

ORDER SHEET

WEST BENGAL ADMINISTRATIVE TRIBUNAL

Bikash Bhavan, Salt Lake, Kolkata – 700 091.

Present : **HON'BLE JUSTICE SOUMITRA PAL,** **HON'BLE CHAIRMAN.**

Case No. – OA 40 of 2019.

KARTIC ALIAS KARTICK BISWAS –VS–THE STATE OF WEST BENGAL & ORS.

Serial No. and Date of order	For the Applicant	: Mrs. Malabika Dey, Advocate.
	For the State Respondents	: Mrs. S. Agarwal, Advocate.
<u>14</u> 5.7.2022		

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 11th February, 2022 issued in exercise of the powers conferred under section 6 (5) of the Administrative Tribunals Act, 1985.

At the very outset, Mrs. M. Dey, learned advocate for the applicant prays that leave may be granted to add Joint Secretary to the Government of West Bengal, Public Works Department, Works Branch, Nabanna, Howrah as a party respondent by amending the cause title of the application.

As prayed for leave granted to the applicant to add Joint Secretary to the Government of West Bengal, Public Works Department, Works Branch, Nabanna as a party respondent by amending the cause title of the application. Since Mrs. S. Agarwal, learned advocate appearing on behalf of the State respondents, accept service of notice on behalf of the added respondent, no further copy of the original application be served.

In this application Kartick Biswas, the applicant has prayed for certain reliefs, the relevant portion of which is as under :-

“i) Direct the respondent authorities to withdraw, cancel, rescind and/or to set aside the impugned Order No. 465-PW/O/Works(ECG)/5P-45/2015 dtd 03.05.2018, and revisit the case of the applicant strictly in accordance with law forthwith;

ii) Direct the respondent authorities, their men, agents, and/or servants to immediately accord appointment in favour of the applicant on compassionate ground in any suitable post upon completion of all the required formalities under the law and to cause him to join in such post forthwith;”

ORDER SHEET

Form No.

KARTIC ALIAS KARTICK BISWAS.

-Vs-

THE STATE OF WEST BENGAL & ORS.

Case No. OA 40 of 2019.

It appears that the father of the applicant Sankar Biswas, while working as Roller Driver in the office of the Bolpur Highway Sub-Division, Public Works (Roads) Directorate expired on 11th February, 2011 leaving behind his wife Chinta Biswas, Kartick Biswas, son, the applicant and Reba Badyakar Biswas, the married daughter. The applicant, after the demise of Sankar Biswas, has applied for compassionate appointment which was verified by the department concerned. It has been stated in the application as late Sankar Biswas was originally a road majdoor, who joined service on 5th April, 1974 and had continued to serve till death, he must have been deemed to be absorbed in the regular establishment or to be considered as a regular employee and therefore, the order passed on 3rd May, 2018 by the Joint Secretary to the Government of West Bengal, - the added respondent, cannot be sustained. In support of her submission, Mrs. Dey has relied on the judgement passed on 9th July, 2014 in W.P.S.T. No. 170 of 2014 Manoj Kumar Mishra – Vs- The State of West Bengal & Ors, wherein a similar issue was considered. .

Ms. S. Agarwal, learned advocate for the State respondents submits that since late Sankar Biswas was a work charged employee, he cannot be considered as a regular employee and therefore, cannot be given employment on compassionate ground.

Admittedly, late Sankar Biswas joined in service on 5th April, 1974 and had continued to serve till 11th February, 2011 when he expired, that is, he served for more than thirty-seven years. According to the applicant, he must be deemed to have been absorbed in the regular establishment. In this regard, it is appropriate to refer to the relevant portion of the impugned order dated 3rd May, 2018, which is as under :-

“....The compassionate appointment is being dealt with as per

ORDER SHEET

Form No.

KARTIC ALIAS KARTICK BISWAS.

-Vs-

THE STATE OF WEST BENGAL & ORS.

Case No. OA 40 of 2019.

relevant provisions framed by the Government of West Bengal. From the above facts in issue it is evident that Late Sankar Biswas had not been brought under Regular Establishment before his death.

As the instant case is against the mandatory rules of the Government of West Bengal noted above, the instant case is rejected...”.

Since the above finding is contrary to the principles of law laid down in Manoj Kumar Mishra (supra), the order under challenge cannot be sustained and is thus set aside and quashed. The application is allowed. Accordingly, the Secretary, Department of Public Works, Nabanna, Howrah, - the respondent no. 2(i) is directed to consider the matter afresh for appointing the applicant on compassionate ground 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, after verifying the records and after considering the law laid down in the judgement in Manoj Kumar Mishra (supra).

(SOUMITRA PAL)
CHAIRMAN.

Skg.

ORDER SHEET

Form No.

KARTIC ALIAS KARTICK BISWAS.

-Vs-

THE STATE OF WEST BENGAL & ORS.

Case No. OA 40 of 2019.

WEST BENGAL ADMINISTRATIVE TRIBUNAL