

**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. - 604 of 2017

Lutfar MiahApplicant

-Versus-

State of West Bengal & others....Respondents

**For the Applicant : - Mr. Abhijit Basu,
Mr. Masud Karim,
Ms. Bulbul Sarbajna,
Advocates.**

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

Judgment delivered on : 27.06.2019

**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):

“(i) Direction be given upon the respondents and each of them their men, agents, subordinates and servants to set aside, cancel, rescind and/or withdraw the order passed by the Public Works Department, Government of West Bengal being Memo No. 395-PW/L & A/2M-17/2017 dated June 12,2017 forthwith.

(ii) Direction be given upon the respondents and each of them their men, agents, subordinates and servants to give compassionate appointment in group – “D” post under the respondent authorities in favour of the applicant forthwith;

(iii) A direction be given upon the respondents and each one of them their men, agents, subordinates and servants to certify and transmit all relevant records of this case to this Hon’ble Tribunal so that conscionable justice may therein be administered.

(iv) Pass such other or further order or orders and/or direction or directions as to Your Lordships may deem fit and proper.”

2. As per applicant, his father died on 23.02.2010, leaving behind his wife and three sons. After the death of his father, the mother of the applicant filed an application before the authority praying for consideration of the candidature of the applicant (who is the

second son) and has also submitted affidavit dated 04.05.2010 (Annexure – A) for ‘no objection’ from all other legal heirs. Though initially the eldest son i.e. Bellal Miah had given his ‘no objection’ in favour of present applicant by way of an affidavit however subsequently, he filed O.A. No. 949/2011 (Annexure – B) before this Tribunal which was disposed of vide order dated 16.12.2011 with a direction to the authority to take decision with regard to the first son i.e. Bellal Miah as per Rules. In compliance to the said order, the authority considered the case of the first son i.e. Bellal Miah and had rejected his claim vide order dated 08.02.2012 (Annexure – C) on the ground that as per the Departmental Schemes/Circulars ‘No Objection Certificate’ was not furnished in favour of the said Bellal Miah. In the mean time, the instant applicant also had approached before this Tribunal in O.A. No. 1036 of 2016, which was also disposed of by this Tribunal vide order dated 25.01.2017 directing the authority to take decision as per Rules. In pursuance to the said order, the Principal Secretary, Government of West Bengal, Public Works Department vide his impugned order dated 12.06.2017(Annexure – I) had rejected the claim of the applicant on the ground that after proper enquiry, it has been noticed that ‘No Objection Certificate’ has not been furnished before the authority rather the eldest son Bellal Miah had categorically objected to furnish any ‘No Objection Certificate’ in favour of the applicant during the enquiry and the third son Monchar Ali Miah has gone abroad for service. Therefore, in absence of any ‘No Objection Certificate’ from the other legal heirs, the respondents are not in a position to provide employment assistance on compassionate ground to the applicant. As per the counsel for the applicant, as the case of Bellal Miah was already rejected holding that the affidavit filed by Bellal Miah was not obtained by coercive measure or fraud,

the respondents cannot reject the claim of the applicant on the ground of the family dispute.

Being aggrieved with, the applicant has presently approached this Tribunal.

3. The respondents have filed their written statement, wherein it has been stated that as per direction of this Tribunal dated 27.03.2017 by which the Principal Secretary was directed to grant an opportunity to the applicant and to take decision as per the Rules. As the compassionate appointment is governed by the different Schemes/Circulars issued by the department time to time, therefore, the case of the applicant was considered as per Labour Department's Notification No. 251 E.M.P. dated 03.12.2013 after conducting proper enquiry and granting personal hearing to the applicant and other family members. In course of such enquiry, it has been found that though the elder brother of the applicant had earlier granted his 'no objection' by way of affidavit but subsequently he had changed his mind and during the enquiry process he had vehemently objected to grant 'no objection' in favour of the applicant. Further, the other brother of the applicant was not also available for granting 'no objection' in favour of the applicant as he was out of India for his service. Therefore, as per the Labour Department's Notification, as till date the family disputes is in existence and 'no objection' has not been granted by the other family members therefore, his case was rightly rejected by the Principal Secretary. Accordingly, the respondents have prayed for dismissal of the O.A.
4. No rejoinder has been filed. However, the counsel for the applicant has vehemently submitted that once the elder brother of the applicant had granted his 'no objection', it should be taken care while considering applicant's case.

5. We have heard both the parties and perused the records. It is noted that though initially the elder brother of the applicant had granted 'no objection' in favour of the applicant but immediately thereafter he objected to extend any 'no objection' and had approached this Tribunal, which was disposed of by way of directing the authority to consider his case and ultimately the case of the elder brother was also rejected on the issue of non-availability of 'no objection' in his favour. Subsequently, the applicant approached this Tribunal and this Tribunal had also directed the respondents to consider his case afresh as per Rules. Hence the respondent had considered the claim of the applicant. However, since still the family disputes are in existence and 'no objection' is not available from other family members and as the case of compassionate appointment has to be considered as per the different Scheme/Circular of the department, therefore, we do not find any reason to interfere with the decision of the respondent. 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)