

2<sup>nd</sup> February, 2026  
(M/L No.26)  
Ct. No.4  
(SKB)

**W.P.S.T. 201 of 2025**

Alaka Nayak  
Versus  
The State of West Bengal and others

Mr. Partha Sarathi Bhattacharyya, Sr. Adv.  
Mr. Raju Bhattacharyya  
... for the petitioner.

Ms. Ashmita Chakraborty  
... for the State.

1. Heard learned advocate for the parties.
2. The petitioner's candidature for appointment on compassionate ground has been rejected by the authorities by an order dated 28.10.2022. The rejection is on the ground that the writ petitioner (wife of the deceased) had crossed the maximum age of regular appointment being 40 years as on the date of death of the employee in harness. It is not in dispute that the writ petitioner was aged 43 years and 3 months.
3. The order of rejection was challenged by the writ petitioner before the West Bengal Administrative Tribunal (Tribunal for short) in O.A. No. 362 of 2024. The O.A. was rejected by the Tribunal on 19.06.2025. This order is impugned in the present writ proceeding.

4. The date of birth of the present writ petitioner is 24.01.1978. The date of unfortunate demise of her husband is 26.04.2021. The writ petitioner submitted an application for appointment on compassionate ground complying with the requirement of submitting an NOC by the other legal heirs, namely, daughter aged about 20 years at the time of demise of her father; and a minor son. The application was rejected by an order dated 28.10.2022. The order records the various notifications containing the policy on compassionate appointment including the provisions contained in the West Bengal Services (Group D) Recruitment Rules, 2009 (in short "2009 Rules") wherein the maximum age for appointment/recruitment has been specified as 40 years.
5. The Rule acknowledges the power of the Governor to dispense with or relax the requirement of any of the 2009 Rules to such extent and subject to such conditions as he may consider necessary for dealing with a case in a just and equitable manner. The power to relax is contained in Rule 9 of the 2009 Rules.
6. According to the learned advocate for the State Rule 9 is to be read, and is circumscribed by the provisions contained in Rule 7 of the 2009 Rules.

Referring to Rule 7, it is submitted that the proviso contained therein allows for relaxation of maximum age criteria but only in specific circumstances such as in case of candidates with disabilities, belonging to scheduled castes, scheduled tribes or other backward classes. The petitioner does not fall in any of these categories and, therefore, there was no scope and occasion to relax the maximum age criteria in respect of the petitioner's claim for compassionate appointment.

7. The learned senior advocate for the writ petitioner submitted that the authorities were wrong in rejecting the petitioner's claim for relaxation. Placing reliance on the 2009 Rules meant for general recruitment, the appointment on compassionate ground is in exception to the general rule of recruitment. He has drawn attention of this court towards 251-Emp. Notification dated 03.12.2013 and 26-Emp. Notification dated 01.03.2016. He submits that from perusal of these Notifications containing the terms and conditions for appointment on compassionate grounds, it is obvious that the age criteria specified in the general rules of recruitment are applicable. The provisions of these Notifications, however, reveal that there is

a scope for relaxation of the same. Insofar as relaxation of the condition of excess age, the scope is provided in Note (a) of Clause 6(c) of the 251-Emp. The Note (a) reads as follows:

*“6. (c) Note: (a) Condonation of excess in age in case of eligible cases will be made by the respective head of the department or their subordinate Officer who are competent to make the compassionate appointment as per existing provisions.”*

8. It is submitted that since the appointment under the compassionate grounds is in exception to the 2009 Rules, the officers competent to make the compassionate appointment were required to consider condition of relaxation of the excess age in case of the petitioner as per the notifications governing compassionate appointment.
9. Referring to 251-Emp. Notification, it is submitted that recognizing the benevolent underlying intention for granting compassionate appointment, the Notification dated 01.03.2016 introduced revised Clause 10(bb) of Notification which casts an obligation on the concerned authority in the department to meet the members of the family of the deceased Government servant, immediately after his death to advise and assist them in getting appointment on compassionate ground.

