

ORDER SHEET

WEST BENGAL ADMINISTRATIVE TRIBUNAL

Present-

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

Case No – **OA 483 OF 2017**

Smt. Priya @ Gouri Sarkar 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
14 21.02.2019	<p>For the Applicant : Mr. A.K. Das Sinha, Learned Advocate.</p> <p>For the Respondents : Mr. B.K. Roy, Learned Advocate.</p> <p>For the AG (A&E),WB : Mr. B. Mitra, Departmental Representative.</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 Alokesh Sarkar, Jail Warder of District Correctional Home at Suri died-in-harness on March 16, 1993. Alokesh Sarkar died leaving behind his mother Chhaya Sarkar, his wife, the applicant Smt. Priya alias Gouri Sarkar and his minor daughter Puja Sarkar as his legal heirs. The mother of the deceased employee filed Title Suit No. 43 of 1994 before the Court of Learned Civil Judge (Junior Division), 1st Court, Barasat praying for declaration that she is entitled to get family pension and retirement benefits of her deceased son. The said Title Suit was decreed in terms of compromise between the plaintiff and the private defendant namely the present applicant. It appears from the terms of compromise that the</p>	

ORDER SHEET

Smt. Priya @ Gouri Sarkar

Form No.

Vs.

The State of West Bengal & Ors.

Case No. **OA 483 OF 2017**

<p>mother of the deceased employee will get family pension and 45% of other retiral benefits like GPF, death gratuity, group insurance and leave encashment and the present applicant will get 55% of the said retiral benefits. Except family pension other retirement benefits of the deceased employee have already been disbursed in favour of the mother of the employee and the wife of the employee by passing order on June 9, 2006 by the Joint Secretary to the Goernment of West Bengal, Department of Jails. Subsequently, the minor daughter of the deceased employee filed another Title Suit No. 35 of 2006 against the state respondents, mother of the employee and wife of the employee before the Learned Civil Judge (Junior Division), 1st Court, Barasat praying for declaration that the judgment and decree passed in previous Title Suit No. 43 of 1994 is void. Ultimately, on January 27, 2012 Learned Civil Judge (Junior Division), 1st Court, Barasat decreed Title Suit No. 35 of 2006 by declaring the compromise decree passed in Title Suit No. 43 of 1994 as void and also declared that the minor daughter of the deceased employee is entitled to get one third share in the retirement benefits of her father including family pension.</p>	
---	--

ORDER SHEET

Smt. Priya @ Gouri Sarkar

Form No.

Vs.

The State of West Bengal & Ors.

Case No. **OA 483 OF 2017**

The reply submitted by the state respondents indicates that family pension @ Rs.400/- per month was sanctioned during the period from March 17, 1993 to March 31, 1997 and thereafter @ Rs.130/- per month in favour of the mother of the deceased employee by the Accountant General (A&E), West Bengal vide Memo. No. Pen-PCI/78(D)/940 dated August 14, 2006. However, the said order of sanction of family pension in favour of the mother of the employee was not given effect due to subsequent declaration by the Civil Court in Title Suit No. 35 of 2006 that the minor daughter of the deceased employee is entitled to get one third share of family pension. The reply of the state respondents has specifically pointed out that the state respondents were not in a position to pass any order in connection with family pension as Learned Judge of the Civil Court in Title Suit No. 35 of 2006 did not pass any order in connection with the remaining two third share of family pension. Under the above facts and circumstances, we have to decide whether the applicant is entitled to get family pension of her deceased husband.

Having heard Learned Counsel representing the applicant, Learned Counsel representing the

ORDER SHEET

Smt. Priya @ Gouri Sarkar

Form No.

Vs.

The State of West Bengal & Ors.

Case No. **OA 483 OF 2017**

state respondents and the departmental representative of the respondent AG (A&E), West Bengal and on consideration of the provisions of Rule 101 and Rule 105 of West Bengal Services (Death-cum-Retirement Benefit) Rules, 1971 (in short, the DCRB Rules, 1971), we find that family pension shall be payable to only one member of the family of the deceased employee at a time. Rule 105 of the DCRB Rules, 1971 has specifically laid down that family pension will be first admissible to the widow and then to the minor children and thereafter to the mother and lastly to the father of the deceased Government employee. Learned Civil Judge (Junior Division), 1st Court, Barasat did not take into consideration the provisions of Rule 101 and Rule 105 of the DCRB Rules, 1971 at the time of passing judgment and decree in Title Suit No. 35 of 2006 and as such the said judgment and decree may be treated as per incuriam. The claim of the applicant for grant of family pension as the wife of the deceased Government employee cannot be turned down in terms of the provisions of Rule 101 and Rule 105 of the DCRB Rules, 1971.

In view of our above observation, the applicant is entitled to get family pension in terms of the provisions of Rule 101 read with Rule 105 of

ORDER SHEET

Smt. Priya @ Gouri Sarkar

Form No.

Vs.

The State of West Bengal & Ors.

Case No. **OA 483 OF 2017**

the DCRB Rules, 1971 w.e.f. March 17, 1993 onwards. Accordingly, the respondent no. 4, Superintendent, District Correctional Home at Suri is directed to take necessary steps for grant of family pension in favour of the applicant w.e.f. March 17, 1993 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 this order be supplied to both parties.

(S.K. DAS)
MEMBER(A)

(R. K. BAG)
MEMBER (J)

Sanjib