

ORDER SHEET
WEST BENGAL ADMINISTRATIVE TRIBUNAL

Present-

**The Hon'ble Justice Ranjit Kumar Bag
& The Hon'ble Dr. Subesh Kumar Das**

Case No – OA 127 of 2019

Swapna Deb Majhi vs The State of West Bengal & Ors.

Serial No. and Date of order. 1	Order of the Tribunal with signature 2	Office action with date and dated signature of parties when necessary 3
03 12.04.2019	<p>For the Applicant : Mr. S. K. Mitra, Learned Advocate.</p> <p>For the Respondent : Mr. G.P. Banerjee, Learned Advocate.</p> <p>The applicant has prayed for direction upon the respondents for grant of family pension.</p> <p>It appears from the materials on record that one Nikhil Ranjan Deb Majhi retired from the post of GDA from the establishment of the respondent no. 2, Block Medical Officer of Health, Bari, Purulia. He died on February 9, 2011 leaving behind one Sandhya Rani Deb Majhi as his first wife and the present applicant Swapna Deb Majhi who claims to be the second wife of Nikhil Ranjan Deb Majhi. The admitted position is that the first wife Sandhya Rani Deb Majhi used to get family pension after the death of her husband till the date of her death on September 30, 2017. The contention of the applicant is that both the first wife Sandhya Rani Deb Majhi and the second wife Swapna Deb Majhi used to live in the same residence and in the joint mess even after the death of Nikhil Ranjan Deb Majhi. Learned Counsel for the applicant has referred to the copy of nomination form for grant of GPF and the copy of nomination form for grant of death gratuity of the deceased employee and</p>	

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submitted that the deceased employee nominated both the wives for receiving the amount of GPF and the amount of death gratuity in equal half share. Learned Counsel further contends that after the death of the first wife Sandhya Rani Deb Majhi on September 30, 2017, the applicant being the second wife of the deceased employee is entitled to get family pension in terms of the provisions of Rule 104 of the West Bengal Services (Death-cum-Retirement Benefit) Rules, 1971 (in short, the DCRB Rules, 1971) as amended by Notification No. 54-F (Pen) dated January 13, 1997 issued by the Joint Secretary to the Government of West Bengal, Department of Finance, Audit Branch : Pension Cell.

Having heard Learned Counsel representing both parties and on consideration of the intention of the deceased Government employee to divide his death gratuity and the amount of GPF between his two wives in equal share, we have to decide whether the present applicant is entitled to get family pension after the death of the first wife of the deceased Government employee. For convenience of our discussion, it is relevant to quote the provisions of Rule 104 of the DCRB Rules, 1971 as amended by Notification dated January 13, 1997, which is as follows :

**“ R.104. Period during which pension is admissible. –
The pension shall be admissible –**

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- (a) in the case of widow/widower up to the date of death or re-marriage whichever is earlier;**
- (b) in the case of minor son until he attains the age of 18 years;**
- (c) in the case of unmarried daughter until she attains the age of 21 years or marriage whichever is earlier;**
- (d) in the case of dependent parents up to the date of their death or re-marriage whichever is earlier.**

Note – Where a Government servant is survived by more than one widow the family pension shall be paid to them in equal shares. On the death of a widow her share of the pension shall become payable to her eligible minor children. If at the time of her death a widow leaves no eligible minor child the payment of her share of the pension shall cease, *[in case the minor children are twins, the family pension shall, if the twins are of the same sex, be divided between them in equal shares. If the twins are of different sexes, the family pension shall be paid to them in accordance with the provisions of these rules:]

****[Provided that where the deceased Government servant or pensioner is survived by a widow but has left behind eligible child or children from another wife who is not alive, the eligible child or children shall be entitled to the share of family pension which the mother would have received, if she had been alive at the time of death of the Government servant or pensioner.]**

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*****[Note – (i) (a) Where the family pension is payable to more widows than one, the family pension shall be paid to the widows in equal shares.**

(b) On the death of a widow, her share of the family pension shall become payable to her eligible child:

Provided that if the widow is not survived by any child, her share of the family pension shall not lapse but shall be payable to the other widows in equal shares, or if there is only one such other widow, in full, to her.

