

ORDER SHEET

WEST BENGAL ADMINISTRATIVE TRIBUNAL

Bikash Bhavan, Salt Lake, Kolkata – 700 091.

Present-

The Hon'ble Sayeed Ahmed Baba, Officiating Chairperson & Member (A)

Case No. – OA 445 of 2023

Debasish Pal & Another -- VERSUS – The State of West Bengal & Ors.

Serial No. and
Date of order

For the Applicants : None.

For the State Respondents : Mr. R.K. Mondal,
Ld. Advocate.

06
29.01.2025

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.

The prayer in this application is for setting aside the impugned order dated 10.5.2023 passed by the Director of Health Services in terms of a direction of the Tribunal in OA 380 of 2020. The impugned order after considering rejected the application for employment under compassionate ground. The primary reason given is that such an application was made after the stipulated period of submission was over. The respondent observes that as per Emp-251 Notification, such an application can be made in a plain paper within six months and in the proforma within two years from the death of the employee. The respondent observed that this application was submitted after more than two years and three months from the date of passing of the deceased employee.

Mr. Mondal, learned counsel on the last date of hearing had submitted that the applicant may not be educationally qualified to apply for an employment under compassionate ground. Since this particular ground of ineligibility due to educational qualification was not a ground in the impugned order, therefore, this subject is not relevant.

The first application of the applicant was considered and rejected by the respondent authority in its memo 126 dated 20.04.2010. The rejection in this impugned order was that the family was already receiving family pension amounting to Rs.4,800/-. Therefore, the family is not in immediate financial assistance in the form of an employment. Aggrieved by such

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rejection, the applicant preferred another representation before the respondent authorities on 27.08.2012. The respondent authority passed a reasoned order in terms of the direction of the Tribunal in OA 380 of 2020 which again regretted the compassionate employment proposal. This time the reasoned order dated 10.05.2023, had relied on the ground that the proforma application was made well after the stipulated time. In the earlier paragraphs, the respondent authority in the reasoned order had observed that as per Notification No. 251-Emp., the applicant is required to submit a plain paper application within six (06) months and proforma application within two (02) years from the date of death of the employee. It is also clear from the records that the applicant's mother had furnished a plain paper application in favour of her son on 16.01.2006 after the death of the employee on 06.12.2005. It is clear that this plain paper application was made within six (06) months from the date of death of the employee. The reasoned order which cites Notification 251-Emp. in which six (06) months time is given to file a plain paper application is covered under 10) Procedure (a), but by Notification 26-Emp. dated 01.03.2016 this provision has been amended. The time as per the amended relevant rules under Notification 26-Emp. is two (02) years from the date of death of the employee.

Mr. Ghosh not disagreeing that the proforma application was furnished by the applicant after a lapse of two (02) years, however, relies on a judgement of Hon'ble High Court at Calcutta in (2012) 2 WBLR (Cal) 202 in the case of Smt. Angurbala Maity & Another v. State of West Bengal & Others.

It is not in dispute that the mother of the applicant had submitted a plain paper application on 16.01.2006 which was submitted within two (02) years from the date of death of the employee on 06.12.2005. However, the guideline stipulated in Notification No. 251-Emp. dated 03.12.2013 and Notification No.

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26-Emp. dated 01.03.2016 requires the proper application to be submitted in the prescribed proforma. The applicant had submitted this proforma application before the respondent authorities on 17.08.2008 after a lapse of more than two (02) years from the date of death of the employee. Once the Rule stipulates that a proforma application be submitted within two (02) years from the date of death of the employee, the fact of submission of plain paper application within time is not a remedy and is not a valid application in absence of the proforma application. Compassionate employment cannot be made disregarding the rules framed for such purpose. The respondent authorities while taking a decision does not have any discretion to make the rules flexible to suit the needs of the family. Such application in prescribed proforma should have been submitted by the applicant within two (02) years from the date of death of the deceased employee. Since this fact of delayed submission has not been disputed, therefore, the Tribunal does not find any merit in the prayer and **disposes of** this application without passing any order.

SAYEED AHMED BABA
Officiating Chairperson & Member (A)

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