

ORDER SHEET**WEST BENGAL ADMINISTRATIVE TRIBUNAL****Present-**

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

Case No – OA 1079 of 2017.

Anjali Mukhopadhyay @ Mukherjee – 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
<p>03 21.03.2018.</p>	<p>For the Applicant : Mrs. Pallabi Majumder, Learned Advocate.</p> <p>For the State Respondents : Mrs. Sunita Agarwal, Learned Advocate.</p> <p>For the Principal Accountant General (A&E) West Bengal : Mr. Biswanath Mitra, Departmental Representative.</p> <p>The applicant has prayed for direction upon the respondents to release family pension and retiring gratuity in favour of the applicant by filing original application under section 19 of the West Bengal Administrative Tribunals Act, 1985.</p> <p>One Nani Gopal Mukhopadhyay retired on August 31, 1989 from the post of Medical Technologist (LAB). One anonymous complaint was received against Nani Gopal Mukhopadhyay before his retirement and the same was referred to the Vigilance Commission for conducting an enquiry . While the matter was pending for enquiry , Nani Gopal Mukhopadhyay died on October 10, 2013. The present applicant claimed family pension after the death of her husband Nani Gopal Mukhopadhyay. The husband of the applicant was not paid gratuity though he was paid provisional pension on</p>	

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	<p>the ground that enquiry is pending against him. The grievance of the applicant is that she has not been paid family pension and other retirement benefits of her husband and as such she approached the Tribunal by filing the present application. By passing an interim order on February 23, 2018 , this Tribunal gave direction to the respondents for payment of family pension within a period of fifteen days and to exchange reply and rejoinder between the parties for deciding on claim of interest on gratuity. By virtue of the said interim order, family pension has already been sanctioned in favour of the applicant on March 14, 2018 and a copy of family pension payment order is now placed on record.</p> <p>Learned Counsel for the applicant has prayed for interest on delayed payment of arrears of pension and gratuity. On the other hand, Learned Counsel representing the State Respondents submits that the pension sanctioning authority was not in a position to release gratuity and arrears of pension due to pendency of enquiry before the Vigilance Commission. On consideration of the reasoned order dated December 15, 2018 passed by the Respondent No. 2 , we find that the Vigilance Commission asked the department to conduct</p>	

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	<p>an enquiry and to submit a report with regard to the complaint against the husband of the applicant . The said enquiry was not conducted by the department from the year 1998 till the date of death of the husband of the applicant on October 10, 2013. Since the fact finding enquiry was not conducted by the department as desired by the Vigilance Commission from 1998 till the death of the husband of the applicant and since the departmental enquiry was not initiated against the husband of the applicant by issuing charge sheet, we are inclined to hold that the pendency of the so called enquiry before the Vigilance Commission cannot stand as a bar on the way of issuance of gratuity and arrears of pension in favour of the applicant.</p> <p>It appears from letter dated March 14, 2018 issued by the Accounts Officer, AGWB that the Respondent No. 8 was requested to accord specific sanction for life time arrears of pension and retiring gratuity in favour of the nominee or legal heirs of the deceased Nani Gopal Mukhopadhyay after obtaining clearance from the Vigilance Commission. We have already observed that the pendency of enquiry before the Vigilance Commission in this particular case cannot</p>	

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	<p>stand on the way of granting life time arrears of pension and retiring gratuity in favour of the applicant , who happens to be the wife of the deceased employee.</p> <p>Now, the question for consideration of the Tribunal is whether interest is to be paid to the applicant on the amount of gratuity. Since the gratuity was not released in this case due to pendency of enquiry before the Vigilance Commission and since we have found that the Vigilance Commission was handicapped in proceeding with any enquiry without getting report of fact finding enquiry in connection with the complaint against the deceased employee from the concerned department , we are of the view that delay in payment of gratuity cannot be attributed to the conduct of the husband of the applicant. In view of Memorandum No. 9112 (F) dated September 24, 1979 issued by the Finance Department, Audit Branch, Government of West Bengal read with letter dated December 09, 1991 issued by the Deputy Secretary to the Government of West Bengal, Department of Finance, Audit Branch, the applicant is entitled to get interest at the rate of 5 per cent per annum from December 01, 1989 to March 31, 2018 on the amount of gratuity payable to the applicant . The</p>	

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Skg.	<p>period for payment of gratuity is calculated after lapse of three months from the date when the gratuity was due till the end of the preceding month in which the gratuity is to be paid.</p> <p>In view of our above findings, the Respondent No. 8 Superintendent cum Vice Principal, Calcutta Medical College & Hospital is directed to release life time arrears of pension of the husband of the applicant and retiring gratuity of the husband of the applicant with interest as decided herein above within a period of twelve weeks from the date of communication of the order.</p> <p>With the above direction, the Original Application is disposed of.</p> <p>Let a plain copy of the order be supplied to both parties.</p> <p>(S.K.Das) Member (A)</p> <p>(R.K.Bag) Member(J).</p>	

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