

ORDER SHEET

WEST BENGAL ADMINISTRATIVE TRIBUNAL

Bikash Bhavan, Salt Lake, Kolkata – 700 091.

Present-

Mr. Sayeed Ahmed Baba, Officiating Chairperson and Hon'ble Member (A).

Case No. – OA 815 of 2022.

TANUMOY DUTTA ROY - VERSUS- THE STATE OF WEST BENGAL & ORS.

Serial No. and
Date of order

09
14.11.2024

For the Applicant : Mr. S. Bhattacharjee,
Advocate.
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.

The prayer in this application is for setting aside the impugned order passed by the respondent No. 2 on 16.06.2022 rejecting his application for appointment on compassionate ground. The reasoned order rejected the application on the primary ground that the applicant did not attain the minimum age for government service.

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, therefore, the impugned order is untenable.

Responding on behalf of the respondent authority, Mrs. S. Agarwal, learned counsel, however, insists that the reasoned order was correct in rejecting the

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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.

It is not being disputed that the applicant was only 14 years old at the time of death of his father. To be eligible for an employment under compassionate ground, one needs to fulfil all the criteria including the age of employment. It is also clear that in the family, Smt. Binu Dutta Roy, the mother of the applicant was very much eligible but she had not applied for herself. The primary contention of the applicant's side is that this case should have been considered under clause 10(aa) of Emp-26 Notification. By this specific provision, extended time limit for five years is available to the applicant's side provided the following two conditions are met :-

- (i) Died in Action and
- (ii) None in the family was eligible for such appointment.

After examination of the records and hearing the submissions of the learned counsels, the Tribunal comes to the conclusion that the applicant does not fulfil any of the two conditions as mentioned above to avail the extended time limit of five years. The Tribunal has come to such a conclusion after finding that the death of the applicant's father was not due to "Death in action". After perusal of the copy of police report, it is seen that his father, Tanuj Dutta Roy, had died in an accident being hit by a train while he was crossing a railway track no. 4 near Bidhannagar Railway Station. This report was filed by one Apurba Kumar Chakraborty, S.I. of Police, Sealdah GRPS on 12.8.2011. From this report, it can be safely concluded that the death was due to an accident and not due to action while on duty. This observation is further supported by the application filed by the applicant himself where he does not mention the father's death was "due to action" while on duty. The benefit of submitting an application up to five years available under 10(aa) of Emp-26 Notification could not be fulfilled for another reason, because Smt. Binu Dutta Roy, the mother of the applicant was eligible for such an appointment and was also advised

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by the authorities to apply with her documents. It appears that she did not apply for herself rather preferred such an appointment for her son. From this, it can also be safely concluded that though the mother was eligible, but she choose not to apply for herself.

From the above two observations, the Tribunal comes to the conclusion that this case does not fulfil the eligible criteria under 10(aa) and therefore the extended time limit for five years cannot be allowed for this application. The Respondent authority had rightly recorded the reasons for such rejection and the Tribunal does not find any reason to disagree with the Respondent authority.

In conclusion, the Tribunal is also aware of the several judgements of the Hon'ble Supreme Court and is compelled to repeat that compassionate employment is not a vested right upon the family members of the deceased employee. The applicant as well as the family members of the deceased employee have to fulfil all the eligible criteria of the Scheme. Mere death of a Government employee does not confer any right upon the family members for such an employment. The applicant has not been able to satisfy this Tribunal that he has fulfilled all the eligible criteria. Therefore, finding no merit in this application, it is disposed of without passing any orders.

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

Skg.