October 1, 2026
Sl. No.2
Court No.11
s.biswas

WPST 76 of 2024

Sri Avishek Sarkar
vs.
The State of West Bengal and others

Mr. Udaynarayan Betal

... for the petitioner

Mr. D. N. Ray, GP
Mr. Guddu Singh
Mr. Sourav Halder
Ms. Diya Chakraborty

... for the State

Records would reveal that the petitioner, namely, Avishek Sarkar (in short, Avishek) preferred an original application (in short, OA) being OA 246 of 2018, challenging an order dated 4th February, 2015 issued by the respondent no.3 herein and praying for reconsideration of his representation dated 26th February, 2018. The OA was admitted directing the parties to exchange their reply and rejoinder. Upon contested hearing the OA was dismissed by an order dated 14th March, 2024. Challenging the same, Avishek has filed the present writ petition.

The following facts are not in dispute. Avishek's father, namely, Rabindra Kumar Sarkar (in short, Rabindra) was a Krishi-Shramik in the office of Coconut Development Officer, Chandannagar, West Bengal, Hooghly (hereinafter referred to as CDO) under the

respondent no.2 herein. On 22nd May, 2013, i.e., more than 2 years prior to his retirement, scheduled in the month of August, 2015, Rabindra submitted a representation to the CDO to arrange for his appearance before a Medical Board for unveiling the truth about his physical incapable condition for discharging his service. Thereafter, by a letter dated 30th December, 2013 the CDO intimated Avishek that his father often fells very sick in office while on duty and on 30th December, 2013 his condition became serious and that somebody should accompany him when he comes to attend his office. Thereafter by a memo dated 26th February, 2014, the respondent no.3 abruptly issued a letter to the respondent no.2 stating *inter alia* that Rabindra's prayer for voluntary retirement (hereinafter referred to as VR) has been approved by the Department. Immediately thereafter Avishek submitted a representation on 30th July, 2014 praying for grant of compassionate appointment to tide over the distress faced by the family for the incapacitation of Rabindra rendering him unfit to continue in service. Ultimately the respondent no.3 intimated the respondent no.2 by memo dated 4th February, 2015 that Avishek's prayer for compassionate appointment cannot be entertained. Challenging the said memo dated 4th February, 2015, the OA was preferred which was dismissed by the order impugned in the present writ petition.

Mr. Betal, learned advocate appearing for the petitioner submits that while in service, Rabindra was suffering from various ailments and it was becoming increasingly difficult for him to continue in service and as such he submitted a representation for constitution of a Medical Board for declaring him permanently incapacitated. Without constituting such Medical Board, the respondents could not have granted him VR applying different parameters and could not have rejected Avisekh's prayer for compassionate appointment stating that his claim cannot be considered in view of clause 6(b) of the notification dated 3rd December, 2013 since at the time of premature retirement Rabindra had less than two years of service.

He argues that on 22nd May, 2013, i.e., more than 2 years prior to his retirement, scheduled in the month of August, 2015, Rabindra submitted a representation to the CDO to arrange for his appearance before a Medical Board for unveiling the truth about his physical incapable condition for discharging his service. In view thereof, Avisekh's claim could not have been rejected as VR was thrust upon Rabindra about one year six months prior to his date of normal retirement. The authorities granted VR with a *mala fide* intent to deny the benefit of compassionate appointment provided under the Scheme promulgated *vide* notifications dated 3rd December, 2013

and 1st March, 2016 (hereinafter referred to as the Scheme).

He submits that Avisekh's claim also could not have been rejected as allegedly he did not apply in the prescribed proforma moreso when he was qualified having passed Higher Secondary Education in 2006.

