

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

Present:-

The Hon'ble Justice Madhuresh Prasad

And

The Hon'ble Justice Supratim Bhattacharya

WPST 226 of 2024

Sanjib Sardar & Anr.

Vs.

State Of West Bengal & Ors.

For the Petitioners	: Mr. Sukumar Ghosh Mr. Sandip Ghosh Ms. Moumita Ghosh.
For the State Respondents	: Mr. Tapan Mukherjee, Ld. AGP., Ms. Sangeeta Roy.
Judgment on	: 24.12.2025

Madhuresh Prasad, J.:

1. The writ petitioners were the applicants before the West Bengal State Administrative Tribunal (hereinafter in short referred to as SAT) in OA 717 of 2023 filed by the writ petitioners with respect to claim for compassionate appointment (hereinafter in short referred to as claim) of the first writ petitioner which was rejected by the SAT by an order dated 04.07.2024.
2. Briefly stating the case of the applicants before the SAT was that one Kalipada Sardar died while in harness on 24.04.2010. At the time of his demise he was working as "Gowala" in the

Department of Animal Resources Development (DARD for short).

3. The petitioner No.1, who was first applicant before the SAT is son of late Kalipada Sardar. The petitioner No. 2 the second applicant before the SAT is wife of Late Kalipada Sardar. The deceased Government employee left behind the two writ petitioners and two daughters. It is the case of the applicant that on 14.06 2010 the applicants/writ petitioners along with other legal heirs of the deceased Government Employee affirmed an affidavit of no-objection before the 1st Class Magistrate, Alipore, South 24 Paraganas. The first applicant being wife of the deceased submitted a representation on the same date (14.06.2010), seeking an offer of compassionate appointment in favour of her son (second applicant.)
4. The son thereafter submitted an application on the prescribed form on 28.12.2012 seeking benefit of compassionate appointment. An enquiry was conducted with respect to the claim of the son. Respondent No. 3 Deputy Director, in whose office the deceased was employed during his lifetime, forwarded the application to the Director, Respondent No. 2. The same was followed up by a reminder from the Deputy Director, as well as by the second writ petitioner. When the application and reminder evinced no response from the authorities the first writ petitioner invoked the jurisdiction of the SAT by filing an application under Section 19 of the Administrative Tribunals

Act, 1985. The same was numbered as OA No. 910 of 2021 and was disposed of by an order dated 11.04.2022 recording a submission of the applicant that the Director of Animal Husbandry and /Veterinary, Government of West Bengal be directed to dispose of the petitioners' pending claim. The SAT directed, passing of a reasoned order under communication to the petitioner within a period of 15 weeks from the date of receipt/ production of a copy of the SAT's order. The order was passed containing an explicit observation of the SAT that it had not gone into the merit of the matter and that all issues were left open to be dealt with by the Director in accordance with law.

5. The petitioners' claim was thereafter rejected by respondent No. 1, Secretary by an order dated 27.07.2022. From perusal of the same it is apparent that the application for compassionate appointment was processed by the Department and enquired into by a three-man-committee. Thereafter with a view to expeditious consideration of the application the Chief Secretary, Government of West Bengal, directed constitution of a departmental committee of senior officers, which was constituted by the Additional Chief Secretary of the Department on 11.05.2022. The Committee examined the claim and by a communication dated 27.07.2022 informed the writ petitioner regarding rejection of his claim for compassionate appointment in the following terms:

“.....4. And whereas, said Departmental Committee has, inter alia,

(i) examined the application of Sri Sanjib Sardar, son of Late Kalipada Sardar, resident Vill+ P.O.-Raspunja, P.S.-Bishnupur, South 24 Parganas, Pin-700104 forwarded by Director, AR & AH, in the light of the relevant rules and regulations of the Government of West Bengal regulating appointment on compassionate grounds.

(ii) perused the relevant documents available on file

(iii) taken into consideration the report of the three-men-enquiry committee.

5.And Whereas, the Departmental Committee, on examination of the documents and considering the matter from all relevant aspects, made in observations/recommendations to the ARD Department. Based on the above exercise, the department had decided that present application for appointment on compassionate cannot be granted as it does not fulfil the requisite conditions laid out by the Government of West Bengal for compassionate appointment.

6.Hence, the application of Sri Sanjib Sardar for appointment on compassionate ground is hereby declined and disposed of.”

