

ORDER SHEET**WEST BENGAL ADMINISTRATIVE TRIBUNAL**

Present- The Hon'ble Mrs. Urmita Datta (Sen) Member(J)
The Hon'ble Mr. P. Ramesh Kumar Member (A)

Case No –MA-123 of 2018 (OA-1155 of 2012).

Khuku Mahanta. –Vs- The State of West Bengal & Others.

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
<p style="text-align: center;"><u>01</u> 11.09.2018</p>	<p><i>For the Applicant : None.</i></p> <p><i>For the Respondents : Mrs. S. Agarwal, Advocate.</i></p> <p style="text-align: center;">The instant application has been filed praying for following reliefs :-</p> <p>(1) To start the execution proceeding against the respondent no. 2 under section 27 of the West Bengal Administrative Tribunal Act, 1985; In connection with the order passed by the Hon'ble Tribunal on 02-01-2013 pertaining to OA No. 1155 of 2012.</p> <p>(II) Direct to the respondent no. 2 for immediate payment of pensionary benefits to the petitioner with immediate effect.</p> <p style="text-align: center;">According to the applicant the father of the applicant was an employee of Calcutta Police being</p>	

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	<p>Constable No. 9183 who retired on 30-06-1986. However, since one P.S. Case No. 50 dated 11-09-1982 was pending, he was granted provisional pension. Subsequently her father died on 16-01-2010. At the time of death of the father, his son, one married daughter and one unmarried daughter(applicant) since his wife is predeceased. Thereafter, the applicant approaches the authority for family pension as she was not provided with the family pension. Being aggrieved with, she approaches this Tribunal in OA-1155 of 2012. This Tribunal vide its order dated 02-01-2013 disposed of the application with a direction to the authority to consider his application and communicate the same. Subsequently, the authority vide its Memo dated 13-06-2013 communicated the order passed by the authority dated 12-06-2013. Being aggrieved with again the applicant filed this MA application praying for execution of the order dated 02-01-2013. It has been stated by the applicant that the prayer for granting family pension to the petitioner has been rejected on the ground that the applicant was</p>	

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	<p>directed to submit all the relevant documents in connection with the criminal case as well as the status of the criminal case which he failed to submit.</p> <ul style="list-style-type: none"> ● As per the applicant the authority vide his letter dated 12-06-2013 had disposed of his application, whereby the applicant was again directed to submit the relevant documents in connection with the criminal proceeding so as to convince the office to ascertain the status of the criminal case against the father of the applicant. Learned Advocate on behalf of the applicant by his letter dated 11-02-2014 had clearly stated that since the accused person died, all the cases against the death person has automatically being abated. Therefore the applicant is entitled to get the family pension as there could not be any disciplinary proceeding against a dead person. As per the applicant, the respondents instead of allowing the family pension in favour of the applicant directed her to submit the present status of the criminal case though 	

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	<p>Learned Advocate for the applicant vide letter dated 11-02-2014 had already communicated that the pending criminal case has already been abated due to the death of her father. *</p> <p>It is noted that this Tribunal on 02-01-2013, had passed the following order :-</p> <p>“ We have gone through application.</p> <p>There is no necessity to take any reply from the state respondent for disposing of the same.</p> <p>After going through the submission of Ld. Advs. Of both the sides, we dispose of the present application with direction to the authority/respondent no. 2 to dispose of the present application within a period of 16 weeks from the date of communication of this order after giving an opportunity of personal hearing of the petitioner as per rule and the decision shall be communicated to the petitioner within a period of 4 weeks thereafter.</p> <p>The application is disposed of accordingly”.</p> <p>Subsequently in compliance with the said</p>	

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	<p>order the respondents had passed following order vide order dated 12-06-2013:-</p> <p style="text-align: center;">“After due consideration of the application of the petitioner together with all its enclosures, fact of the case and available records, it is ordered that necessary sanction of the payment of life time arrear of pensionary benefits and other admissible dues in respect of late Subodh Chandra Mahanta, if any and family pension to his unmarried daughter namely Khuku Mohanta @ Khuku Rani Mohanta shall be considered on receipt of the documents in connection with the fate of the Khardah Police Station Case No. 50 under section 147/148/149/326/307/337/427 of Indian Penal Code registered against him and other relevant documents from the applicant.</p> <p style="text-align: center;">The applicant is, therefore directed to submit all the relevant documents in connection with the criminal proceeding in the instant matter so as to convince this office to ascertain the status of the</p>	

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	<p>criminal case against the said Constable with a view to taking necessary steps towards payment of Death-cum-Retirement Benefit as per rule.</p> <p>The application of the petitioner is hereby disposed of in compliance of the order dated 02-01-2013 of the Hon'ble West Bengal State Administrative Tribunal passed in O.A. No. 1155 of 2012.</p> <p>Let a copy of this order be communicated to the petitioner as per order of the Ld. Tribunal".</p> <p>It is further noted that the Learned Advocate on behalf of the applicant subsequently made it clear to the authority that due to the death of accused person the criminal case has already been abated. Therefore, there is no bar to grant of family pension. However from the perusal of the order dated 02-01-2013, it transpires that the respondents were directed to grant opportunity of personal hearing to the petitioner and take the decision and communicate the same. The respondents in compliance to the said</p>	

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	<p>order have passed the order dated 12-06-2013 by which the applicant has become aggrieved. However without challenging the same he has filed the instant application by invoking Section 27 of the Administrative Tribunal Act 1985, which stipulates inter alia :-</p> <p style="text-align: center;">“Subject to the other provisions of this Act and the rules, [the order of a Tribunal finally disposing of an application or an appeal shall be final and shall not be called in question in any court (including a High Court) and such order] shall be executed in the same manner in which any final order of the nature referred to in clause (a) of sub-section (2) of section 20 (whether or not such final order had actually been made) in respect of the grievance to which the application relates would have been executed”.</p> <p>Since we had only directed the respondents to dispose of the application and the respondents</p>	

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	<p>rightly or wrongly have passed one order. Therefore there is no scope for execution of order under Section 27 as no mandatory direction was passed to grant family pension to the applicant. However, if the applicant is aggrieved by the order dated 12-06-2013, she has liberty to challenge the said order on the ground as stated in the instant application by filing a fresh original application, if so advise. However there is no scope to entertain the instant application under Section 27 of the Administrative Tribunal Act, 1985 as there was no mandatory direction except to dispose of the application which the respondents have rightly or wrongly complied with by way of passing one order dated 12-06-2013. Accordingly, we are unable to entertain the instant application. However the applicant will be at liberty to take appropriate steps, if still she is aggrieved by the order of the respondents.</p>	

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Mihir	<p>Accordingly, the M.A. is rejected with the above observations with no order as to cost.</p> <p>P. RAMESH KUMAR URMITA DATTA(SEN) MEMBER(A) MEMBER(J)</p>	