

**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-105 of 2017**

Souvik Karmakar.....Applicant.

-Versus-

State of West Bengal & others....Respondents

For the Applicant

**:- Mrs. Sonali Mitra,
Learned Advocate**

For the State Respondents :-

**Mr. S. N. Roy,
Learned Advocate**

Judgement delivered on : 4th February, 2020

**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 do issue directing the respondents, their agents, subordinates and successors to rescind, cancel and withdraw the impugned memo dated 08-11-2016 in Annexure-F to this application forthwith;**
- b) An order do issue directing the respondents, their agents, subordinates and successors to grant compassionate appointment to the applicant under the died-in-harness category in any post commensurate with his educational qualification forthwith without any hindrance from any quarters;**
- c) An order directing the respondents, their agents, subordinates and successors to produce all records and proceedings so that conscionable justice may be administered by granting the relief for hereinabove;**
- d) To pass such other or further order or orders as to the Hon'ble Tribunal may deem fit and proper;**

As per the applicant, his father died on 03-02-2010 leaving behind the applicant, his mother and one sister. After the death of his father, the mother of the applicant made an application on 04-06-2010 praying for compassionate appointment in favour of her daughter Ms. Bisakha Karmakar since the applicant was minor at that relevant point of time (Annexure-B). In the mean time, the applicant attained majority, and the mother of the applicant submitted an application dated 06-11-2012 praying for grant of compassionate appointment in favour of the applicant in place of her daughter on 17-11-2015. The Joint Commissioner of Excise, however, has turned down the claim of the applicant (Annexure-D). The applicant further made an application for revisiting the matter. Subsequently 3(three) Men Enquiry Committee was constituted, however

they did not recommend the case of the applicant on the ground that the applicant is not fulfilling the criteria of the Notifications for compassionate appointment (Annexure-E). Thereafter the Additional Excise Commissioner communicate the decision of the Commissioner by way of rejecting the claim of the applicant vide Memo dated 08-11-2016 (Annexure-F). Being aggrieved with, he has filed the instant applicant. In the mean time, the applicant got information under RTI Act that one Dipaniwita Bhadra, who was also minor at the time of death of her father was granted compassionate appointment after a long time. Therefore as per the applicant his case should not be rejected being minor.

2. The respondents have filed their reply wherein they have stated that the case of the applicant was not found fit as the mother of the applicant earlier had filed application for consideration of her daughter as the applicant was minor at that point of time. Subsequently when the applicant got majority, she had prayed for compassionate appointment in favour of the applicant. In such background, the Enquiry Committee had found that if the family could have survived for a period of more than 4(four) years after the death of the deceased employee and waited for attaining majority of the applicant, the main purpose of granting financial assistance to the family of the deceased employee has already been frustrated. Further as per the respondents, the compassionate appointment is not a matter of right and it cannot be interchangeable. Therefore the claim of the applicant has been rightly rejected by the respondents. The Counsel for the respondent has further submitted that even if one person has been granted any benefit wrongly that cannot be perpetuated forever. However the case of the applicant is not only rejected on the ground of minority but on the ground that they did not have any immediate need of financial assistance as they could have waited for 4(four) years to get the compassionate appointment.

3. The applicant has filed rejoinder basically reiterating his earlier submission.

4. We have heard both the parties and perused the records. The case of the applicant was earlier rejected on 17-11-2015, which the applicant never challenge. Instead of that he made further application for consideration of his case and the respondents had constituted 3(men) Enquiry Committee which had observed the following :-

“ Smt. Putul Karmakar, w/o the deceased employee also submitted affidavit declaring no objection in favour of his son Sri Souvik Karmakar for appointment on compassionate ground instead of her daughter Smt. Bisakha Karmakar. It appears from such action of the family members of the deceased, that they virtually waited for the only male member of the family Sri Souvik Karmakar to attain majority nearly after two years nine months of death of Ex-employees Lt. Satya Ranjan Karmakar.

It also transpired from the changed belated request for appointment in favour of Sri Souvik Karmakar, that the family could manage for a period of more than two years after their death of their father, despite being a sole bread winner.

Moreover the financial benefits accrued in course death of the deceased Lt. Satya Ranjan Karmakar were perhaps sufficient enough to sustain the family to meet the immediate financial needs in order to relive it from the economic distress. The application of Sri Souvik Karmakar does not conform to the schemes under 10(a) of the Notification No: 251 Emp dt : 03-12-2013. Such prayer was rejected earlier by the Joint Commissioner of Excise, Alipore Excise Division.

In the present scenario the application of Sri Souvik Karmakar for appointment on compassionate ground after the death of his father does not conform to Rule 10(aa) as per Notification 26-Emp dated : 01-03-2016 for consideration of belated request for appointment in exceptional cases as well due to reason already stated above”.

It is a settled principle of law that the compassionate appointment is not a matter of right however the respondent may extend the benefit of compassionate appointment as a benevolent employer to tide over the sudden financial crisis caused due to the sudden demise of the sole bread earner. In the case of Umesh Kumar Nagpal Vs. State of Haryana reported in (1994) 4 SCC 138, the Hon'ble Apex Court made it amply clear that compassionate appointment is not a matter of hereditary right to get the job and that too after a long period of time. In the instant case, admittedly the applicant was minor at the time of death of the deceased employee and had approached the authority after a long 4(four) years of time from the date of death of his father and that too in place of her sister. The Enquiry Authority after conducting the enquiry had clearly observed that the applicant approached them after a long time which establishes the fact that the family of the applicant could have survived without any financial assistance for a long time. Therefore the case of the applicant has admittedly not been rejected on the ground of minority. Thus the case of Dipaniwita Bhadra has no relevancy in the instant case. Even he never challenged the earlier rejection order dated 17-11-2015, which has attained finality. Therefore we do not find any reason to interfere with the decision of the respondent authority.

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

P. RAMESH KUMAR
MEMBER (A)

URMITA DATTA(SEN)
MEMBER(J)

