

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 815 of 2022

Tanumoy Dutta Roy. - Versus - The State of West Bengal & Others.

Serial No. and Date of order	For the Applicant	: Mr. S. Bhattacharjee, Advocate.
<u>03</u> 04.08.2023.	For the State Respondents	: Mrs. S. 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 for the contesting parties, the case is taken up for consideration sitting singly.

No Objection Vakalatnama filed by Mr. S. Bhattacharjee, learned counsel for the respondent no. 5, be kept on record.

The prayer in this application is for a direction for setting aside the impugned order passed by the respondent No. 2 on 16.06.2022 rejecting the application for appointment on compassionate ground. The reasoned order rejected the application on few grounds including that the applicant did not attain the minimum age for government service and thus the applicant is not eligible for such appointment.

Submission of Mr. S. Bhattacharjee, learned counsel for the applicant is that the respondent failed to follow the provisions of 26-EMP dated 01.03.2016 in which appearing at Clause 10 (aa) the revised provision allows the dependent member to qualify for such appointment at the time of consideration. The relevant para of Clause 10 (aa) which is as follows:

“Dependent member must invariably attain the minimum age of appointment at the time of consideration.”

Submission is at the time of consideration of his application by the respondent the applicant had attained the minimum age of appointment,

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therefore, the impugned order be quashed and set aside with a direction to offer an employment under compassionate ground.

Responding on behalf of the respondent authority, Mrs. S. Agarwal, learned counsel, however, insists that the reasoned order was correct in rejecting the application on the ground that the applicant was a minor at the time of death of his father, the deceased employee. At that point of time, the applicant was a minor. Mrs. Agarwal also adds that at the time of death of the employee, there was another member of the family who was then eligible.

As per 6 (c) (c) of Notification No. 251-EMP dated 03.12.2013 which is as under, the applicant was not eligible.

“Dependent member shall invariably attain the minimum age for recruitment within 6 months from the date of death or incapacitation of the concerned employee.”

After hearing the submissions of the learned counsels and on examination of the relevant Notifications, the Tribunal feels that there is a contradiction in terms of the eligibility in age of the applicant. As referred in the above paragraph, the Notification No. 251-EMP at 6 (c) (c) stipulates that the applicant should have attained the minimum age of recruitment within 6 months from the date of death of the deceased employee. On the other hand, the Notification No. 26-EMP which came into force on 01.03.2016 much after the parent Notification of 251-EMP, however, stipulates at 10 (aa), as a revised provision, that “Dependent member must invariably attain the minimum age of appointment at the time of **consideration**”. From a simple reading of the above provisions in the two different Notifications, it appears to the Tribunal that the Notification No. 26-EMP in force since 01.03.2016 has superseded the earlier Notification

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No. 251-EMP on 03.12.2013 and gives the impression that an applicant should have attained the age of majority 18 (eighteen) years at the time of consideration of his application by the competent authority.

The Tribunal has also observed that although as per the Notification No. 26-EMP, the eligibility requirement of attaining minimum age of appointment has been amended by making it at the time of consideration, however, it also appears that this new provision- 10(aa) is not a substitute of 6 (c) (c) of 251-EMP.

In view of this kind of contradictory use of nomenclature and statements made in these two Notifications, it is the direction of the Tribunal to the applicant to add the Additional Chief Secretary, Labour Department as respondent No. 5 in the array of respondents in this application.

Let a copy of this application be served upon the added respondent No. 5 and affidavit of service be affirmed and filed on the next date of hearing.

Let a reply be filed by the Labour Department on the next date clarifying the above contradictory statements expressed in 6 (c) (c) of Emp-251 with 10 (aa) of Emp-26.

Let the matter appear under the heading 'Hearing' on 06th December, 2023.

(SAYEED AHMED BABA)
Officiating Chairperson and Member (A)

SM