

**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. UrmitaDatta(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-665 of 2017**

**Kakoli Majumdar.....Applicant.**

**-Versus-**

**State of West Bengal & others....Respondents**

**For the Applicants :- Mr. S. Das,  
Ms. L. Moitra,  
Learned Advocates**

**For the State Respondents :- Mr. G. P. Banerjee,  
Learned Advocate**

**Judgement delivered on : 30-08-2019**

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

## J U D G E M E N T

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

- i) An order setting aside and quashing the order dated November 11, 2016 of the respondent no. 2 by which the prayer of appointment on compassionate ground of the applicant was rejected.**
- ii) An order directing the respondent authorities to appoint the applicant in a suitable post on compassionate grounds under the Government of West Bengal.**
- iii) Such other order orders as to this Hon'ble Tribunal may deem fit and proper.**

As per the applicant, her father died on 26-09-2014 leaving behind her mother, one brother and the applicant. However, as per the applicant, her brother is staying separately and not looking after the family. Therefore as the applicant and her mother were dependent upon her father, the applicant approached the authority for compassionate appointment on 20-12-2014. Subsequently one Enquiry Committee was constituted, who had recommended the case of the applicant through enquiry report dated 17-02-2016(Annexure-A/6). However the Joint Secretary to the Government of West Bengal, Public Works Department vide his Memo Dated 11-11-2016 (Annexure-A/7) had rejected the claim of the applicant on the ground that the total family income is more than 90% of the gross monthly salary of the deceased employee after taking into consideration the income of the son (brother of the applicant) who leaving separately. Being aggrieved with, she has filed the instant application.

2. As per the applicant though the Enquiry Committee after necessary enquiry had made it clear that the brother of the applicant is not leaving with them nor he is looking after the family even then the respondent no. 1 had taken into account the income of the brother of the applicant and had rejected her prayer and ignoring the financial crisis faced by the applicant and her ignoring the findings of the Enquiry Committee.

3. The respondents have filed their reply and submitted that first of all there is some factual wrong in the calculation of last monthly salary drawn by the deceased employee as it would be Rs. 17,179/- but not Rs. 16,239/- as stated by the applicant. It has been further submitted that as per the report dated 22-04-2015 submitted by the Executive Engineer as well as report dated 21-04-2015 and 30-04-2015 submitted by the Assistant Engineer, Midnapore Sub Division-1, Social Sector, P. W. Directorate, it would transpired that Shri Biswajit Majumdar, the only son of the deceased employee doing service as Group-D employee in Indian Railway and drawing gross pay of Rs. 18,150/- and the applicant is also earning Rs. 10,000/- p.a. through tuition (Annexure-R/2). However as per the respondents, the Chief Engineer vide his Memo dated 01-10-2015 had only forwarded his documents but he did not recommended for any compassionate appointment in favour of the applicant (Annexure-R/3). Therefore the respondent no. 1 had taken into account the income of the son of the deceased employee as per Rules and as after calculation, the gross income of the family was found to be more than 90% of the gross salary of the deceased employee. Therefore the respondents have rightly rejected the claim of the applicant.

4. The applicant has filed the rejoinder controverting submission of the respondents. It has been further submitted that from the perusal of the enquiry report, it would be evident that the brother of the applicant is leaving separately. Therefore his income should not be considered towards calculation of the total monthly income of the family. The Counsel for the applicant has filed the following judgements :-

**(1) 2010 (1) CHN (CAL) 665****Swati Chatterjee****-Vs-****State of West Bengal and Others.****W.P.S.T. No. 21 of 2010****(2) Karnataka High Court.****Susheela B. Bhakta And Another****-Vs-****Karnataka State Road Transport**

5. We have heard both the parties and perused the records. It is noted that the respondent no. 1 vide his order dated 11-11-2016 has held inter alia :-

**“It is established from the Enquiry Committee Report that the son of the deceased is an employee of Indian Railway and has been drawing Rs. 18,150/- p.m. as on 01-12-2015. The concerned authority has furnished the calculation sheet excluding the income of the son of the deceased and as such he monthly income of the family of the deceased falls below the 90% of last gross pay of the deceased employee.**

**Opinion of Labour Department is sought for in this regard as to whether any dependent member of the family of the deceased is entitled to be considered for compassionate appointment where one of the three dependents is in Central Government Service. Labour Department vide its U.O. No. 331-Emp dated 18-10-2016 informed that as per provision laid down in Labour Department Notification No. 251-Emp dated 03-12-2013, income of the employed son of the**

**deceased is to be taken into consideration towards calculating the total monthly income of the family of the deceased.**

**After taking into consideration of the income of the son of the deceased, submitted by the concerned authority, it is seen that monthly income of the family of the deceased does not fall below the 90% of the gross monthly salary of the employee before death or the monthly income of the family does not fall below the minimum salary of a Group-D employee. As per prevalent rules issued by the Government in this regard vide Para 13 (c) & 6 (a) (i) & (ii) of Labour Department's notification No. 251-Emp dated 03-12-2013 that compassionate appointment shall be offered to a dependent family member of a deceased Government employee if the monthly income of the family of the deceased falls below the 90% of the gross monthly salary of the employee before death or the monthly income of the family falls below the Minimum salary of a Group-D employee.**

**In view of the said facts, it is concluded that none of the abovementioned two conditions for having employment on compassionate ground as stipulated in Labour Department's order no. was fulfilled in the instant case. Thus, the prayer of the applicant is considered, but rejected, due to the reason stated above."**

From the perusal of the above, it is noted that though the respondent no. 1 has taken care of enquiry report of the enquiry committee constituted for the purpose of compassionate appointment of the applicant and further the respondent no. 1 had observed that the enquiry committee, (while calculating

the total income) had not considered the income of the son as per rules. However, the respondent no. 1, while considering the case of the applicant, had taken care of the income of the son of the deceased employee but had not observed anything contrary of the observation/opinion of the enquiry committee, who had opined that son of the deceased employee is living separately. Therefore in our opinion though generally the income of the son has to be considered while calculating the total family income but if on enquiry, it would be found that the son is not looking after the dependent family members while leaving separately, in that case, there should be clear observation on the part of the authority to that effect. Therefore unless the competent authority would get any contrary report with regard to the financial condition and information's regarding the family, generally the enquiry report has to be accepted.

6. In view of the above, we quash and set aside the impugned order dated 11-11-2016 and remand back the matter to the respondent no. 1 to enquire into the matter a fresh with regard to the financial involvement of the son in his family by way of further fresh enquiry with regard to factual aspects of this matter and to take a decision with regard to actual financial crisis of the applicant and her compassionate appointment and to communicate the same by way of reasoned and speaking order within a period of 12 weeks from the date of receipt of this order.

7. Accordingly, the OA is disposed of with above observations and direction with no order as to cost.

**P. RAMESH KUMAR**  
**MEMBER (A)**

**URMITA DATTA (SEN)**  
**MEMBER (J)**