6. This rejection dated 27.07.2022 was put to challenge by the writ petitioner before the SAT in OA 690 of 2022. The SAT vide it's order dated 14.06.2023, found the rejection to be without giving any specific reason and quashed the order dated 27.07.2022 passed by the Secretary, Government of West Bengal in the DARD and directed reconsideration of the application. The Secretary was obliged to pass a reasoned and speaking order referring the specific Government Rules/orders within a stipulated time frame.
7. The claim was rejected by the Additional Chief Secretary to the Government of West Bengal in the DARD by an order Dated 23.08.2023. This time, while rejecting the claim the Additional

Chief Secretary took into consideration notifications involving compassionate appointment issued since 2008 till issuance of Notification dated 01.03.2016 being No. 26-Emp. Considering these notifications it was found that the claim could not be granted since an application was not made by the first writ petitioner within two years from the date of death of Kalipada Sardar. Since the time limit for submitting application for compassionate appointment was fixed up to two years from the date of the death of the deceased employee under notification dated 01.03.2016 bearing No. 26 –Emp, the application submitted by the petitioner beyond this time was not found worthy of consideration. The rejection of the petitioners' claim by the order dated 23.08.2023 was assailed by the petitioner by filing OA being No. 717 of 2023 before the SAT. The same was rejected by the SAT on 04.07.2024, hence the present writ petition.

8. The SAT found substance in the reasons assigned for rejecting the petitioners' claim since the pro-forma application was submitted by the petitioner on 28.12.2012 i.e. more than two years after the date of the death of the first petitioner's father (24.04.2010). The Tribunal found the pro-forma application to be 8 months and 4 days beyond the prescribed period (two years) for making an application. The SAT considered Clause 10(bb) of the Notification 26-Emp which allowed for an

extension of the period for making application up to 5 years but subject to fulfilment of certain conditions namely :

- (i) *Where the employees dies in action and*
- (ii) *Where there is none other eligible in the family of the deceased for the purpose of compassionate appointment.*

9. The first writ petitioner's date of birth was taken into consideration by the SAT based on which it concluded that the petitioner was 32 years 5 months and 9 days old at the time of death of his father. Being eligible for compassionate appointment, the petitioner did not apply within the stipulated time. The SAT proceeded to reject the OA since an application was not made with due diligence on the proforma within the stipulated time frame. The SAT held:

"But in this case such a crisis does not seem to have been faced by the family, nor was there any urgency a realisation to apply for such appointment within two years by the applicant."

10. The learned Advocate for the petitioner has submitted that the SAT findings regarding there being no financial crisis or urgency is based on nonest reasons. Such finding is contrary to findings of the three-member-committee, which recommended the petitioner's claim for compassionate appointment by a report dated 21.09.2012. The report contained a detailed consideration of the financial condition of the family of Kalipada Sardar (since deceased), the details of dependants left behind, the death certificate of the deceased and affidavit filed by the petitioner No. 2 in support of the petitioner No.1. The

committee also considered the amounts received by the family under the heading pension, DCRG Group Insurance, Leave Encashment, etc. Based on such consideration the committee arrived at a finding that the composite monthly income of the family was below 90 per cent of the salary of the deceased Government employee, and therefore, recommended first petitioner's claim for appointment on compassionate ground. The finding of the Tribunal, therefore, that there is no financial urgency or that the family is facing no crisis is unsustainable. In so far as the reason assigned by the Tribunal regarding application on the prescribed pro-forma being belated the learned Advocate for petitioner relied upon Notification No. 26 Emp to submit that as per Clause 10(aa) read with Clause 14(bb) the rejection is unsustainable.

11. The learned Additional Government Pleader, on the other hand submitted that making of application on the prescribed form is mandatory requirement under the Notifications regarding compassionate appointment dated 21.08.2002 bearing No. 303-Emp. A time limit of 6 months was specified for making application on the prescribed form in notification dated 02.04.2008 being No. 30-Emp., which was applicable at the time of death of the Government Servant. The time limit was not extended by Notification dated 03.12.2013 being No. 251-Emp. The requirement of submission of application on prescribed form was not diluted or done away with prior to

issuance of Notifications No. 278-EMP dated 23.09.2015. The same contemplated:

“Notification No. 278 Emp Dated 23.09.2015.

Plain paper application submitted within six months, and be accepted as valid application, provided proforma application has been submitted subsequently, but not later than one year from the date of death/incapacitation of the Govt employee. The administrative Dept. must be doubly sure that plain paper application was really submitted within the prescribed period of six months.”

12. The first petitioner does not fulfil the requirement of any of these notifications, and therefore, rejection of his claim as being belated by the order of the Additional Chief Secretary requires no interference.

