

**HIGH COURT OF TRIPURA
AGARTALA**

WA No.55 of 2024

1. Smt. Dipali Sarkar, wife of Late Swapan Sarkar and mother of Late Sudip Sarkar, a Constable 169th Battalion, BSF, resident of Dhaleswar, Road No.18, P.S. East Agartala, District: West Tripura, PIN: 799 285, aged about 64 years

---Appellant(s)

Versus

1. The Union of India, represented by its Secretary, Department of Home Affairs, Government of India, having his office at South Block, New Delhi, PIN-1100001
2. The Commissioner & Secretary, Home Department, Government of Tripura, having his office at Secretariat Building, Pandit Nehru Complex, P.O. Kunjaban, PS- New Capital Complex, Sub-Division: Agartala, District- West Tripura, PIN-799 006
3. The Commanding Officer, HQ 169 Battalion BSF, Raninagar, Jalpaiguri, District-Jalpaiguri, West Bengal, PIN-735133
4. Ajeet Kumar, Commandant, 169 Bn BSF, C/O APO, PIN-193222
5. Director General, BSF, 10, CGO Complex, Lodhi Road, New Delhi, PIN-110003

----Official-Respondent(s)

6. Rumpa Sarkar, wife of Late Sudip Sarkar (deceased BSF soldier)
7. Subhra Sarkar, daughter of Late Sudip Sarkar (deceased BSF soldier)
8. Atithi Sarkar, daughter of Late Sudip Sarkar (deceased BSF soldier)

----Private-Respondent(s)

For Appellant(s)	:	Mr. Somik Deb, Sr.Adv. Mr. Pannalal Debbarma, Adv.
For Respondent(s)	:	Mr. B. Majumder, Deputy S.G.I. Mr. D. Sharma, Addl. G.A. Mr. T. K. Deb, Adv.

**HON'BLE THE CHIEF JUSTICE MR. APARESH KUMAR SINGH
HON'BLE MR. JUSTICE BISWAJIT PALIT**

Order

12/12/2024

The appellant is the writ petitioner and mother of the martyr Sudip Sarkar who died on duty upon receiving multiple bullet injuries fighting with the infiltrators in Machal Sector, Kupwara, State of Jammu and Kashmir on 8th November, 2020 while working as a Constable in 169th Battalion, BSF.

2. The writ petitioner-appellant approached the writ court with a prayer to direct the official-respondents not to disburse further money in favour of the widow, respondent No.6 till final disposal of the writ petition and further direct them to distribute the monetary and other benefits admissible to the Class-I legal heirs including the petitioner in strict conformity with the statutory mandate contained in Section-8 of the Hindu Succession Act, 1956.

3. Upon the unfortunate death of Sudip Sarkar while on the call of duty, the petitioner-appellant and the respondent No.6 were paid Rs.2,50,000 (two lakh fifty thousand) each from the Chief Minister's Relief Fund, Tripura. She was also paid Rs.10,00,000/- on account of 'Bharat Ke Veer Fund' through bank transfer on 24.03.2021 as a welfare measure to the parent of a BSF martyr communicated vide letter dated 13.05.2021 [Annexure-4].

4. The dispute between the appellant-mother and the respondent No.6-widow is said to have arisen on a claim by the widow for sharing the amount received under 'Bharat Ke Veer Fund' to enable her to purchase a flat. According to the appellant, she paid a sum of Rs.2,00,000/- out of the said Rs.10,00,000/-. However, this contention has been denied by the widow in her counter-affidavit.

5. The appellant contends which stands corroborated by the documents annexed by the official-respondents that the deceased made certain nominations in favour of the wife during his lifetime to receive amounts under Death-cum-Retirement Gratuity, Family Pension, GPF, Financial assistance from Central Welfare Fund, Government Employees Insurance Scheme and Golden Jubilee Seema Prahari Kalyan Kavach. The following payments were

disbursed to the widow (Annexure-R-2, Page-59) as per the statement issued by the Commandant, 169 Bn BSF which are as follows:

Details of Payments made to NOK Smt. Rumpa Sarkar by BSF is as under:

