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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 29th May, 2023.

+ **W.P.(C) 16532/2022**

KUSMA

..... Petitioner

Through: Mr. Chirayu Jain & Ms. Sakshi
Dewangan, Advs.

versus

DELHI BUILDING AND OTHER CONSTRUCTION WORKERS
WELFARE BOARD & ANR. Respondents

Through: Mr. Abhay Dixit and Mr. Ankit
Kumar, Advocates for R-1.

CORAM:

JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

1. This hearing has been done through hybrid mode.

Brief Facts

2. The present petition has been filed by the Petitioner - Kusma is the widow of Late Shri Brij Kishore (hereinafter, '*the deceased*') who was a construction worker registered with the Respondent No.1 - Delhi Building and Other Construction Workers Welfare Board (*hereinafter, 'BOCW Board'*) since 10th January 2014.

3. This petition relates to the payment of death and funeral benefits under the Delhi Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Rules, 2002, and the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996 (*hereinafter, 'BOCW Act, 1996'*) to the family of the deceased.

4. The case of the Petitioner is that the deceased passed away on 15th January 2018. Thereafter, the Petitioner applied for death and funeral benefits



in 2018. On 25th August 2021 after more than two years, BOCW Board sent a deficiency letter wherein the '*original slip from the funeral house*' and the '*renewal slip for 10 January 2018*' i.e. the 'MR slip' were sought from the Petitioner.

5. In response to the said letter, the Petitioner vide reply dated 26th February 2022, submitted the receipts from the funeral house however, the MR slip was not submitted. Another deficiency letter was raised on 8th July 2022 whereby the MR slip was sought and the same was replied to without providing the MR slip.

6. Thereafter, on 6th February 2023 the amount of Rs.1,10,100/- was sanctioned and released to the Petitioner after notice was issued in the present petition. The Petitioner prays for the grant of interest for the delayed period.

Submissions

7. Mr. Chirayu Jain, Id. Counsel appearing for the Petitioner relies upon various SOPs which have been issued by the BOCW Board in respect of death benefits, funeral assistance, pension benefits, maternity benefits, etc. to argue that the timelines prescribed under the Delhi (Right of Citizen to Time Bound Delivery of Services) Act, 2011 are not being complied with. He places specific reliance on the communication dated 12th January, 2023 issued by the Chairperson of the BOCW Board which records that there are unnecessary deficiencies being raised, all deficiencies are not raised in one go and, delay is being caused in disbursement of benefits to construction workers.

8. On the other hand, Id. Counsel appearing for the Respondents submits that in the case of construction workers, the submission of the application is always not with proper documentation or with the proper authority. He submits that now an online portal has been created to facilitate the application



processing. He further submits that the BOCW Board has one Secretary, assisted by 11 Deputy Secretaries across separate districts. Since the applications are made directly to the Secretary instead of the concerned Deputy Secretary, there is a delay in processing and releasing benefits under the BOCW Act, 1996.

Analysis and Findings

9. The Court has perused the record, as also the orders relied on by the Id. Counsels. Insofar as the death and funeral benefits are concerned, the SOP of the BOCW Board reads as under:

“ANNEXURE -II

**1. Name of the Service: Death Benefit (Natural/ Accidental)
(Rule-279)**

2. Category: G to C (G to C/ G to B/ G to G)

3. Documents required for the above service

- a) Application in Form No. XXXVII
- b) Death certificate (in original)
- c) I.D Proof of applicant/ Nominee
- d) Address proof in case of change of address
- e) Bank account detail of Nominee/ Nominees for RTGS
- f) Documents relating to FIR/ hospitalization in case of accidental death (during employment)
- g) Guardianship Certificate and age proof (in case, if the nominee is minor)
- h) Letter of consent from other nominees (where the number of nominees are more than one)
- i) One passport size photo of Claimant / Nominee

4.

