

**IN THE WEST BENGAL ADMINISTRATIVE TRIBUNAL
BIKASH BHAVAN, SALT LAKE CITY
K O L K A T A – 7 0 0 0 9 1**

Present :-

**The Hon'ble Mrs. Urmita Datta (Sen)
MEMBER (J)**

-AND-

**The Hon'ble Mr. P. Ramesh Kumar
MEMBER(A)**

**J U D G E M E N T
-of-
Case No. OA-965/2018**

Chumki ChatterjeeApplicant .

-Versus-

State of West Bengal & others....Respondents

For the Applicant	:- Mr. S. Chatterjee, Ld. Advocate.
For the State Respondent No.1,2 & 3	:- Mrs. S. Bandyopadhyay, Ld. Advocate.
For the State Respondent No.1(a), 5 & 6	Mrs. R. Sarkar, :- (Departmental Representative) Land & Land Reforms Department.
For A.G. West Bengal	:- Mr. B. Mitra, (Departmental Representative)

Judgement delivered on: 25.09.2019.

**The Judgement of the Tribunal was delivered by:-
Mrs. Urmita Datta (Sen), Member (J).**

J U D G E M E N T

The instant application has been filed praying for following reliefs;

- a) The applicant prays before his Learned Tribunal that the Learned Tribunal graciously be pleased to direct the concern authority to immediately and forthwith release the amount of Rs.2,57,819/- after deduction from the Death Gratuity of her father to your petitioner without any further delay.
- b) The applicant prays before this Learned Forum for a direction to the concern authority to immediately release the amount in terms of the memo being No.286/1(8) dated 07.03.2018 without any further delay without being influenced from any corner.
- c) The applicant further prays before this Learned Forum for a direction upon the Sub-Divisional Land and Land Reforms Officer to implement its own direction dated 07.03.2018.
- d) Any other and/or further orders/directions as this Learned Tribunal may deem fit and necessary for the interest of justice.

As per the applicant, she is the only child of her parent and her father died in harness on 23.10.2016 leaving behind the applicant only, as the mother of the applicant is pre-deceased to her father. After the death of her father she made an application on 25.10.2016 before the concerned Block Land & Land Reforms Officer, Nalhati-II, Birbhum praying for retiral benefits of her father. However, no steps were taken by the respondents. The concerned authority, subsequently, had sanctioned some portion of retiral benefits in favour of the applicant on 21.02.2017 and 22.02.2017 i.e Insurance, Leave Encashment. But the GPF and death gratuity was not disbursed in favour of the applicant. The applicant made an application on 9.6.2017 (Annexure E) and thereafter, the applicant had received an amount of Rs.42,635 (Annexure F) on account of GPF on 14.6.17 but till date no death gratuity has been received by her. Though in the meantime, Chief Executive Officer, Rampurhat Coop. Agricultural & Rural Development vide his letter dated 21.02.2015 to the SRO II and DDO SD & LR Office, Rampurhat had requested for recovery of loan amount from his DCRG and the Sub-Divisional Land & Land Reforms Officer, Rampurhat, Birbhum vide his memo dated 07.03.2018 (Annexure I) asked the Principal Accountant General (A&E) West Bengal to make payment of death gratuity of 2,57,819/- after deducting the amount of loan to the applicant. In spite

of that no payment has been received by the applicant. Being aggrieved, she had approached the Hon'ble High Court in WP 2840 (W) of 2018, which was dismissed for want of jurisdiction by the Hon'ble High Court vide order dated 04.10.2018 (Annexure H) with a liberty to approach the appropriate forum. Hence, the instant application has been filed by the applicant.

Though no reply has been filed either by the state respondent or by the A.G. West Bengal, departmental representatives of A.G.W.B. has submitted that as the applicant is a married daughter and she is not coming under the definition of 'Family' as per Death Cum Retirement Benefit Rules, 1971, therefore, no payment can be made to her.

