

**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-551/2017

Chandana Dutta & AnotherApplicant .

-Versus-

State of West Bengal & Others....Respondents.

**For the Applicant :- Mr. A.K. Niyogi,
Ld. Advocate.**

**For the State Respondent :- Mr. S.N. Ray,
Ld. Advocate.**

Judgement delivered on: 19.07.2019.

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

J U D G E M E N T

The instant application has been filed challenging the impugned order dated 29.11.2016 which was communicated to the applicant on 05.01.2017 and also with a prayer for direction upon the respondents to forthwith appoint applicant No.2 on compassionate ground. As per the applicant No.1, her husband died on 04.04.2003 while in service. Immediately, thereafter the applicant No.1 had submitted representation to the respondents on 29.04.2003 praying for compassionate appointment in favour of her elder son Siddhartha Dutta (Annexure B). Subsequently, his case was forwarded by the Executive Engineer asking for certain documents vide letter dated 11.06.2003 (Annexure C).

However, unfortunately the elder son of the applicant No.1 also died on 15.08.2005 when his case for compassionate appointment was still pending before the respondent authority. After the sad demise of the elder son of the applicant No.1, she immediately communicated the news of demise of her son and also made a representation before the authority for consideration of the case of the younger son i.e. applicant No.2, which was received by the authority on 06.04.2006. Thereafter, vide Memo dated 26.06.2009, the respondent authority had communicated that though the elder son was selected for compassionate appointment but due to his death the said application was returned back to the applicant (Annexure F). The applicant No.2 again submitted a representation on 07.06.2009 along with proforma application. However, his case was rejected by the Deputy Secretary, Government of West Bengal, Housing Department (Annexure I) vide Memo dated 30.11.2016 whereby the case of the applicant No.2 was rejected under Clause 10(aa) added to the Notification No.251 EMP dated 03.12.2013 as well as Notification 26-Emp dated 01.03.2016 which was communicated to the applicant No.2 vide Memo dated 05.01.2017 (Annexure I). Being aggrieved with, the applicants have filed the instant application.

It has been further submitted that the case of the applicant has been rejected by the Deputy Secretary, Government of West Bengal, who is not the competent authority to take final decision with regard to compassionate appointment and the applicants still are suffering with financial difficulties due to the death of two members of their family. As per the applicant No.1, her husband died in 2003 and though she applied for compassionate appointment in favour of her elder son on 2003 but due to delay and laches on the part of the department, he could not be appointed and as in the meantime he died in 2005 and the said applicant No.1 immediately approached the authority praying for compassionate

appointment in favour of her younger son after intimating the death of elder son. However, the respondent only sent back the application of her elder son in the year 2009 and subsequently rejected the claim of the applicant No.2 in 2017 only.

Though the respondents have not filed their reply, however, the counsel for the respondents have submitted that as the applicant No.2 was minor at the time of death of the employee, his case was rejected as per the newly added provision of 10(aa).

However, the counsel for the applicant has vehemently submitted that though there was no delay on the part of the applicants as they have taken appropriate steps immediately after the death of each of the family member and in the peculiar unfortunate situation. However, as per Clause 10(aa) the dependent member who attained immediate age of appointment at the time of consideration and since the applicant No.2 has attained majority at the time of consideration of applicant. Therefore, the respondents have wrongly rejected the case of the applicant.

We have heard the parties and perused the records. It is noted that the case of the applicant was rejected by following order:

“The undersigned is directed to inform him that the application of Sri Sabyasachi Dutta, son of Late Arup Kumar Dutta, Ex-Care Taker cum Rent Collector under Office of the Executive Engineer, Housing Construction Division No.IV, 21, Bharat Sabha Path, Kolkata-700 012, regarding compassionate appointment will not be entertained under Clause 10(aa) (new clause) added to Notification No.251-Emp., dated 03.12.2013 by the Notification No.26-Emp., dated 01.03.2016 of Labour Department, Government of West Bengal.”

However, Clause 10(aa) under Emp-26 dated 01.03.2016 stipulates inter alia;

“In exceptional cases such as (i) death during action (ii) where none in family is eligible etc., departments can consider requests for compassionate appointment even where the death or retirement on medical grounds of a Govt. servant took place upto five years ago. While considering such belated request the 3 member screening-cum-enquiry committee should, however, keep in view that the concept of compassionate appointment is largely related to the need for immediate assistance to the family of the Govt. Servant in order to relieve it from economic distress. The very fact that the family has been able to manage somehow all these years should normally be taken as adequate proof that the family had some dependable means of subsistence.

Therefore, examination of such cases could call for a great deal of circumspection at all levels. The dependent member must invariably attain the minimum age of appointment at the time of consideration.”

From perusal of the aforesaid provision under Clause 10(aa), it is noted that the dependent family member should attain the minimum age of appointment at the time of consideration. As in the instant case, the applicant No.2 had already attained the minimum age of appointment, therefore contention of the counsel for the respondents i.e. ground for rejection of the case of the applicant No.2 is not acceptable as per Clause 10(aa). Accordingly, the impugned order dated 29.11.2016 is quashed and set aside and the matter is remand back to the respondent No.1 to re-consider the case as per rules and communicate the decision by a reasoned and speaking order within a period of 12 weeks from the date of receipt of the order. Accordingly, the OA is disposed of with the above observation and direction with no order as to cost.

P. RAMESH KUMAR
MEMBER (A)

URMITA DATTA (SEN)
MEMBER (J)