

16.03.2023
DL-79
(PP)

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

WPA 17555 of 2021

Rabindra Das
Vs.
The Union of India & Ors.

Mr. Chandan Dutta,
Mr. Goutam Malik

....for the petitioner.

Mr. Manik Das

....for the respondent nos.2 to 6/ECL.

The petitioner claims that his father died-in-harness on September 28, 2018 while working as an employee of Eastern Coalfields Limited (in short "ECL"). He claims that under the terms of the NCWA – VI, Clause 9.3.4 he is eligible for appointment on compassionate ground being under 35 years on the date of death of his father. An initial medical examination was held on November 22, 2019. From the initial medical examination conducted, it appears that the petitioner was declared to be **"unfit"** for employment for being over-aged. Thereafter, a review medical examination (RME) was conducted by the Apex Medical Board of ECL on May 27, 2020. The age of the petitioner was assessed between 42 – 45 years in the RME. As a natural corollary, the petitioner was held **"unfit"** for employment by ECL.

Considering the rival submissions of the parties, this Court directed the Superintendent, SSKM Hospital to constitute a board for conducting an ossification test on the petitioner for assessment of his age. Pursuant to the direction passed by this Court, the petitioner was examined on January 19, 2023. It appears from the report issued by the Board that the petitioner was aged between 25 – 40 years on the date of the examination, i.e., on January 19, 2023.

Therefore, this Court is of the view that if the mean age of the petitioner is taken as in November 2019, the petitioner would have been aged approximately around 28 years. Therefore, this Court is of the opinion that the petitioner was more than 18 years on the date of death of his father and was also less than 35 years on the date of the death of his father.

Therefore, this Court sees no impediment in granting an appointment to the petitioner on compassionate ground. This Court sets aside the impugned order of rejection dated June 24, 2020 issued by the Chief Manager (Personnel).

The petitioner's representation/application for compassionate appointment will be considered by the authorities concerned within 4 weeks from date upon

giving a personal hearing on the petitioner relying on the report of the Medical Board of SSKM-IPGMER Hospital, Kolkata. Such reasoned order shall be communicated to the petitioner within one week from the date of passing thereof.

Parties will be at liberty to make copies of the report of the Medical Board.

With the directions aforesaid, **WPA 17555 of 2021** is **disposed of**.

All parties shall act on the server copies of this order duly downloaded from the official *website* of this Hon'ble Court.

Urgent photostat certified copies of this order, if applied for, be supplied to the parties upon compliance of all necessary formalities.

(Lapita Banerji, J.)