

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

The Hon'ble Justice Soumitra Pal (Chairman)
& The Hon'ble Mr. Subesh Kumar Das (Administrative Member)

Case No –OA 237 OF 2018

BARUNA NAYAK 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>1 10.07.2018</p>	<p>For the Applicant : Mr. S. Acharyya Mr. Sujit Bhunia Learned Advocate</p> <p>For Respondents : Mr. A.K. Das Sinha Learned Advocate</p> <p>For the A.G., West Bengal : Mr. B. Mitra Departmental Representative</p> <p>In this original application, Baruna Nayak, widow of late Dilip Kumar Nayak, an employee (Excise Constable) attached to the office of the Superintendent of Excise, Paschim Medinipur Excise District, has filed this application praying for a direction upon the respondents, particularly the Superintendent of Excise, Paschim Medinipur Excise District, Paschim Medinipur, respondent No. 8 to release family pension, death gratuity and other terminal-cum-death benefits of her deceased husband, after setting aside the impugned memo being annexure 'O', 'U', 'X' and the impugned intimation being annexure 'Z' to the application.</p>	

The facts, as evident from the application, are that in 1981 Dilip Kumar Nayak had married one Kanakanjali Maity (Nayak), a school teacher. Kanakanjali Nayak expired on 3rd July 1986 while in service. After the death of Kanakanjali Nayak, the competent authority issued Pension Payment Order in favour of Dilip Kumar Nayak and Kaustav Kumar Nayak, the son, appearing at page 50 of the application. Late Dilip Kumar Nayak used to draw the said family pension. Thereafter, on 13th December, 1992 as stated in the application, Dilip Kumar Nayak married the applicant as per Hindu rites and customs and began to live together as husband and wife. The marriage between the applicant and the late husband Dilip Kumar Nayak though not registered was duly recorded by the Competent Authorities in the official documents such as voters' list, voter card, Adhaar card. Dilip Kumar Nayak in his life time even in the insurance policy had recorded the name of the applicant. In an accident claim case filed by the applicant, being MACC No. 381 / 09, before the Court of learned District Judge Paschim Medinipur against an insurance Company it was established that the applicant was the wife of Dilip Kumar Nayak. Submission is upon an application for the grant of legal heir certificate an enquiry was made by the BLB.L.&L.R.O. Debra Block, and in the report it was recorded that the applicant is the wife of late Dilip Kumar Nayak, Jyotsna Nayak was the mother of Dilip Kumar

Nayak and Kaustav Kumar Nayak is the son. On the said basis under memo. No. 905/RM dated 17th August 2009, appearing at page 80 of the application, the Collector had issued the Legal Heir Certificate. Significantly, in the said report it has been stated that “The finding is for the purpose of payment of lifetime dues payable to deceased on account of un-drawn salary etc.” According to the applicant as it has been found by the highest executive authority of the district, the Collector, Paschim Medinipur, that the applicant Baruna Nayak is the wife of Dilip Kumar Nayak, the respondent authorities cannot withhold the superannuation dues. Though the Superintendent of Excise, Paschim Medinipur Excise District, respondent No. 8 by memo No. 759 / E dated 31st July 2015, appearing at page 85 of the application, had requested the Treasury Officer, Medinipur Treasury, Paschim Medinipur to expeditiously settle the pension case of Baruna Nayak and though thereafter on 15th September, 2015 a representation was filed before the respondent No. 8 which is yet to be disposed of and though the State respondent No. 8 by memo dated 2nd December 2015 had requested the Treasury Officer, Kharagpur Treasury, Paschim Medinipur, respondent No. 11 to finalise the death benefit dues of late Dilip Kumar Nayak, yet no steps have been taken. On a query, referring to the application it is submitted that the mother-in-law of the applicant had expired on 3rd April, 2014, as evident from the certificate

issued by the Gram Panchayet, appearing at page 89 of the original application. Further the applicant for the last few years is unaware of the whereabouts of his son as evident from the affidavit filed before the learned Executive Magistrate, Paschim Medinipur, being annexure “K” to the application. Submission is since the issue of pendency of the disbursement of pensionary dues and other dues is pending for the past few years appropriate order may be passed.

Mr. Asoke Kumar Das Sinha, learned Advocate for the State submits that Dilip Kumar Nayak, after expiry of his first wife in the year 1986 did not disclose the fact about re-marriage to the authorities and had withdrawn the family pension of his first wife, Kanakanjali Nayak and continued to withdraw family pension illegally till his death in the year 2009. Therefore, this sum, an overdrawn amount, may be directed to be recovered before any amount is directed to be released in favour of the applicant.

