

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 838 of 2022

Manoj Kumar Mishra - Vs - The State of West Bengal & Others.

Serial No. and
Date of order

For the Applicant : Mrs. S. Agarwal,
Learned Advocate. .

4

17.01.2024

For the State Respondents : None. .

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 parties, the case is taken up for consideration sitting singly.

Late Chullai Mishra, father of the applicant died in harness working as a work charged employee for 14 (fourteen) years on 22.11.2009. The son and this applicant, Manoj Mishra had applied for an employment under compassionate ground. However, the application was considered and rejected on the ground that his deceased father was a work charged employee and not on regular establishment. It also stated that as per the relevant Rules, employment on compassionate ground is offered only to the legal heirs of those deceased employees who had served in a regular establishment. This order came up for judicial review in this Tribunal and the Tribunal after considering all the aspects upheld the impugned order. The matter was also heard by the Hon'ble High Court in WPST - 170 of 2014 and WPST - 4 of 2016.

In terms of directions of the Hon'ble High Court, the Secretary, Department of Housing reconsidered the application but regretted it on the same ground that the deceased employee was a work charged employee and not appointed on regular basis. Since the deceased

ORDER SHEET

Form No.

**Manoj Kumar Mishra
Vs.**

Case No **OA 838 of 2022**

THE STATE OF WEST BENGAL & OTHERS.

employee was not on regular establishment, the application for compassionate employment for his son was not found admissible.

Having heard the submissions of the learned counsels and after close examination of the records, the Tribunal has the following observations which have not been denied by either of the parties :-

- i) That Chullai Mishra was appointed as a work charged khalasi on temporary basis. Though he served for more than 10 (ten) years in such capacity but he was never regularised in a post under regular establishment till his death.
- ii) The Scheme for compassionate employment very clearly lays down that compassionate employment is offered only to the legal heirs of the deceased employee in regular establishment.

That it is a fact that the deceased employee had worked for more than 10 (ten) years but no orders were passed to have him regularised in a regular post during his service time. Mere service for more than 10 (ten) years in the capacity of work charged khalasi will not automatically entitle the employee to be considered as a full time regular employee, even notionally. The fact that the deceased employee was appointed and remained till his death as a work charged khalasi has not been disputed by the applicant. Therefore, it leads to the logical conclusion that as per the provisions of the Rule, the deceased employee being a work charged employee, his legal heirs are not entitled for employment under compassionate ground. There was no doubt in the minds of the respondent authorities that such decision was in proper conformity to the Rule. The repeated contention of the applicant that his father having

ORDER SHEET

Form No.

Manoj Kumar Mishra
Vs.

Case No **OA 838 of 2022**

THE STATE OF WEST BENGAL & OTHERS.

worked for more than 10 (ten) years as a work charged employee ought to have been considered as an employee for a post in a regular establishment, is not legally tenable. Such assumption and conclusion would not only pave the way of compassionate employment for this applicant but will also open the pandora's box for every work charged/casual/part time/temporary employees to apply for compassionate employment.

As of today, the Rule regarding compassionate employment is clear and limited only to the legal heirs of the deceased employee having died in service holding a regular post. Unless and until the Government amends the Rule and includes legal heirs of work charged employees to be eligible for compassionate employment, the prayer of this applicant remains inadmissible. With the above observation this application, having no merit, is disposed of without passing any orders.

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

sc