13. We have considered the materials on record and submissions advanced. The petitioner's father died-in-harness on 24.04.2010. An application was made by the petitioner's mother on 14.06.2010 seeking benefit of compassionate appointment in favour of the first petitioner. The details for consideration of the petitioner's claim was subsequently provided on the prescribed proforma, which was submitted on 28.12.2012. The Deputy Director, Animal Resource Development and Parisad Officer of South 24 Paraganas recommended the petitioner's claim by a communication dated 21.03.2013 addressed to the Director, Animal Husbandry and Vetnary Services, West Bengal. He has stated in the communication that it is beyond doubt that the petitioner's family is suffering from hardship and that family pension is not

sufficient to maintain livelihood of the family left behind by the deceased employee namely Kalipada Sardar. Thereafter the application was considered and rejected by the Secretary to the Government of West Bengal in the Animal Resource Development Department by an order dated 27.07.2022, which we have extracted above. The order of the Secretary rejected the petitioner's claim as he was of the view that the petitioner does not fulfil the requisite conditions for compassionate appointment. It is obvious that after considering the application made by the petitioner's mother on 14.06.2010 and the recommendation of the Deputy Director, order of the secretary dated 27.07.2022 does not record that application made for petitioner's compassionate appointment was belated.

14. Finding the Secretary's order dated 27.07.2022 to be without any reasons in support of the Decision the Tribunal set aside the rejection order by its order dated 14.06. 2023 passed in O.A. No. 690 of 2022. The Tribunal directed the Secretary Department of Animal Resource Development to reconsider the petitioner's claim by a reasoned order.

15. Under such circumstances consideration was accorded afresh by an order dated 23.08.2023 passed by the Additional Chief Secretary to the Government of West Bengal in the Department of Animal Resource Development. This time the petitioner's claim for compassionate appointment was rejected by assigning a reason that the application for compassionate appointment

was submitted after the stipulation time mentioned at clause 4 of Notification prevailing at the time of death of the deceased employee namely Kalipa Sardar. The time limit was reckoned by the Additional Chief Secretary with referenced to Notification No. 30-Emp. dated 02.04.2008 while passing an order dated 23.08.2023.

16. The finding regarding petitioner's claim being barred as a belated application is unsustainable for two reason. Firstly, the reason assigned in the impugned order is at variance with the reason assigned in the earlier order dated 27.07.2022. The earlier order did not mention any such reason that petitioner's application was belated. The authority passing the earlier order dated 27.07.2022, proceeded to consider the petitioner's claim on merits without raising any issue regarding the application being belated. Therefore, there was no occasion for the Additional Chief Secretary to raise such an issue while passing the impugned order dated 23.08.2023.

17. Secondly we find that the Additional Chief Secretary while rejecting the petitioner's claim has accorded consideration limited to the time limit prescribed for making of an application for compassionate appointment. Applying the time limit existing at the time of demise of the Government employee, the petitioner's claim has been rejected. The petitioner has not been granted consideration in this regard as per Notification No. 26-Emp. dated 01.03.2016 which had revised the earlier provision;

and which contemplated that if an application remained undisposed till issuance of the revised provisions then the same could be looked into afresh, if it complies with the revised instructions. Only condition attached was that death of the employee should have occurred in between issuance of Notification No. 30-Emp. dated 02.04.2008 and revised provisions contained in Notification No. 26-Emp. dated 01.03.2016. This was provided in Clause 14(bb) of Notification No. 26-Emp. which reads:

“14(bb)

Any undisputed case where the death/incapacitation has occurred prior to issue of this order, but after the issue of order No. 30-Emp. dated 02.04.2008, could be looked into afresh, if it complies with the revised instructions.”

18. There is no doubt that demise of the petitioner's father occurred on 24.04.2010 that is after issuance of 30-Emp. and prior to issuance of revised provisions of 26-Emp, the petitioner's claim was therefore required to be looked into afresh to see if it complied with the revised instructions.

19. The Additional Chief Secretary was required to consider the petitioner's application with reference to provisions contained in 26-Emp. The revised time line as per 26-Emp reads as under:

“10(a)

Timelines:-

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 two years

from the date of death or retirement on permanent incapacitation. If no application (emphasis ours) is submitted within the said period it will be presumed that the family does not require any financial assistance.”

20. From reading of the revised provisions it is apparent that the requirement of making proforma application not later than one year from the date of death of the Government employee was deleted.

21. The revised provision, therefore acknowledges a requirement of having a more flexible consideration regarding making of an application on proforma in the matter of grant of compassionate appointment. The revised provision cast an obligation upon the authority even to meet the family of the deceased Government servant and to advise and assist them in getting appointment on compassionate ground. The time limit was also extended from six months to two years. A provision was also incorporated allowing consideration of belated requests up to 5 years from the date of demise of the Government employee, but in exceptional cases.