- i. Family Pension (LPA)- Rs.37,500/- w.e.f. 09.11.2020 to till death
- ii. DLI + GPF final payment – Rs.1,31,790/-
- iii. CGEGIS – Rs.42,794/-
- iv. DCRG – Rs.8,77,500/-
- v. GJSPKK – Rs.40,00,000/-
- vi. Leave Encashment – Rs.2,80,800/-
- vii. FA- Rs.70,000/-
- viii. BKV – Rs.15,00,000/-
- ix. Ex-gratia compensation

6. The petitioner-mother approached the writ court to stop further disbursement of any amount in favour of the widow and also a direction upon the official respondents to disburse the admissible Death-cum-Retirement benefits amongst the Class-I legal heirs including the writ petitioner. Counter-affidavit was filed by the official-respondents and also by the widow contesting the case. The writ petition has been dismissed with the following observations:

“[8] Having considered the submission as advanced by the counsel for the parties and having perused the entire record, specifically the Rules 50, 51, 52 and 53 of the Central Civil Services (Pension) Rules, 1972, this court is of the opinion that none but the widower (the respondent No.6) is the nominee of the deceased soldier who is eligible to get all the monetary benefits since her name is reflected in the nomination form. In the nomination form under the Rules and also the Rules indicate the word “Nominee” or “Nominees” that means it could be one person or more. In the instant case, the deceased has only indicated the name of his wife as nominee. Thus giving value to the will of deceased, this court feels it needs to be accepted the way it is and needs no interpretation. Thus widow of the deceased soldier is nominee as per pension papers. Moreover, the pension is to be given under the provisions of the Pension Scheme and therefore, only the person who is entitled to get the pension as per the Scheme would get it.

[9] The argument made by Mr. T. Chakraborty, learned counsel in reference to the Hindu Marriage Act is not applicable to the case in hand. The petitioner has not placed on record nor before the official-respondents any judgment & decree obtained from competent court to say that the petitioner’s case under Hindu Law as Class-I heir can be considered. So far as the petitioner is concerned, though it does not fall under the category of pension and further not to deprive the petitioner of any monetary benefit, she has been given Rs. 10,00,000/- under Bharat Ke Veer Fund and the State Government has also extended the financial benefit of Rs. 2,50,000/- to the petitioner (Total Rs.12,50,000/-). It appears that the petitioner has not approached with clean hands before this court and she has failed to make out her case. Hence, the instant writ petition stands dismissed.

[10] As a sequel, stay, if any, stands vacated. Pending application(s), if any, also stands closed.”

Being aggrieved the petitioner is before us in appeal.

7. Learned senior counsel for the appellant has questioned the findings of the learned Writ Court which is to the effect that it is the nominee of the deceased soldier, i.e the respondent No.6 who is only eligible to get all the monetary benefits since her name is reflected in the nomination form. Learned senior counsel for the petitioner submits that the expression 'nominee' and its connotation has been explained in the *Advanced Law Lexicon by P. Ramanatha Aiyar, 3rd Edition, 2005* to mean a person appointed by a member of the fund to receive the benefits arising from such membership in the event of his death. In the case of *Datar Switchgears Ltd. Vs. Tata Finance Ltd. & Another* reported in *(2000) 8 SCC 151*, the expression has been referred to as under:

“26. In P. Ramanatha Aiyar's Law Lexicon (2nd Edition) at page 1310-11, the meaning of the word 'Nomination' is given as follows:-
1. The action, process or instance of nominating;
2. The act, process or an instrument of nominating; an act or right of designating for an office or duty.
"Nominations" is equivalent to the word "appointments", when used by a mayor in an instrument executed for the purpose of appointing certain persons to office.”

8. It is submitted that nomination does not amount to entitlement of the nominee to appropriate the entire claim. It is only for the purpose of receiving the amount. The amount so disbursed is to be distributed amongst the legal heirs. In this case, since the deceased was a Hindu guided by Hindu Succession Act, 1956 the disbursement could be in terms of Section-8, the 1st Schedule in which the mother is also a Class-I legal heir apart from the widow. The learned Writ Court, therefore, fell in error by dismissing the writ petition.

9. On part of the respondent-Union of India, it is contended that the pensionary benefit and other dues of the deceased have been rightly disbursed in favour of the widow who was nominated by the deceased during his lifetime in prescribed manner.

Learned counsel for the widow, respondent No.6, has also contested the claim of the writ petitioner and submitted that the admissible pensionary benefits and other dues have been rightly disbursed in her favour on the basis of the nomination made by her husband/employee. Therefore, the learned Writ Court had rightly rejected the prayer.

