

ORDER SHEET

WEST BENGAL ADMINISTRATIVE TRIBUNAL

Present-

**The Hon'ble JUSTICE RANJIT KUMAR BAG
& The Hon'ble DR. SUBESH KUMAR DAS**

Case No – CCP 175 OF 2016

**SK MESBAUDDIJN MOLLA Vs Shri Pravat Kumar Mishra, Secretary Water Resources Investigation & Development
Department, Government of West Bengal**

Serial No. and Date of order. 1	Order of the Tribunal with signature 2	Office action with date and dated signature of parties when necessary 3
<p style="text-align: center;"><u>07</u> 20.03.2018</p>	<p><i>For the Applicant : Mrs. S. Mitra , Learned Advocate.</i></p> <p><i>For the Respondents : Mr. S. Ghosh, Learned Advocate.</i></p> <p style="text-align: center;"><i>The affidavit of compliance submitted on behalf of the contemnor today is kept on record.</i></p> <p style="text-align: center;"><i>Liberty is given to the advocate on record for the applicant to incorporate the name of the present contemnor by way of amendment of cause title of contempt application in course of this day.</i></p> <p style="text-align: center;"><i>Mr. Ghosh Learned Counsel for the contemnor has produced the original file of the department which is returned to him after perusal.</i></p> <p style="text-align: center;"><i>The applicant has prayed for issuance of the contempt rule against the contemnor for intentional violation of order dated August 24, 2015 passed by the Tribunal in O.A No. 142 of 2014. On consideration of the order dated August 24. 2015, we find that the contemnor was directed to consider the case of the applicant for compassionate</i></p>	

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appointment by taking into consideration the points discussed in the order and to take a decision on the basis of existing materials and the report of Three Men Enquiry Committee and after giving the applicant an opportunity of hearing, if necessary, within a period of 8 (eight) weeks from the date of communication of the order. During pendency of the contempt application, the Assistant Secretary to the Government of West Bengal, Department of Water Resources Investigation & Development communicated to the Director of Personnel & Ex-Officio Chief Engineer, Directorate of Water Resources Development on November 29, 2017 that prayer of the applicant for compassionate appointment was rejected on the ground that the applicant was overaged. Since there is no provision in Notification No. 251-EMP dated December 03, 2013 issued by the Labour Department, Government of West Bengal for rejection of an application for compassionate appointment on the ground of overage, on February 26, 2018 we directed the contemnor to produce the original file of the department containing the notings of the officials including Principal Secretary of the concerned department for our consideration. The contemnor was further directed on February 26, 2018 to file an affidavit describing in details how the order of the Tribunal has been complied with by the contemnor on this date of hearing. Accordingly, the

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affidavit of compliance has been filed by the contemnor on this date.

It appears from paragraph 8 of the affidavit of compliance submitted by the contemnor that Shri Navin prakash, the then Additional Chief Secretary in charge of the department of Water Resources Investigation & Development took the decision to reject the prayer of the applicant for compassionate appointment on the ground of overage as the age limit for appointment in Group-D post is 18 years to 37 years and as on January 01, 2017 the age of the applicant was 43 years.

We have already observed that there is no provision in Notification No. 251-EMP dated December 03, 2013 issued by the Labour Department, Government of West Bengal for rejection of the application for compassionate appointment on the ground of overage. On the contrary, Note to paragraph 6 of the said Notification No. 251-EMP dated December 03, 2013 issued by the Labour Department, Government of West Bengal clearly lays down the provisions for condonation of excess in age in case of eligible candidates by the respective heads of the department or their subordinate officers who are competent to make compassionate appointment as per the said provisions. Since we are not at all satisfied with the

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manner by which prayer of the applicant was rejected on the ground of overage by ignoring the provisions of the Notification dated December 3, 2013 of the Labour Department, Government of West Bengal and since the present contemnor had no role in rejection of payer of the applicant on the ground of overage, we are inclined to give the present contemnor an opportunity to comply with the order of this Tribunal by taking fresh decision in connection with the compassionate appointment of the applicant on the basis of Notification No. 251-EMP dated December 03, 2013 issued by the Labour Department, Government of West Bengal.

In view of our above observations, we are not accepting the report of compliance submitted by the contemnor in connection with the present contempt application. The contemnor is directed to take fresh decision in connection with appointment of the applicant on compassionate ground on the basis of existing materials and in accordance with provisions of Notification No. 251-EMP dated December 03, 2013 issued by the Labour Department, Government of West Bengal and on consideration of the fact that the application for compassionate appointment was submitted on 07.06.2006 within a period of 8 (eight) weeks from this date.

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*List the matter under the heading "for order" on
16.05.2018 .*

*Let a plain copy of this order be supplied to both the
parties.*

(S.K.DAS)
Member (A)

(R.K.BAG)
Member (J)

H.S

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