10. The revised provision relied upon reads as follows:

**“10) Procedure –**

*(bb) The concerned authority in the department/office should meet the members of the family of the deceased Govt. servant immediately after his death to advise and assist them in getting appointment on compassionate ground. The applicant should be called in person at the very first stage and should be advised in person about the requirement and formalities to be completed by him. A record of such meeting should be kept with the office of the controlling authority and appointing authority.”*

11. It is nobody's case that any advice was rendered to the writ petitioner. On the contrary, we find that rejection of the petitioner's claim is by a mechanical and cryptic order. The rejection order dated 22.10.2022 after taking note of the various provisions contained in the Notifications and the 2009 Rules, rejects the petitioner's claim in the following terms:

*“In the instant case: date of death-in-harness of the Govt. employee Late Satyajit Nayak is 26.04.2021. Date of birth of the applicant is on 24.01.1978. So, the age of the applicant at the time of death of the deceased employee was 43 years 03 months. The applicant, Smt. Alaka Nayak belongs to the General Category. Condonation of excess in age was not recommended to ensure that only suitable candidates are offered appointment on compassionate ground.”*

12. The Joint Secretary in the impugned order has deprived the writ petitioner even of consideration for condonation of the excess age, nearly 3 years and 3 months, in case of the instant writ petitioner.

13. From perusal of the provisions contained in this regard, extracted above, it is obvious from a plain reading of Note (a) to Clause 6(c) of the Notification dated 03.12.2013 that in eligible cases the condonation of excess age can be allowed by the head of the department or subordinate officer, who is competent to make the compassionate appointment as per the existing provisions.
14. Therefore, it was required to be seen whether the petitioner was eligible for any condonation. The eligibility is to be found in Clause 6 of the same Notification dated 03.12.2013, which has also been extracted above.
15. There is nothing on record to show that any exercise was undertaken to determine whether the family left behind by the Government servant was indigent and deserve immediate assistance as relief from financial destitution. It is only if such exercise was undertaken that condonation of excess age of the petitioner, if found "*eligible*" as per Notification dated 03.12.2013 could be properly considered.
16. Insofar as the reliance placed on the proviso contained in Rule 7 of the 2009 Rules, we find that the proviso does not limit the condonation, in

“eligible cases” as contained in Note (a) of Clause 6(c) of the 251-Emp (supra).

17. The condonation of excess age under the Notification dated 03.12.2013 is required to be considered in terms of the eligibility specified therein, extracted above, as by now it is a settled legal proposition that appointment on compassionate ground is in exception to the general rule of recruitment. The reliance placed on the proviso to Rule 7 of 2009 Rules is, therefore, clearly unsustainable.
18. In arriving at such conclusion, we have also considered the 26-Emp. dated 01.03.2016. The same has introduced a reasonable amount of flexibility, in respect of the minimum age of the candidate on the date of demise of the government servant, as contained in the 2009 Rules, being relied upon by the learned State counsel.
19. The Notification, therefore, is not in any way limited in its scope to prescribe reasonable relaxation, in furtherance of the object of social security and welfare to be disseminated by the Notification in exception to the general rule. We, therefore, are not inclined to read the limitations of the 2009 Rules for grant of condonation of the

maximum age criteria while considering a claim for compassionate appointment.

20. The authorities were required to first see whether there is a financial indigency which deserves immediate need for financial destitution as contained in Clause 6 of 251-Emp. Only if such eligibility is satisfied, then the competent authority under Note (a) to Clause 6(c) is to consider for grant of such condonation.
21. We would also add such a situation of deprivation has been brought about by non-observance by the authorities of the revised Clause 10(bb), extracted above. If the authorities proceeded as per the revised provision, by now they would either have advised the petitioner to offer another member of the family for appointment on compassionate ground or may have advised her to make a formal application seeking condonation of the excess age criteria.
22. In view of our consideration above, we find a total failure on the part of the authorities to consider the application for compassionate appointment in its true letter and spirit. They have ignored the provisions contained in their own Notification/s, which we have considered above.
23. We, therefore, find that the impugned order dated 28.10.2022 issued by the Joint Secretary,

Public Works Department, Government of West Bengal is unsustainable. The consideration is *de hors* the provisions contained in both the Notifications being 26-Emp. and 251-Emp. We also find that the consideration is by a cryptic order showing non-application of mind. The rejection order dated 28.10.2022 is, therefore, quashed.

24. The competent authority being the respondent no.2 is directed to consider the petitioner's claim for compassionate appointment and condonation of excess age criteria, or in the alternative, to consider another applicant, if eligible in the family, in accordance with the provisions contained in the Notifications, 251-Emp. and 26-Emp., and any other notification/s governing the grant of compassionate appointment without relying upon the proviso contained in Rule 7 of the 2009 Rules, for general appointment. The consideration is to be accorded by the respondent under intimation to the writ petitioner and to be disposed of by a reasoned and speaking order.
25. The entire exercise must be completed within three months from the date of receipt/production of a copy of this order before the respondent no.2. The Writ Petition is allowed in the above terms.

26. The Order of the Tribunal is, accordingly, set aside and the Original Application bearing O.A.362 of 2024 stands allowed.

**(Madhuresh Prasad, J.)**

**(Prasenjit Biswas, J.)**