

**ORDER SHEET**

**WEST BENGAL ADMINISTRATIVE TRIBUNAL**

Bikash Bhavan, Salt Lake, Kolkata – 700 091.

**Present-**

**The Hon'ble Justice Soumitra Pal, Chairman**

**Case No. – O.A. 84 of 2019**

**KIRON KHAN & ANOTHER – VERSUS- THE STATE OF WEST BENGAL & ORS.**

Serial No. and Date of order	For the Applicants	: Mr. Masud Karim, Advocate
<u>11</u> 07.07.2022	For the State Respondents	: Mr. Gautam Pathak Banerjee, Advocate
	For the Respondent No. 7 & 8	: Mr. Saptarshi Chakraborty, Advocate

The matter is taken up by the single Bench pursuant to the order contained in the Notification No.118-WBAT/1E-08/2003 (Pt.-II) dated 11<sup>th</sup> February, 2022 issued in exercise of the powers conferred under section 6(5) of the Administrative Tribunals Act, 1985.

The Registry has published a supplementary cause list enlisting the matter under the heading “Order”. Let a copy of the supplementary cause list be kept on record.

In this application, Kiron Khan and Khodija Bibi, the applicants have prayed for certain reliefs, the relevant portion of which is as under:

- (a) *An order do issue directing the irrigation and Water Ways Secretary to Set aside and an quash the order dated 30.11.2018.*
- (b) *An order, do issue, directing the irrigation and Water Ways Directorate, Mayurakshi South Canal Circle to issue necessary appointment letter in favour of the applicant No.1 under compassionate ground due to sudden death of his father who was “Khalasi” lastly posted at Bharatpur Section after setting aside quashing the order dated 30.11.2018.*
- (c) *An order do issue directing the irrigation and Water Ways Directorate, Mayurakshi South Canal Circle to release all retirement / pensionary benefits in favour of the applicant No.2.*
- (d) *An order do issue, directing the concerned respondents to complete*

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*the proceeding including the enquiry for appointment of the applicant No.1 under compassionate ground due to sudden death of the father of the applicant within a period of 4 weeks from the date on the basis of the Circulars and Notifications and Revised Guide Lines applicable on the date of death of the deceased employee.*

*(e) An order do issue directing the concerned respondents to consider the prayer of the applicant No.1 for appointment under compassionate ground on the basis of the Notification and Circulars issued by the Government of West Bengal and also applicable in case of the applicant as on the date of the death of his father.”*

It is submitted by Mr. Masud Karim, learned advocate for the applicants that the reasoned order dated 30<sup>th</sup> November, 2018 passed by the Secretary Irrigation and Waterways Department pursuant to the directions contained in the order dated 30<sup>th</sup> November, 2018 passed in O.A. 123 of 2015 : Absar Khan + Another vs. The State of West Bengal & Ors., rejecting the prayer of the applicant no.1 for compassionate appointment under the died-in-harness category is without any substance as the said order is contradictory and mere working in Saudi Arabia and other parts of India, cannot be a ground for rejection of the prayer for compassionate appointment. Moreover as the private respondent no. 7 is not the married wife of late Ahammed Ali Khan, therefore, Absar Khan, the private respondent no.8 cannot be considered for compassionate appointment. Moreover, the issue regarding the status of the private respondent no.7 as wife of Ahammed Ali Khan claiming to be the wife of late Ahammed Ali Khan is subjudice in view of the Title Suit No. 26 of 2018 pending before the Civil Court. Since Absar Khan is married and has been living separately before the death of Ahammed Ali Khan, stated to be his father and was not dependent on the income of his father, he is not entitled to be

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considered for compassionate appointment in the died-in-harness category.

Mr. Gautam Pathak Banerjee, learned advocate appearing on behalf of the State respondents, relying on the reply submits that the reasoned order dated 30<sup>th</sup> November, 2018, by the Secretary, Irrigation and Waterways Department, Government of West Bengal, Kolkata, was passed after considering the report furnished by the Officer-in-Charge, Bharatpur Police Station, Murshidabad, appearing at page 8 of the said reply filed by the State respondents and it appears the applicants have not denied that on the date of local enquiry, Kiron Khan, the applicant no.1 was residing in Saudi Arabia for two and half / 3 years and on the date of hearing on 5<sup>th</sup> June, 2018 he was staying in Saudi Arabia. Khadija Bibi, the applicant no.2, mother of Kiron Khan, stated that her son was at Bombay for the last 6 months, but she did not give any whereabouts about the applicant no.1. Moreover it appears from the report, local people stated that they have not seen him for last three years. According to him the said report which was the basis of the reasoned order dated 30<sup>th</sup> November, 2018, has not been challenged effectively in the original application. Rather they have accepted the fact that on the date of enquiry, Kiron Khan was in Saudi Arabia. So far as the allegation regarding submission of Absar Khan, the private respondent no.7 got married before the death of his father and hence, cannot be considered for compassionate ground, may not be accepted as it does not form part of the pleadings in the original application and has only been referred to in the rejoinder.

With regard to the grant of pensionary retirement benefits, it is submitted that the same has already been released in equal shares amongst the heirs of late Ahammed Ali Khan which is also submitted by Mr. Saptarshi Chakraborty, learned advocate for the private respondent nos. 7 and 8.

It is to be noted that a compassionate appointment in the died-in-harness category is granted to a person who is in immediate need of assistance. Relying

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on the police report, dated 2<sup>nd</sup> July, 2018 prepared by the Officer-in-Charge, Bharatpur Police Station, Murshidabad, the Secretary, Irrigation and Waterways Department has come to the conclusion that as Kiran Khan, the applicant no.1 has been staying in Saudi Arabia for long and have no immediate requirement for compassionate appointment in the died-in-harness category owing to the death of late Ahammed Ali Khan, has not been denied by the applicants that on the date of enquiry, Kiron Khan, the applicant no.1 was in Saudi Arabia and, therefore, he had no immediate need for compassionate appointment. Therefore the order of the Secretary, Irrigation and Waterways Department Government of West Bengal, the respondent no.1 directing consideration of the prayer of Absar Khan for compassionate appointment is just and proper.

So far as the objection regarding Absar Khan, the private respondent no.8, being considered for compassionate appointment in the died-in-harness category raised on behalf of the applicant, being the married son of Ahammed Ali Khan, cannot be accepted as there are no pleadings in the original application which has been raised in the rejoinder which cannot be accepted.

So far as the pendency of the civil suit is concerned, I am of the view that as it appears from the prayers, it relates to the dispute regarding disbursement of death gratuity and family pension which has been already disbursed pursuant to the reasoned order dated 27<sup>th</sup> July, 2018, passed by the respondent no.1, which has been annexed to the reply filed by the State respondents and as the fact of disbursement has been supported by the learned advocate appearing on behalf of the private respondent nos. 7 and 8 no order is passed on the application. The application is dismissed.

SCN.

(SOUMITRA PAL)  
CHAIRMAN