



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)
(ITANAGAR BENCH)

Case No. : WP(C)/315/2022

Pinky Chetia
Daughter of Lt. Mahananda Chetia,
Presently residing at Tarajuli, Banderdewa, PO/PS Banderdewa, Papumpare District,
Arunachal Pradesh and permanent resident of Hapotiya Gohain Village, PO Hapotiya
and PS Dhakaukhana, Lakhimpur District, Assam.
Phone No. 9436062618

VERSUS

THE STATE OF AP and 4 Ors. Through the Secretary, Department of Environment
and Forest, Govt. of Arunachal Pradesh, Itanagar.

2:The Secretary
Age: 0
Occupation :
Department of Environment and Forest Govt. of Arunachal Pradesh Itanagar.

3:The Principal Chief Conservator of Forest
Age: 0
Occupation :
Department of Environment and Forest Govt. of Arunachal Pradesh Itanagar.

4:The Divisional Forest Officer
Age: 0
Occupation :
Khellong Forest Division Bhalukpong West Kameng District Arunachal Pradesh.

5:The Director
Age: 0
Occupation :
Department of Audit and Pension Govt. of Arunachal Pradesh Itanagar

Advocate for the Petitioner : D. Panging, D. Tamuk, M.Doji, T.Tayeng,
D. Lona, Kirmar Ado

Advocate for the Respondent : GA (AP)

**BEFORE
HONBLE MR. JUSTICE KARDAK ETE**

JUDGMENT & ORDER (Oral)

Date : 02-04-2024

Heard Mr. D. Panging, learned counsel for the petitioner. Also heard Mr. I. Riram, learned Additional Senior Government Advocate for the respondents no. 1 to 5.

2. By instituting this writ petition, the grievance put forward by the petitioner is for a direction to the respondent authorities to pay death gratuity and grant family pension to her, being the unmarried daughter of Late Mahananda Chetia, who was serving as Forest Guard in the Department of Environment and Forest, Government of Arunachal Pradesh in terms of the Central Civil Services (Pension) Rules, 2021.

3. The case of the petitioner, in nutshell, is that she is the unmarried daughter of Lt. Mahananda Chetia, who was serving as Forest Guard in the Department of Environment and Forest, Government of Arunachal Pradesh and was posted under Khellong Forest Division, Bhalukphong. The petitioner was born on 02.10.2001, i.e. 2 (two) months after the death of her father. The father of the petitioner was born on 22.02.1960 and had died at the age of 41 years on 16.08.2001. He was appointed as Forest Guard in the year 1980 and had served the Department for long 20 years. The petitioner contends that since, she was born 2 (two) months after the death of her father, she is not aware of the exact date of her father's appointment, however, as per the Bio-data, it is shown that

her father was appointed as Forest Guard in the year 1980.

4. The father of the petitioner was first married to a lady named Smti Dipti Sharma. For some reason their marriage did not last long and eventually they got divorced. The petitioner's father has no child from his first marriage. Later in the year 1997, the petitioner's father married, Smti Yaka Mosing, who is the mother of the petitioner. At the time of marriage, Smti Yaka Mosing was also serving as Forest Guard in Khellong Forest Division. Out of his second marriage, the petitioner's father has 2(two) daughters, the petitioner and her elder sister, namely, Smti Sunky Chetai. Few years after the death of the petitioner's father, her mother got remarried to some other person and in the meantime her father's first wife has also remarried. Now, both of them have children from their second marriages. After their mother's remarriage, petitioner and her elder sister were looked after by their uncle, Shri Dilip Chetai. The petitioner has been told by her uncle that after the death of their father, he had made a claim for grant of service and pensionary benefits on behalf of the petitioner and her elder sister. Simultaneously, their mother and her father's first wife had also made claim for grant of service and pensionary benefits. In order to settle the matter, the petitioner's uncle and the 2 (two) wives had approached the Deputy Commissioner, Bomdila. As there was no nomination in favour of any person for receiving the death gratuity as required under the Rule, the Deputy Commissioner, Bomdila advised them to wait for the daughters to become major, who upon attaining majority could apply for Succession Certificate. Thereafter, neither the petitioner's mother nor the first wife has ever made any claim and the matter was laid to rest. The petitioner attained the age of 18 years on 02.10.2019 but before she could process her claim the Covid-19 pandemic started, due to which, the petitioner could not process her claim for

service and pensionary benefits. When the situation became normal, the petitioner applied for Succession Certificate before the Court of the District Judge, Bomdila, for claiming debts and securities of her late father including service and pensionary benefits. Accordingly, the Learned District Judge, Bomdila issued the succession certificate No. SA- 05/2022(WSD/BDL) dated 28.02.2022 in favour of the petitioner.

