

**HIGH COURT OF TRIPURA
AGARTALA**

WP(C) 531 of 2023

Mrs. Dipali Sarkar,
W/o late Swapan Sarkar
M/o late Sudip Sarkar,
Constable 169th Battalion, BSF
Resident of Dhaleswar, Road No.18, PS- East Agartala,
District- West Tripura, PIN: 799285 aged at 63 years.

---Petitioner(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; 110001
- 2. The Commissioner & Secretary,**
Home Affairs Department, Government of Tripura, Having his office at Secretariat
Building, Pandit Nehru Complex, PO- Kunjaban, PS: New Capital Complex, Sub-
Division: Agartala, District: West Tripura, PIN: 799006
- 3. Commanding Officer,** HQ 169 Battalion BSF, Raninagar, Jalpaiguri, District-
Jalpaiguri, West Bengal, PIN- 735133
- 4. Ajeet Kumar,** Commandant, 169 Bn BSF, C/o 56 APO, PIN: 193222
- 5. Director General,** Border Security Force, 10 CGO Complex, Lodhi Road, New Delhi,
PIN: 110003

----Official Respondents

- 6. Rumpa Sarkar,** W/o Late Sudip Sarkar (deceased BSF Soldier)
- 7. Subhra Sarkar,** D/o Late Sudip Sarkar (deceased BSF Soldier)
- 8. Atithi Sarkar,** D/o Late Sudip Sarkar (deceased BSF Soldier)

---Private Respondent(s)

For Petitioner(s)	: Mr. Somik Deb, Sr. Advocate. Mr. P. Chakraborty, Advocate.
For Respondent(s)	: Mr. B. Majumder, Deputy SGI. Mr. T. Chakraborty, Advocate.
Date of hearing and date of delivery of Judgment and Order	: 14.03.2024.
Whether fit for reporting	: Yes

HON'BLE MR. JUSTICE T. AMARNATH GOUD

Judgement & Order (Oral)

This is a petition under Article 226 of the Constitution of India for
seeking the following reliefs:

- (i) *Issue Rule calling upon the respondents and each one of them to show cause as to why a Writ of Certiorari and/or in the nature thereof shall not be issued for transmitting the records lying with the respondents for rendering substantive and conscionable justice to the petitioner;*
- (ii) *Issue Rule calling upon the respondents and each one of them to show cause as to why a Writ of Mandamus and/or in the nature thereof shall not be issued mandating/directing them not to disburse further money in favour to the private respondent No.6 till the final disposal of this writ petition.*
- (iii) *Issue Rule calling upon the respondents and each one of them to show cause as to why a Writ of Mandamus and/or in the nature thereof shall not be issued, mandating/directing them to distribute the monetary & 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*
- (iv) *Issue Rule calling upon the respondents and each one of them to show cause as to why a Writ of Prohibition and/or in the nature thereof shall not be issued for restraining/prohibiting the official respondents from disbursing further money in favour of the private respondent No.6 till the final disposal of this writ petition;*
- (v) *In the Ad-interim and Interim to pass an Order in terms of relief (iv) supra;*
- (vi) *Call for the records appertaining to this writ petition;*
- (vii) *After hearing the parties be pleased to make the Rule absolute in terms of (i) to (iv) above;*
- (viii) *Costs of and incidental to this proceeding*
- (ix) *Any other relief(s) as to this Hon'ble High Court may deem fit and proper.*

[2] The case of the petitioner is that the petitioner is the mother of Late Sudip Sarkar, a BSF Jawan of 169th Battalion, who laid down his life in Machal Sector, Kupwara District, Jammu & Kashmir, on 08.11.2020 while he was serving as a constable in 169th Battalion, BSF. On that day he received multiple bullets injuries while fighting with the infiltrators. Late Sudip Sarkar use to maintain and take care of his mother's livelihood from his salary. The Special Secretary, Government of Tripura issued a Memorandum, thereby sanctioning Rs. 5,00,000 from the Chief Minister Relief Fund, Tripura, and the said amount shall be placed to the Sub-Divisional Magistrate, Sadar, West Tripura, for making payment of Rs.2,50,000 each was given to the petitioner and the daughter-in-law respectively.

