

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
Appellate side

PRESENT:

HON'BLE JUSTICE MADHURESH PRASAD
AND
HON'BLE JUSTICE SUPRATIM BHATTACHARYA

W.P.S.T. 1 OF 2025

The State of West Bengal & Ors.
vs.
Susanta Dangar

For the Petitioners	:	Mr. Tapan Kumar Mukherjee, Id. AGP, Ms. Ashmita Chakraborty, Adv.
For the Respondents	:	Mr. Partha Sarathi Bhattacharya, Sr. Adv. Mr. Arup Kundu, Adv. Mr. Raju Bhattacharyya
Heard on	:	11.02.2025
Judgment on	:	11.02.2025.

MADHURESH PRASAD, J.:-

1. Heard the learned State counsel as well as the learned counsel for the respondent.
2. The State has challenged the order passed by the West Bengal Administrative Tribunal (*hereinafter referred to as S.A.T.*) dated

19.06.2024 passed in O.A. No. 304 of 2023 whereby and whereunder the rejection of the applicant's claim for compassionate appointment on account of death of his father in harness has been assailed and allowed by the S.A.T. The S.A.T. has directed for reconsideration of the application by treating the application to be within time (within two years).

3. The father of the applicant was serving as a Chowkidar under the P.W.D. at the Bankura Office. He unfortunately passed away on 04.02.2011. At this juncture, the elder brother of the applicant (eldest son of the deceased) made an application for compassionate appointment on 04.06.2013. It is not in dispute that the elder brother's application was within time and on the specified proforma.
4. The authorities were not taking any decision on the claim of the elder brother. Under the apprehension that he would lose his chance for employment otherwise, the family of the deceased took a conscious decision that the elder son should pursue the opportunities available to him, and the younger son (the applicant before the S.A.T.) should seek the benefit of compassionate appointment in his place. Application to this effect was submitted before the office of the Executive Engineer, P.W.D. on 28.01.2013 by the elder brother. The wife of the deceased had also given an application to this effect. Subsequently an application was submitted on the proforma by the present applicant, on 04.06.2013.

5. Nearly 12 years after demise of the employee in harness and about 10 years after the application was submitted by the present applicant he has been served with a communication dated 10.02.2023 rejecting his claim for compassionate appointment citing a reason that the application was belated since it was made about four months beyond the two years period specified for the making of application. The delay has been counted by treating the date of submission of proforma (04.06.2013) to be the date of applicant's application.
6. The S.A.T. has treated the application submitted by the mother as well as the present applicant on 28.01.2013 as being the first application for claiming the benefit of compassionate appointment in favour of the present applicant. The same being within two years of the date of death (04.02.2011), the objection regarding belated application raised by the respondents/State before the S.A.T. has been rejected. The rejection order dated 10.02.2023 relying upon the date of submission of proforma application 04.06.2013 as the date of application, has thus been quashed.
7. It is submitted by the learned counsel for the petitioners that a bare reading of the 2013 Circular makes it clear that the application is required to be submitted on the prescribed proforma. He has referred to the prescription regarding procedure contained at Paragraph 10 of the Notification dated 03.12.2013 whereby and whereunder the **West Bengal Scheme for Compassionate Appointment, 2013** was notified. He has

laid great emphasis on the provisions contained in Paragraph 10 (a) and (b) of the 2013 Scheme which reads as follows:

“(10) Procedure –

(a) If the family of the deceased or the employee retired on being permanently incapacitated is in need of financial assistance and the same is absolutely necessary to support the family, application for employment is to be submitted within six month from the date of death or retirement on permanent incapacitation. If no application is submitted within the said period it will be presumed that the family does not require any financial assistance. In no case application submitted after expiry of the above period will be entertained.

(b) Application is to be submitted in the prescribed proforma as in Annexure ‘A’ and ‘B’ as applicable through the Head of office. In case of death-in-harness such application must accompany copy of death certificate.”

8. It is submitted that in view of this specific prescription in the scheme a person can claim any benefit under the scheme only if he or she fulfils the requirement of making an application within two years that also on the prescribed proforma. It is thus submitted that the rejection order dated 10.02.2023 by the Secretary of the Public Works Department was in accordance with the provisions contained in the Scheme. According to

him, the Secretary or any authority has not been vested with any discretion to condone the delay of nearly four months in submission of the application on proforma by the applicant and therefore, the S.A.T. should not have quashed the rejection order.

9. The learned counsel for the respondent has made his submissions. According to him, the Secretary's consideration has relied upon the provisions contained in the Notification dated 03.12.2013 as well as the subsequent notification dated 01.03.2016 which stipulates a time frame of two years for making application for compassionate appointment. The 2016 Notification dated 01.03.2016 issued by the Labour Department Employment Cell of the Government of West Bengal brought about changes in the existing guidelines for compassionate appointment. The notification has been issued taking note of the fact that the departments under the State Government were facing difficulties in implementing certain provisions contained in the earlier notifications. To remove such difficulties as is apparent from the opening paragraph of the notification dated 01.03.2016, the policy of compassionate appointment was revised. One of the revisions was regarding the "*time lines*" and "*belated requests*". On these two counts the State revised the guidelines to incorporate that in exceptional cases departments can consider requests for compassionate appointment even where the death or retirement on medical grounds of a government servant took place up to 05 (five) years ago. The notification calls for a decision based on a great deal of

circumspection at all levels. Nonetheless there is a provision to accommodate belated requests in appropriate circumstances.

