

ORDER SHEET
WEST BENGAL ADMINISTRATIVE TRIBUNAL

Present-

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

Case No – **OA 937 OF 2014**

Bhanu Rani Ghosh 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 <hr/> 12.03.2018	<p>For the Applicant : Mr. B.K. Singh, Learned Advocate.</p> <p>For the Respondents : Mr. A.L. Basu, Learned Advocate.</p> <p>For the Respondent Nos. 6&7 : Mrs. S. Mitra, Learned Advocate.</p> <p>For AG (A&E), WB : Mr. B. Mitra, Depttl. Rep.</p> <p>The applicant has filed this original application under section 19 of the Administrative Tribunals Act, 1985 praying for direction upon the respondents to release the family pension in favour of the applicant in accordance with rule 105 of the West Bengal Services (Death-cum-Retirement Benefits) Rules, 1971 [in short “WBS (D.C.R.B.) Rules, 1971”] and in accordance with the judgment passed by Learned Civil Judge (Junior Division), Asansol in T.S. No. 160 of 2003.</p> <p>The contention of the applicant is that the applicant is the legally married wife of one Sanatan Ghosh who was discharged from service on medical ground on February 27, 2003 while he was attached to SAP, 7th Battalion as Constable. Sanatan Ghosh died on July 27, 2003 leaving behind the applicant as the first wife and one Parbati Ghosh as the second wife. Two daughters and one son were born from the first wife of Sanatan Ghosh and two daughters were born from the second wife of Sanatan Ghosh. The second</p>	

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wife of Sanatan Ghosh and the daughters born from the second wife of Sanatan Ghosh instituted Title Suit No. 160 of 2003 before the Learned Civil Judge (Junior Division), 1st Court, Asansol against the first wife of Sanatan Ghosh and the children born from the first wife of Sanatan Ghosh. It appears from the copy of judgment and decree passed by Learned Civil Judge in T.S. No. 160 of 2003 that the first wife Bhanu Rani Ghosh and her one daughter Marina Ghosh and son Sujit Ghosh will get 3/5th share in the service dues of Sanatan Ghosh and two daughters of the second wife Parbati Ghosh namely Sumitra Ghosh and Anu Ghosh will get the remaining 2/5th share of service dues of Sanatan Ghosh.

We are informed that the respondent no. 5, the Commandant, SAP, 7th Battalion, Kalyanpur, Asansol is the authority to issue family pension and other retirement benefits of Sanatan Ghosh. The grievance of the applicant is that the applicant has not received any retiral dues and family pension after the death of her husband Sanatan Ghosh on July 27, 2003. The Assistant Secretary to the Government of West Bengal, Department of Home (Police) has issued one G.O. dated September 12, 2011 by sanctioning family pension in favour of the applicant and the eldest child of the second wife – Sumitra Ghosh in equal half share, but the family pension or other retiral benefits have not been given to the applicant.

Mr. Basu, Learned Counsel representing the state

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respondents submits that the applicant never approached the office of the respondent no. 5 for filling up necessary form and for submission of necessary documents for processing the case of the applicant for release of retiral benefits and family pension, in spite of giving notice.

The grievance of the applicant is that the applicant is entitled to get the entire amount of family pension which was divided in equal $\frac{1}{2}$ share between the applicant and the eldest daughter of the second wife of the deceased Sanatan Ghosh by the Department of Home (Police), Government of West Bengal by issuing G.O. dated September 12, 2011. Rule 105 of the WBS (D.C.R.B.) Rules, 1971 provides that only one member of the family of the deceased employee is eligible to get family pension. However, the said provision of Rule 105 of WBS (D.C.R.B.) Rules, 1971 will be applicable, subject to the provisions contained in Note to Rule 104 of the said Rules of 1971. On perusal of Note to Rule 104 of WBS (D.C.R.B.) Rules, 1971 read with Finance Department Memorandum No. 1410-F (Pen) dated November 12, 1997 go to establish that pensionary benefits will be granted to the children of the deceased Government employee/pensioner who were born from void marriages, when their turn will come in accordance with Rule 105 of the WBS (D.C.R.B.) Rules, 1971. We are inclined to follow the provisions of the Rules discussed hereinabove without ignoring the judgment and decree passed by the Civil Court in T.S.

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No. 160 of 2003, whereby the two daughters of second wife are entitled to get 2/5th share of service benefits of the deceased Sanatan Ghosh and the applicant and her son and one daughter are entitled to get 3/5th share of service benefits of the deceased Sanatan Ghosh.

Having heard Learned Counsel representing the respective parties and on consideration of the entire background of filing the original application before this Tribunal, we are of the view that the applicant alone is entitled to get family pension of the deceased Sanatan Ghosh as per provision of Rule 105 of WBS (D.C.R.B.) Rules, 1971 read with Finance Department Memorandum No. 1410-F (Pen) dated November 12, 1997. However, apart from family pension, the applicant and her son Sujit Ghosh and unmarried daughter Marina Ghosh are entitled to get 3/5th share of the other retiral benefits of the deceased Sanatan Ghosh, while two daughters of second wife of the deceased Sanatan Ghosh namely Sumitra Ghosh and Anu Ghosh are entitled to get 2/5th share of the retiral benefits of the deceased Sanatan Ghosh. Since the retiral benefits and family pension have not been released in favour of the persons who are entitled to get it after the death of Sanatan Ghosh on July 27, 2003, we direct the Respondent no. 5, the Commandant, SAP, 7th Battalion, Kalyanpur, Asansol to complete the entire process for release of family pension after giving the applicant an opportunity of hearing within a period of 12 (twelve) weeks from the date of communication of

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this order. The said respondent no. 5 is further directed to complete the entire process for release of all retiral benefits of the deceased Sanatan Ghosh in favour of the applicant and her one son and one daughter to the extent of 3/5th share and in favour of the two daughters of the second wife of the deceased Sanatan Ghosh to the extent of 2/5th share within a period of 12 (twelve) weeks from the date of communication of this order. The applicant is directed to appear before the respondent no. 5 positively within a period of 4 (four) weeks from the date of this order, in default of appearance of the applicant before the respondent no. 5 within the stipulated period of time, the respondent no. 5 will have no liability to comply with the direction of the Tribunal within the stipulated period of time.

The respondent no. 3, Principal Accountant General (A&E), West Bengal is directed to release the family pension and other retiral benefits from his end within a period of 12 (twelve) weeks from the date of communication to be received from the end of the respondent no. 5.

With the above direction, the original application is disposed of.

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

(S.K. DAS)
MEMBER(A)

(R. K. BAG)
MEMBER (J)

Sanjib

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