

WEST BENGAL ADMINISTRATIVE TRIBUNAL

Bikash Bhavan, Salt Lake, Kolkata – 700 091.

Present : **HON'BLE JUSTICE SOUMITRA PAL,** **HON'BLE CHAIRMAN.**

Case No. – OA 763 of 2019.

MITHUN BARMAN-Versus- THE STATE OF WEST BENGAL & ORS.

Serial No. and Date of order	For the Applicant	: Mr. S. Kamal, Ms. S. Hossain, Advocates.
<u>13</u> 18.8.2022	For the State Respondents	: Mr. A. De, Mrs. R. Sarkar, Departmental representatives.

The matter is taken up by the single Bench pursuant to the order contained in the Notification No. 496-WBAT/1E-08/2003 (Pt.-II) dated 4th August, 2022 issued in exercise of the powers conferred under section 6 (5) of the Administrative Tribunals Act, 1985.

In this application Mithun Barman, the applicant has prayed for certain reliefs, the relevant portion of which is as under :-

"...A) A mandatory direction is issued upon the concerned respondent authorities to revoke, cancelled and/or set aside the three men committee enquiry report held on 3.12.2013 and thereby also set aside and/or cancelled the order of rejection dated 12.12.2017 passed by the respondent no. 1, being the District Magistrate, Coochbehar, for appointment to the applicant in the post of as per qualification under Died In harness category.

B) A direction upon the concerned respondent authorities to issue appointment letter to the applicant as per his eligibility under died in harness category in the district of Coochbehar..".

It appears that the father of the applicant – Pulin Chandra Barman expired on 23rd November, 2012 while in service leaving behind two sons including the applicant and one daughter namely Dulali Barman, daughter of the second wife as legal heirs. On 16th February, 2013, the applicant made an application for appointment on compassionate ground. The three men committee was constituted for holding enquiry for considering the case of the applicant. It has been stated that in December, 2017 he received a letter from

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the office of the District Magistrate, Cooch Behar, - the respondent no. 1 wherefrom he came to know that the three men committee had rejected his case. Thereafter, the applicant filed an application being OA 969 of 2018 which was disposed of on 7th February, 2019 by directing the said respondent no. 1 to furnish the three men committee report to the applicant. The applicant came to know from the report that his family income was Rs.46007/- per month which was one of the reasons for rejection of his case. According to the applicant that since the said committee has taken into consideration the salary of Dulali Barman, the daughter of Basanti Roy Barman claiming to be the second wife of the deceased employee, submission is as second marriage is not permissible under the Hindu law, the said report is without any foundation and is arbitrary and unjust and therefore, the order dated 12th December, 2017 passed by the Additional District Magistrate (G), Cooch Behar addressed to the Sub Divisional Officer, Dinhata, -the respondent no. 2 rejecting the prayer of the applicant for compassionate appointment in view of the three men enquiry report and in view of paragraph 6(a) of G.O of 251-Emp dated 3rd December, 2013 issued by the Labour Department, Government of West Bengal, is arbitrary and illegal.

Mr. S. Kamal, learned advocate appearing on behalf of the applicant submits since the three men committee had wrongly included the income of Dulali Barman, the order is harsh, unjust and illegal and therefore be set aside and the respondents may be directed to consider the matter afresh.

Mr. A. De, the departmental representative for the added respondent submits since on enquiry it was found by the three men committee that Dulali Barman along with the family of the applicant was staying together, the income of Dulali Barman, daughter of Basanti Roy Barman claiming herself to be the second wife was taken into consideration and accordingly, the total monthly income of the applicant was calculated at Rs. 46007/-.

Since it is submitted on behalf of the applicant that Dulali Roy Barman has a separate establishment, considering such fact, the enquiry report

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of the three men committee, annexure 'I' to the original application is set aside and quashed and accordingly, the memo dated 3rd December, 2017 being annexure 'F' to the application is also set aside and quashed. The application is allowed.

Hence, the Secretary, Department of Land and Land Reforms, Government of West Bengal is directed to consider the matter regarding the appointment of the applicant on compassionate ground afresh and shall pass a reasoned order within fifteen weeks from the date of presentation of a copy of this order downloaded from the website of the Tribunal after giving an opportunity of hearing to the applicant and other members of the family and after making a fresh enquiry through an officer not below the rank of Additional District Magistrate and without being influenced by the report of the three men enquiry committee and the memo dated 12th February, 2017 and after considering the principles of law laid down by the Supreme Court in the judgement delivered on 20th May, 2022 in Civil Appeal No. 4103 of 2022 (Arising out of S.L.P.(Civil) No. 936/2022) (Malaya Nanda Sethy -vs- State of Orissa and others).

(SOUMITRA PAL)
CHAIRMAN.

Skg.

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