

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-213 of 2021

Chandana Dutta and Another. -- VERSUS – The State of West Bengal & Others

Serial No. and
Date of order

For the Applicants

: Mr. S. Bhattacharjee,
Learned counsel.

19
04.04.2025

For the State Respondents

: Mr. A. K. Das Sinha,
Learned counsel.

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.

In this application the applicant has prayed for a direction upon the respondent authorities for quashing and setting aside the rejection order passed on 09.01.2020 and pass an order directing the respondents to appoint the applicant on compassionate ground.

Siddhartha Dutta was the elder son of the deceased employee, Arup Kumar Dutta who died on 04.04.2003. Earlier his case was under consideration for an employment on compassionate grounds. Unfortunately, he died before such an offer was received. The younger son of Late Arup Kumar Dutta, the applicant, Sabhyasachi Dutta was only 11 years old at the time of death of his father. He applied for an appointment on compassionate grounds on 23.02.2007 but it was not considered for the reason that the application was not in the prescribed format and the applicant was 15 years old at the time of submitting the application for compassionate employment. The applicant applied again in prescribed format as per rule which was forwarded to the Chief Engineer, Housing Directorate on 07.06.2011. The respondent authorities now found that this application was made after more than 8 (eight) years from the death of his father and thus regretted.

Learned advocate for the applicant submits that Notification 251-Emp. dated 03.12.2013 issued by the Labour Department. Note (c) under

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Case No. **OA-213 of 2021.**

The State of West Bengal & Ors.

Para 6(c) stipulating :-

“The dependent member shall invariably attain the minimum age for recruitment within six months from the date of death or incapacitation of the concerned employee” ----- has been deleted by Notification 26-Emp. dated 01.03.2016. So the question of minor at the time of death of the father of the applicant does not arise. That after the sad demise of the elder son, Siddhartha Dutta, the mother made a representation for consideration of the case of her younger son, Sabyasachi Dutta, which was received by the respondents on 06.04.2006 and 07.06.2009. However, his case was rejected vide memo dated 30.11.2016. Being aggrieved, the applicant had filed an application before this Tribunal which was OA-551 of 2017. The Division Bench after perusing the records and considering the facts and circumstances had set aside the rejection order dated 29.11.2016 with the direction that the Respondent No. 1 has to reconsider the case as per rules.

The respondents in compliance with the direction of the Tribunal in OA-551 of 2017 considered the application afresh and rejected on the main ground that the applicant Sabyasachi Dutta was only 11 years 02 months and 28 days old at the time of death of his father which is under age to have a Government service. Learned Advocate for the applicant contested the above reason for rejection of his application by referring to the Notification of Labour Department No. 26-Emp dated 01.03.2016 deleting para 6 (c) of Notification No. 251-Emp dated 03.12.2013. This para 6(c) earlier required an applicant to attain the minimum age of recruitment within six months has been done away with.

Learned advocate for the respondent refers to para 10 (aa) of the said Notification where a new para has been added which gives an extended time of five years to apply, provided it is a case where, i) death occurred due to action or ii) where none in his family is eligible.

From the submissions of the learned counsel and the records, the

Tribunal has observed the following points :-

- (i) Though the applicant had presented his application for such employment on 23.2.2007, but the fact remains that on this very date of application, the applicant had not attained the age of employment. Besides, it is also not disputed that he was a minor at the time of death of his father on 04.04.2003.
- (ii) The applicants has argued that the respondent authority should have considered his application under 10(aa) of Notification 26-Emp dated 01st March, 2016 which enables a family member to apply up to five years from the date of death of the deceased employee. However, this same provision has two conditions :-
 - (a) The death of the employee should have been in action.
 - (b) None in the family at the relevant point of time of death of the deceased employee was eligible to apply.

The Tribunal finds the claim of the applicant that none in the family was eligible is not correct since Chandana Dutta, the widow was eligible for such an employment, but chose not to apply.

In view of the above findings, this Tribunal is not satisfied that the prayer in the application has any merit. The respondents were correct in their reasoning that the applicant was not found eligible. Therefore, this application disposed of without passing any orders.

SAYEED AHMED BABA
Officiating Chairperson & Member (A)

S.M.