5. It is contended that due to ignorance and lack of proper guidance, the petitioner could not make any claim for death gratuity and family pension admissible to her as per the Rules at an earlier point of time. Therefore, immediately after obtaining the Succession Certificate, petitioner being the only eligible family member under the Central Civil Services (Pension) Rules, 2021 (hereinafter referred to as the Pension Rules, 2021, in short), submitted an application dated 01.03.2022 before the Divisional Forest Officer, Khellong Forest Division, Bhalukpong, claiming service and pensionary benefits of her late father. Along with the application, she also submitted the copies of Death Certificate of Lt. Mahananda Chetia and Succession Certificate issued in her favour. The application of the petitioner was duly received in the Office, however, in spite of lapse of many months, the petitioner has neither received the death gratuity nor is she receiving any family pension. When the petitioner made an enquiry in the Office of the Divisional Forest Officer, Khellong Forest Division, Bhalukpong, she was informed that her application was forwarded to the concerned authority i.e. the Director, Department of Audit & Pension, Government of Arunachal Pradesh, Itanagar. However, the Director, Department of Audit & Pension, Government of Arunachal Pradesh, Itanagar has not released the service and pensionary benefits.

6. Mr. D. Panging, learned counsel for the petitioner, submits that since the

father of the petitioner died while in service, the death gratuity has to be calculated as per Serial No. V of the table to clause (v) of Rule 45 of the Pension Rules, 2021. The father of the petitioner has not made any nomination conferring upon any person the right to receive the retirement and death gratuity as required under Rule 46 of the Pension Rules, 2021. He further submits that under Rule 47(1)(b)(i) of the Pension Rules, 2021, the death gratuity is first payable in equal share to wife or wives including judicially separated wife or wives, husband including judicially separated husband, sons including step sons and adopted sons, unmarried daughter including step daughters and adopted daughters and widowed or divorced daughter including step daughters and adopted daughters. The mother of the petitioner and her father's first wife have already remarried and in such situation, the petitioner and her elder sister are entitled for equal share of the death gratuity. However, since the elder sister of the petitioner is married, as such, she is not eligible for family pension but in terms of Sub-Rule 4 of the Rule 41 of the Pension Rules, 2021, her eldest sister is also eligible for an equal share of death gratuity. However, her elder sister has already given a No Objection Certificate (NOC) in favour of the petitioner at the time of applying for Succession Certificate for claiming death gratuity and family pension and her elder sister is not claiming any share of the death gratuity of their father. Therefore, the petitioner being the only unmarried daughter of Lt. Mahananda Chetia, is entitled to receive the death gratuity of her late father under the Rules.

7. Mr. Panging, learned counsel, submits that since both the wives of the late father of the petitioner had already remarried and have children from their present marriages, as per Rule 50 of the Pension Rules, 2021, they are ineligible for family pension and the elder sister of the petitioner being married

as per Sub-Rule 9 (a)(ii) of Rule 50 of the Pension Rules, 2021, she is also ineligible as she is already married. Therefore, the petitioner, who is unmarried, is the only family member entitled to receive family pension as per the said Rule. Mr. Panging further submits that as per Rule 47 (1) (b) of the Pension Rules, 2021, the petitioner is entitled to receive the death gratuity along with family pension.

8. Mr. Panging, learned counsel for the petitioner submits that the application for grant of death gratuity and family pension was submitted on 01.03.2022. The respondent authorities have neither processed her claim nor taken any decision on her claim, which amounts to denial of the entitlement of the petitioner of death gratuity and family pension, which the petitioner is entitled as per the Pension Rules, 2021. Therefore, this Court may direct the respondent authorities to pay the death gratuity as well as grant family pension to the petitioner.

9. Mr. I. Riram, learned Additional Senior Government Advocate, while referring to paragraph-5 of the affidavit-in-opposition filed on behalf of the respondents no. 2, 3 & 4, submits that as per service record, date of birth of the father of the petitioner is 22.02.1960, the date of appointment as Forest Guard is 18.02.1980 and the date of death is 16.08.2001. The service of the father of the petitioner was terminated w.e.f. 10.01.1985 and reinstated w.e.f. 25.09.1992 and the length of qualifying service is not 20 years but 13 years 9 months 14 days. However, Mr. Riram fairly submits that the petitioner is entitled for death gratuity and family pension, which may be calculated for 13 years 9 months 14 days as per Rule 45 of the Pension Rules, 2021 and not for the qualifying service of 20 years. He further submits that for release of gratuity as well as for pensionary benefits, the original records need to be submitted to the

Office for appropriate consideration.