22. The learned AGP has laid emphasis on exceptional circumstances contemplated in the revised provision regarding belated requests. He submits that in the present case the Government Servant did not die during action. It is also not the petitioner's case that at the time of demise of the Government Employee there was none in the family eligible for compassionate appointment. Since these two conditions have been specified as “*exceptional cases*”, the petitioner's claim not

falling in either of these two categories, cannot be extended benefit of the revised provision.

23. We find that the two exceptional circumstances contained in Clause 10 (a) are merely illustrative. The revised provision states exceptional cases using an expression “*such as*”. Thus, it is clear from the language employed in the Notification that the two circumstances are merely illustrative. It does not contemplate a consideration of exceptional circumstances restricted to only the two conditions enumerated therein. A plain reading of the revised provisions leaves no room for doubt that the provisions contemplates expansive consideration of exceptional cases to include other such exceptional cases.

24. We gathered such meaning and intention from the revised provision also being guided by the statement in the opening paragraph of the Notification No. 26-Emp, which reads:

No. 26 Emp. Dated: 01.03.2016.

“...Several Departments under Govt. of West Bengal are reportedly facing difficulties in implementing certain provisions contained in the Notifications as aforesaid. The matter has been under active consideration of the Government for some time past. The Governor is pleased to bring about the following changes in the existing guidelines to dispose of the cases in a just and equitable manner.” (emphasis ours)

25. For ensuring disposal of claim for compassionate appointment in a just and equitable manner. The revised provisions are required to be implemented in furtherance of this explicit object.

26. In the present case it is not in dispute that request for petitioner's compassionate appointment was submitted by wife of the deceased (petitioner no.2) on 14.06.2010, for appointment of petitioner no.1 within two months from the date of demise of his father. Thereafter, no action was taken by the authorities. In the meantime all the parameters requisite for consideration were provided by the petitioner in the prescribed proforma.

27. It is not in dispute that without raising any issue of application being belated consideration was accorded to the petitioner's claim by the Secretary of the Department 12 years after demise of the petitioner's father and 10 years after the proforma was submitted by the petitioner. This consideration was found by the Tribunal to be unsustainable in OA No. 690 of 2022, and requiring reconsideration. It is under such circumstances that the Additional Chief Secretary reconsidered the petitioner's claim as per direction passed by the Tribunal in OA 690 of 2022. This reconsideration of an application which had remained undisposed till issuance of 26-EMP dated 01.03.2016, was required to be extended the benefit of Clause 14(bb) of Notification dated 01.03.2016 (26-Emp.) and looked into afresh.

28. Clause 10(a) of this guideline recognises a presumption that the family does not require financial assistance but only "*if no application submitted*" within two years. It is not in dispute that

wife of deceased made an application for son's compassionate appointment on 14.06.2010, that is within 2 months from the date of death of government employee. All the details regarding relevant parameters to consider whether the family was in financial crisis was supplied on the prescribed proforma to the authorities thereafter. The petitioner's claim was considered with reference to all requisite parameters by the three member committee constituted under the scheme for compassionate appointment which based on financial condition and liabilities including all relevant parameters, found the family of the deceased to be in financial crisis and therefore entitled to grant of benefit of compassionate appointment. Despite such recommendation dated 21.09.2012 the authorities sat tight over the matter for more than a decade. Thereafter, the impugned order was passed rejecting the petitioner's claim as being time barred; contrary to the recommendation dated 21.09.2012, and without extending just and equitable consideration in terms of 26-Emp

29. The Additional Chief Secretary has deprived the petitioner of such reconsideration by raising an issue regarding belated application, when the authorities themselves have failed to accord due consideration to the petitioner's application for a period of 13 years from the date of death of his father and for 10 years after submission of the application for compassionate

appointment. We, therefore, find the order dated 23.08.2023 to be unsustainable and quash the same.

30. We direct the authority concerned to consider the petitioner's claim afresh with reference to the recommendation dated 21.09.2012 and any other relevant factors without raising an issue of her application being belated.

31. Let fresh decision be taken by the authority by a reasoned and speaking order, within a period of 8 weeks from the date of receipt /production of copy of this order before the respondent No. 1.

32. The writ petition is thus allowed. The order of the Tribunal dated 04.07.2024, passed in OA 717 of 2023 is set aside. Pending application/s if any stands disposed of. Interim order if any stands vacated.

33. There will be no order as to costs.

34. Urgent Photostat certified copy of this Judgment, if applied for, be given to the parties on completion of usual formalities.

(Madhuresh Prasad, J.)

I agree.

(Supratim Bhattacharya, J.)