

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 385 OF 2023

SUBRATA DAS - Vs - THE STATE OF WEST BENGAL & OTHERS.

Serial No. and
Date of order

04
31.07.2024

For the Applicant : Ms.K.Kulsum
Advocate

For the State respondents : Mr.Subit Kumar Mondal
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.

After death of his father, Kartick Chandra Das, an employee at Fire & Emergency Service, Burdwan, on 14.06.2010 the applicant had submitted his application for employment under compassionate ground. By a reply under the R.T.I. Act, it was communicated to him on 16.03.2023 that such an application was considered and rejected on the following grounds:

- (i) That the applicant was only 16 years old at the time of death of the deceased employee. Therefore, in terms of clause 6 (c) (c) of Notification No. 251-Emp. dated 03.12.2013 such an application was not found valid.
- (ii) That the application was not submitted within six months from the date of death of the employee. Therefore, such application is barred by clause 10 (a) of Notification No. 26-Emp. Dated 03.12.2013.

However, Ms. Kulsum, learned counsel for the applicant disagrees

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with such reasons of rejection and draws attention to clause 10 (aa) of Notification 26-Emp. added to Notification 251-Emp. dated 01.03.2016 and submits that since his father had **died in action** while performing duty on 14.06.2010, therefore, a relaxation of 5 years was to be considered. Ms. Kulsum also emphasises that in the same clause, the respondent authorities were required to enquire into such an application through a 3-Member Screening-cum-Enquiring Committee. However, no such Committee was formed and no such enquiry was conducted. Therefore, the competent authority considering such application for compassionate employment were not aware of the financial and economic condition of the family of the deceased employee. Further submission is that since the proforma application was furnished before the respondent authorities and acknowledged by them on 01.12.2012, therefore, the question of belated application does not arise. As per clause 10 (aa) such application can be filed upto 5 years. Since the proforma application was filed on 01.12.2012 in less than five years' time, rejection on belated ground as mentioned in the R.T.I. reply is not a valid ground of rejection.

As to the question of how this is a case of "death during action" to be covered under 10(a)(a) of Notification 26-Emp., Ms.Kulsum presents a copy of FIR which was lodged by the Officer-in-charge, Burdwan Fire Station in its Memo. No. 227 dated 14.06.2010 and a copy of "Bardhaman Jelar Khobor" dated 15.06.2010 which had published the news of an accident in which the applicant's father had succumbed to his injuries. By filing these, Ms.Kulsum argues that this proposal is well covered under (i) death during action as stipulated in 10(a)(a) [new clause] added to Notification No. 251-Emp. Though the applicant was only 16 years at the time of his father, but relying on the same para of

the Notification as mentioned above, he had attained the age of employment at the time of consideration of his proposal. She draws attention to the relevant part of 10(a)(a) [new clause] added to Notification No. 251-Emp. which is as under:

“BELATED REQUESTS:- In exceptional cases such as (i) death during action (ii) where none in family is eligible etc., departments can consider requests for compassionate appointment even where the death or retirement on medical grounds of a Govt. servant took place upto five years ago.”

“The dependent member must invariably attain the minimum age of appointment at the time of consideration.”

Mr.Mondal, learned counsel has submitted that this case is not covered under either Notification No. 251-Emp published on 03.12.2013 nor it is covered under the Notification No. 26-Emp. published on 01.03.2016. His submission is that at the relevant point of time, when the employee had died on 14.06.2010, the relevant Notification prevailing at that point of time was 80-Emp. published on 02.04.2008. Submission is that by dint of this Notification, only six months time was available to the applicant to apply for such employment. Ms.Kulsum, however, disagrees and refers to the Memo. No. 1880 dated 16.03.2023 by which the OSD & SPIO had informed the applicant that his proposal was regretted in terms of clause 10 (a) of Notification No. 251-Emp dated 03.12.2013. Therefore, the contention of Mr.Mondal is erroneous in this regard.

Having heard the submissions of the learned counsels and after examination of the records in this application, the Tribunal finds that the deceased employee, the father of the applicant, had indeed died in an

accident while on duty. The news as well as the reports of the respondents are clear indication of this fact. Therefore, this proposal is eligible to be considered under 10(a)(a) [new clause] added to Notification No. 251-Emp dated 03.12.2013. By this particular provision, the applicant can avail a total of five years time to submit a proposal before the respondent authorities for employment under the compassionate ground. The deceased employee having died on 14.06.2010, the application in prescribed format submitted before the respondent authorities on 01.12.2012 is well covered under this provision and it was well within the permissible time. Therefore, the Tribunal cannot agree with the impugned Memo. No. 1880 dated 16.03.2023 that his proposal did not fulfil the provision laid down in 10 (a) of Notification No. 251-Emp. While considering the proposal, it is clear that the respondent authorities were either not aware of the new provision 10(a)(a) as mentioned above or ignored the fact that this case in which the deceased employee had died in action, such application could be submitted within five years from the date of death of the deceased employee. Again by relying on the second part of the provision contained in 10(a)(a) of Notification No. 251-Emp., it is abundantly clear that the applicant had attained the age of employment at the time when the proposal was considered. The relevant sentence of the provision 10 (a)(a) is “*The dependent member must invariably attain the minimum age of appointment at the time of consideration.*” Thus, the undisputed fact is that though the applicant was only 16 years old at the time of his father’s death on 14.06.2010, but at the time of consideration of his application on 16.03.2023, the applicant had already attained the age of appointment. The Tribunal also has become aware of the casual attitude of the respondent authority in responding to this matter; this

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application for compassionate employment lying with it since 2012 was finally responded in 2023, after a gap of 11 years.

In view of the above observations, the Tribunal finds the impugned reference No. 1880 dated 16.03.2023 issued by the OSD and SPIO not tenable under the law and it is quashable and therefore, it is quashed with a direction to the Additional Chief Secretary, Department of Fire and Emergency Services to reconsider the decision of the applicant's prayer for an employment under the compassionate ground in the light of above observations and pass a reasoned and speaking order within a period of three months from the date of communication of this order. Let a copy of such reasoned order passed be communicated to the applicant within two weeks thereof. The application is disposed of.

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

BLR