

**IN THE WEST BENGAL ADMINISTRATIVE TRIBUNAL
BIKASH BHAVAN, SALT LAKE CITY
K O L K A T A – 7 0 0 0 9 1**

Present :-

**The Hon'ble Mrs. Urmita Datta (Sen)
MEMBER (J)**

-AND-

**The Hon'ble Mr. P. Ramesh Kumar
MEMBER(A)**

**J U D G E M E N T
-of-
Case No. OA-21 of 2016**

Sanjoy Singh Tamta.....Applicant.

-Versus-

State of West Bengal & others....Respondents

For the Applicants :-

**Mr. Tarapada Das,
Learned Advocate**

For the State Respondents :-

**Mr. Ruhul Amin Chowdhury,
Learned Advocate**

Judgement delivered on :

01-03-2019

**The Judgement of the Tribunal was delivered by :-
Hon'ble Mrs. Urmita Datta (Sen), Member(J)**

J U D G E M E N T

The instant application has been filed praying for the following reliefs :

- a) **An order direction upon the respondents and/or their agents to show-cause as to why the impugned order dated 08-06-2015 passed by the Principal Secretary to the Government of West Bengal, Home Department should not be set-aside, cancel, rescind or quashed in connection with the appointment to the post of Constable/Group-D post in any establishment of the State forthwith on compassionate ground who died-in-harness category;**
- b) **A direction upon the respondents and/or their agents to provide one employment to the post of Constable/Group-D post in any establishment of the State forthwith on compassionate ground who died-in-harness category at an early date;**
- c) **A direction upon the respondents and/or their agents to produce the entire records of the case of the applicant before this Hon'ble Tribunal at the time of hearing of this application, so that conscionable Justice may also be rendered;**
- d) **And/or to pass such other order or orders as Your Lordships may deem fit and proper including order as to costs and compensation to your applicant;**

And your applicant is in duty bound shall ever pray;

As per the applicant, his father died on 18-01-1996 while in service leaving behind his wife, one son (applicant) and one married daughter. Since his mother was suffering from liver disease from 1998-1999, his mother applied for compassionate appointment for the post of constable in favour of the applicant on 12-01-2000 i.e. after the applicant had attained major.

Thereafter, the applicant was called for physical measurement for the purpose of considering his case on compassionate ground. However, he was not found fit in physical measurement test in 2004 and again on the request of the mother of the applicant his physical measurement test was conducted. However he was not found fit as per the prescribed measurement. Thereafter the mother of the applicant had prayed for condonation of deficiency in height. However according to the applicant, the government vide order dated 29-12-2006 had granted approval for condonation of deficiency in height for the post of constable provided the applicant otherwise found fit for appointment to the said post as per the existing Rules and Orders.

Thereafter, the mother of the applicant again applied on 07-09-2011 for compassionate appointment in favour of the applicant for Group-D post in place of constable. Subsequently, the applicant filed one OA No. 380 of 2013, which was disposed of by this Tribunal vide order dated 06-06-2013 with a direction to the Secretary, Govt. of West Bengal, Department of Home (Police) to consider the prayer of the applicant treating the said application as a representation and to pass a reasoned and speaking order after granting him an opportunity of hearing.

However, the respondent, vide order dated 08-06-2015, had rejected the claim of the applicant on the ground of late submission of application before the authority as well as on the ground that he was minor at the time of death of the deceased employee. Therefore, he was not found eligible as per this scheme for compassionate appointment. Being aggrieved with, he has filed the instant application.

The respondents have filed their reply wherein they have stated that the mother of the applicant made an application for compassionate appointment in favour of the applicant after 4(four) years from the date of death of the deceased employee after the applicant attained major. It has been further stated by the respondents that the applicant was granted repeated opportunities for physical measurement. However, not only he was found unfit in height measurement but was found deficient in all criteria i.e. chest, weight and height. Even then, he was granted repeated opportunities for re-measurement but was not found fit. In the mean time, vide order dated 29-12-2006, the condonation of deficiency in height was granted provided the applicant would be found otherwise fit but he failed to fulfill the other eligibility criteria. Thereafter on the request made by the mother of the applicant his case was considered for Group-D. After considering all aspects as per the scheme of the government for the compassionate appointment, the applicant was not found fit basically on 2(two) grounds i.e. the application for compassionate appointment was made after 4(four) years from the date of death of the deceased employee. Therefore it proves that the applicant did not have any immediate financial crisis. Secondly the applicant was minor at the time of death of the deceased employee. Therefore as per the government scheme, compassionate appointment cannot be deferred for long. Accordingly, respondents have prayed for dismissal of the OA.

The applicant has filed rejoinder mainly reiterating the same submission. During the course of the hearing the Counsel for the applicant has referred the following judgements and has prayed for extension of benefit of those judgements :-

(1) WPST 1393 of 2008

Prosanta Kumar Das

-vs-

State of West Bengal & Others.

