

**ORDER SHEET**

**WEST BENGAL ADMINISTRATIVE TRIBUNAL**

Bikash Bhavan, Salt Lake, Kolkata – 700 091.

**Present-**

**Mr. Sayeed Ahmed Baba, Officiating Chairperson and Hon'ble Member (A).**

Case No. – OA 445 of 2022.

MANOJ KUMAR RAI- VERSUS- THE STATE OF WEST BENGAL & ORS.

Serial No. and  
Date of order

5  
20.4.2023

For the Applicant : Mr. T. K. Majumder,  
Advocate.  
For the State respondents : Mrs. S. 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 23<sup>rd</sup> 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.

Heard the learned counsels of both sides.

The prayer in this application is for setting aside the impugned order dated 13<sup>th</sup> April, 2022 issued by the Principal Secretary, Department of Higher Education. The impugned order was passed in terms of the Tribunal's direction dated 7<sup>th</sup> November, 2019 in OA 952 of 2018. The relevant portion of which is as under :-

*“ Since we find that the appointment was made on a contract basis and thereafter, he was disengaged, no order can be passed on this application. However, as the Commanding Officer, 3, Bengal B. N.C.C. vide intimation dated 28<sup>th</sup> November, 2003 to the Deputy Secretary, Govt. of West Bengal, Home (Civil Defence-NCC) Department, Kolkata made a request to put the applicant in the regular establishment in the then pay scale of Group-D staff as per Ropa, 1998, respondent authorities, if in a position to do the needful even after the passage of so many years, are at liberty to put the applicant in the said job, if available, on same*

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*terms and conditions and in accordance with law expeditiously.”*

In the reasoned order, the respondent considered the matter citing belated application, as per clause 10(a) of 251-Emp Notification, the prayer for compassionate appointment was rejected.

After hearing the learned counsels, it is noted that the application of the applicant was rejected on two fronts :-

i) That the applicant was on contract basis appointed only for one year and renewed for further two more consecutive years and then disengaged.

ii) That the applicant's case for compassionate employment was a belated case and clause 10(a) of Notification 251-Emp prohibits for consideration of such application.

Mr. T.K. Majumder, learned counsel for the applicant refuting the charges made by the respondent in the impugned order argues that although the applicant was on contract basis, but, his services were renewed every year by an order of the respondent totalling three years.

The applicant was issued a formal appointment letter on 28<sup>th</sup> November, 2000 appointing him to the post of Peon on contract basis for a period of one year. This appointment was renewed for next two more years till 27<sup>th</sup> June, 2003. Mr. Majumder submits however his termination was not served by a one- month notice from the side of the respondents. He was terminated on the basis of verbal order. However, Mr. Majumder is not able to satisfy the Tribunal the link between the verbal termination of the applicant and his eligibility for compassionate appointment.

So far the belated application as a reason for rejection is concerned, it appears that after the death of the deceased employee on 13<sup>th</sup> January, 1985 the widow Smt. Shandati Devi, mother of the applicant had submitted a plain paper application on 23<sup>rd</sup> September, 1985 for compassionate appointment in favour of her son Manoj Kumar Rai, the applicant. At the time of the death of the deceased father,

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the applicant was a minor of around ten years. The plain paper application does not bear any official signature and seal of Respondent.

However, from the records it is clear that there is no copy of an application for compassionate employment signed and submitted by the applicant. It appears that Manoj Kumar Rai had never submitted such an application before the respondent, at least there is no copy in the record.

The second reason for rejection by the respondent on the ground of belated stage appears to be with reference to the application made before the Tribunal in OA 952 of 2018. It is presumed that the belatedness of the case is related to filing of the OA 952 of 2018 before the Tribunal.

It appears from the order of the Tribunal dated 7<sup>th</sup> November, 2019 that the applicant had filed a writ petition before the Calcutta High Court relating to compassionate appointment which was dismissed for want of jurisdiction. So, it is clear that neither any plain paper application nor any application in proforma was submitted, even belatedly by the applicant before the respondent.

After hearing the learned counsels and on my above observations, I am of the opinion that there is no merit in the application and the impugned order was passed on proper and valid reasons. Therefore, the application is disposed of without any order.

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

Skg.