

ORDER SHEET
West Bengal Administrative Tribunal

Present.-
The Hon'ble Justice Ranjit Kumar Bag
&
The Hon'ble Dr. Subesh Kumar Das

Case No. OA 56 of 2017

Madan Mohan Sarkar & Anr.

Versus

The State of West Bengal & Ors.

Serial No. and
date of order

Order of the Tribunal
with signature

Office action with date
and dated signature of
parties when necessary.

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08
01/04/2019

For the Applicant : Mr. A. Ghosh,
Ld. Advocate.
For the State Respondent : Mr. G.P. Banerjee,
Ld. Advocate.

Supplementary application filed on behalf of the applicant today is kept on record.

It appears from the materials on record that one Gita Sarkar was working as Nurse in the Directorate of Health Services, West Bengal. She died in harness on August 20, 2013 leaving behind the applicant no. 1 as her husband and the applicant no. 2 as her son-both being legal heirs of the deceased Gita Sarkar. The applicants have prayed for direction upon the respondents for disbursement of outstanding salary of their predecessor in interest Gita Sarkar after regularisation of absence of the said employee in terms of the representation submitted on March 10, 2016 and release of retirement benefits of the deceased employee including Gratuity, Leave Encashment, Family Pension and Provident Fund.

Having heard Learned Counsel representing both parties and on consideration of the materials on record, we find that the deceased employee Gita

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	<p>Sarkar challenged her order of transfer dated September 05, 2003 by filing OA-1303/2003 before this Tribunal. On December 23, 2003, the Tribunal passed an interim order by directing stay of operation of the order of transfer of the deceased employee till the next date of hearing. Ultimately, on August 21, 2009, the said OA-1303/2003 was disposed of by directing the applicant to join her new place of posting, if the order of transfer is modified by the authority concerned and in the office of Chief Medical Officer of Health, Jalpaiguri in default of modification of order of transfer. On September 07, 2009 the deceased employee joined in the office of the C.M.O.H., Jalpaiguri by submitting an application praying for her posting at Madhu-Tea Sub-centre at Lalchini, Jalpaiguri. On October 01, 2009, the deceased employee was released from the office of the C.M.O.H., Jalpaiguri with direction to join at Madhya Haldibari Sub-centre under Kumargram Block in the existing vacancy. Without joining the new place of posting, the deceased employee submitted series of leave applications and ultimately moved the Tribunal for the second time by filing OA-1599/09. On March 19, 2010 the Tribunal disposed of OA-1599/2009 by giving specific direction to the deceased employee to join at Kumargram Block and thereafter to submit</p>	

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	<p>appropriate representation seeking for favourable posting. The deceased employee had to join at Kumargram Block under Block Medical Officer of Health on April 01, 2010. The order of posting of the deceased employee was again modified with direction to join at Raimakam Tea Sub-centre on June 04, 2010. She joined accordingly in the new place of posting on June 04, 2010 and she died in harness on August 20, 2013. The applicants have failed to furnish adequate information before us to establish whether the deceased employee worked continuously from June 04, 2010 till the date of her death.</p> <p>With the above factual matrix, we have to decide whether the period of absence of the deceased employee can be regularized by grant of leave in terms of the provisions of West Bengal Service Rules, Part I. The representation submitted by Learned Advocate for the applicant before various authorities including Deputy Director of Health (Nursing) (Annexure P17 to the original application) indicates that the deceased employee Gita Sarkar was absent from duty during the period from September 18, 2003 to September 06, 2009 and from October 02, 2009 to March 31, 2010. It is relevant to point out that we are in the dark about the duty of the deceased employee from June</p>	

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	<p>04, 2010 till the date of her death on August 20, 2013. If any leave was to the credit of the deceased employee, the said leave should be granted in her favour for regularisation of her long period of absence from duty, apart from granting her maximum period of Extraordinary Leave in terms of the provisions of West Bengal Service Rules, Part I. If the entire period of absence of the deceased employee from duty is not covered by grant of leave to her credit and by grant of Extraordinary Leave in terms of the provisions of West Bengal Service Rules, Part I, the remaining period of absence of the deceased employee may be treated as "dies non". The salary, if any, remains due after regularisation of absence of the deceased employee, the legal heirs of the deceased employee are entitled to get the said outstanding salary.</p> <p>With regard to release of retirement benefits of the deceased employee, Gita Sarkar we do not find materials on record to hold that the legal heirs of the deceased employee submitted any application in the prescribed format for disbursement of the amount of G.P.F. Nor have the applicants furnished any information about the outstanding balance in the G.P.F. account of the deceased employee till the date of her death. However, whatever amount was</p>	

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	<p>deposited by the deceased employee in the account of G.P.F. must be returned to the legal heirs of the deceased employee along with interest accrued on that amount till the date of disbursement of the said amount in favour of the legal heirs of the deceased employee. With regard to other retirement benefits like leave encashment, we would like to hold that after regularisation of absence of the deceased employee the pension sanctioning authority will take necessary steps for disbursement of the amount of leave encashment, if the deceased employee was entitled to the same on the date of her death. With regard to the family pension, the pension sanctioning authority will take necessary steps for grant of family pension to the legal heirs of the deceased employee as per entitlement in terms of the provisions of West Bengal Services, (Death-Cum-Retirement Benefits) Rules, 1971 after regularisation of absence of the deceased employee.</p> <p>In view of our above findings, we direct the applicants and other legal heirs of the deceased Gita Sarkar, if any, to submit application in the prescribed format before the respondent No. 2, C.M.O.H., Alipurduar, and furnish all other necessary particulars before the said respondent no. 2 within a</p>	

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	<p>period of 04 (four) weeks from this date. The respondent no. 2, C.M.O.H., Alipurduar is directed to release the amount of G.P.F. of the deceased Gita Sarkar in favour of her legal heirs within a period of 12 (twelve) weeks from the date of submission of the application by the legal heirs of the deceased employee.</p> <p>The respondent no. 2, the Chief Medical Officer of Health, Alipurduar is also directed to regularize absence of the deceased Gita Sarkar from duty by grant of leave of any kind to the credit of the said employee and also by grant of maximum period of Extra Ordinary Leave in terms of the provisions of West Bengal Service Rules, Part I and by treating the balance period of absence, if any, as “dies non” after taking necessary approval from the higher authority, if required and on verification of records by passing a reasoned order within a period of 12 (twelve) weeks from the date of communication of the order and to take necessary follow up action for grant of Gratuity, Family Pension and Leave Encashment and Group Insurance in favour of the legal heirs of the deceased Gita Sarkar as per entitlement in terms of the rules by which the deceased employee was governed within a period of 08 (eight) weeks after passing of the</p>	

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Csm	<p>reasoned order. With the above direction, the original application stands 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>	