<i>Steps performed internally for the service</i>	<i>Time for each step/task (in days)</i>
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● <i>Receipt of application by board staff in the district concerned</i> ● <i>Diary & entry of application in excel format and issuance of provisional receipt.</i> ● <i>Forwarding to the verifying officer (10/LO) of the concerned district</i>	08
● <i>Verification/checking of documents by verifying officer (10/LO) of the concerned district</i> ● <i>If documents are not in order, informing short comings to worker</i> ● <i>If documents are not in order, informing short comings to worker If documents are found in order, forwarding the same to the recommending officer/ DLC through LO/ALC of the concerned district</i>	20
● <i>Recommendation by recommending officer/ DLC of the concerned district</i> ● <i>Forwarding of same to the Construction Board by concerned District for approval/ sanction</i>	20
● <i>Scrutiny & preparation of bills by Accounts Officer.</i> ● <i>Approval of Competent Authority i.e. Secretary Board</i> ● <i>Release of payment to the beneficiary through RTGS.</i>	12
Total service delivery time	60

5. *Pain areas/difficulties experienced by stakeholders for the above service: NIL*



10. The communication dated 12th January 2023 relied upon by Id. Counsel for the Petitioner, records as under:

“It has been recently brought to my notice that District offices of the Delhi Building and Other Construction Workers Welfare Board have not been disposing applications of welfare claims of construction workers. Due to this pendency at district offices is increasing at an alarming rate.

In many instances reported to me, workers' claim applications are not even accepted at district offices so they do not reflect in actual pendency reports of the Board. Workers are given future dates to visit to submit their claims, which is unethical and unconstitutional behaviour on part of the Board staff.

Where Delhi Building and Other Construction Welfare Board currently has 779369 live registered construction workers, claim applications received last year are as low as 5515, out of which only a select few got sanctioned. No claims have been disbursed by the Board since 12th October 2022 which is very disappointing.

Construction workers represent the most poor and marginalized section of our society. When they come to apply for claims they have to forego their wages for the day. But, it looks like our staff doesn't understand their pain at all, which is reflected in the increasing pendency of claim applications.

We fail to realize how much the amount of maternity, marriage, education etc. matter to the construction worker who are in urgent and dire need of financial assistance from DBOCWWB. Engagement in over documentation and unnecessary delays in disposing claim applications defeats the purpose of setting up of DBOCWWB under The Building and Other Construction Workers Act, 1996.

Despite SOP being formed of clearing claim applications within one month from the date of their receipt, applications are still pending for months and in



some cases for years at almost all district offices. This kind of deliberate carelessness and lacklustre attitude towards government service by Board staff would not be tolerated.

Therefore, to correct the functioning of the Board, it is directed:

- *To submit a report on pendency of welfare claim applications in each district offices stating reasons why SOP is being violated in the concerned districts.*
- *To take action against the officials who are causing the delay in clearance of welfare claim applications of poor construction labourers.*
- *Ensure clearance of all pending applications with Board as per SOP by 22nd January 2023.*

11. Further, Entry 106 and Entry 107 of the Schedule I of the Delhi (Right of Citizen to Time Bound Delivery of Services) Act, 2011 specifies 60 days as the period during which the death and funeral benefits of construction workers have to be processed. The SOP of the BOCW Board also stipulates 60 days for the same. Thus, it is clear that once an application for death and funeral benefits is made by the family of the construction worker, the said application ought to be processed without any delay, considering their financial status.

