

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 687 OF 2021

ANIMESH MANNA - VERSUS - THE STATE OF WEST BENGAL & ORS.

Serial No. and
Date of order

13

04.04.2024

For the Applicant	:	Mr.Goutam Pathak Banerjee Ms.Aishwarya Pathak Banerjee Advocates
For the State respondents	:	Mr.Biswapriya Roy 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 for the contesting parties, the case is taken up for consideration sitting singly.

The prayer in this application is for setting aside the impugned Memo. dated 23.02.2021. By this Memo., the prayer for compassionate employment was rejected on the ground that such an application was not submitted within the stipulated period. The impugned order relies on Notification No. 251- EMP dated 03.12.2013. Though the impugned Memo. does not mention specific dates of submission, but Mr.G.P.Banerjee, in his submission, informs that after the death of the deceased employee on 11.02.2009, the parents of the applicant had submitted such plain paper application before the respondent authorities on 06.06.2011 which was duly received by the respondent's office on 04.07.2011. This fact is not in dispute, because by Memo. No. 1143 dated 23.11.2011 such application was regretted. This rejection was on the ground that the applicant was not a dependent member of the family of the deceased employee and being brother of the deceased employee, he is not covered under the definition of family eligible for compassionate employment. After such rejection the

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applicant himself preferred a plain paper application which appears to have been received by the respondent authority on 26.12.2011 and followed by submission of the proforma application dated 20.04.2012. On 17.03.2021 Superintendent of Police communicated to the applicant the decision of the competent authority rejecting his application on the ground that “The first application was not submitted within stipulated period.” This impugned Memo. also mentions Notification No. 251-Emp “read with subsequently amendments”. However, the impugned order does not state what is the stipulated period, how much delay occurred in filing the application and what relevant clause of Notification 251-Emp and other Notifications were not complied. Submission of Mr.Banerjee is that such rejection is arbitrary and reliance on the new clause 10(aa) added to the Notification 251-Emp which allows up to five years for any eligible applicant to apply was not considered.

The first rejection order dated 23.11.2011 was on the ground that the applicant was not eligible under the definition of family. This impugned order interpreted the law on compassionate employment relating to family - as wife/ husband / son / unmarried daughter of the employee. But attention is drawn to 3 (e) of 251 EMP in which “brother or sister in case of death in harness of an unmarried employee provided his / her parents, all the brothers and sisters were fully dependent on him / her” – are declared as family member and thus eligible. By this very definition, it is clear that the applicant being the brother of the deceased unmarried employee was eligible for such compassionate employment.

Appearing on behalf of the State respondents, Mr.B.P.Roy, learned counsel submits that as stated in the reply of the respondents, such rejection was made in the light of the Notifications No. 30-Emp dated 02.04.2008 and 251-Emp dated 03.12.2013.

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Having heard the submissions of the learned counsels and after examination of the relevant documents, the Tribunal has observed the following:

- (i) That after the death of the deceased employee on 11.02.2009, the parents had submitted an application on behalf of the applicant which was received by the respondent's office on 04.07.2011. Such application was after 2 years 4 months and 23 days from the date of death of the deceased employee. Soon thereafter, on 26.12.2011, the applicant furnished a plain paper application before the respondent authorities followed by the proforma application on 20.04.2012.
- (ii) By provision of the revised 10 (a) of Notification No. 251, the family member is allowed to submit such an application within two years from the date of death of the Government employee. It is clear in this case that such an application could not be made within the stipulated period of two years. The plain paper application was submitted after a delay of 2 years, 10 months and 15 days.
- (iii) It appears from the nature of death, his brother, the deceased employee had died an unnatural death and it can be considered as death during action and therefore, such delayed filing of application can be considered under Clause (i) of 10 (aa) of Notification No. 26-Emp. By such provision, the applicant is allowed to submit a belated request up to 5 years. By help of this provision, therefore, the applicant had preferred such an application well within the time and rejection of the application on the ground that it was not submitted within time was not a

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valid ground. Further, the same provision of 26-Emp allow such belated application upto 5 years for such families, in which there were none in the family who were eligible for such employment.

From the submissions and the records, it has also become clear that besides this applicant no other family member were eligible for such employment, therefore, this criteria has also been fulfilled.

The ground given for rejection in the first impugned order dated 23.11.2011 was that the deceased employee was an unmarried person. Here, it is clear that the respondent authorities completely ignored the clause 3(a) of 251-Emp which makes a brother eligible for such employment if the deceased employee was an unmarried employee. The respondent authority may have thought that this Notification No. 251-Emp came into force on 03.12.2013 whereas the deceased employee had died on 11.02.2009. Therefore, such provision may not be applicable in this case. The Tribunal finds that 251-Emp Notification though published on 03.12.2013 makes it clear that the Notification has come into force in supersession of all previous orders. Therefore, it is safe to assume that provisions of this Notification No. 251-Emp having superseded all previous Notification 30-Emp dated 02.04.2008 makes the applicant as brother of his deceased and unmarried Government employee to be eligible for such employment.

Considering the above observations, the Tribunal finds both the impugned Memos. dated 23.11.2011 and 23.02.2021 were based on invalid and untenable grounds for such rejection was passed on wrong interpretation of the rules. The Tribunal is satisfied that the application of the applicant submitted by both parents on 06.06.2011 and proforma application submitted by the applicant on 20.04.2012 are very well covered under 10(aa). Belated request under Emp-26. Thus, rejection on the ground that it was not submitted within

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the stipulated period is an invalid reason and not considered in the light of the relevant Notification- Emp-26 dated 01.03.2016. The Tribunal is also not satisfied with the reason for rejection of the deceased employee being an unmarried person under Emp-30 Notification, The respondents could have considered this case under 3(e) of Emp-251 by which even a brother of an unmarried deceased employee is entitled for compassionate employment. This Notification came into force after in supersession of all previous orders including Emp-30.

Finally, the Tribunal is also not satisfied that different grounds can be shown in different orders to reject such application. The first rejection dated 23.11.2011 was on the ground of the deceased employee being an unmarried person and the second rejection dated 23.02.2021 was on the ground that such application was not submitted within the stipulated time. Thus, the Tribunal, based on the above findings finds both the impugned Memos. untenable and not in conformity with natural justice and therefore, these are quashed and set aside with a further direction to the respondent No. 3, the Secretary, (Co-ordination) to reconsider this application for employment on compassionate ground in the light of the above observation of this Tribunal and pass a fresh reasoned order within four months from the date of communication of this order and also communicate the same to the applicant within two weeks thereof.

Accordingly, the application is disposed of.

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

BLR