

ORDER SHEET

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 816 of 2022

Sri Sankar Chakraborty -- VERSUS – The State of West Bengal & Others

Serial No. and
Date of order

For the Applicant : None.

For the State Respondents : Mr. S. N. Roy,
Advocate.

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19.11.2024

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 relates to an employee under compassionate ground by an order of this Tribunal in OA-689 of 2021. The respondent authorities were directed to dispose of the application for such employment. In terms of such direction, the respondent authority considered the matter and passed a reasoned order dated 30.08.2022. The important points covered in the reasoned order are :

- (i) The applicant's father, Subal Kumar Chakraborty had died on 12.04.2006 while working as a Pump Operator. The applicant had submitted a plain paper application for compassionate employment on 13.11.2006.
- (ii) At the time of death of the employee, compassionate appointment was guided by the Labour Department Notification No. 97-Emp published on 06.06.2005. In terms of this Notification a compassionate employment was not available to the legal heirs if the deceased employee had died after completing 20 years of service and / or after attaining the age of 50 years. The deceased employee had died at the age of 59 years after completing the length of service of 37 years and 10 months.
- (iii) In terms of Notification No. 26-Emp dated 01.03.2016 the applicant is required to submit his application in the

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prescribed proforma. The reasoned order noted that this applicant had submitted only a plain paper application but not the proforma application.

- (iv) It was concluded with the remark that at the time of death of the deceased employee, the relevant Notification No. 97-Emp and 30-Emp were applicable. Therefore, the applicant's case was not considered.

From the records, it is evident and not in dispute that the applicant had indeed submitted an application for an employment under compassionate ground though it was a plain paper. The contention of the respondent authority recorded at para 5 of the reasoned order that by Notification No. 26-Emp dated 01.03.2016 the concept of submission of application in a plain paper has been replaced by submission of proforma application is an incorrect statement. In fact, para 10 (b) titled as "Procedure" in Notification No. 251-Emp dated 03.12.2016 emphasises the requirement of prescribed proforma in Annexure - 'A' and 'B'. Nevertheless, such requirement was not in force at the relevant time of submission of the application by the applicant in the 2006. Therefore, the insistence by the respondent authority for this requirement does not hold any water. A plain paper application submitted within seven weeks from the date of death of the employee should have been sufficient and acceptable by the respondent authorities.

Another argument presented by the respondent authority that since the deceased employee had died on 12.04.2006, therefore, the Notification No. 97-Emp dated 06.06.2005 should be applicable. If this Notification is to be relied then the application for compassionate employment could not be accepted.

The Tribunal has observed that the application of the applicant submitted on 13.11.2006 was finally considered by the respondent

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authorities on 30.08.2022. The respondent authority has not explained why an application pending before it since 2006 was not considered and a decision taken till the Tribunal's intervention in 2022. The statement made at para 4 of the reasoned order that a decision of the Department was communicated to the Superintending Engineer but not to the applicant is not a valid ground and such statement is not supported by any details. Therefore, it has to be accepted that the application of the applicant submitted on 13.11.2006 was finally considered and a decision taken only on 30.08.2022. Therefore, the argument that this case is covered by Notification No. 97-Emp dated 06.06.2005 is not tenable and not acceptable.

In terms of the prevailing Notification Nos. 251-Emp and 26-Emp, all applications pending for compassionate employment has to be enquired by a Three – men Screening-cum-Enquiry Committee. The objective of the scheme is to assess whether the family members of the deceased employee have been financially suffering due to the death of the earning member. In this case, it is evident that the Department had not constituted any such committee to enquire. Unless such a committee is set up and a detailed report presented, covering the financial aspect of the family, the department cannot on its own decide that the family is not in minimum need of financial assistance. It is true that compassionate appointment is not a vested right of the applicant but it is also necessary to have the committee enquire and report the details of financial aspects of the family. After such an enquiry the Department can come to conclusion whether the family has been suffering or not. The requirement of an enquiry is also reflected at para 14 (b) of Notification No. 251-Emp.

Therefore, in the light of the above observations and para 14 (b) of Notification No. 251-Emp, a direction is issued to the Respondent No. 2(i) – the Secretary, Public Works Department to constitute a Three – men

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Screening-cum-Enquiry Committee who shall enquire into the financial position of the applicant and advise the Department whether the family has been passing through serious financial difficulties or not. The final decision of the Department on the basis of such an Enquiry Committee should be completed within six months from the date of communication of this order and communicate the decision to the applicant within two weeks thereafter. The reasoned order no. 307 dated 30.08.2022 is hereby quashed and set aside.

Accordingly, the application is disposed of.

SAYEED AHMED BABA
Officiating Chairperson & Member (A)

S.M.