

30/100

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

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O.A.T.A No. 274/2003

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SECTION OFFICER (Judl.)

FROM No. 4
(SEE RULE 42)

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH:

ORDER SHEET

Original Application No:- 274 /03

Misc Petition No: _____

Contempt Petition No: _____

Review Application No: _____

Name of the Appellant(s): Smti Malati Pohowmik.

Name of the Respondant(s): UOI & ONS.

Advocate for the Appellant:- Smti Uma Chakraborty,
Miss Lipika Dori.

Advocate for the Respondant:-

Notes of the Registry	date	Order of the Tribunal
Application is in form but not in time for presentation. Petition is filed / not filed C.F. Rs. 50/- deposited No. 336 387303 dated 09/12/03.	16.12.03	present : The Hon'ble Mr K.V. Prahlanan, Admn. Member. Heard Mrs U.Chakraborty, learned counsel for the applicant. Issue notice to show cause as to why this application shall not be admitted. Returnable by four weeks. List on 28.1.2004 for filing reply to show cause and admission.
Steps taken with regard to the respondents.		
09/12/03. Per issue notice as per order dated 16/12/03.	pg	
Notice & order dt. 16/12/03, sent to D/Section for issuing to respondents, No- 1 to 7.		
22/12/03. D/No- 243762443 dt. 22-12-03.		

K.V. Prahlanan
Member

19.2.2004

Heard Mrs. U. Chakrabarty, learned counsel for the applicant.

On the plea of learned counsel for the respondents four weeks time is allowed to file reply.

List on 23.3.2004 for admission.

K. V. Subudha
Member (A)

mb

23.3.2004

Heard Mrs. U. Chakrabarty, learned counsel for the applicant and also Ms. U. Das, learned counsel on behalf the respondents.

The application is admitted. Four weeks further time is given to the respondents to file written statement.

List on 26.4.2004 for orders.

K. V. Subudha
Member (A)

mb

26.4.2004

Ms. U. Das, learned counsel appearing on behalf of Mr. S. Sarma, learned Standing counsel for the Railways, prays for four weeks time to file written statement.

Prayer allowed. List on 27.5.2004 for written statement.

K. V. Subudha
Member (A)

bb

27.5.2004

Written statement has been filed by the respondents. Learned counsel for the applicant prayed for time to file rejoinder. Four weeks time is allowed to the applicant to file rejoinder.

List on 22.6.2004 for orders.

K. V. Subudha
Member (A)

No. reply has been filed.

22
22.3.04

10.5.04
W/s filed by the Respondents.

Dis.

8-7-04
An affidavit in reply filed on behalf of the applicant.

Dis.

13.8.04

Case is ready for
hearing
Dr.

27.7.2004 . Written statement has been filed.
List after three weeks.

List on 16.8.2004 for hearing

K. P. Das
Member (A)

bb

28.9.04

W/S filed by the
respondents also an
affidavit-in-reply
filed by the applicant.

16.8.04

Let this case be listed on 22.9.04
for hearing.

K. P. Das
Member(A)

lm

22.9.04

The matter pertains to the jurisdic-
tion of Single Judge. Accordingly the
matter be listed before Single Judge
on 29.9.04.

Am

Steps taken

Dr.
29/10/04

pg

29.9.04

K. P. Das
Member

R.
Vice-Chairman

Imploded as
resp. No-8, vide
court order Dated.

29/9/04.

Dr.
3/11/04

Notice & order
dt. 29/9/04, sent to
D/Section for
issuing to resp.
No-8, by regd. A/O
post.

Dr.
4/11/04

pg

Heard Mrs U.Chakraborty, learned
counsel for the applicant and Miss Usha
Das, learned counsel on behalf of the
respondents. In view of prayer 9.2,
learned counsel for the applicant wants
to join Smt Sipra Bhowmick, as party
respondent. Leave to join Smt Sipra
Bhowmick as party respondent is granted.
Necessary entry in the title of the
application be made by the learned
counsel for the applicant within 15
days from today by adding Smt Sipra
Bhowmick as party respondent No.8 and
take steps for service on the said
respondent No.8.

The matter be listed on 24.11.04 at
2-30 P.M.

R.
Vice-Chairman

23-11-04
w/s - la - Secy - 8/10/04

Dr.

24.11.04.

Présent: Hon'ble Mr.KV.Prahla dan
Administrative Member.

Notice duly
served on
resp. No. 8.

Written statement has already
been filed. List the case for hearing
on 10.1.05. The applicant may file
rejoinder, if any within two weeks.

K. V. Prahla dan
Member

19-1-05

- ① Notice duly served on
R. no. 8.
② No reply filed.

lm

19.01.2005

Mrs. U. Chakrabarty, learned
counsel for the applicant is present.
Respondent No. 8 who has been joined
as party respondent has been served but
no one has appeared on her behalf today
when the matter was called for. It is
considered necessary that another
opportunity be given to respondent No.
8 in case she wants to file written
statement in the matter.

Stand over to 18.2.2005.

R. -
Vice-Chairman

17-1-05

pg

1 Notice duly served on
R. no. 8

18.2.2005

Last opportunity is given to the
respondent No. 8 to file written state-
ment. List on 23.3.2005.

2 No reply has been
filed.

K. V. Prahla dan
Member (A)

22-3-05

mb

3 All has been
filed.

29.3.2005

Present : The Hon'ble Mr. Justice G.
Sivarajan, Vice-Chairman.

The case is ready for
hearing

Heard learned counsel for the
parties. Hearing concluded. Judgment
delivered in open Court, kept in separate
sheets. The application is disposed of
in terms of the order.

