

**ORDER SHEET**

**WEST BENGAL ADMINISTRATIVE TRIBUNAL**

**Present-**

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

**Case No – OA 183 OF 2019**

**Urmila Lepcha 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
05 19.08.2019	<p>For the Applicant : Mr. S.K. Nandi, Learned Advocate.</p> <p>For the Respondents : Mr. G.P. Banerjee, Learned Advocate.</p> <p>For the Pvt. Respondents : Mr. D. Das, Mr. D. Das, Learned Advocates.</p> <p>For the AG (A&amp;E),WB : Mr. B. Mitra, Departmental Representative.</p> <p>The applicant has prayed for direction upon the respondents for grant of family pension and other death benefits of her deceased husband after setting aside the report of enquiry submitted by the Superintendent of Police, Murshidabad on June 16, 2017.</p> <p>One Moti Lepcha died-in-harness on May 30, 2015 while he was working as Police Driver in the establishment of the respondent no. 4, Superintendent of Police, Murshidabad. The contention of the applicant Urmila Lepcha is that she was married to Moti Lepcha on September 18, 2004 as per Hindu Rites and Religion. The further contention of the applicant is that one daughter by name Bipasha was born from the said wedlock. The applicant previously approached this Tribunal by filing OA 83 of 2016 praying for family pension and death benefits of her deceased husband Moti Lepcha. The order</p>	

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passed by the Tribunal in OA 83 of 2016 was not initially complied with by the concerned respondent resulting in initiation of contempt proceeding by the applicant by filing CCP 33 of 2017. On March 20, 2018, the said contempt proceeding was dismissed in terms of the report submitted by the Superintendent of Police, Murshidabad on June 16, 2017. The said report of the Superintendent of Police, Murshidabad is now under challenge in the present application.

The applicant has impleaded one Shefali Dey (Lepcha) and one Monisha Das (Lepcha) and one Tiyasa Lepcha as private respondents in the present application. Learned Counsel representing the private respondents submits that the respondent no. 6 Shefali was married to Moti Lepcha on September 5, 1991. Learned Counsel further submits that two daughters by name Monisha and Tiyasa were born from the said wedlock. The specific contention made on behalf of the private respondents is that the marital tie between Shefali Lepcha and the deceased Moti Lepcha remained intact till the date of death of Moti Lepcha. It is, therefore, contended on behalf of the private respondents that the marriage between the deceased Moti Lepcha and the present applicant Urmila on September 18, 2004 took place during the existence of marital tie between Moti Lepcha and Shefali and thereby the second marriage is void in terms of Section 5 (i) read with Section 11 of the Hindu Marriage Act, 1955. The specific contention of Learned Counsel for the

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private respondents is that the marriage between the deceased Moti Lepcha and the applicant Urmila is void ab initio and thereby the applicant is not entitled to get any benefit of service of Moti Lepcha as a legally married wife.

Mr. Nandi, Learned Counsel representing the applicant, contends that no marriage was solemnized between Moti Lepcha and the private respondent Shefali at any material point of time. He further contends that Shefali married one Amit Dey and children were born from the said wedlock and as such the private respondent Shefali is not entitled to get any benefit of service of the deceased Moti Lepcha.

Mr. Banerjee, Learned Counsel representing the state respondents, submits that the applicant is not entitled to get any benefit of service of Moti Lepcha as the report of enquiry of the Superintendent of Police, Murshidabad clearly indicates that the second marriage of Moti Lepcha with the applicant Urmila took place during the existence of marital tie of Moti Lepcha with his first wife Shefali. Mr. Banerjee has pointed out from the materials on record that two daughters were born from the first marriage namely Monisha and Tiyasa, and one daughter was born from the second marriage namely Bipasha.

On our query, Mr. Mitra, the Departmental Representative of the respondent AG, West Bengal, submits that the AG Office has not yet received the case of family pension

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and any order of release of death benefits of the deceased Moti Lepcha. We are informed that the amount of GPF has also not been released in favour of the legal heirs of the deceased Moti Lepcha till date.