10. He has further submitted that the elder brother of the applicant as well as the mother of the applicant had already intimated the authorities, within two years of the death of the deceased, regarding the petitioner being the claimant of compassionate appointment in place of his elder brother. The S.A.T. has thus rightly found that such application of 28.01.2013 was to be treated as the application in favour of the present applicant.
11. The Three Men Enquiry Committee had also processed the application dated 28.01.2013 in favour of the applicant and submitted a report dated 02.08.2013. The Three Men Enquiry Committee comprising of the Divisional Accountant, The Assistant Engineer and the Executive Engineer of the Bankura Division after a thorough consideration of the applicant's claim including the total retiral benefits received by the family of the deceased, the status regarding the movable and immovable property owned by the family, and the monthly income arising from interest on the death benefits of the deceased as well as family pension, has come to a conclusion that the income of the family of the deceased was below 90% of the gross monthly salary of the employee before his death. After a comprehensive consideration, the Committee has recommended the applicant's case favourably for employment on compassionate ground on a Group-D post.

12. We have considered the submissions advanced on behalf of the rival parties.
13. Insofar as the time limit is concerned, both the authority as well as the applicant has referred to and relied upon the two years' time limit specified in the 2016 Circular. Therefore, what remains to be seen is whether the application has been made within the two years period specified, or not.
14. The submission of the learned counsel for the petitioners that the application is mandatorily to be submitted on the prescribed proforma has to be considered keeping in view the facts and circumstances of the present case. There is no dispute that application was made on the prescribed proforma within time, but by the elder brother of the present applicant (eldest son of the deceased) within time. It is also not in dispute that the elder brother and the mother of the present applicant had given a request that instead of the elder son (Prasanta Dangar) the applicant before the S.A.T., namely, Susanta Dangar was to be given the benefit of compassionate appointment. It is also not in dispute that Susanta Dangar has also submitted the prescribed proforma thereafter enabling the authorities to consider the entitlement of the petitioner with reference to all necessary parameters based on the two proformas submitted by the present applicant; as well as the one submitted by his elder brother, earlier on 30.06.2011.

15. In view of such facts and circumstances, we find that an application had been made as per requirement contained in Paragraph 10 of the Notification of 2013 extracted above. The proforma application was made by the elder brother of the present applicant which contained all the details requisite for considering the entitlement of the family of the employee who died in harness. The relevant parameters which are required to be considered have also been specified with details as to the exact amounts received by the family under the various heads and the exact income of the family, for supporting which, the present applicant was claiming the benefit of compassionate appointment.
16. The requirement of Paragraph 10 was therefore duly complied by the family of the deceased. Since the State authorities, were procrastinating, and not taking any steps for finalising the claim, subsequently two applications were submitted, one by the elder brother; and the mother of the applicant, for changing the beneficiary of compassionate appointment. The same is obvious from a plain reading of the two applications, both dated 28.01.2013, which it is not in dispute, was submitted within time.
17. We, therefore, find that the objection of the State that the consequential application dated 28.01.2013 was not on the prescribed proforma is devoid of any substance. The requirement of submitting an application on prescribed proforma as noted above had already been complied with by submission of application by the elder brother on 30.06.2011. The

application submitted on 28.01.2013 was only an application for change of the beneficiary.

18. It is nobody's case that the authorities were in any way prevented from considering the claim for want of any details or that there was any deficiency with respect to any parameter specified in the prescribed proforma submitted by the parties.
19. In fact, as noted above the Three Men Enquiry Committee comprising of responsible officials had considered the claim of the applicant before the S.A.T. and favourably recommended grant of compassionate appointment to him.
20. We also find from a bare perusal of the Scheme of 2013 that the same does not contemplate any bar to change of beneficiary of compassionate appointment, till such time appointment has been made on compassionate ground.
21. We consider it relevant to reproduce Paragraph 12 of the Notification of 2013 in this regard which reads as follows:

“(12) Request for change in post/person –

(a) When a person has been appointed on compassionate ground to a particular post, the set of circumstances, which led to such appointment, should be deemed to have ceased to exist and he will be guided by the service rules, orders, guidelines etc. as are applicable to other employee of the State Government.

(b) An appointment offered/made on compassionate ground cannot be transferred to any other person and any such request shall be rejected.”

22. A bare reading of the same would show that till such time a compassionate appointment is finalised, there is no such bar on change of the applicant. We only add that by not incorporating such a bar the State apparently has acknowledged the fact that in the event an application is kept pending for years together (12 years in the instant case), there may be various developments requiring a change in the applicant having regard to the need.
23. We, therefore, find no reason to interfere with the order passed by the S.A.T. dated 19.06.2024.
24. The Writ Petition is dismissed.
23. There shall be, however, no order as to costs.
24. Pronounced in open Court on this day i.e. 11th day of February, 2025.
25. Urgent Photostat certified copy of this Judgement, if applied for, be given to the parties on completion of usual formalities.

I agree.

(Supratim Bhattacharya, J.)

(Madhuresh Prasad, J.)