

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 815 of 2022

Tanumoy Dutta Roy -- VERSUS – The State of West Bengal & Ors.

Serial No. and Date of order
06
05.03.2024

For the Applicant : Mr. Sourav Bhattacharjee,
Ld. Advocate.
For the State Respondent : Mrs. S. Agarwal,
Ld. 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.

Reply filed by the State respondents be kept on record.

While hearing this matter earlier, the Tribunal had observed that the Notification No. 26-Emp. dated 01.03.2016 had deleted Note (c) under 6(c)(c) of the Notification No. 251-Emp. dated 03.12.2013. The deleted provision of the Notification No. 251-Emp. was as follows :

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

After the deletion of the above Clause, a new Clause, 10(aa) was added to the Notification No. 251-Emp. by the revised Notification – 26-Emp. on 01.03.2016. This new clause covered belated requests in exceptional cases in which (i) death occurred during action and (ii) when none in family is eligible giving the applicant an extended time to apply upto five years. This added proviso also allowed the applicant to attain the minimum age of appointment at the time of consideration.

From the submissions of the learned counsels and on close examination of the relevant provisions of the Notifications - 251-Emp. and 26-Emp., it appears to the Tribunal that the new Notification No. 26-Emp. does not mention when the applicant should attain the minimum age of appointment. The deleted 6(c)(c) of Notification No. 251-Emp. had such a proviso by which an applicant should have attained the minimum age of appointment within six months from the date of death/incapacitation of the employee. From a close

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reading of these provisions, it appears to the Tribunal that such a relaxation of attaining the minimum age of appointment is limited only to those cases in which death had occurred during action and where none is eligible in the family for such appointment. It is the Tribunal's assumption that such relaxation for attaining the minimum age of appointment is not, as a general rule, open for all other cases. As regards, the meaning of words "*at the time of consideration*" neither the reply filed by the Labour Department nor from the submission of the learned counsel, it is clear to this Tribunal as to what does the wording "*at the time of consideration*" mean. From a simple reading and understanding of this line, the Tribunal assumes that the very wording "*at the time of consideration*" ought to mean such consideration by the respondent of the application submitted by the applicant for employment under compassionate ground. The Tribunal does not see why the combination of these four words would mean anything else apart from what is assumed here. In the reply which has been filed in terms of a direction to the Labour Department wanting to know the meaning of these words, surprisingly, inference is given to mean at the time of submitting the proforma application. The counsel has clarified that "*at the time of consideration*", as stated in the reply, means "*at the time of submitting the proforma application*". The Tribunal fails to understand how "*submission of proforma application*" has to be understood as "*at the time of consideration*". To the Tribunal, both these are separate activities; submission of proforma application and at time of consideration. Only when an application is submitted, the respondents can consider it. From the foregoing observations, it is also the opinion of this Tribunal that the new Notification No. 26-Emp. which is in force since 01.03.2016 remains silent as to when should the applicant attain the minimum age of appointment. As observed earlier, the deleted provision of Notification No. 251-Emp. had a clear and unambiguous entry in which it was clear to understand that an applicant should invariably attain the minimum age of appointment within six months from the date of death of the Government employee. Notification No. 26-Emp. does not contain any clear, specific and

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unambiguous provision as to when an applicant should attain the minimum age of appointment to be eligible for an employment under compassionate ground.

In view of the above observations, the Labour Department is directed to examine the Notifications and submit a clearly word and unambiguous Reply explaining the actual meaning of the words, “at the time of consideration” within three months from the date of this order. Let such Reply be filed by the next date and let the matter appear under the heading “**Hearing**” on **11.07.2024**.

SAYEED AHMED BABA
Officiating Chairperson & Member (A)

CSM/SS