

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 678 OF 2023

SUJATA GHOSH - Vs - THE STATE OF WEST BENGAL & OTHERS.

Serial No. and
Date of order

03
08.02.2024

For the Applicant : Mr.Sourav Bhattacharjee
Advocate

For the State Respondents : Ms.Ruma Sarkar
Mr.Sourav Debray
Mr.R.Bag
(Departmental Representatives)

For the Respondent No. 6 : Mrs.Sunita 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 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 counsels and the learned Departmental representatives for the contesting parties, the case is taken up for consideration sitting singly.

The applicant has prayed for setting aside the impugned order of the respondent rejecting her claim for employment under compassionate ground. Such a claim was preferred by the applicant after her husband, Bulu Ghosh took his retirement after being declared permanently incapacitated. However, the respondents reasoned that the employee had not fully exhausted all his leave before such retirement was taken. Therefore, such employment could not be offered to the applicant under Clause 6(b)(ii) of Notification No. 251-EMP dated 03.12.2013.

Clause 6(b)(ii) of Notification No. 251-EMP is as under:

“In case of premature retirement the concerned employee had at least two years of service left to reach the normal age of superannuation and should fulfil the following conditions.

ORDER SHEET

Form No.

SUJATA GHOSH

Vs.

Case No **OA 678 OF 2023**

THE STATE OF WEST BENGAL & OTHERS.

(ii) He/ she has fully exhausted all kinds of leave with pay including commuted leave on medical ground.

Submission of Ms.Sarkar is that the employee had not exhausted all his leave as required by the above Notification. In further support of this statement, Ms.R.Sarkar also submits that the concerned employee had received leave salary on account of 300 days of Earned Leave.

Mrs.Agarwal, learned counsel representing the Department of Labour submits that upon request from the Land and Land Reforms Department, her Department examined the case in the light of the 251-Emp Notification and opined that the case of the employee is not admissible since it was found that he had not exhausted all his leave.

Responding to the above observations of the Department, Mr.Bhattacharjee, however, disagrees and submits that as is evident from page 12 of this application, Sujata Ghosh, the present applicant and wife of the retired employee had submitted a plain paper application before the Collector of Kolkata-in-charge on 04.09.2020 along with the medical documents and had prayed for leave on behalf of her husband, the employee.

Mr.S.Bhattacharjee draws attention to one of the diagnosis report given by Dr.Pradip Kumar Saha of Institute of Psychiatry-A Centre of Excellence and points out that as mentioned in the report, Bulu Ghosh was a psychiatric patient and suffers from severe depression. Another prescription by the same Institute advises the relatives to keep him under close observation and remove sharp objects from his proximity.

After hearing the submissions of the learned counsels and

examining the records in this application, the Tribunal observes the following:

- (i) The rejection of the application for compassionate employment on the ground of non-eligibility as per 6 (b)(ii) was technically correct. The employee had not exhausted his 300 days of Earned Leave, rather he had received the leave encashment for the unused leave. The above fact has been admitted by both the sides.
- (ii) However, having stated that such leave was not exhausted, the Tribunal also finds that the employee was suffering mental illness and as can be understood from the prescriptions, he was advised not to attend his duty in the office. Later on the basis of his wife's application for leave a medical examination by a Medical Board was also held. The fact that Bulu Ghosh, the employee was suffering from mental illness and was not in a position to perform his duties in office has not been disputed by the respondent authorities. In fact, attention has been drawn to page 25 of this application which appears to be a communication from the Collector of Kolkata to the employee which is dated 13.09.2021. The relevant lines of this communication is as under:

“This is to inform that following the medical report issued by the Medical superintendent-cum-Vice Principal Medical College and Hospital, you have been declared to be completely and permanently incapacitated for further service w.e.f. 31.08.2021”.

By such communication, the employee has been asked to submit

ORDER SHEET

Form No.

SUJATA GHOSH

Vs.

Case No **OA 678 OF 2023**

THE STATE OF WEST BENGAL & OTHERS.

his pension papers (invalid pension).

Though the employee, Bulu Ghosh was suffering from mental illness and for this very reason, he was retired, but it is difficult to relate consideration of the application for employment on compassionate ground due to such incapacitation of the employee. The rules regulating consideration of such compassionate employment have certain criterias to be fulfilled before such employment is offered. The Tribunal finds in this particular case, though very deserving from humanitarian point of view, but one of the important eligibility criterias was missed, that is, exhaustion of all kinds of leave.

Having observed the above facts, the Tribunal comes to this conclusion that, the impugned order No. U.O. No. 87-Emp dated 23.11.2022 rejecting the application for employment on compassionate ground due to non-fulfilment of 6(b)(ii) of 251-Emp Notification was on valid ground and correct.

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

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

BLR