

**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 Smt. Urmita Datta (Sen)
Member (J)**

-AND-

**The Hon'ble P. Ramesh Kumar,
Member (A)**

J U D G M E N T

-of-

Case No. O.A. - 126 of 2018

Sourav Chatterjee.....Applicant

-Versus-

State of West Bengal & others....Respondents

**For the Applicant : - Mr. Soumendra Narayan Ray,
Advocate.**

**For the State Respondent:- Mr. Sankha Ghosh,
Advocate.**

Judgment delivered on : 29.11. 2019

**The Judgment of the Tribunal was delivered by :-
The Hon'ble Smt. Urmita Datta (Sen), Member (J)**

Judgement

1. The instant application has been filed praying for following relief(s):

“(a) An order do issue thereby set-aside/quash/rescind/revoke/withdraw/cancel the rejection order dated 28.11.2016 and after cancelling the same direct the concerned respondent authorities to consider the case of your applicant for employment on compassionate ground in accordance with law within a stipulated time period.

(b) A further order to issue directing the concerned respondent authorities to forthwith issue appointment letter to your applicant for any Group D/C post under the respondent authorities commensurate to his educational qualification after proper assessment in accordance with law without any further delay.

(c) An order do issue directing the respondent authorities to dispose of the repeated representations dated 13.09.2010, 18.10.2012, 29.11.2012, 10.02.2015, 18.05.2015, 20.07.2015, 04.08.2015 in accordance with law after setting aside the rejection order dated 28.11.2016 within a stipulated time period.

(d) An order do issue directing the respondent authorities to transmit all the records pertaining to the instant case before

this Hon'ble Tribunal so that conscionable justice can be done.

(e) Any order appropriate order/orders direction/directions as this Hon'ble Tribunal may deem fit and proper to protect the right of the Applicant and in the ends of justice.”

2. As per the applicant, his father while working as Ex-Peon (Grade I), was declared permanently incapacitated as per observation of the medical board dated 09.09.2010 and accordingly, the respondent authorities vide Memo dated 24.09.2010 allowed the father of the applicant to retire from Government service on medical ground (Annexure - A). Accordingly, the father of the applicant duly filled up the application for premature retirement as well as prayed for compassionate appointment of his son and submitted the same before the authorities. Subsequently, the applicant along with his mother also made representations on 13.09.2010, 18.10.2012, 29.11.2012, which was forwarded by the Assistant Secretary vide Memo dated 13.02.2013 to Joint Secretary (MA) Branch, Deptt. of Health and Welfare forwarded the petition dated 29.11.2012. Subsequently, also the applicant had filed repeated representation before the authority and lastly on 04.08.2015 (Annexure D collectively). As no communication was made by the respondents, being aggrieved with, the applicant had approached this Tribunal in O.A. 1240/2015 (Annexure D), which was disposed of vide order dated 08.07.2016 directing the respondents to take decision and communicate the same. However, as the respondents did not comply with the order, the applicant was forced to file CCP No. 72/2016. Subsequently, the respondents vide their Order dated 28.11.2016 (Annexure D) rejected the claim of the applicant on the ground of non-fulfillment of criteria stipulated in the Labour Department's

Notification No. 251-EMP dated 03.12.2013. Being aggrieved with, he has filed the instant application. As per the applicant, the respondents have rejected his claim on the ground that his father did not exhaust all kinds of leave before his premature retirement. Therefore, no compassionate appointment has to be made. According to the applicant, his father could not get any opportunity to exhaust his leave. However, he has referred orders passed in O.A. No. – 25/2014 as well as O.A. No. 782/2014 and has prayed for extension of benefit though the respondents have not filed any reply.

3. However, the counsel for the respondent has vehemently submitted that the case of the applicant was rightly rejected by the authority. As per counsel for the respondents, father of the applicant did not fulfill the criteria stipulates in Labour Department's Notification No. 251-EMP dated 03.12.2012 as he has not exhausted all kinds of leave with pay including commuted leave on medical ground before such retirement even he had actually drawn leave salary of Rs. 32,094/-. Further it has been submitted that as per the 251 – EMP, in case of premature retirement, the concerned employee, should have at least two years of service left for superannuation and should exhaust all kinds of leave with pay. As the date of retirement on superannuation of the father of the applicant is 31.12.2011 and he took voluntary retirement on 24.09.2010, which is less than two years of stipulated time, therefore, the applicant is not at all entitled to be considered for compassionate appointment.
4. We have heard both the parties and perused the records. It is admitted fact that the case of the applicant was rejected for non-fulfillment of criteria stipulated in 251-EMP dated 03.12.2013. It is observed that the applicant never denied that his case is covered by 251-EMP dated 03.12.2012. However, as per him, his case

should not be considered of such stipulation of exhausting the leave. We have gone through the 251-EMP dated 03.12.2012, wherein it has been stipulated that the Governor had made the Scheme in suppression of all previous orders. Para 6 of the said Scheme deals with the criteria for eligibility for the concerned employee, who retired premature. The said paragraph 6 stipulates inter alia:

“In case of premature retirement the concerned employee had at least two years of service left to reach the normal age of superannuation and should fulfill the following conditions.

(i) On premature retirement he/she would not be entitled to the full pensionary benefits to which he/she would have entitled if he/she had retired at his/her normal age of superannuation.

(ii) He/she has fully exhausted all kinds of leave with pay including commuted leave on medical ground;

(iii) The financial conditions of the family is so acute as to make the appointment essential consequent upon the fall in income due to such retirement.”

After perusing the records as well as the circular, it is observed that admittedly the father of the applicant had not exhausted all kinds of leave of pay including commuted leave on medical ground even he had been left with only one year three months normal service period to reach the normal age of superannuation. Therefore, in our considered opinion, as the compassionate appointment is not a matter of right and as per settled principle of law, compassionate appointment has to be considered as per the Scheme of the concerned department and in the instant case, the

Scheme of the department has clearly stipulated that the concerned employee should have left at least two years of service for superannuation and he has to exhaust all kinds of leave and in the instant case, thus admittedly the father of the applicant is not fulfilling such criteria. Therefore, in our opinion, the respondent has rightly rejected the case of the applicant. Accordingly, the O.A. is dismissed being devoid of merit with no order as to cost.

P. RAMESH KUMAR
MEMBER (A)

URMITA DATTA (SEN)
MEMBER (J)