

**WEST BENGAL ADMINISTRATIVE TRIBUNAL**

Bikash Bhavan, Salt Lake, Kolkata – 700 091.

Present-

The Hon'ble Justice Soumitra Pal, Chairman

Case No. – OA 176 OF 2020

**ALPANA SARKAR (ROYCHOWDHURY)**

**- VERSUS - THE STATE OF WEST BENGAL & ORS.**

Serial No. and  
Date of order

11  
21.07.2022

For the Applicant

: Mr. Manujendra Narayan Roy  
Mr. Biswarup Nandy  
Mrs. Priya Sasmal  
Advocates

For the State respondents

: Mr. Goutam Pathak Banerjee  
Advocate

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. 118-WBAT/1E-08/2003 (Pt.-II) dated 11<sup>th</sup> February, 2022 issued in exercise of the powers conferred under section 6 (5) of the Administrative Tribunals Act, 1985.

In this application, Alpna Sarkar (Roychowdhury) has prayed for certain reliefs, the relevant portion of which is as under:

*“(a) An order do issue directing thereby the concerned respondent authorities to immediately disburse family pension and/ or compassionate allowance to the applicant as has been laid down in Rule 15 of The West Bengal Services (Death -cum- Retirement Benefit) Rules, 1971.*

*“(b) An order do issue holding thereby that Rule 12 and Rule 14 of The West Bengal Services (Death -cum- Retirement Benefit) Rules, 1971, do not act as a hindrance for disbursement of Family Pension and/or Compassionate*

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*Allowance to the applicant, in the instant case, particularly when the applicant herself was inflicted to torture by her husband (the deceased Government employee) and the applicant having no other alternative, to save herself from the tortures of her husband took recourse, shelter and protection of law u/s 498A, Indian Penal Code, 1862."*

The facts are that the applicant got married to Pradip Kumar Sarkar, who was posted as Lower Division Clerk under the Chief Medical Officer of Health (CMOH), Purulia, the respondent no. 3 and had superannuated on 31<sup>st</sup> August, 2009 and had expired on 6<sup>th</sup> July, 2014. It has been stated that after her marriage as she was tortured by her husband. Having no other alternative she took shelter under the law by filing a complaint under section 498A of Indian Penal Code 1860 which was duly taken cognizance of and a case was registered as Purulia Town P.S. Case no. 47/93. After adjudication, the husband of the applicant was convicted. Subsequently, an appeal was preferred by him before the High Court, being CRR 740 of 2003. During the pendency of the matter before the High Court, the husband of the applicant passed away and as a result the CRR stood abated. After the death of her husband, the applicant filed a representation being Annexure-‘C’ to the application before the respondent no.3 praying for release of legitimate dues. It has been stated that the respondents made a spot inquiry regarding the legal heirs of late Pradip Kumar Sarkar wherefrom, according to the applicant *“it was clear that the applicant is the sole legal heir of Late Pradip Kumar Sarkar, the deceased Government employee.”* (Paragraph 6 of the application).

It has further been stated that the respondent no. 3 forwarded a report as received from Public Prosecutor, Purulia to the Director of Health Services,

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Department of Health and Family Welfare, Government of West Bengal, the respondent no. 2. It has further been stated that after visiting the office of the respondents *“she was informed that she is not entitled to any family pension as her husband was convicted and since her husband was not entitled to pension, she is not entitled to family pension. She was also further informed that as per the records, her husband did not nominate anybody for grant of family pension after his demise.”* (Paragraph 8 of the application).

