

ORDER SHEET

WEST BENGAL ADMINISTRATIVE TRIBUNAL

Bikash Bhavan, Salt Lake, Kolkata – 700 091.

Present-

The Hon'ble Sayeed Ahmed Baba, Officiating Chairperson & Member (A)

Case No. – OA 353 of 2023

Aditya Narayan Mallick -- VERSUS – The State of West Bengal & Ors.

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| Serial No. and Date of order | For the Applicant | : Mr. G. P. Banerjee, Mr. H. Ghosh, Ld. Advocates. |
| <u>06</u> 13.05.2024 | For the State respondent | : Mr. S. Ghosh, Ld. Advocate. |
| | For the Pvt. Respondent No. 8 | : Mr. M.N. Roy, Mr. G. Halder, Ld. Advocates. |
| | For the Pr.AG (A&E), WB | : Mr. B. Mitra, Ld. Depttl. Rep. |

The matter is taken up by the Single Bench pursuant to the order contained in the Notification No. 638-WBAT/2J-15/2016 (Pt.-II) dated 23rd November, 2022 issued in exercise of the powers conferred under Section 5(6) of the Administrative Tribunals Act, 1985.

On the question of whether family pension and death gratuity can be extended to the applicant being a minor son from the second marriage of the deceased employee, the Tribunal relies on the Rules governing such benefits. The West Bengal Services (Death-cum-Retirement Benefits) Rules, 1971 at Rule 7(e)(1) defines and includes the following relatives of a Government servant for benefits of death gratuity :

- i. wife in the case of a male officer,
- ii. husband in the case of a female officer,
- iii. sons including stepsons,
- iv. unmarried and widowed daughters (including stepdaughters),
- v. brothers below the age of 18 years and unmarried or widowed sisters,
- vi. father,
- vii. mother

As regards family pension, the Rule 7(e)(2) includes the following family members :

- i. wife in the case of a male officer,
- ii. husband in the case of a female officer,
- iii. minor sons including adopted sons,
- iv. unmarried minor daughters including adopted daughters,
- v. dependant parents,

Form No.

Vs.

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Further definition has been made for family pension at Rule 105 which is as under :

“105. Pension payable to one member of the family – Subject to the provisions contained in the note under rule 104 the pension awarded under this scheme shall not be payable to more than one member of the Government servant’s family at the same time, It shall first be admissible to the widow(s) / widower and than to the minor children and thereafter to mother and lastly to father.

In the event – of re-marriage or death of the widow/widower the pension shall be granted to the minor children through their natural guardian. In disputed cases however payments shall be made through a legal guardian.”

From the above Rules, it is clear that so far the death gratuity is concerned, the applicant being a minor son is also entitled along with private respondent no. 8, Sonali Mallick Nee Sarkar who happens to be the first wife of the deceased employee and now the widow. As regards family pension relying on the above Rules, it is clear that as per Rules 104 and 105, pension is payable to only one member of the family at a time. Therefore, the question of granting family pension to the applicant is not admissible for the reason that the widow as per the Rules is the first member of the family entitled to receive family pension. The above points have been further clarified by Memo. dated 09.01.2023 issued by the Principal Accountant General (A&E), West Bengal. The letter clarifies that the sanction of death gratuity be accorded in favour of surviving family members in terms of DCRB Rules, 1971, instead of legal heirs of late Dr. Mallick. The above letter also clarifies that family pension cannot be sanctioned in favour of a child from a void marriage.

Mr. Banerjee prays for accommodation to go through the copies of the judgment served upon him by Mr. Roy and respond suitably on the next date.

Let the matter appear under the heading **“For Orders”** on **12.06.2024**.

CSM/SS

SAYEED AHMED BABA
Officiating Chairperson & Member (A)