

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

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

Case No. **OA - 56 OF 2018**

MD MANAN SK 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>01</u> 20.06.18</p>	<p>For the Applicant : Mr.A.Hati Learned Advocate</p> <p>For the Respondent : Mr.G.P.Banerjee Learned Advocate</p> <p>The applicant has prayed for quashing of order communicated under letter dated January 20, 2016 issued by the Additional Secretary to Government of West Bengal, Department of Agriculture, by which claim of the applicant for compassionate appointment was rejected. One Hekmat Sk, father of the applicant was declared by the Medical Board as permanently incapacitated on August 03, 2009 while he was working as Krishi Shramik of Nowda Block Seed Farm under Deputy Director of Agriculture (Administration) in the district of Murshidabad. The applicant submitted application for compassionate appointment which was initially rejected and the fact of rejection was communicated under letter dated June 20, 2014 issued by the Assistant Secretary, Government of West Bengal, Department of Agriculture. The claim of the applicant for compassionate appointment was again reconsidered by the Department of Agriculture, Government of West</p>	

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	<p>Bengal on the basis of letter dated September 5, 2014 issued by the Deputy Director of Agriculture (Administration) Murshidabad. The applicant moved this Tribunal by filing OA-708 of 2015 which was disposed of on July 31, 2015. This Tribunal gave direction to the Assistant Secretary to the Government of West Bengal, Department of Agriculture to act upon Memo. No. 2358/En dated September 5, 2014 issued by the Deputy Director of Agriculture (Administration), Murshidabad. Ultimately, the claim of the applicant for compassionate appointment was rejected and the said fact was communicated to the applicant under letter dated January 20, 2016 issued by the Respondent No.3, which is under challenge in the present application.</p> <p>It appears from the impugned letter dated January 20, 2016 issued by the Respondent No. 3 that the claim of the applicant for compassionate appointment was rejected on the ground that the father of the applicant did not exhaust the leave in his credit and thereby the conditions laid down at paragraph 6 (b) (ii) of Notification No. 251-EMP dated December 3, 2013 and para 2 (ii) of Notification No. 303-EMP/1M-10/2000</p>	

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	<p>dated August 21, 2002 issued by the Labour Department, Government of West Bengal were not fulfilled for giving appointment on compassionate ground. Learned Counsel for the applicant has made two fold submissions: first, the amount of leave encashment received by the father of the applicant as retirement benefit cannot be taken into consideration to decide income of members of family of the employee retired prematurely due to permanent incapacitation, and secondly, Notification issued by the Labour Department, Government of West Bengal in the year 2013 cannot be made applicable in the present case where cause of action for getting compassionate appointment arose in the year 2009 when the father of the applicant retired prematurely. On the other hand, Mr.Banerjee, Learned Counsel representing the State respondents contends that the father of the applicant did not exhaust the leave in his credit and as such, the applicant is not entitled to get compassionate appointment for violating the conditions laid down in the Notification issued by the Labour Department, Government of West Bengal.</p>	

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	<p>Having heard Learned Counsel representing both parties and on consideration of the facts of the present case, we accept the submission made by Learned Counsel for the applicant that notification No.251-EMP dated December 3, 2013 issued by the Labour Department, Government of West Bengal cannot be made applicable with retrospective effect in the present case where cause of action for claiming compassionate appointment arose in the year 2009 when the father of the applicant retired prematurely due to permanent incapacitation. However, the conditions for giving compassionate appointment to the dependants of an employee who was declared permanently incapacitated are laid down in Notification No. 30-EMP dated April 2, 2008 issued by the Labour Department, Government of West Bengal by which the applicant will be governed, as the said Notification was in force in the year 2009. It is specifically laid down in proviso to paragraph 2 of the said notification 30-EMP dated April 2, 2008 that in case of compassionate appointment of a dependant of a Government employee who retires prematurely on being declared permanently incapacitated, all conditions laid down in para A-2 of</p>	

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	<p>Labour Department notification No. 303-EMP/1M-10/2000 dated August 21, 2002 and dated August 21, 2002 shall have to be fulfilled. On perusal of Notification No. 303-EMP/1M-10/2000 dated August 21, 2002 issued by the Labour Department, Government of West Bengal, we find that in paragraph A-2 (ii) of the said Notification, the condition for giving compassionate appointment to any dependent of a Government employee retiring prematurely on being declared permanently incapacitated shall have to exhaust all kinds of leave with pay including commuted leave on medical ground. In the instant case, the admitted position is that the father of the applicant did not exhaust all kinds of leave including commuted leave before premature retirement. On the contrary, the father of the applicant enjoyed leave encashment and thereby the applicant did not fulfil conditions laid down in Labour Department Notification No. 30-EMP dated April 2, 2008 for getting compassionate appointment. The argument advanced on behalf of the applicant that the amount of leave encashment received by the father of the applicant cannot be taken into consideration for the purpose of</p>	

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BLR	<p>compassionate appointment has no bearing on the facts of the present case. In view of our above findings, we do not find any illegality in rejecting the claim of the applicant for compassionate appointment. As a result, the original application is dismissed.</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>	