[3] Thereafter, the Commandant, disbursed a sum of Rs. 10,00,000 to the account of the petitioner, on account of 'Bharat Ke Veer Fund' through bank transfer. After his death, his widow promised to maintain his mother only on the condition that the petitioner has to give a sum of Rs. 10,00,000 only to the widow in order to buy an expensive flat. The petitioner paid a sum of Rs.2,00,000 only to the widow and waived

off Rs.1,50,000 only which in debt to the widow. The petitioner spent a sum of Rs. 3,50,000 out of Rs. 10,00,000/- on the widow. Thereafter, the daughter-in-law refused to maintain the petitioner and has been living separately. The daughter-in-law demanded the rest of the money which is Rs.8,00,000. Thereafter, the petitioner came to know that, an approximate sum of Rs. 1.45 Crore was given to the daughter-in-law from various financial institutions as petitioner's late son made daughter-in-law the nominee for his leftover assets/dividends. The petitioner craved for equal distribution of the approximate sum of Rs. 1.45 Crore among the legal heirs of the deceased. Hence the present writ petition.

[4] On the contrary, Mr. B. Majumder, learned Deputy SGI appearing for the respondents No. 1, 3, 4, & 5 submitted before this court that as per Rule 50(1) of the Central Civil [Pension] Rules, 1972 as well new Rule of 2021, the widow of the deceased is entitled to the family pension in order of preference for admissibility of family to the family members. As such the benefit/family pension have been released in favour of widow of the deceased i.e. Smt. Rumpa Sarkar. Moreover, on the representation dated Nil submitted by the petitioner to the DG BSF regarding payment of financial benefits a sum of Rs.10,00,000.00 (Rupees Ten lac) only were released in favour of the petitioner by HQ DG BSF in Saving Account of the petitioner through CBS on the account of 'Bharat Ke Veer Fund' on 24.03.2021 being a welfare measure to the parent of a BSF Martyr.

[5] To support his contention, Mr. B. Majumder, learned Deputy SGI has relied on a judgment of the apex court in *Nitu vs. Sheela Rani and Others* reported in (2016) 16 SCC 229 where the apex court has observed as follows:

"17. It is pertinent to note that in this case the pension is to be given under the provisions of the Scheme and therefore, only the person who is entitled to get the pension as per the Scheme would get it. Similar issue had arisen before this Court in the case of Violet Issaac (Smt.) v. Union of India (1991) 1 SCC 725 and after considering the relevant provisions, this Court came to the conclusion that family pension does not form part of the estate of the deceased and therefore, even an employee has no right to dispose of the same in his will

by giving a direction that someone other than the one who is entitled to it, should be given the same. In the instant case, as per the provisions of the Scheme, the appellant widow is the only family member who is entitled to the pension and therefore, the respondent mother would not get any right in the pension. Of course, it cannot be disputed that if there are other assets left by late Shri Yash Pal, the respondent mother would get 50% share, if late Shri Yash Pal had not prepared any Will and it appears that late Shri Yash Pal had died intestate and no Will had been executed by him.”

[6] Mr. T. Chakraborty, learned counsel appearing for the respondents no. 6, 7 & 8 submitted that the writ petition is not maintainable before this Court as none of the fundamental, legal or statutory rights of the petitioner have been violated in the instant case. It is further stated by Mr. Chakraborty, learned counsel that the petitioner is not solely dependent upon the income of the deceased soldier. She herself is a pensioner getting approximately Rs.5000/- per month after the death of her husband who was a Government employee alongwith old age allowance amounting to Rs.2000/- i.e. Rs.7000/- in total. He further contended that the claim sought by the petitioner is covered by Hindu Marriage Act which is not applicable to the present case in hand and prayed for dismissing the writ petition.

[7] To deal with the case, it is apposite to extract herein below the Rules 50, 51, 52 and 53 of the Central Civil Services (Pension) Rules, 1972.

