

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 647 of 2023

Brototi Bag -- VERSUS – The State of West Bengal & Others

Serial No. and
Date of order

For the Applicant : None.

For the State Respondents : Mr. M. N. Roy,
Advocate.

05
19.11.2024

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.

Amita Bag, a Health Assistant (F) in Karnasubarna BPHC, Murshidabad died on 16.07.2013. Biswajit Bag, the husband submitted an application for an employment under compassionate ground for himself which was forwarded by the CMOH, Murshidabad to the Director of health Services on 23.05.2014. A Three – men Screening-cum-Enquiry Committee enquired into the application and submitted its report on 03.01.2017. However, on 06.09.2022, Biswajit Bag, the father of the applicant changed his mind and furnished a prayer requesting name of his daughter, Brototi Bag to be considered for such an employment. On the same day itself i.e. on 06.09.2022, the applicant, Brototi Bag also presented her prayer before the Additional Director (Personnel) praying for an employment. The applicant was born on 29.10.1988 and was a minor of only 14 years and 9 months at the time of her mother's death on 16.07.2013. The impugned order regretting her prayer for employment on compassionate ground was communicated by the Director to the CMOH, Murshidabad on 18.05.2024.

The regret correspondence recorded rejection on the following two grounds:

- (i) that the applicant was a minor of 14 years and 9 months at the time of death of the deceased employee; and
- (ii) that at the time of death of the employee, her husband Biswajit Bag was the eligible dependant family member.

It is an admitted fact from the applicant's side that she was a minor at

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the time of death of her mother, but Mr. Ghosh, learned counsel had argued that the respondent authorities completely ignored the fact that being eligible, Biswajit Bag, the husband had applied for himself, but later realising that he has already attained the age of 58 years and not capable to serve in the government wished to transfer such application in the name of his daughter, the present applicant. Mr. Ghosh also feels that in terms of 10(a)(a) added to Notification No. 251 – Emp. published in Notification No. 26 – Emp., the time for submission upto 5 years should have been allowed to the applicant. Responding on behalf of the State respondents, Mr. Roy, learned counsel disagrees with submission of Mr. Ghosh that the benefit of 10(a)(a) is applicable in this case for the reason that the applicant submitted her prayer after a gap of more than 9 years from the date of death of the deceased employee.

Having heard the submissions of the learned counsels and on examinations of the records, the Tribunal comes to this conclusion that the father of the applicant, as an afterthought, decided to present his daughter as the new applicant for an employment under compassionate ground. It has not been disputed that Brototi Bag, the daughter was a minor of only 14 years and 9 months at the time of death of her mother, the deceased employee on 16.07.2013. From the history of this case, it becomes difficult to ignore that the scheme for compassionate employment was perceived by the family of the deceased employee as their vested right. It has been made amply clear by several judgements of the Hon'ble Supreme Court that the compassionate employment cannot be considered as the inherent right and cannot be applied suiting the family's whims and wishes. In brief, this scheme cannot be treated as a trial and error method. The scheme is available to those legal heirs who fulfil all the eligibility criterias and has also been proved to be facing serious financial difficulties. The argument of Mr. Ghosh, learned counsel for the applicant that an extended submission

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time of 5 years was not considered is also erroneous for the reason that the particular Clause 10(a)(a) added to Notification No. 251 – Emp. stipulates two considerations :

- (i) Death in action ; and
- (ii) None in the family were eligible for such employment at the time of death of the employee.

This case neither comes under the Clause (i) nor under Clause (ii) for the reason the death did not occur while in action, and at the time of death of the employee, the husband and father of this applicant was eligible to apply and he had applied but later withdrew it. The applicant's side has also completely failed to satisfy that due to death of the deceased employee, the family was passing through serious financial difficulties. Withdrawn his own application and re-submitting in the name of his daughter, the present applicant, with a clear motive that such an employment will be more beneficial to the family in the long run is in contradiction to the objective of the scheme.

Having considered all the aspects in this case, the Tribunal is clearly of the opinion that the application of the applicant has no merit and the respondent authorities were correct in taking their decision in regretting the application.

Accordingly, this case is disposed of without passing any orders.

SAYEED AHMED BABA
Officiating Chairperson & Member (A)

S.M.