10. We have considered the submissions of the learned counsel for the parties and taken note of the relevant materials placed from records from either side. As it appears from the body of pleadings of both the sides, dispute is in relation to the claim of the amounts disbursed in favour of the respondent No.6, widow on the basis of the nomination made by the deceased employee during his service. It is evident from the documents placed by the official-respondents that such nomination was made by the deceased employee in favour of his wife, respondent No.6, to receive the following amounts under these heads:

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- vii. FA- Rs.70,000/-
- viii. BKV – Rs.15,00,000/-
- ix. Ex-gratia compensation

11. The official-respondents including the BSF, therefore, have released the aforesaid amount in favour of the respondent No.6-widow. However, ‘nomination’ as explained in *Advanced Law Lexicon by P.*

Ramanatha Aiyar and also dilated upon in the case of **Datar Switchgears Ltd. Vs. Tata Finance Ltd. & Another** (supra) means appointment of a person for a specific purpose in this case to receive the amount against the enumerated heads towards Death-cum-Retirement benefits and other dues or welfare measures by the widow of the deceased.

12. In the case of **Shipra Sengupta Vs. Mridul Sengupta & Ors**, reported in **(2009) 10 SCC 680** the Apex Court has explained the effect of the nomination by the deceased employee for payment of terminal benefits. Para 14 & 18 of the report is extracted hereunder:

“14. In *Sarbati Devi* [(1984) 1 SCC 424 : 1984 SCC (Tax) 59] this Court has laid down that a mere nomination does not have the effect of conferring to the nominee any beneficial interest in the amount payable under the life insurance policy, on death of the insurer. The nomination only indicates the hand which is authorised to receive the amount on payment of which the insurer gets a valid discharge of its liability under the policy. The amount, however, can be claimed by the heirs of the assured in accordance with the law of succession.

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18. In view of the clear legal position, it is made abundantly clear that the amount under any head can be received by the nominee, but the amount can be claimed by the heirs of the deceased in accordance with the law of succession governing them. In other words, nomination does not confer any beneficial interest on the nominee. In the instant case the amounts so received are to be distributed according to the Hindu Succession Act, 1956.”

13. Similarly in the case of **Shakti Yezdani & Anr. Vs. Jayanand Jayant Salgaonkar & Ors.**, reported in **(2024) 4 SCC 642** the Apex Court has observed as under:

“41. A consistent view appears to have been taken by the courts, while interpreting the related provisions of nomination under different statutes. It is clear from the referred judgments that the nomination so made would not lead to the nominee attaining absolute title over the subject property for which such nomination was made. In other words, the usual mode of succession is not to be impacted by such nomination. The legal heirs therefore have not been excluded by virtue of nomination.”

14. The petitioner-mother has raised a claim for share being a Class-I legal heir under the Hindu Succession Act, 1956 as per Schedule-1 of the Hindu Succession Act, 1956. Since the dispute on the claim for share as a Class-1 legal heir under Hindu Succession Act, 1956 is between the mother-writ petitioner and the widow-respondent No.6, two private parties, such an issue or claim is not fit to be entertained in exercise of the writ jurisdiction of the Court. However, the stand of the official-respondents to disburse the amount in favour of the widow on the basis of the said nomination cannot be faulted. If the petitioner has claim for share in any of these amounts on the basis of being a Class-I legal heir, she is at liberty to raise her cause of action in an appropriate proceeding before the competent Court of civil jurisdiction where *inter se* right between the parties can be adjudicated upon on the basis of pleadings and evidence placed by the parties.

15. This Court in exercise of powers under writ jurisdiction is not required to get into the *inter se* dispute between the two private parties on the claim of share. To that extent, the impugned judgment warrants interference. Observations, if any, made by the learned Writ Court as to the entitlement of the petitioner towards share in the Death-cum-Retirement benefits and other dues or funds under welfare schemes of the BSF would not stand in the way of the writ petitioner to raise her claim and cause of action in an appropriate proceeding before the competent Court of civil jurisdiction. The observations and finding, if any, in the impugned judgment to that effect shall not have effect in any fresh proceeding placed by the writ petitioner as observed hereinabove.

16. This writ appeal stands disposed of with the aforesaid observations in the manner indicated above.

Pending application, if any, shall also stand disposed of.

(B. PALIT), J

(APARESH KUMAR SINGH), CJ

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