(ii) Where the deceased Government servant or pensioner is survived by a widow but has left behind eligible child or children by another wife who is not alive, the eligible child or children shall be entitled to the share of the family pension which the mother would have received if she had been alive at the time of the death of the Government servant or pensioner:

Provided that on the share or shares of the family pension payable to such child or children or to a widow or widows ceasing to be payable, such share or shares shall not lapse but shall be payable to the other widow or widows and/or to the other child or children otherwise eligible, in equal shares, or if there is only one widow or child, in full, to such widow or child.

(iii) Where the deceased Government servant or pensioner is survived by a widow but has left behind eligible child or children by other wife or wives since

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divorced, the eligible child or children shall be entitled to the share of the family pension which the mother would have received at the time of the death of the Government servant or pensioner had she not been divorced.:

Provided that on the share or shares of the family pension payable to such child or children or to a widow or widows ceasing to be payable, such share or shares shall not lapse but shall be payable to the other widow or widows and/or to the other child or children otherwise eligible, in equal share, or if there is only one widow or child, in full, to such widow or child.

(iv) Where the family pension is payable to twin children, it shall be paid to such children in equal shares :

Provided that when one of such children ceases to be eligible, his/her share shall revert to the other child, and when both of them cease to be eligible for the family pension, the family pension shall be payable to the next eligible single child/twin children.] ”

On consideration of the above provisions of the proviso to Note of Rule 104 of the DCRB Rules, 1971, we find that the family pension is payable to two widows of the deceased Government employee in equal half share. In the instant case, the present applicant claiming to be the second wife of the deceased Government employee has not been granted half share of the family pension in terms of the provisions of the above rules after the death of the Government employee. The

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<p>above rules have conferred right on two widows of any deceased Government employee to receive family pension in equal half share only when they acquired the status of legally married wives of the concerned Government employee, which may happen if the personal law of the parties permit second marriage. Any woman can become widow of her deceased husband only if the woman acquired the status of a legally married wife of the said person. A concubine or a mistress cannot have the right to claim family pension to which the widow of the employee is entitled under the provisions of the proviso to Note of Rule 104 of the DCRB Rules. In the instant case, there is no dispute that the applicant has claimed her right as widow on the basis of her alleged second marriage with the deceased Government employee during the life-time of the first wife of the said deceased Government employee. Admittedly, the deceased Government employee and the present applicant are governed by the provisions of the Hindu Law. The date of marriage of the applicant with the deceased Government employee has not been disclosed in the pleading of the applicant. The marriage of the applicant, if any, with the deceased Government employee during the life-time of the first wife of the deceased Government employee must be void marriage in terms of the provisions of Section 5 (i) read with Section 11 of the Hindu Marriage Act, 1955. It goes without saying that the void marriage is always considered as void <i>ab initio</i> and the said marriage need not be declared as void by any</p>	
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competent Court of Law. Since the marriage of the applicant with the deceased Government employee was void, the applicant cannot claim the status of legally married wife of the deceased Government employee and thereby she cannot claim her right as widow of the deceased Government employee under the provisions of proviso to Note (i) (b) of Rule 104 of the DCRB Rules, 1971.

In view of our above findings, we are unable to accept the contention made on behalf of the applicant that the applicant being the second wife of the deceased Government employee is entitled to get family pension after the death of the first wife of the deceased Government employee.

As a result, the original application is **dismissed**.

Let urgent xerox certified copy of the order be supplied to the parties, if applied for, on priority basis after compliance of all necessary formalities.

(S.K. DAS)
MEMBER(A)

(R. K. BAG)
MEMBER (J)

Sanjib