Mr. B. Mitra, the Departmental Representative adopts the submission of the State respondents.

Mr. Acharyya, in reply submits since all facts have been disclosed in this application and as the Collector had issued the Legal Heir Certificate after the

expiry of Dilip Kumar Nayak, the appropriate respondent may be directed to pay the dues after deducting the overdrawn amount from the date of the second marriage till 8th April 2009, that is the date of death of Dilip Kumar Nayak. Since late Dilip Kumar Nayak had remarried on 13th December, 1992 and expired on 8th April, 2009, the withdrawal of family pension by late Dilip Kumar Nayak from the date of death of Kanakanjali till the date of second marriage is just and proper and therefore, the respondents erred in asking for refund of overdrawal amount from 4th July, 1986 to 13th December 1992.

Heard learned Advocates for the parties. We find that the issue of heirship has been settled. It appears from the memo dated 17th August, 2009 issued by the Collector, Paschim Medinipur that the applicant, Baruna Nayak is the wife of late Dilip Kumar Nayak, Jyotsna Nayak is the mother and Kaustav Nayak is the son. Therein significantly it has inter alia been held that “The finding is for the purpose of payment of lifetime dues payable to deceased on account of undrawn salary etc.” Hence, the issue of heirship decided by the Collector can neither be questioned now as sought to be done by impugned memo dated 22nd June, 2016, 10th February, 2017, 15th February 2017 and by the Accounts Officer, Pen VII by an intimation being annexure ‘Z’ at page 109 of the application nor the amount as mentioned can be

withheld. It is evident from the application that Jyotsna Nayak, the mother has expired. It has been stated in the application that the whereabouts of Kaustuv Nayak is not known. Therefore, as it is evident from the Legal Heir Certificate issued by the Collector that the applicant is the wife of Dilip Kumar Nayak, considering such facts this application is disposed of by directing the Superintendent of Excise, Paschim Medinipur Excise District, Paschim Medinipur, the respondent No. 8, the pension sanctioning authority, to dispose of the matter regarding grant of family pension, death gratuity and other terminal benefits to the applicant by passing a reasoned order to be communicated to the applicant within twelve weeks from the date of presentation of a copy of the certified copy of this order to the respondent No. 8 after giving an opportunity of hearing to the applicant and also after obtaining a report from the Treasury Officer, Kharagpur, Paschim Medinipur the respondent No.11 regarding payment of family pension after the death of Kananjali Nayak, and withdrawal of such pension by Dilip Kumar Nayak. Such report shall be furnished by the Treasury Officer, Kharagpur, Paschim Medinipur, the respondent No. 11 to the respondent No. 8 within four weeks from the date of presentation of copy of certificate copy of this order on him.

It is made clear that after report is submitted by

the Treasury Officer, the respondent No. 8 shall pass an order regarding the grant of family pension, death gratuity and other terminal-cum-death benefits to the applicant within time frame as indicated hereinabove.

In view of the findings made hereinbefore and in view of the memo No. 905 / RM dated 17th August, 2009 issued by the Collector, Paschim Medinipur, appearing at page 80 of the application, the memo dated 22nd June 2016 issued by the Treasury Officer Kharagpur, Paschim Medinipur, the respondent No. 11, the memo dated 10th December 2017 and the memo dated 15th February, 2017 both issued by the A.T.O.(P), Kharagpur Treasury and the intimation by the Accounts Officer Pen VII being annexure 'Z' to the application appearing at pages 92 - 93, 101, 104 and 109 respectively, are set aside and quashed. Since the whereabouts of Kaustav, the son are not known, the applicant shall hold the share of money due to her son in fiduciary capacity and shall hand over the amount promptly after he is traced.

As prayed for by Mr. Acharya, learned Advocate for the applicant, at this stage, we have not gone into the relief as prayed for in prayer 'f' with liberty to raise the said issue before the appropriate forum, if so advised.

Since the application is disposed of at the stage

of admission without calling upon the respondents to file reply, the allegations made therein are deemed to have been denied.

No order as to costs.

Urgent Photostat certified copy of this order, if applied for, be furnished to the parties on priority basis.

(S.K. Das)
MEMBER (A)

(Soumitra Pal)
CHAIRMAN

SCN.