(2) WPST No. 544 of 2010**Manas Ranjan Kumar****-vs-****State of West Bengal & Others.****(3) W.P No. 25164(W) of 2014****Shib Narayan Das****-vs-****The State of West Bengal & Others.****(4) W.P.C.T 201 of 2015****Sri Santosh Kumar Sahoo****-vs-****Union of India & Others.**

We have heard both the parties and perused the records. It is an admitted fact that the mother of the applicant had made application for compassionate appointment in favour of the applicant on 12-01-2000 i.e. after 4(four) years from the date of death of his father (who died on 18-01-1996). It is noted that the Principal Secretary, Government of West Bengal, Home (Police) Department while disposing of the application of the applicant as per the order of this Tribunal and had specifically stated that the Labour Department of the Government of West Bengal in respect of compassionate appointment notified the scheme regulating the appointment on compassionate ground under 251-EMP dated 03-12-2013 in suppression of all previous orders in this respect and guidelines regarding old undisposed cases was also included in the said notification.

In our considered view, the applicant had admittedly filed the application for compassionate appointment after 4(four) years. It is noted that though repeated opportunities were granted for measurement/re-measurement of physical fitness criteria but the applicant was not found

fit in all criteria laid down for the post of constable and ultimately the mother of the applicant again applied for compassionate appointment for the applicant for the post of Group-D. It is further observed that the Principal Secretary vide his order dated 08-06-2015 had rejected the claim of the applicant on following grounds :-

- 1. “The date of death of deceased employee in the present case was 18-01-1996 and the first application for compassionate appointment was submitted on 12-01-2000. So the first application was submitted long after stipulated two years period in Para 14(a) referred to above in respect of pre 02-04-2008 cases and, therefore the said application is not liable to be entertained as per provision of the said Govt. Scheme. Now, since the application is not entertainable under Para 14(a) of the said Scheme, provision of Para 14(b) referred to above is also not applicable for the case.**
- 2. Moreover, the date of birth of applicant is 19-12-1981 and his age was only 14 years 29 days at the time of death of his father. This contravenes the provision of Para 6© of the Notification 251-EMP dated 03-12-2013 shown above.**
- 3. The applicant was a minor at the time of death of his father and the application was submitted after almost four years from the death of his father and after attaining adulthood. But the benefit of providing compassionate appointment is not supposed to be given as a deferred benefit and instead the**

scheme is based on very purpose of providing financial assistance which the family of the deceased may be in immediate need of . The very necessity of financial assistance in the instant case is not substantiated as Smt. Laxmi Rani Singh Tamta, wife of the deceased employee never applied for compassionate employment for herself but applied for her son only when he became adult after long four years from the date of the death of deceased employee. If there was any immediate need of financial assistance she could have applied earlier for job on compassionate ground for herself”.

We have also gone through the judgements referred by the Counsel for the applicant. However those judgements are not relevant as in all the cases, the claim of the applicants were rejected on the ground of no financial crisis after taking the death-cum-retirement benefit of the deceased employee, but in the instant case grounds for rejection are quite different. Therefore the aforesaid judgements are distinguishable with the instant case. The case of **Sri Santosh Kumar Sahoo –vs- Union of India & Others** is also quite distinguishable as the aforementioned case was rejected on the ground of efflux of time in filing the original application before the Tribunal from the date of death of the deceased employee to the date of filing of the original application. But in the instant case the mother of the applicant had applied for compassionate appointment in favour of the applicant for the first time after 4(four) years from the date of death of the deceased employee.

The Hon’ble Apex Court in the case of Umesh Kumar Nagpal Vs. State of Hariyana reported in 1994 (4) SCC 138 has held that the whole object of granting compassionate appointment is to enable the family to overcome the sudden crisis occurs due to death of sole bread earner. However,

compassionate employment has necessarily to be made as per the Rules or by the Executive instruction issued by the Government or Public Authority concern but cannot be granted after lapse of reasonable period. It is noted that though the applicant has claimed that his mother could not apply for compassionate appointment within time due to her Liver disease for the period from 1998-1999, however from the perusal of the documents, it is observed that one Medical Certificate dated 05-07-2015 was issued indicating that during 1998-1999 she was ill due to Liver Cyst but in contrary to that one U.S.G. report (Annexure-B) dated 11-12-2008, had indicated Hepatic Cyst. Therefore, the claim of the applicant i.e. his mother was ill due to Liver diseases is self contradictory as per his own documents. Therefore the delay in filing the application for compassionate appointment before the authority is not appreciable. Further as the applicant was minor at the time of death of the deceased employee and there is specific bar for 'Minor' in different Departmental Circulars/G.O.s, therefore in our considered view the respondents have rightly rejected the claim of the applicant Thus we do not find any merit to entertain the OA.

Accordingly, the OA is dismissed with the above observations being devoid of any merit with no order as to cost.

P. RAMESH KUMAR
MEMBER (A)

URMITA DATTA(SEN)
MEMBER(J)