Referring to rule 15 of the West Bengal Services (Death -cum- Retirement Benefit) Rules, 1971, it has been stated that in the event an employee was entitled to compensation or pension, the family is also entitled to the same as similar to that of family pension / gratuity as provided under Chapter X of the Rules. It has further been stated that the rule on family pension being Rule 101 under Chapter X is not contrary to Rule 15. The applicant has also stated that as per the 1971 Rules ordinarily no pension is allowable to an employee who has been convicted by a court of law, but exceptional provisions have also been carved out in the said rules. Further the applicant has also referred Rule 12 and Rule 14 of the said 1971 Rules. In paragraphs 13 to 17 of the original application, it has been stated:

*“13. That your applicant states that since she was tortured by her husband, she had no other alternative other than taking recourse to the provisions of law to save herself. Now, since she had set the law in motion, it took its own course and her husband was found guilty. As a result of her own complaint back in the year 1993, she is practically not receiving any family pension today. Thus, her own action to take recourse under law is hurting her todays sustenance.*

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*Presently, the applicant is facing extreme difficulty in sustaining herself as has been revealed in the inquiry report. It is pertinent to state that the nuptial tie between the applicant and her husband was not broken as their marriage was never dissolved by any competent Court of law.*

*14. That your applicant states that the exceptional case as that of her has not been provisioned for in the The West Bengal Services (Death -cum- Retirement Benefit) Rules, 1971. The Rule is silent as to what shall happen in case of disbursement of family pension in case an employee is convicted upon complaint made by spouse. As such, your applicant states that there lies no impediment in disbursing her the Family Pension, particularly when she herself had set the law in motion to save herself from the tortures of her husband, since deceased.*

*15. That your applicant states that since the Rule is silent covering the case of the applicant, a combined reading of Rules 15, 12, 14 and 101 of The West Bengal Services (Death -cum- Retirement Benefit) Rules, 1971, are required to be read together to form a harmonious construction.*

*16. That your applicant further states that the intention of the legislature is evident that even in the case of conviction the authorities are to take a call regarding disbursement of allowance. Thus, a conviction necessarily do not wipe out all cases of receipt of allowances.*

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*17. That your applicant further states that the concept and objective of Family Pension is primarily to provide financial support to the spouse in case of demise of the Government employee. The legislatures being aware of the fact that there may be differences amongst the spouses and resultantly the employee, out of vengeance, may not nominate the wife to receive the family pension. The legislatures taking care of the same, also provided even in the case the nominee for family pension is somebody else, out of the family, the same shall be ignored and nomination contrary to the statute shall be void. Thus, the entire statute read as whole only points towards the beneficial steps of the authorities to see and ensure that the spouse is in receipt of Family Pension.”*

Mr.M.N.Roy, learned advocate for the applicant submits that since the applicant is in penury, appropriate order may be passed on the State respondents, particularly on the respondent no. 3, to grant family pension after considering the representation, being Annexure- ‘C’ to the application.

Mr.G.P.Banerjee, learned advocate appearing on behalf of the State respondents submits that the husband of the applicant was convicted during his service tenure on a complaint lodged by the applicant and therefore, she cannot now turn around and make a prayer for family pension. Moreover, in view of the settled position of law as the husband of the applicant was convicted, pension and other benefits available to him was forfeited except release of provident fund, G.I.S. and leave encashment. Further Rule 12 and Rule 15 of 1971 Rules are not applicable in the case of the applicant.

**ORDER SHEET**

Form No.

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Mr.B.Mitra, the Departmental representative for the Principal Accountant General (A&E) West Bengal, the respondent no. 4, adopts the submission of Mr.Banerjee.

Since the applicant, as noted hereinbefore, has stated that 1971 Rules are silent regarding grant of family pension to a lady whose husband has been convicted during his service tenure at her instance and as in my view, the matter is with regard to framing of policy by the State Government, in such facts and circumstances of the case, the application is disposed of by granting liberty to the applicant to file representation specifying her claim in the backdrop of the West Bengal Services (Death -cum- Retirement Benefit) Rules 1971, before the Principal Secretary, Department of Health and Family Welfare, Government of West Bengal, the respondent no. 1 within a week from the date of obtaining a copy of this order downloaded from the website of the Tribunal. If representation is filed before the Principal Secretary, Department of Health and Family, Government of West Bengal, the respondent no. 1, the said respondent no. 1 shall dispose of the same by passing an order within eight weeks which shall be communicated to the parties within the said period.

(SOUMITRA PAL)  
CHAIRMAN

BLR