

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. RA – 07 of 2022 (OA – 990 of 2018)

Ainul Mia - VERSUS - THE STATE OF WEST BENGAL & ORS.

Serial No. and Date of order	For the Applicant	: Mr. D.K. Mukherjee, Advocate
<u>6</u> 21.03.2023	For the Respondents	: Mr. S.N. Ray, Advocate

The matter is taken up by the Single Bench pursuant to the order contained in the Notification No. 638 – WBAT / 2J-15/2016 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, the case is taken up for consideration sitting singly.

The prayer in this application is for review of the Tribunal's M.A. 11 of 2019 dated **11.04.2022**, in which the prayer for condonation of more than **11** years delay was not allowed.

Submission of Mr. Mukherjee is that the applicant after death of his father in **2007** had submitted an application for compassionate employment in **2016**. Therefore, the delay should be counted from the date the application was furnished by the applicant before the respondent.

Mr. Ray relying on the Order XLVII, Rule 1 of the CPC submits that this review application is not admissible because no new facts had been submitted. Mr. Ray also refers to the EMP – 26 Notification 10(a)(a) dated 1st March, 2016, in which belated application of up to 5 years can be considered on the following two conditions –

- (i) Death during action
- (ii) Where none in the family is eligible.

From the submission of the learned counsels and the records, the following fact are noted –

- (i) The employee, **Ibrahim Mia**, Ex-Rasham-Karmee died-in-harness on **28.11.2007** leaving behind widow and four minor children.
- (ii) That the applicant **Md. Ainul Mia** when he attained adulthood applied for compassionate appointment on **24.02.2016 in a pro-forma application**.

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Mr. Mukherjee relies on 10(a)(a) of 26 EMP Notification dated 1st March, 2016 of the Labour Department, in which a maximum of five years delay can be considered provided the applicant's case match the following two conditions –

- (i) Death during action and
- (ii) Where none in family is eligible.

It is clear that the pro-forma application submitted by the applicant, which is not verifiable was submitted after around 9 years. Therefore, concession under 26 EMP is not available to the applicant. It is also clear that the above two conditions mentioned in 26 EMP are not met by the applicant.

So far the question of condonation of delay is concerned, the law is very clear that unless the Tribunal is satisfied that without the fault for the petitioner, the delay had occurred. In this case, it is very clear that the applicant has not been able to substantiate and satisfy the Tribunal that the delay was not caused by his fault.

After considering the application and reviewing above observations, the prayer for review of the Tribunal's order is not allowed. Hence, the application is disposed of.

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

A.K.P