Having heard Learned Counsel representing the respective parties and the Departmental Representative of the respondent AG, West Bengal and on consideration of the fact that the legal heirs of the deceased employee have not received the death benefits after four years of death of the employee, we would like to decide the issue of grant of family pension and release of death benefits in favour of the legal heirs without relegating the same to the Pension Sanctioning Authority. On consideration of the report of enquiry of Superintendent of Police, Murshidabad which is based on the opinion given by Learned Government Pleader of the district of Murshidabad we do not find any anomaly or inconsistency or illegality in deciding the issue of legal heirship of the deceased Moti Lepcha. Accordingly, we would like to rely on the report of enquiry submitted by the Superintendent of Police, Murshidabad, without setting aside the same as prayed by the applicant.

What transpires from the materials on record is that Moti Lepcha died on May 30, 2015 while he was in service. Nothing is on record to disbelieve that the private respondent Shefali was married to Moti Lepcha in the year 1991, while the applicant

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Urmila was married to Moti Lepcha on September 18, 2004. Admittedly, the parties claimed that they are governed by the provisions of Hindu Law. There is nothing on record to indicate that the marital tie between Moti Lepcha and the private respondent Shefali was snapped when the second marriage of Moti Lepcha with the applicant Urmila took place on September 18, 2004. The natural corollary is that the second marriage of the applicant Urmila with Moti Lepcha is void in terms of the provisions of Section 5 (i) read with Section 11 of the Hindu Marriage Act, 1955. Accordingly, the applicant Urmila is not entitled to get any benefit of service of Moti Lepcha as a legally married wife, but the daughter born from the wedlock between Moti and Urmila is entitled to inherit the property of Moti Lepcha as legitimate child in terms of the provisions of Section 16 of the Hindu Marriage Act, 1955.

The private respondents Shefali being the legally married wife of Moti Lepcha is entitled to get family pension with effect from May 31, 2015 in terms of the Rule 7(e)(2) of the West Bengal Services (Death-cum-Retirement Benefit) Rules, 1971 (in short, DCRB Rules, 1971).

Two daughters by name Monisha and Tiyasa were born from the wedlock between Moti Lepcha and the private respondent Shefali. Out of these two daughters Monisha was married and Tiyasa was unmarried on the date of death of Moti Lepcha. Similarly, one daughter by name Bipasha was born

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from the void marriage of Moti Lepcha and the applicant Urmila but she will be treated as legitimate as already observed by us. With regard to death gratuity of Moti Lepcha, we would like to hold that the amount of death gratuity will be distributed in equal share among the following legal heirs namely first wife i.e. private respondent Shefali, two daughters viz. Tiyasa and Bipasha and the mother of the deceased employee - Puspo Lepcha. It is relevant to point out that the married daughter Monisha is not entitled to get the share of death gratuity in terms of Rule 7(e)(1) of the DCRB Rules, 1971.

With regard to the amount of GPF of Moti Lepcha, we would like to hold that the amount of GPF will be distributed among the first wife i.e. private respondent Shefali and two daughters namely Tiyasa and Bipasha in equal share. The married daughter Monisha will be excluded from getting the share of the amount of GPF in terms of Rule 31 (1) of the West Bengal Services (GPF) Rules. With regard to the amount of Group Insurance of the deceased Moti Lepcha, we would like to hold that the amount will be distributed in equal share among the first wife i.e. private respondent Shefali, three daughters namely Monisha, Tiyasa and Bipasha and the mother of the deceased employee Puspo Lepcha.

In view of our above observation, we direct the respondent no. 4, Superintendent of Police, Murshidabad to disburse the amount of GPF, death gratuity, group insurance

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and grant family pension of the deceased employee Moti Lepcha as indicated in our order within a period of 12 (twelve) weeks from the date of communication of the order.

With the above direction, the original application stands **disposed of.**

Let a plain copy of the order be supplied to all the parties.

**( S.K. DAS )**  
MEMBER(A)

**( R. K. BAG )**  
MEMBER (J)

Sanjib