12. This Court in its judgment dated 23rd February 2023 in ***W.P.(C) 13969/2022*** titled ***Dulari Devi v. Delhi Building and Other Construction Workers Board [2023/DHC/001341]*** held as under:

“54. In the present two cases, the workers concerned were registered as beneficiaries on 17th December, 2007. The workers attained the age of superannuation in the year 2009. They had been recorded as beneficiaries for more than a year in terms of Rule 272 of the Rules. For various reasons, there was a period



during which the said workers had failed to make part of their contributions. During the worker's lifetime itself, the worker had made good the said shortcoming and had deposited their contributions along with the demanded penalty. Thus, by making contribution to the fund under Rule 267 of the Rules, the membership of the said workers as beneficiaries has to be deemed to have been resumed/renewed. For all benefits under the Act and Rules, the workers continue to qualify as beneficiaries and their membership cannot be deemed to have ceased. **The objections taken by the Board relating to original MR slip, notary's verification number are completely untenable once the admitted position is that the deceased workers membership was restored under Section 17 of the Act, albeit with payment of the demanded fee clearly the delay in payment of membership fee cannot deprive the worker or his family to pension. The workers in these petitions fulfilled the conditions laid down in the Act and the Rules for release of pension and other benefits they were entitled to.**

13. In view of the aforementioned judgment, the objections taken by the BOCW Board in the present case that the original MR slip has not been submitted by the Petitioner shall not stand in the way of death and funeral benefits being provided to the Petitioner.

14. Further in the recent decision of the Id. Division Bench of this Court dated 17th April 2023 in **LPA 209/2023** titled **Rajo v. Delhi Building and Other Construction Workers Welfare Board & Anr. [2023/DHC/2581-DB]**, it has been directed that interest would be liable to be paid upon the expiry of a period of 45 days after all the deficiencies are cleared at the rate of 6%. The relevant observations of the Id. Division Bench are set out below:

"12. As regards the alleged delay on the part of the respondent no.1 in processing the appellant's



application for pension, it is pertinent to note that even though the appellant completed sixty years of age/superannuated on 01.01.2021, she submitted the application for sanction of pension only on 08.02.2022 i.e. more than 13 months after attaining the requisite age. It is also a matter of record, as noticed in the impugned judgment that the respondent no. 1 vide its letter dated 06.07.2022 pointed out certain deficiencies in the said pension application. The communication expressly referred to the fact that the labour card of the appellant was valid only till 13.12.2020. The said communication also requested the appellant to appear before the concerned Deputy Secretary (District-South), Delhi and provide necessary clarifications. This communication was responded to by the appellant on 05.08.2022. Thereafter, the respondent no. 1 sanctioned the pension on 06.01.2023. As rightly observed in the impugned judgment, it was only after the requisite information was provided by the appellant on 05.08.2022, that the appellant's application for grant of pension could be processed. In view of the sequence of events and the factual position as emerges from the record, it cannot be said that the impugned judgment has incorrectly computed the period for which interest has been held to be payable.

13. The impugned judgment, taking into the account that the relevant rules do not provide any timeline within which an application for pension is to be processed, proceeded on the basis that the period of 45 days can be taken as a reasonable period for the respondent no.1 board to process the appellant's application for grant of pension. On that premise, the appellant has been granted interest @ 6% per annum on the delayed amount of pension w.e.f. 21.09.2022 (after excluding 45 days w.e.f. 05.08.2022). No fault can be found with the directions contained in the impugned judgment which are based on the peculiar facts and circumstances of the present case. "



15. Under these circumstances and keeping in mind the overall objective of the BOCW Act, 1996, the judgments in *Dulari Devi (supra)* and *Rajo (supra)* as also the COVID-19 pandemic wherein a large disbursement was to be made to migrant workers, it is directed that interest at the rate of 6% p.a. shall be released to the Petitioner's family 60 days from the date the deficiencies in the death and funeral benefit application were cured till the date sanction was granted to the Petitioner i.e. from 26th April 2022 till 6th February 2023.

16. The said release shall be given effect to by the BOCW Board by 1st July, 2023. After 1st July, 2023, if there is any delay, 6% p.a. interest shall be applicable for the period of delay.

17. The present petition along with all pending applications is disposed of in the above terms.

PRATHIBA M. SINGH
JUDGE

MAY 29, 2023

Rahul/KT

(corrected & released on 12th June, 2023)