Memo. No. 1-1L / 400 is an order of confirmation of the applicant as a work guard.
- (iii) The notification 251-Emp at 3(f) defines “Government employee” for the purpose of this scheme means a Government employee **appointed** on regular basis and not the one working on daily wage or casual or apprentice or ad-hoc or contract of re-employment basis...”.

From this, one can interpret that the deceased employee was on the work-charged establishment as a work guard and was confirmed later. His appointment was not in regular establishment.

ORDER SHEET

Form No.

Case No. **OA 367 of 2020.**

Kabiruddin Sk.

Vs.

The State of West Bengal & Others.

- (iv) It is also noted that the on 03.06.2004 vide Memo. No. 1-1L / 400 is actually a correspondence from the Superintending Engineer authorising the Executive Engineer to appoint the applicant's deceased father for work guard post under work-charged establishment. However, this is not an appointment letter issued to the applicant by the establishment.
- (v) The paras from the judgement in Civil Appeal No. 4575/2021 arising out of SLP(c) No. 20650/2019 (The State of Uttar Pradesh & Ors- versus- Uttam Singh) relied by the learned counsel for the applicant is not relevant in this matter. It is clear that the relevant paras of the judgement primarily relate to the condition of work-charged-employees. Here in this application, the main relief prayed for is compassionate appointment.

In view of the above observations, the Tribunal is of the opinion that this application for compassionate employment has no merit, although the deceased employee had worked under work-charged establishment and later confirmed, but this does not alter the fact that his appointment was not on regular basis.

Therefore, the reasoned order passed by the respondent is upheld and no order is passed. This application is disposed of.

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

S.M./H.S.