

ORDER SHEET**WEST BENGAL ADMINISTRATIVE TRIBUNAL****Present-**

The Hon'ble Justice Ranjit Kumar Bag
& The Hon'ble Subesh Kumar Das

Case No. **OA- 1261 OF 2013**

DEBABRATA ADHIKARI & ANR. Vs. STATE OF WEST BENGAL & ORS.

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>17</u> 27.04.18</p>	<p>For the Applicant : Mr.T.K.Bhattacharya Mr.A.K.Sinha Mr.H.Nandi Learned Advocates</p> <p>For the Respondent : Mr.R.A.Chowdhury Learned Advocate</p> <p>The applicant has approached this Tribunal for the second time praying for direction upon the respondents to give appointment to the applicant on compassionate ground after setting aside order dated May 20, 2013 passed by the Respondent No.2, Director of Health Services, Government of West Bengal, by which claim of the applicant for compassionate appointment was rejected.</p> <p>It appears from the materials on record that one Sanatan Adhikari died on September 12, 2007 while he was working as G.D.A. under Department of Health, Government of West Bengal. Sanatan Adhikari died leaving behind two (2) sons - the applicant No.1 and the respondent No. 5 and his wife - the applicant No. 2 as legal heirs. On August 6, 2008, the applicant No. 1 submitted application in prescribed format praying for compassionate appointment as dependent son of the</p>	

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	<p>deceased employee. The claim of the applicant No.1 for compassionate appointment was not considered, as Respondent No. 5 did not submit no objection in the form of an affidavit in support of the claim of the applicant No.1. The applicant no.1 approached this Tribunal by filing OA-1165 of 2010, which was contested by the Respondent No. 5 by filing reply. The Respondent No. 5 specifically pleaded in paragraph 3 of the reply that the applicant No.1 has sufficient income from catering business run by him under the name and style "Yaisarya Caterer", business of filling up cooking gas and business of dairy farm wherefrom the applicant No.1 was selling milk. On February 6, 2013, the Tribunal disposed of OA-1165 of 2010 by directing the Respondent No. 2, Director of Health Services, Government of West Bengal to consider the claim of the applicant No.1 along with reply of the respondent No. 5 with special reference to paragraph 3 of the said reply by passing a reasoned order within the stipulated period of time after giving both the applicant No.1 and the respondent No. 5 an opportunity of hearing. Accordingly, the respondent No. 2 has passed</p>	

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	<p>reasoned order dated May 20, 2013 by rejecting claim of the applicant No.1 on the ground that the members of family of the deceased employee are not in acute financial crisis due to sufficient income of the applicant No. 1 from catering business, dairy farm and business of filling up cooking gas.</p> <p>The applicant No.1 and his mother being applicant No.2 have again approached the Tribunal praying for same relief of granting compassionate appointment to the applicant No.1. The respondent No. 5 had sworn affidavit before Learned Judicial Magistrate, Katwa, Burdwan on June 14, 2013, which is marked by Annexure A-17. The Respondent No.5 has now taken different stand in support of claim of the applicant No.1 for compassionate appointment. The stand taken by the Respondent No. 5 in the affidavit is that the applicant No.1 has no business or farm house or any source of income, whereas the stand taken by the respondent No.5 in the reply in OA No. 1165 of 2010 was that the applicant No.1 had catering business, dairy farm and business of cooking gas.</p>	

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	<p>The question for consideration of the Tribunal is whether the reasoned order passed by the Respondent No. 2 by rejecting claim of the applicant No.1 for compassionate appointment on May 20, 2013 can be quashed for subsequent affidavit sworn by the Respondent No.5 before Learned Judicial Magistrate on June 14, 2013. No reasons have assigned by the Respondent No. 5 as to why he disclosed in paragraph 3 of reply submitted in connection with OA-1165 of 2010 that the applicant No. 1 has income from catering business, dairy farm and business of filling up cooking gas, and why the Respondent No. 5 has now taken contrary stand in support of claim of applicant No.1 for compassionate appointment by disclosing that the applicant No.1 has no business and no income. We are unable to accept this contention made on behalf of the Respondent No.5 due to contradictory stand taken by him before this Tribunal in connection with the same claim of the applicant No.1 for compassionate appointment. The Respondent No. 5 is not at all reliable person and the Tribunal is unable to give any credence to the statement of the Respondent No. 5 disclosed in the</p>	

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	<p>affidavit before Learned Judicial Magistrate. In our view, the Respondent No.2 has rightly turned down claim of the applicant No. 1 for compassionate appointment on the ground that there was no immediate financial crisis in the family of the deceased employee due to income of applicant No.1 from business. It is true that the Respondent No.2 has not formally decided the claim of the applicant No. 1 on the basis of Notification No. 97-EMP dated June 6, 2005 issued by the Labour Department, Government of West Bengal which was in force when claim of the applicant No.1 for compassionate appointment arose, but the Respondent No.2 has decided the claim of the applicant by taking into consideration the substance of the said notification, as we have understood from the tenor of the reasoned order dated May 20, 2013.</p> <p>In view of our above findings, we cannot persuade ourselves to give any direction to the Respondents to consider the claim of the applicant No.1 for compassionate appointment. So, the present application is dismissed.</p>	

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BLR	<p style="text-align: center;">Urgent xerox certified copy of the order, if applied for, be given to the parties on priority basis on compliance of all necessary formalities.</p> <p style="text-align: center;"> (S.K.Das) MEMBER(A) </p> <p style="text-align: center;"> (R.K.Bag) MEMBER (J) </p>	