10. At the time of hearing, Mr. Riram, learned Additional Senior Government Advocate, has placed on record a letter dated 09.02.2024, issued by the Divisional Forest Officer, Khellong Forest Division, Bhalukpong, addressed to one Shri Lekhan Chandra Chetia and Mrs. Dipti Sarmah Chetia, wherein, it is directed to submit the Succession Certificate along with documents or on before 21.01.2024, so as to enable the respondents to take action for settlement of the death gratuity and other pensionary benefits with regard to the father of the petitioner.

11. It is stated at the Bar that Shri Lekhan Chandra Chetia is the father of Lt. Mahananda Chetia and Mrs. Dipti Sarmah Chetia is the first wife of Lt. Mahananda Chetia. As per the Rules, since Mrs. Dipti Sarmah Chetia has already remarried and having children from the present marriage, she is not entitled for any death gratuity or family pension on the death of Lt. Mahananda Chetia and the father of the Lt. Mahananda Chetia is also not entitled and only the petitioner is entitled for death gratuity and the family pension.

12. Due consideration has been extended to the submissions of the learned counsels appearing for the parties and I have also perused the materials available on record.

13. The grievance of the petitioner is for a direction to the respondent authorities to pay the death gratuity and grant family pension to her, being the unmarried daughter of Late Mahananda Chetia, who was serving as Forest Guard in the Department of Environment and Forest, Government of Arunachal Pradesh in terms of the Central Civil Services (Pension) Rules, 2021.

14. In order to analyse appropriately, I deem it apposite to refer to the

relevant provisions of the Central Civil Services (Pension) Rules, 2021, which are extracted herein below:

“Rule 45. Retirement Gratuity and Death Gratuity.

(1)(a).....

(b). If a Government servant dies while in service, the death gratuity shall be paid to his family in the manner indicated in sub-rule (1) of Rule 47 at the rates given in the Table below, namely :-

<i>Sl. No.</i>	<i>Length of qualifying service</i>	<i>Rate of death gratuity</i>
<i>(1)</i>	<i>(2)</i>	<i>(3)</i>
<i>(i)</i>	<i>Less than 1 year</i>	<i>2 time of emoluments</i>
<i>(ii)</i>	<i>One year or more but less than 5 years</i>	<i>6 time of emoluments</i>
<i>(iii)</i>	<i>5 years or more but less than 11 years</i>	<i>12 time of emoluments</i>
<i>(iv)</i>	<i>11 years or more but less than 20 years</i>	<i>20 time of emoluments</i>
<i>(v)</i>	<i>20 years or more</i>	<i>Half of emoluments for every completed six-monthly period of qualifying service subject to a maximum of 33 times of emoluments.</i>

Provided that the amount of retirement gratuity or death gratuity payable under this rule shall in no case exceed twenty lakh rupees:

Provided further that where the amount of retirement or death gratuity, as finally calculated, contains a fraction of a rupee, it shall be rounded off to the next higher rupee.

(6) The emoluments for the purpose of gratuity admissible under this rule shall be reckoned in accordance with rule 31:

Provided that if the emoluments of a Government servant have been reduced during the last ten months of his service, average emoluments as referred to in rule 32 shall be treated as emoluments.

Provided further that the dearness allowance admissible on the date of retirement or death, as the case may be, shall also be treated as emoluments as referred to in rule 32 shall be treated as emoluments for the purpose of this rule.

Explanation.- For the purposes of this rule and rules 46, 47, 48 and 49, 'family', in relation to a Government servant, means,-

(1) 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 male Government servant;

(iii) Sons including stepsons and adopted sons;

(iv) Unmarried daughters including stepdaughters and adopted daughters;

(v) Widowed or divorced daughters including stepdaughters 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 including stepbrothers who are suffering from any disorder or disability of mind including the mentally retarded or physically crippled or disabled without any limit of age and brothers, including stepbrothers, below the age of eighteen years, in other cases;

(ix) Unmarried sisters, widowed sisters and divorced sisters including stepsisters;

(x) Married daughters; and

(xi) Children of pre-deceased son.