50. Death-cum-retirement gratuity.

(1) (a) A Government servant, who has completed five years' qualifying service and has become eligible for service gratuity or pension under rule 49, shall on his retirement, be granted death-cum-retirement gratuity equal to one-fourth of his emoluments for each completed six monthly period of qualifying service, subject to 16 ½ times the emoluments,

(b) If a Government servant dies, while in service after completing five years' qualifying service, the amount of death-cum-retirement gratuity shall be equal to 12 times of his emoluments or the amount determined under clause (a), whichever is higher and it shall be paid to his family in the manner indicated in sub-rule (1) of rule 51 :

Provided that the amount of death-cum-retirement gratuity payable under this rule shall, in no case exceed thirty thousand rupees.

(2) If a Government servant, who has become eligible for a service gratuity or pension; dies within five years from the date of his retirement from service including compulsory retirement as a penalty and the sums actually received by him at the time

of his death on account of such gratuity or pension including ad hoc increase, if any, together with the death-cum-retirement gratuity admissible under sub-rule (1) and the commuted value of any portion of pension commuted by him are less than the amount equal to 12 times of his emoluments; a residuary gratuity equal to the deficiency may be granted to his family in the, manner indicated in sub-rule (1) of rule 51.

- (3) (a) If a Government servant dies in the first year of qualifying service, a death-cum-retirement gratuity equal to two times of his emoluments at the time of his death shall be paid to his family in the manner indicated in sub-rule (1) of rule 51.
- (b) If a Government servant dies after completion of one year of qualifying service but before completing five years of qualifying service the amount of death-cum-retirement gratuity shall be equal to six times of the emoluments.
- (4) (a) In the case of a Government servant to whom rule 54 applies, a contribution of an amount equal to two months emoluments or five thousand rupees, whichever is less, shall be recovered out of the death-cum-retirement gratuity.

Provided that where the average emoluments are treated as emoluments under sub-rule (5), the amount of contribution shall be determined reference to such average emoluments:

Provided further that no recovery death-cum-retirement gratuity for contribution towards the family pension shall be made in the case of a Government servant retiring from service on or after 22nd September, 1977.

- (b) No such recovery shall be made out of the death-cum-retirement gratuity payable servant-
- (i) who retires before earning a pension, or
- (ii) who at the time of death while in service or the time of retirement, was an unmarried Government servant or was a widower or a widow and had no child or children.

Explanation-In this sub-clause, "child" or children" includes legally adopted child or children.

Or

- (iii) in respect of whom contributory family pension is sanctioned under sub-rule (4) of rule -54.

- (5) The emoluments for the purpose of gratuity admissible under this rule shall be subject to a maximum of two thousand and five hundred rupees per mensem, and shall be reckoned in accordance with rule 33:

Provided that if the emoluments of a Government servant have been reduced during the last three years of his service otherwise than as penalty, average emoluments as referred to in rule 34 may, at the discretion of the pension -sanctioning authority, be treated as emoluments.

- (6) For the purpose of this rule and rules 51, 52 and 53 'family' in relation to a Government servant, means-

- (i) wife or wives including judicially separated wife or wives in the case of a male Government servant,
- (ii) husband including judicially separated husband in the case of a female Government servant,
- (iii) sons including step sons and adopted sons,
- (iv) unmarried daughters, including step daughters and adopted daughters,
- (v) widowed daughters including step daughters and adopted daughters,
- (vi) father- including adoptive parents in the case of individuals whose personal law permits adoption,
- (vii) mother - including adoptive parents in the case of individuals whose personal law permits adoption,
- (viii) brothers below the age of eighteen years including step brothers,
- (ix) Unmarried sisters and widowed sisters, including step sisters,
- (x) Married daughters, and
- (xi) children of a pre-deceased son,

