

ORDER SHEET

WEST BENGAL ADMINISTRATIVE TRIBUNAL

Bikash Bhavan, Salt Lake, Kolkata – 700 091.

Present-

The Hon'ble Sayeed Ahmed Baba, Officiating Chairperson and Administrative Member

Case No. –OA 475 OF 2022

PAYEL GHOSH & ANOTHER - VERSUS - THE STATE OF WEST BENGAL & ORS.

Serial No. and Date of order	For the Applicants	:	Mr. S. Bhattacharjee, Advocate
	For the State Respondents	:	Mr. Sunita Agarwal, Advocate
<u>13</u> 25.07.2024	For the Private Respondent No.5	:	None
	For the Principal Accountant General (A&E), West Bengal	:	Mr. Biswanath Mitra, Departmental Representative

The matter is taken up by the single Bench pursuant to the order contained in the Notification No.638-WBAT/2J-15/2016 (Pt.-II) dated 23rd November, 2022 issued in exercise of the powers conferred under section 5(6) of the Administrative Tribunals Act, 1985.

By filing this application, the applicants have prayed for setting aside the reasoned order passed by the District Magistrate, Howrah on 24.03.2022. In terms of this reasoned order the retiral benefits including family pension were given in the name of Krishna Maity (Ghosh), wife of the deceased employee, Dipak Kumar Ghosh. The applicant No.1 Payel Ghosh is the unmarried daughter of the deceased employee. He has prayed for a share of the family pension and other retiral benefits. The applicant No.2, Piyali Ghosh (nee Sarkar) is the married daughter of the deceased employee and has prayed for her share of the retiral benefits like G.P.F., leave encashment and death gratuity. A copy of the amended Rule 104 notified in 54 (F) (Pen) dated 13.07.1997 has been presented by Mr. B. Mitra in which paragraph 3 is the relevant part, which is as under:

“(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 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.”

It is agreed by the learned counsels representing all the sides that in terms of the paragraph above of Rule 104 notified in 54 (F) (Pen) dated 13.07.1997, Payel Ghosh, the applicant No.1 being the unmarried daughter is entitled to receive her share of the family pension. As regards death gratuity, *Rule 7 Note 2 (e) (1) of the West Bengal Services*

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(Death-cum-Retirement Benefit) Rules, 1971 defines the members of family of a deceased employee eligible to receive death gratuity. In the same note under (iv), unmarried daughter and widowed daughters (including step daughters) are also members of the family, who are entitled to receive death gratuity. In terms of the above Rules, all the learned counsels also agree that Payel Ghosh is also entitled to get her share of death gratuity. Mrs. Agarwal, though agreeing to the above remarks also points out that Saurav Ghosh the minor son from the second wife, Krishna Maity (Ghosh) is also entitled to receive a share of death gratuity.

In view of above observations relating to the rules, the Tribunal feels it necessary to direct the respondent No. 2, the District Magistrate & Collector, Howrah to modify his reasoned order dated 24.03.2022 and include the other eligible member of the family who has been left out to receive her share of the **family pension**, namely, Payel Ghosh. The modified order be passed to sanction family pension in equal shares in the names of (i) Krishna Maiti (Ghosh), the wife of the deceased employee and (ii) Payel Ghosh, the unmarried daughter of the deceased employee.

As regards **death gratuity**, the order may be modified to the extent that equal shares be divided among Krishna Maity (Ghosh), wife, Payel Ghosh, unmarried daughter and Saurav Ghosh, minor son of Krishna Maity (Ghosh).

As regards **other benefits** like G.I.S., Provident Fund, and Leave Encashment, as per the extant rules, Piyali Sarkar, the married daughter of the deceased employee is also entitled. Therefore, this benefit may also be divided equally amongst (i) Krishna Maity (Ghosh) (ii) Piyali Sarkar (iii) Payel Ghosh and (iv) Saurav Ghosh.

The modified order be passed by the respondent No. 2, the District Magistrate & Collector, Howrah within a period of three months from the date of communication of this order. The respondent No.2 shall also communicate the same to the applicants within a period of two weeks thereafter.

Thus, the application is disposed of.

(SAYEED AHMED BABA)
OFFICIATING CHAIRPERSON
and MEMBER (A)

SCN.