

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

The Hon'ble Mrs. Urmita Datta (Sen), Member (J)

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

Case No – OA-517 of 2019.**Sahag Mondal Vs The State of West Bengal & Others.**

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>04</p> <p>-----</p> <p>21-08-2019</p>	<p>For the Applicants : Ms.Gopa Biswas, Advocate.</p> <p>For the State Respondents : Mr. M. N. Roy, Advocate.</p> <p>Affidavit of service has been filed be kept on record.</p> <p>The instant application has been filed challenging the order dated 11-09-2018 As per the applicant, his father died on 25-07-2010 leaving behind his wife, one daughter and son i.e. the applicant. Subsequently his case was considered and recommended to the higher authority for final decision and the authority after considering the case of the applicant had rejected his claim vide order dated 26-03-2019 (Annexure-G) on the ground that the applicant was 10 years 3 months and 23 days old at the time of death of his father. Being aggrieved with, he has filed the instant application.</p> <p>As per the applicant, since in the</p>	

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	<p>enquiry report of the Enquiry Committee, they had recommended his case and also observed that he will be considered after being major. Therefore his case cannot be rejected. However his case was considered under Labour Department's Notification No. 26-Emp dated 01-03-2016 whereas the concerned employee died in the year 2010.</p> <p>The Counsel for the respondent has vehemently objected to the submission of the applicant. As per the respondent at the time of death of the concerned employee, the applicant was 10 years 3 months and 23 days old even another child was also minor and the wife of the deceased employee was 35 years old. Therefore, if they were immediate need of financial assistance, the wife of the deceased employee could have approached for compassionate appointment. However they have decided to wait till the applicant became major i.e. for another 8 years. Therefore the main purpose of compassionate appointment has been frustrated. It has been further</p>	

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	<p>submitted that the recommendation or observation if any, in the enquiry report is not mandatory as the competent authority is to take final decision as per Rules. Therefore, even if the enquiry authority had observed something with regard to attaining majority, if Rule does not permit, such recommendation has no binding effect on the competent authority. With regard to the applicability of 01-03-2016 Notification, it has been submitted that even if the case of the applicant would have considered as per the circular applicable on 2010, in that case also the applicant has to attain majority within 6 months but in the instant case, the applicant would attained majority after 8 years from the date of death of the ex-employee. However as per the scheme of the department, they cannot wait for 8 years long time for such compassionate appointment. Therefore he has prayed for dismissal of the OA.</p> <p>Heard the parties and perused the records. It is a settled principle of law that the compassionate appointment is not a matter of</p>	

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Mihir	<p>right but to provide financial assistance to the family for sudden financial crisis caused due to the sudden demise of the sole bread earner. However in the instant case at the time of death of the concerned employee, the applicant was only 10 years 3 months and 23 days old whereas his mother was 35 years old. Therefore if they were in a stringent financial condition, the mother would have approached for compassionate appointment for herself instead of waiting for 8 years for attaining majority of her son. Therefore, in our considered opinion, the main purpose of the compassionate appointment is being frustrated as the applicant and his family was ready to wait for 8 years to get the job. Therefore we do not find any reason to interfere with the decision of the authority. Accordingly, the OA is dismissed being devoid of merit.</p> <p>P. RAMESH KUMAR MEMBER(A)</p> <p>URMITA DATTA (SEN) MEMBER(J)</p>	

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