

ORDER SHEET
WEST BENGAL ADMINISTRATIVE TRIBUNAL
Bikash Bhavan, Salt Lake, Kolkata – 700 091.

Present-

The Hon'ble Sayeed Ahmed Baba, Officiating Chairperson & Member (A)

Case No. OA – 400 of 2024

Nandita Chhetri - VERSUS - THE STATE OF WEST BENGAL & ORS.

Serial No. and Date of order	For the Applicant	: Mr. S.K. Mitra, Learned Advocate.
<u>4</u> 15.05.2025	For the Respondents	: Mr. G. Halder, Learned Advocate

The matter is taken up by the Single Bench pursuant to the order contained in the Notification No. 638 – WBAT / 2J-15/2016 dated 23rd November, 2022 issued in exercise of the powers conferred under Section 5(6) of the Administrative Tribunals Act, 1985.

The prayer in this application is for quashing and setting aside the impugned order No. 374 dated 09.10.2023. By this correspondence, the Joint Secretary informed the Superintending Engineer, Western Highway Circle-I that the prayer of Nandita Chhetri, the unmarried sister of the deceased employee, Kartick Chhetri was not found eligible for an employment under compassionate ground. The primary ground taken by the Joint Secretary is that the applicant preferred such an application before the respondent authorities on 15.03.2023, which was after more than two years from the date of death of the deceased employee on 29.04.2019.

The brother of the applicant died on 29.04.2019 while working as an Ex-work Assistant under Katwa Highway Sub-division of PWD (Roads) Directorate. The deceased employee was unmarried and as per statement of the applicant, she has been living with her deceased brother and completely dependent on his income. This statement has also been confirmed by the Enquiry Committee in its report dated 15.03.2023. In terms of the definition of family in Notification 251-EMP dated 3rd December, 2013, a brother or sister is also entitled to apply for employment under compassionate ground, provided they were entirely dependent on the deceased Government employee. It is an admitted fact that the proforma application was received by the Assistant Engineer, Katwa Highway Sub-division on 15.03.2023. In terms of executive rules governing the Scheme, such a proforma application was to be furnished within two years from the date of death of the employee. This proforma application was furnished almost four years from the date of death of kartick Chhetri, the deceased employee. The respondent authorities were correct to observe that such a

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belated proforma application does not make the applicant eligible for compassionate employment. However, the respondent authority has completely ignored another important fact of this case. The fact that the applicant had submitted a plain paper application before the Executive Engineer, Burdwan North Highway Division through the Assistant Engineer on 29.06.2020 was completely ignored. The fact of submission of a plain paper and duly acknowledged and forwarded by the Assistant Engineer was neither recorded in the impugned correspondence of the Joint Secretary nor considered as a material and relevant document. The impugned rejection order only relied on the date of submission of proforma application. It is expected from the respondent authorities that while examining a proposal all these important facts should have been considered. Neither this fact of submission of plain paper was admitted and considered but the report of the Enquiry Committee was also neither mentioned in the impugned order nor considered as an important factor while taking a decision in this matter. The copy of the Enquiry report mentions specific figures to show the gross earnings of the family and points out that it is below 90% of the gross monthly income of the deceased employee. The Committee also confirms that the applicant is the unmarried sister and had been completely dependent on the income of her deceased brother. After covering all the important details in their report, the Committee had recommended an employment on compassionate ground in favour of Nandita Chhetri, the unmarried sister of the deceased employee, Kartick Chhetri.

