

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- 817 of 2016

Sk. Rezaul Karim VERSUS – The State of West Bengal & Ors..

Serial No. and
Date of order

For the Applicant : Mr. G.P. Banerjee,
Mr. S. Haque,
Learned Advocate.

21
15.06.2023

For the State
Respondents : Mrs. S. Agarwal,
Learned 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 sitting singly.

In the instant application, Sk. Rezaul Karim - the applicant has applied for a compassionate employment. The deceased father who died on 30.04.2011, had worked as Group – 'D' in the Department of Arsenic Division, P.H.E. Directorate, North 24-Parganas. The application for employment was made on 05.07.2011 within the time frame under the rules. Subsequently, an Enquiry Committee was set up which enquired and submitted its report recommending compassionate employment. The Enquiry Committee in its report on 23.07.2013 recommended employment assistance based on the socio-economic need of the family. However, when despite several prayers the respondents did not offer a substantive employment, the applicant approached the Tribunal through this OA in the year 2016. The Tribunal directed the respondents vide order dated 02.11.2016 to file a status report. Accordingly, the respondents filed a status report dated 06.02.2017. As per the status report, the family has already received death gratuity and other benefits and the widow is also getting the

family pension as well she is also the recipient of her own pension due to her service as a school teacher. In view of the above, the Chief Engineer (Planning & W.Q.M.), P.H.E. Directorate informs in his letter to the Superintendent Engineer, North 24-Parganas W/S Circle, P.H.E. Directorate with copy to the applicant regretting compassionate employment to the applicant as he is not eligible. 17 20.06.2022. Form No. Sk. Rezaul Karim. Vs. Case No. OA 817 of 2016. The State of West Bengal & Others. 2 S.M. Not satisfied with the decision of the respondents rejecting his prayer, the applicant challenged the impugned order on 16.01.2018. The letter dated 03.02.2021 addressed to Special Secretary, Public Health Engineering Department, Government of West Bengal by Chief Engineer, (Mech. / Elec.) Southern Zone, P.H.Engg. Dte. informs that "A vacancy in favour of Sri Sk. Rezaul Karim may be allotted from the vacancy position that already sent to them if otherwise eligible for job as per existing G.O.s of Labour Department." The matter was finally disposed of by the respondents through a letter 03.02.2022 from the Deputy Secretary to the Govt. of W.B. addressed to the Chief Engineer (M/E) S.Z. PHE Dte. The relevant portion of the order is as under :- "The undersigned is directed to inform him that prayer for employment assistance on compassionate ground in favour of Sk. Rezaul Karim, S/o Late Mozaffer Hussain , Ex-Guard under Barasat Arsenic Division, PHE Dte. forwarded from his end vide no. under reference is rejected as the applicant could not fulfil all requisite criteria as per No. 251-Emp. Dated 03.12.2013 read with 26-Emp. Dated 01.03.2016. Reason of Rejection: The total family income of the deceased is more than 90% of the gross monthly salary drawn by the deceased employee drawn immediately before death."

Mr. Banerjee submits that the respondent has rejected the application on the ground that the family income comes to more than 90 % of the gross salary of the deceased employee. Since in several judgements, the Hon'ble Apex Court as well as Hon'ble High Court has ordered that the family pension and other retiral benefits of the deceased employee cannot be a part of the family income, therefore, the impugned order of the respondent is bad in law and should be set aside.

Mrs. S. Agarwal, learned advocate for the State respondents submits copies of the relevant Apex Court Judgements to support her submission that any family of the deceased employee having received pension and other retiral benefits which are more than 90% of the gross salary of the deceased employee is not eligible for compassionate employment. These judgements be kept on record.

Mrs. S. Agarwal has submitted Para 19 of Hon'ble Apex Court judgement reported in (2019) 3 SCC 653 – State of Himachal Pradesh and Another Vs. Shashi Kumar. The relevant portion of the judgement is as under :-

“What the policy mandates is that the receipt of family pension should be taken into account in considering whether the family has been left in indigent circumstances requiring immediate means of subsistence. The receipt of family pension, therefore, one of the considerations which is to be taken into account. Para (10) (c) of the policy sets out the measures provided by the State which have a bearing on the financial need of the family.”

Mr. Banerjee has also submitted para 6 of the Hon'ble Apex Court Judgement reported in (2005) 10 SCC 289 –Govind

Prakash Verma Vs. Life Insurance Corporation of India & Ors.

The relevant portion of the judgement is as under:-

“In our view, it was wholly irrelevant for the departmental authorities and the learned Single Judge to take into consideration the amount which was being paid as family pension to the widow of the deceased (which amount, according to the appellant, has now been reduced to half) and other amounts paid on account of terminal benefits under the Rules. The Scheme of compassionate appointment is over and above whatever is admissible to the legal representatives of the deceased employee as benefits of service which one gets on the death of the employee. Therefore, compassionate appointment cannot be refused on the ground that any member of the family received the amounts admissible under the Rules.”

Mrs. Agarwal further submits that the rejection on the ground that the total income in a family exceed more than 90% of the gross salary of the deceased employee is supported under Notification 251-Emp dated 03.12.2013. The relevant portion of the Notification is as under :-

ORDER RESERVED.

SAYEED AHMED BABA
OFFICIATING CHAIRPERSON & MEMBER(A)

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