

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

Present-

THE HON'BLE SAYEED AHMED BABA, OFFICIATING CHAIRPERSON AND ADMINISTRATIVE MEMBER,

Case No. - OA 88 OF 2023

MAHADEB GORAI - Vs - THE STATE OF WEST BENGAL & OTHERS.

Serial No. and
Date of order

06
22.04.2025

For the Applicants	:	Mr. Gourav Haldar Advocate
For the State Respondents	:	Mr. Asok Kumar Das Sinha Advocates

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

On consent of the learned counsels for the contesting parties, the case is taken up for consideration sitting singly.

Mr.G.Haldar, learned counsel refers to the impugned order No. 751 dated 22.09.2017 and argues that the income of the applicant's two brothers - Uttam Kumar Garain and Indrajit Garain have been added as part of the family's income. Although the same impugned order at para 1 itself, has admitted that both these brothers live separately, therefore, including the incomes of his two brothers - Uttam Kumar Garain and Indrajit Garain are not valid in assessing the family's gross income.

Mr.A.K.Das Sinha, learned counsel for the State respondents submits that this application is barred by limitation due to the fact that the impugned order dated 22.09.2017 being assailed before this Tribunal through this application which was filed on 07.02.2023, after lapse of more than five years.

To the point of limitation argued by Mr.Das Sinha, Mr.Haldar, draws attention to Memo. 494 dated 13.07.2020 and submits that although the Memo. 751 dated 22.09.2017 regarding his proposal is

being assailed, but such reasoned order was being reviewed by the respondent authorities as is evident from the Memo. 494. Therefore, the point of limitation does not arise in this case since Memo. 751 dated 22.09.2017 with Memo. 494 dated 13.07.2020 was continuous cause of action. The delay in filing this application after Memo. 494 dated 13.07.2020 was due to the restrictions imposed during Pandemic-19 situations. The report of the Inquiry Committee at para 11 also clearly mentions the fact that the other dependents are living separately and their gross income does not include as monthly income except family pension.

From the above points, it is clear that the incomes of the two elder brothers - Uttam Kumar Garain and Indrajit Garain who are living separately and not dependant on the income of the deceased employee, have been clubbed while calculating the gross monthly income of the family. The impugned order while fixing the total monthly income of the family at Rs. 55,125/-, it states that "*the employed sons of the deceased namely Uttam Kumar Garain and Indrajit Garain is to be included in the calculation sheet of the income of the family of the deceased employee, Patal Garain.*" However, it does not elicit as to why the incomes of Uttam Kumar Garain and Indrajit Garain should be included. Further, in the previous page of this impugned order itself, at para 1, the respondent, Joint Secretary has accepted the fact that both Uttam Kumar Garain and Indrajit Garain are living separately. The Tribunal is intrigued as to why the impugned order, knowing very well and accepting that these two brothers are living separately, their incomes were added in the gross monthly income of the family of the deceased employee. While defining who are the dependant members of the deceased family, it is important to show only the names of those family

members who are living under one roof, and who were dependant on the income of the deceased employee. In this case, it has been made clear that the two elder brothers, Uttam Kumar Garain and Indrajit Garain have been living separately and moreover, they were not financially dependent on the income of the deceased father. Therefore, adding their incomes to show gross monthly earning of the family was a departure from existing norms and rules.

In view of the above observation, the Tribunal finds the impugned order No. 751 dated 22.09.2017 as non est in the eyes of law and untenable, and therefore, quashable and is quashed and set aside. The respondent No. 2, Joint Secretary, Public Works Department is directed to reassess the gross income of the family afresh excluding the incomes of the applicant's two elder brothers - Uttam Kumar Garain and Indrajit Garain. After such reassessment, the decision be taken in a reasoned order whether the applicant is eligible for an appointment under compassionate ground or not. The reasoned order be passed within 90 (Ninety) days from the date of communication of this order and communicated to the applicant within two weeks of its passing.

With the above directions, this application is disposed of.

(SAYEED AHMED BABA)
OFFICIATING CHAIRPERSON AND MEMBER (A)

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