However, during the course of hearing, the counsel for the applicant has submitted that the applicant has already received certain amount from retiral benefit on the basis of nomination made by her father in his service book. Even she has been nominated for full amount of gratuity by her father vide nomination dated 21.08.1995 made by the father of the applicant, which was accepted by the office and subsequently placed before us during the course of hearing. She has also referred one judgement passed in WPST 79 of 2014 on 28.04.2014.

Heard both the parties and perused the records. It is noted that as per the respondents, the applicant is a married daughter and as per definition of 'Family' stipulated under definition clause 7 of DCRB, Rules 1971, married daughter does not come under the definition of 'Family'. Therefore, she has not been paid the DCRG amount. It is noted that DCRB rules is a guideline for the payment of gratuity. Therefore, the married daughter has not been included in the definition of 'Family'. However, Chapter X of The West Bengal Services(Death-cum-Retirement Benefit) Rules, 1971 deals with death gratuity and family pension. Rule 98 stipulates inter alia:

“.....When a Government servant referred to in Rule.97, who has completed five years qualifying service dies while in service, a death gratuity as prescribed below shall be paid to the person or persons to whom the right to receive the gratuity is conferred (by means of a noimination) under rule 100***.....

[Provided that –

- (a) If no nomination has been made under rule 100 or if the nomination made thereunder does not subsist and if there is one surviving member of the family the whole amount of gratuity shall be payable to him and if the surviving members of the family are more than one the whole of amount of gratuity shall be payable to all such members in equal shares;
- (b) The right of a female member of the family, or that of a brother of a Government servant who dies while in service, to receive the share of gratuity shall not be affected if the female member marries or re-marries, or the brother attains the age of eighteen years, after the death of a Government servant and before receiving her or his share of the gratuity;
- (c) Where gratuity is granted to a minor member of the family of the deceased Government servant, it shall be payable to the guardian on behalf of the minor.]....”

Rule 100 deals with the nomination in Form A which stipulates inter alia ..

“Rule 100 – Nomination:-

.....(1) Any Government servant to whom these rules apply may, provided he has completed five years’ qualifying service, make a nomination conferring on one or more-persons the right to receive the death gratuity that may be sanctioned under rule 98:

Provided that if, at the time of making nomination the Government servant has a family, the nomination shall not be in favour of any person or persons other than the members of his family.

(2) If a Government servant nominates more than one person under sub-rule (1) he shall specify in the nomination the amount or share payable to each of the nominees in such manner as to cover the whole amount of the gratuity.

(3) A Government servant may provide in a nomination-

(a) that in respect of any specified nominee, the event of his predeceasing the Government servant, the right conferred upon that nominee shall pass to such other member of the Government servants’ family-as may be specified in the nomination; and

(b) that the nomination shall become invalid in the event of the happening of a contingency specified therein.

(4) The nomination made by a Government servant who has no family shall become invalid on his subsequently acquiring a family

#(5) Every nomination shall be in such one of the Forms A to in Annexure II of this Chapter as may be appropriate in the circumstances of the case.

(6) A Government servant may at any time cancel a nomination by sending a notice in writing to the appropriate authority, and Government servant shall along with such notice send a fresh nomination made in accordance with these rules.....”

From the above, it is observed that admittedly the father of the applicant made a valid nomination in Form A as per the provision of the The West Bengal Services(Death-cum-Retirement Benefit) Rules, in favour of the mother of the applicant and after her death, the applicant being only daughter, is a valid nominee of her father.

It is further noted that Rule 100(1) stipulates that the employee can nominate one or more persons to receive gratuity. In the instant case the deceased employee first nominate his wife a nominee and after her death, the applicant has been declared as sole nominee in the year 1995 since she is only child of her parents.

Therefore, in our considered view, the applicant is legally entitled to receive the DCRG amount being sole legal heir of her father, which fact has not been denied by the authority as they have already paid other dues to the applicant. Accordingly, the respondents are directed to disburse the DCRG amount to the applicant immediately within a period of four (04) weeks from the date of receipt of this order. Accordingly, the **OA is allowed** with the above observation and direction with no order as to cost.

P. RAMESH KUMAR
MEMBER (A)

URMITA DATTA (SEN)
MEMBER (J)