

**ORDER SHEET**

**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 817 OF 2016**

**SK. REZAUL KARIM - Vs - THE STATE OF WEST BENGAL & OTHERS**

Serial No. and  
Date of order

For the Applicant : Mr. Goutam Pathak Banerjee  
Advocate

23

17.01.2024

For the State Respondents : Mrs. Sunita 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 23<sup>rd</sup> 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.

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

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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. Not satisfied with the decision of the respondents rejecting his prayer, the applicant challenged the impugned order on 16.01.2018. A 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 is 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.”

It is submitted by Mr.G.P.Banerjee, learned counsel for the applicant that the respondents erred in rejecting the application by

including the family pension as part of the family income. He relies on the judgement by the Hon'ble Apex Court in (2005) 10 SCC 289 : Govind Prakash Verma Vs. Life Insurance Corporation of India & Ors., the relevant part of the such judgement is quoted as under:

*“ 6. 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.”*

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 :-

6: Eligibility : The monthly income of the family shall mean aggregate.

(I) Total family pension per month (Basic Pension and Dearness Reliefs, Medical Allowance).

Responding to the submission of Mr.G.P.Banerjee and relying on an Apex Court Judgement, Mrs.S.Agarwal, refers to para 6 of Notification No. 251-Emp dated 03.12.2013 and emphasises that the rule regarding calculation of gross family pension also includes the family pension received by the family. Thus, the respondent authority was correct in rejecting the application for compassionate employment on this ground.

After hearing the submissions of the learned counsels and after closed examination of the records, the Tribunal is of the view that the respondent authorities were correct in rejecting the application of the applicant for employment on compassionate ground. The primary reason given for such rejection being family income exceeding 90% of the gross salary of the deceased employee last drawn. It is to be appreciated that the very spirit of the scheme is to help the family overcome their financial stress after the sudden death of the earning member. But here in this case, though it was said the father of the family had died in harness, but he did not leave the family into complete financial insolvency. As pointed out by the inquiry report in its detailed report, the total earning of the family including the family pension of the deceased employee and the applicant's mother's own pension were sufficient for

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the family to sustain itself. From this inquiry report and the status report filed by the respondent authorities, the firm impression the Tribunal gets is that after the death of the father, the financial decision of the family did not deteriorate much lead the family in distress. Further, it is also to be understood that offer of compassionate employment is only available on certain conditions. One of the conditions to be fulfilled is to see that the total gross family income falls below 90% of the salary last drawn by the deceased employee. In this case, it has been proved that the family income remained above 90% of the gross salary drawn by the deceased employee. Compassionate employment is only a concession and not a vested right and all the criterias have to be fulfilled before such an employment is offered.

In view of the above observations, the Tribunal does not find any merit in a prayer to set aside the impugned order of the respondent authority rejecting the application for compassionate employment. The respondent authorities were right in correctly assessing the economic and financial situation of the family and thus, arriving at the conclusion that the family does not need any employment under die in harness scheme. Thus, this application is disposed of without passing any orders.

**(SAYEED AHMED BABA)**  
**OFFICIATING CHAIRPERSON AND MEMBER (A)**

BLR