

ORDER SHEET

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 562 of 2022

SUROJIT GOSWAMI

- Vs - THE STATE OF WEST BENGAL & OTHERS.

Serial No. and

Date of order

For the Applicant

: Mr. Goutam Pathak Banerjee

Mr. Anuran Samanta

Advocates

06

12.05.2023

For the State Respondents

: None

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, the case is taken up for consideration sitting singly. It is noted that none had appeared on behalf of the State respondents on past two dates also.

The prayer in this application is for setting aside the impugned letter of rejection dated 11.11.2020 issued by the Commissioner, Home and Hill Affairs Department. In this impugned order, the application for compassionate employment was considered and rejected on the ground that the applicant was only 13 years 5 months and 16 days old at the time of death of deceased employee, his father. Such decision was taken in terms of Notification No. 251-Emp read with Notification No. 26-Emp of Labour Department.

Submission of Mr.G.P.Banerjee is that as per 10 (aa), the revised provision of 26-Emp. dated 01.03.2016 allows belated application as the exceptional ground up to 5 years for (i) death during action (ii) where none in family eligible etc. Submission of Mr.G.P.Banerjee is that in the instant case, the deceased employee died in action, as mentioned in the letter of Director General of Police addressed to the Assistant Secretary vide Memo. No. 386/Spl./Emp-160/2013 dated 22.08.2017. The relevant portion of the above correspondence is as under:

“The Enquiry Committee has stated that the candidate has fulfilled the Belated Request in terms of clause 10(aa) of Notification No. 26-EMP dated 01/03/2016 of Labour Deptt., WB, as the deceased employee died on duty. Thus the Belated Request Clause 10(aa) of 26-Emp. dtd. 01/03/2016 of Labour Deptt. WB, is applicable here.”

In view of the above fact, the respondent was wrong in rejecting the application on the ground of the applicant being a minor at the time of death of his father by relying Notification No. 26-Emp and 251-Emp, however, does not cover the rejection of an application on the ground of the applicant being a minor at the time of death of deceased employee.

After hearing the submission of the learned counsel and examining the Notification No. 26-Emp and 251-Emp., it is the observation of this Tribunal that though the applicant was a minor at the time of death of the deceased employee, but the respondent has rejected the application by relying Notification No. 26-Emp and 251-Emp. It is noted that these two notifications do not have any provision for rejection of an application on the ground of the applicant being a minor at the time of deceased employee's death. On the other hand, it is noted that at 10(aa) of 26-Emp. the last three lines mentioned that *“The dependent member must invariably attain the minimum age of appointment at the time of consideration”*.

In this case, the death of the father of the applicant occurred on 14.02.2011 and the application was finally considered by the respondent on 11.11.2020. So, if he was 13 years at the time of the death of the deceased employee, he had attained the age of 22 years at the time of

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consideration of the application.

In view of the above observation, the Tribunal sets aside the impugned order passed by the Commissioner, Home and Hill Affairs Department dated 11.11.2020 with a direction to consider the matter afresh in the light of relevant sections of the relevant notifications within a period of twelve weeks from the date of communication of this order and communicate the decision to the applicant within a period of two weeks thereafter.

Accordingly, the application is disposed of.

BLR

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