The Tribunal finds the fact that the applicant had submitted her plain paper application within the stipulated time was neither acknowledged nor accepted in the impugned responses of the authority. The respondent authority has completely missed this vital information and relied only on the fact of submission of the proforma application, which was submitted after the stipulated period of two years from the date of death of the employee. As is the norm and as stated by the applicant in the application, the legal heir of the deceased employee first submits a plain paper application for compassionate employment. After preliminary examination and only after satisfaction of the officials, a copy of the application in prescribed form is handed over to the applicant / legal heirs. The applicants usually do not have access to such

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prescribed form, this being the reality more in rural areas. In this case, the applicant had submitted her plain paper application within the permissible period but a prescribed proforma was not handed over to her. When a blank proforma was handed over to her, the time allowed for such submission had long passed. My attention has been drawn to clause 10 (bb) of Notification 26-Emp dated 1st March, 2016, which gives clear responsibility to the office of the respondent in guiding applicants applying for appointment on compassionate ground. The relevant part is as under:-

“The concerned authority in the department / office should meet the members of the family of the deceased Govt. servant immediately after his death to advise and assist them in getting appointment on compassionate ground. The applicant should be called in person at the very first stage and should be advised in person about the requirement and formalities to be completed by her. A record of such meeting should be kept with the office of the controlling authority and appointing authority.”

Though the notification as cited above expresses sympathy for the legal heirs of the deceased employee, but in this case such noble words were not translated into action. The applicant was left at the mercy and sweet will of the respondents and it was only much later the applicant was favoured with the copy of the prescribed proforma. Given this back ground, can we blame the applicant and reject her application on the ground that she submitted her proforma application after delay of more than seven years? In a similar case the Hon’ble Supreme Court in (2012) 7 SCC 248 in the matter of “Shreejith L. vrs. Deputy Director (Education) Kerala and Others” observed a very important point in a similar situation. The relevant part of the judgement is as under:

“23. Mr. Rajan, learned Senior Counsel, argued that the first application submitted by Respondent 4 for compassionate appointment on 2-5-1990 was no doubt within the time prescribed but the same was not in proper format. It was, argued the learned counsel, essential that the application should be not only within the time stipulated for the purpose but also in the prescribed format. Inasmuch as that was not so in the instant case the application must be deemed to be non est.

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24. *We regret our inability to accept that submission. The Manager of the school had on receipt of the application from Respondent 4 not only acknowledged the request for appointment but also recognised that Respondent 4 possessed the requisite qualification for appointment as a Hindi teacher. The request was not, however, granted as no vacancy in the cadre was available in the school at that time. What is noteworthy is that the Manager did not reject the application on the ground that the same was not in the prescribed format or that the application was deficient in disclosing information that was essential for consideration of the prayer for a compassionate appointment. If the authority concerned before whom the application was moved and who was supposed to consider the request, did not find the format of the application to be a disabling factor for a proper consideration thereof, it could not be set up as a ground for rejection of the prayer, by the beneficiary of the appointment made in derogation of the rights of Respondent 4. At any rate, what was important was the substance of the application and not the form. If the application in substance conveyed the request for a compassionate appointment and provided the information which the Manager required for considering the request, the very fact that the information was not in a given format would not have been a good reason to turn down the request. We need to remind ourselves that the scheme is meant to be a beneficial scheme aimed at helping those in need of assistance on account of an untimely demise in the family. Inasmuch as the Assistant Educational Officer and even the High Court found Respondent 4 to be eligible for appointment and directed the Manager to make such an appointment, they committed no error to warrant our interference under Article 136 of the Constitution. The civil appeal is, therefore, liable to be dismissed.”*

Having heard the submissions of the learned counsels and considering the facts and circumstances of the matter, the Tribunal does not hesitate in considering the impugned order as non est in the eyes of law and not tenable. Such impugned order rejecting on the ground of delayed submission of proforma application, ignoring the fact that the plain paper application was submitted by the applicant on time, but a mockery of justice. Therefore, the impugned order No. 374 dated 09.10.2023 is quashable and quashed and set aside with a further direction to the respondent authority

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No.1, Secretary, Public Works Department to consider the matter in the light of the observations of this Tribunal and judgement of Supreme Court in (2012) 7 SCC 248 and pass a reasoned and speaking order within three months from the date of communication of this order. Such reasoned order be communicated to the applicant within two weeks thereof.

With the above directions, the application is disposed of.

SAYEED AHMED BABA
OFFICIATING CHAIRPERSON & MEMBER(A)

A.K.P.