Rule 47. PERSONS TO WHOM GRATUITY IS PAYABLE.-

(1)(a) The gratuity payable under rule 45 shall be paid to the person or persons on whom the right to receive the gratuity is conferred by means of a nomination under rule 46.

(b) In case 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 clause (i), (ii), (iii), (iv) and (v) of the explanation below sub-rule (6) of the rule

45, to all members in equal shares; or

(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 (vi), (vii), (viii), (ix), (x) and (xi) of the explanation below sub-rule (6) of rule 46, to all such members in equal shares.

Rule 50. Family Pension.-

(1) Where a Government servant dies,-

(i) after completion of one year of continuous service; or

(ii) before completion of one year of continuous service, provided the deceased Government servant concerned immediately prior to his appointment to the service or post was examined by the appropriate medical authority and declared fit by that authority for Government servant; or

(iii) after retirement from service and was on the date of death in receipt of a pension, or compassionate allowance, referred to in these rules,

The family of the deceased shall be entitled to a family pension from the date of following the date of death of the Government servant or the retired Government servant, as the case may be.

Explanation- 'Continuous service' means service rendered in a temporary or permanent capacity in a pensionable establishment and does not include period of suspension if any and period of service, if any, rendered before attaining the age of eighteen years.

(9)(a) If the deceased Government servant or the pensioner is not survived by a widow or widower or if the widow or widower dies or ceases to be eligible for family pension, family pension at the rate specified in sub-rule

(2) shall be payable the child or children who fulfill the following conditions:

(i) In the case of a son (other than a son suffering from a mental or physical disability) (including adopted son, step son and son born after retirement of the pensioner)-unmarried, below the age of twenty-five years and not earning his livelihood;

(ii) In the case of a daughter (other than a daughter suffering from a mental or physical disability) including adopted daughter, step daughter and daughter born after retirement of the pensioner)- unmarried or widowed or divorced and not earning her livelihood.

(iii) In the case of case of a son or daughter suffering from mental or

physical disability (including adopted son or daughter, step son or daughter and son or daughter born after retirement of the pensioner)-not earning his or her livelihood.

(d) Where a deceased Government servant or pensioner leaves behind more children than one, family pension shall be first payable to the children below the age of twenty-five years, who fulfil the eligibility conditions for grant of family pension, in the order of their birth."

15. On a bare reading of the above rules, it is clear that if a Government servant dies while in service, the death gratuity shall be paid to his/her family including an unmarried daughter. It also provides that where a Government servant dies, after completion of one year of continuous service, the family of the deceased shall be entitled to a family pension from the date of following the date of death of the Government servant which includes the unmarried daughter. The entitlement of the unmarried daughter is subject to fulfilment of the conditions laid down under the rules and she only would be entitled if the other family members ceases to be eligible.

16. Uncontrovertibly, the petitioner is the only unmarried daughter of Lt. Mahananda Chetia, who was serving as a Forest Guard in the Department of Forest and Environment, Government of Arunachal Pradesh and died on 16.08.2001 and she was born after 2 (two) months after the death of her father on 02.10.2001. The late father of the petitioner had 2 (two) wives and the petitioner is the daughter of the second wife. The 2 (two) wives have already remarried and have children from their present marriages. The petitioner has one elder sister, who is also married and as such all other family members have ceased to be eligible.

17. Having considered the provisions of Rule 45, 47 and 50 of the Pension Rules, 2021 and materials available on record, I am of the view that there is no reason as to why the petitioner shall not be paid the death gratuity and family

pension as the unmarried daughter is entitled to death gratuity as well as family pension. The petitioner being the unmarried daughter of Lt. Mahananda Chetia, and other family members having been ceased to be eligible, is entitled to the death gratuity as well as family pension.

18. In view of what has been discussed hereinabove, I am of the considered view that the petitioner is entitled to be paid the death gratuity and family pension being the unmarried daughter of Lt. Mahananda Chetia, in terms of the Pension Rules, 2021.

19. Having concluded above, this writ petition is allowed with a direction to the respondent authorities to complete the process for payment of death gratuity and family pension within an outer limit of 2 (two) months from the date of receipt of the certified copy of this order and thereafter release the payment to the petitioner not later than 15 (fifteen) days.

20. With above observations and directions, this writ petition stands allowed and disposed of.

No order as to costs.

JUDGE

Comparing Assistant