

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

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

Case No. **OA - 821 OF 2017**

**SOUMYABRATA DE Vs. THE 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><u>03</u> <b>21.06.18</b></p>	<p>For the Applicant : Mr.A.K.Routh Learned Advocate</p> <p>For the State Respondent : Mr.G.P.Banerjee Mrs.S.Agarwal Learned Advocates</p> <p>For the A.G.W.B. : Mr.B.Mitra (Departmental Representative)</p> <p>The applicant has prayed for direction upon the respondents to give appointment to the applicant on compassionate ground. The applicant has also prayed for direction upon the respondents to release family pension and death cum retirement benefits of the mother of the applicant. The cause of action for both the prayers is not the same and the applicant should have filed two separate original applications in accordance with the rules of procedure of this Tribunal. However, we would like to deal with both the prayers of the applicant as an exceptional case for giving appropriate relief to the party.</p> <p>One Jayanti De, mother of the applicant died on January 13, 2006 while she was working as Staff Nurse, Grade-II at N.R.S. Medical College &amp; Hospital, Kolkata.</p>	

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	<p>Jayanti De died leaving behind her husband Srimanta Bhuyan, one son Soumyabarata De - the present applicant and one daughter- Soumoyee De as legal heirs. The applicant was born on December 6, 1989 and he was about sixteen (16) years old at the time of death of her mother. The applicant submitted informal application before the respondent No. 4 on November 28, 2006 for release of pensionary benefits and for any service on compassionate ground. However, on January 9, 2014 the applicant submitted application in the prescribed format praying for compassionate appointment. The said application was duly considered by the respondents and the claim of the applicant for compassionate appointment was rejected and the said fact was duly communicated to the applicant by the Director of Health Services, Government West Bengal under letter dated April 1, 2014. Without praying for quashing of the said impugned order dated April 1, 2014, the applicant submitted one application before the Respondent No.2 praying for reconsideration of prayer of the applicant for compassionate appointment on January 20, 2017. The grievance of the applicant is that the said application is</p>	

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	<p>still pending for consideration of the concerned respondent.</p> <p>Learned Counsel for the applicant contends that prayer of the applicant for compassionate appointment should not have been rejected on the ground of minority as the applicant will be governed by the Notification No. 26-EMP dated March 1, 2016 issued by the Labour Department, Government of West Bengal, whereas claim of the applicant has been decided on the basis of notification issued by the Labour Department in the year 2013. He further submits that the father of the applicant is living separately and both the applicant and his sister have not received any retirement benefits including family pension after premature death of the mother of the applicant. On the other hand, Mr.Banerjee, Learned Counsel representing the State respondent submits that the applicant filed application for compassionate appointment long after eight (8) years of death of his mother, while the claim of the applicant for compassionate appointment may be considered within a period of two (2) years after the death of the mother in</p>	

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	<p>case the applicant was minor as per notification issued by the Labour Department in the year 2016. The gist of submission of Mr.Banerjee is that the applicant is not entitled to get compassionate appointment for filing of the application after lapse of almost eight (8) years from the date of death of his mother.</p> <p>On consideration of the materials on record, we find that the mother of the applicant joined in the Government service on October 2, 1981 and she died on January 13, 2006 after serving for a period of 24 years 3 months and 11 days. The present applicant was born on December 6, 1989 and he was about 16 years old at the time of death of her mother. The cause of action for compassionate appointment of the applicant arose when the mother of the applicant died on January 13, 2006. The Notification No. 97-EMP dated June 6, 2005 issued by the Labour Department, Government of West Bengal was in force when the cause of action for compassionate appointment of the applicant arose. Naturally, the claim of the applicant for compassionate appointment will be governed by Notification No. 97 dated June 6, 2005</p>	

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	<p>issued by the Labour Department, Government of West Bengal. The conditions laid down in paragraph 2 of the said notification dated June 6, 2005 indicate that the dependant of any Government employee who dies in harness may be offered appointment on compassionate ground (i) if the concerned employee died before completing twenty (20) years of service or before attaining the age of fifty (50) years, whichever is earlier and (ii) if the members of the family of the deceased Government employee are in need of immediate financial assistance for survival of members of the family. In the instant case, the mother of the applicant died after completion of twenty (20) years of service and after completion of fifty (50) years of age and as such the conditions laid down in notification dated June 6, 2005 for compassionate appointment of the applicant have not been fulfilled. Even assuming for argument's sake that the claim of the applicant is governed by Notification No. 26-EMP dated March 1, 2016 as contended on behalf of the applicant, the applicant was required to submit the application for compassionate appointment within a period of two (2) years from the date of death of the</p>	

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	<p>Government employee. In the instant case, the applicant submitted the application for compassionate appointment in the prescribed format almost after eight (8) years from the date of death of his mother and thereby the claim of the applicant cannot be considered for compassionate appointment even under Notification No. 26-EMP dated March 1, 2016 issued by the Labour Department, Government of West Bengal. In view of our above findings, we do not find any merit in the submission made by Learned Counsel for the applicant.</p> <p>We find from the letter addressed to the Assistant Secretary to the Government of West Bengal, Department of Finance (Pension Branch) by the Respondent No. 4 that the father of the applicant has contracted second marriage during the life time of the mother of the applicant and he has been living separately. It also appears from record that the applicant and her sister have not received any family pension or retirement benefits of their mother even during the period when they were minors. Since the applicant and his sister have already attained majority and since they are entitled to get pensionary benefits and other</p>	

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BLR	<p>retirement benefits of their mother, we are of the view that the Respondent No. 4 should decide the entitlement of the applicant and his sister to get retirement benefits and family pension in connection with the service of their mother in accordance with the Provisions of West Bengal Services (Death-cum-Retirement Benefits) Rules 1971 within a period of twelve (12) weeks from the date of communication of the order.</p> <p>Accordingly, we direct the Respondent No. 4, Medical Superintendent-cum-Vice Principal, N.R.S. Medical College &amp; Hospital to decide the entitlement of the applicant and her sister to get retirement benefits and family pension in accordance with law within a period of twelve (12) weeks from the date of communication of the order and to communicate the same to the applicant within a period four (4) weeks thereafter. With the above direction, the original application stands disposed of.</p> <p>Let a plain copy of the order be supplied to both parties.</p> <p style="text-align: center;">(S.K.Das) MEMBER(A)</p> <p style="text-align: center;">(R.K.Bag) MEMBER (J)</p>	