51. Persons' to whom gratuity is payable.

- (1) (a) The gratuity payable under rule 50 shall be paid to the person or persons on whom the right to receive the gratuity is conferred by means' of nomination under rule 53;
- (b) If there is no such nomination or if the nomination made does not 'subsist, the gratuity shall be paid in the manner indicated below:-
- (i) if there are one or more surviving members of the family as in clauses (i), (ii) and (iv) of sub-rule (6) of rule 50, to all such-members in equal shares;
- (ii) if there are no such surviving members of the family as in sub-clause (i) above, but there are one or more members as in clauses (v), (vi), (vii), (viii), (ix), (x) and (xi) of sub-rule (6) of rule 50, to all such members in equal shares.
- (2) If a Government servant dies after retirement without receiving the gratuity admissible under sub-rule (I) of rule-50 the gratuity shall be disbursed to the family in the manner indicated in sub-rule (I),
- (3) The right of a female member of the family, or that of a brother, of a Government servant, who dies while in service or after retirement 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 the Government servant and before receiving her or his share of the gratuity.
- (4) Where gratuity is granted under rule 50 to a minor member of the family of the deceased Government servant, it shall be payable to the guardian on behalf of the minor.

52. Lapse of death-cum-retirement gratuity.

Where a Government servant dies while in service or after retirement without receiving the amount of gratuity and leaves behind no family and-

- (a) has made no nomination, or
- (b) the nomination made does not subsist,

the amount of death-cum-retirement gratuity payable in respect of such Government servant under rule 50 shall lapse to the Government.

53. Nominations.

(1) A Government servant shall, on his initial confirmation in a service or post, make a nomination in Form 1 Or Form 2, as may be appropriate in the circumstances of the case, conferring on one or more persons the right to receive the death-cum-retirement gratuity payable under rule 50:

Provided that if at the time of making the nomination-

- (i) 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; or
- (ii) the Government servant has no family, the nomination may be made in favour of a person or persons, or a body of individuals, whether incorporated or not.

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

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

- (i) that in respect of any specified nominee who predeceases the Government servant, or who dies after the death of the Government servant but before receiving the payment of gratuity, the right conferred on that nominee shall pass to such other person as may be specified in the nomination:

Provided that if at the time of making the nomination the Government servant has a family consisting of more than one member, the person so specified shall not be person other than a member of his family:

Provided further that where a Government servant has only one member in his family, and a nomination has been made in his favour, it is open to the Government servant to nominate

alternate nominee; or nominees in favour of any person or a body of individuals, whether incorporated or not;

(ii) that the nomination shall become invalid in the event of the happening of the contingency provided therein.

(4) The nomination made by a Government servant who has no family at the time or making it, or the nomination made by a Government servant under the second proviso to clause (i) of sub-rule (3) where he has only one member in his family shall become invalid in the event of the Government servant subsequently acquiring a family, or an additional member in the family, as the case may be.

(5) A Government servant may, at any time, cancel a nomination by sending a notice in writing to the authority mentioned in sub-rule (7):

Provided that he shall, along with such notice, send a fresh nomination made in accordance with this rules.

(6) Immediately on the death of a nominee in respect of whom no special provision has been made in the nomination under clause (i) or sub-rule (3) or under concurrence of any event by reason of which the nomination becomes invalid in pursuance of clause (ii) of that sub-rule, the Government servant shall send to the authority mentioned in sub-rule (7) a notice in writing cancelling the nomination together with a fresh nomination made in accordance with these rules.

(7) (a) Every nomination made (including every notice of cancellation, if any, given) by a Government servant under this rule shall be sent-

(i) in case the Government is a permanent Gazetted Government servant other than a Gazetted Government servant referred to in sub-rule (1) of rule 59, to the audit officer concerned; and

(ii) in any other case, including that of a Gazetted Government servant referred to in sub-rule (1) of rule 59, to the Head of Office.

(b) The Audit Officer or the Head of Office, as the case may be, shall, immediately on receipt of the nomination referred to in clause (a), countersign it indicating the date of receipt and keep it under his custody.

(c) (i) The Head of Office may authorise his subordinate Gazetted Officer to countersign the nomination form of non-Gazetted Government servants.

(ii) suitable entries regarding receipt or nomination shall be made in the service book of the non-Gazetted Government servant.

(8) Every nomination made and every notice of cancellation given by a Government servant shall to the extent that it is valid take effect from the date on which it is received by the authority mentioned in sub-rule(7).

[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.

JUDGE

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