Drawing our attention to a memo dated 19th April, 2022 issued by the respondent no.2, Mr. Betal submits that the respondents themselves have admitted that no Medical Board was constituted, as prayed for. The medical documents of Rabindra as brought on record would also reveal that Rabindra was permanently incapacitated rendering him unfit to continue in service. For non-discharge of statutory obligations by the respondents, Avisekh cannot be made to suffer. Reliance has been placed upon a judgment delivered in the case of *Amirul Islam vs. State of West Bengal & ors.,* reported in *2020 0 Supreme (Cal) 7.*

Mr. Singh, learned advocate appearing for the State, however, denies and disputes the contention of Avishek and submits that Rabindra was found to be medically unfit to continue in his services. As he had completed 20 years of service, the authorities rightly considered and granted him VR. Such VR was granted admittedly when Rabindra did not have two years of service left. Such VR as granted was willingly accepted by Rabindra without lodging any

contemporaneous complaint as regards non-constitution of any Medical Board.

He contends that after grant of VR, all the monetary benefits available were also disbursed in favour of Rabindra as would be explicit from the representation submitted by Avishek on 26th February, 2018. In view thereof, Avishek at this stage cannot reinvigorate any claim for compassionate appointment, moreso when grant of compassionate appointment is not a vested right and cannot be claimed as a matter of right. The Scheme being an exception, has to be strictly construed and confined only to the purpose it seeks to achieve. No direction for compassionate employment in contravention of the provisions of the Scheme can be issued.

We have heard the learned advocates appearing for the respective parties and considered the materials on record.

Indisputably, Rabindra submitted a representation on 22nd May, 2013 for constitution of a Medical Board for ascertainment as to whether he was physically incapable to continue in service. Such representation was submitted clearly two years prior to his retirement on 31st August, 2015. The respondents, however, did not constitute any Medical Board and such fact has been admitted in the memo dated 19th April, 2022. The said memo dated 19th April, 2022 was produced in view of an order dated 17th March, 2022 passed by the learned Tribunal. Had such

Medical Board been constituted and had Rabindra been examined, it cannot be ruled out, that he would have been declared medically incapacitated. In such eventuality, Avishek's right to be considered under the Scheme could not have been frustrated. To deprive such benefits, the respondents granted VR to Rabindra on different parameters. Being unfit means a person cannot perform a specific duty or role due to temporary or external factors, while incapacitation means a total physical or mental inability to continue in service. In view thereof, VR on medical ground cannot be construed to be discontinuance for medical incapacitation. The records would reveal that the respondents were aware of the fact that it was impossible for Rabindra to continue his service in view of his medical incapacitation. However, still they did not discharge their obligation to constitute a Medical Board. Such action on the part of the respondents, in our opinion, is most unbecoming of the model employer. If an application in substance conveys the request for compassionate appointment, the very fact that such information was not given in a format cannot be the reason to turn down the request.

Clause 2(b) of the Scheme entitles a dependent family member of a person, who has retired on the ground of medical incapacitation, to be considered for grant of compassionate appointment. The authorities cannot now deny consideration of Avishek's prayer for compassionate

appointment since his father was granted VR though Rabindra never applied for such VR. He in fact prayed for constitution of a Medical Board way back in the year 2013 but such prayer was not considered and about one year six months prior to his retirement, Rabindra was compelled to accept VR.

For the reasons discussed above, the impugned order dated 4th February, 2015 issued by the respondent no.3 and the order impugned in the present writ petition are set aside.

Annexure B of the notification dated 3rd December, 2013 is the proforma application for premature retirement due to permanent incapacitation and appointment for son/daughter/wife/near relation on compassionate ground. Avishek is directed to fill up the said proforma and submit the same in the office of the respondent no.2 by 16th November, 2026. The respondent no.2, 5, 6 and the CDO shall extend all assistance to Avishek to enable him to submit such application within the time as directed. The said respondents shall not insist for any document as detailed in Clauses 10, 11 and 12 of Annexure B.

Upon receipt of such application, the respondents shall take all necessary steps as provided under the Scheme for ascertaining the financial condition of the family through a 3 member screening-cum-enquiry committee and upon receipt of the report of the said committee, the respondent no.2 shall forward the same to

the respondent no.3, who shall take a final decision as regards grant of compassionate appointment to Avishek and communicate such decision to Avishek.

The above exercise shall be completed within a period of 8 weeks from the date of receipt of the application of Avishek.

With the above observations and directions, the writ petition is disposed of.

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

(Partha Pratim Roy, J.) **(Tapabrata Chakraborty, J.)**