G. Sivarajan
Vice-Chairman

4.5.05
Copy of the Judgment has
been sent to the parties for hearing.
Case is ready for hearing.
After the hearing the case
to be disposed of as follows
to the Pky. Counsel.

mb

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

O.A./1/4. No. 274/2003

DATE OF DECISION 29.3.2005.

Smt. Malati Bhowmik.....APPLICANT(S)

Smt. U. Chakraborty, Mrs. L. Devi.....ADVOCATE FOR THE
APPLICANT(S).

-VERSUS -

U.O. I. & Ors......RESPONDENT(S)

Mr. S. Sarma, Ms. B. Devi.....ADVOCATE FOR THE
RESPONDENT(S).

THE HON'BLE MR. ~~XXXXXX~~ JUSTICE G. SIVARAJAN, VICE CHAIRMAN.

THE HON'BLE MR.

1. Whether Reporters of local papers may be allowed to see the judgment ?
 2. To be referred to the Reporter or not ?
 3. Whether their Lordships wish to see the fair copy of the Judgment ?
 4. Whether the judgment is to be circulated to the other Benches ?
- Judgment delivered by Hon'ble **Vice-Chairman.**

[Handwritten signature]

X

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No. 274/2003

Date of Order : This the 29th day of March, 2005

The Hon'ble Sri Justice G. Sivarajan, Vice-Chairman

Smt. Malati Bhowmik
Mahasakti Asram, Tarapur,
P.O. - Tarapur, Silchar - 3,
Dist. - Cachar (Assam).

... Applicant.

By Advocates Mrs. U. Chakraborty, Ms. L. Devi.

- Versus -

1. The Union of India,
Represented by the Secretary, Commissioner to the
Central Govt. Department of Railway, Rail Bhawan,
New Delhi - 1.
2. The Divisional Railway Manager (P),
N.F. Railway, Lumding
P.O. - Lumding,
Dist. Nagaon (Assam).
3. The Divisional Finance Manager (DFM),
N.F. Railway, Lumding,
P.O. - Lumding, Dist. - Nagaon, (Assam).
4. The Senior Divisional Engineer (Sr. DEN)
N.F. Railway, Lumding,
P.O. - Lumding, Dist. - Nagaon, Assam.
5. Sri Dulal Dey,
Welfare Inspector, N.F. Railway,
SSE/Works/SCL/ (Silchar),
P.O. - Badarpur,
Dist. Haflong (Assam).
6. The I.O.W. (Inspector of Works),
N.F. Railway, Silchar,
P.O. - Silchar, District - Cachar (Assam).

7. Smt. Subra Bhattacharjee (Dasgupta),
Welfare Inspector, F.S. (Welfare), N.F. Railway,
P.O. - Lumding, District - Nagaon (Assam).
8. Smt. Sipra Bhowmik,
C/o Mohitosh Nath,
Vill. - Marua,
P.O. - Duttagram,
District - Karimganj, (Assam).

... Respondents

By Mr. S. Sarma, Railway Advocate and Ms. B. Devi, Advocate.

ORDER (ORAL)

SIVARAJAN, J. (V.C.):

The matter relates to final settlement of dues of late Sachindra Kr. Bhowmik, ex-Railway employee, who died while in service as SWM (Store Watch Man) SSE/Works/SCL, N.F. Railway on 07.10.2002. His widow Smt. Malati Bhowmik made her claim for settlement of the final dues as legal heir of deceased Sachindra Kumar Bhowmik. This was followed by representations dated 27.12.2002 (Annexure - VIII) and dated 25.06.2003 (Annexure - XII). The applicant's claim was rejected by the Divisional Railway Manager (P), N.F. Railway, Lumding (vide communication dated 10.07.2003 Annexure - XVI to the application). The main ground on which her claim was rejected is that the applicant was divorced by late Sachindra Kr. Bhowmik as per decree in Title Suit Case No. 1/96 before the Deputy Commissioner, N.C. Hills. It is also stated that one Smt. Sipra Bhowmik has also claimed settlement dues stating that she is the widow of late Sachindra Kr. Bhowmik. The applicant assailed the said communication in this application.

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2. The Respondents No. 2 to 7 have filed written statement. It is stated in paragraph 7 of the written statement that there were two Suits being Title Suit No. 1/96 and Title Suit No. 5/97, both between the applicant and late Sachindra Kr. Bhowmik and the order dated 28.06.1996 in Title Suit No. 1/96 shows that there was a decree of divorce between the applicant and her husband late Sachindra Kr. Bhowmik and the order dated 21.07.1998 passed by the First Class Magistrate in Title Suit No. 5/97 shows that the Suit was dismissed and late Sachindra Kr. Bhowmik was held to be free to re-marry, if he so desires. It is also stated that though so many representations were received from the applicant for settlement of the claim she could not be paid since a family declaration for the year 1999 submitted by late Sachindra Kr. Bhowmick indicates Smt. Sipra Bhowmick as his wife and further by his application dated 20.04.1999 requested the Railway authority to include the name of Smt. Sipra Bhowmick in the office record whom he claimed to have married on 03.11.1998. It is also stated that Smt. Sipra Bhowmick submitted application with photocopy of the affidavit dated 23.10.2002 other documents claiming herself to be the legal wife of late Sachindra Kr. Bhowmick and asserted that there is no other surviving members of the family of late Sachindra Kr. Bhowmick. It is further stated that the copies of the Court proceedings produced by the applicant and those with the respondents differed which led to confusion and that the applicant did not produce certified copy of the order in T.S. No. 5/96 (Annexure - X) to clear the doubt. The stand of the respondents in the written statement is that in view of the rival claims made by the

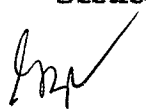
[Signature]

applicant and Smt. Sipra Bhowmick unless orders of a competent Court is obtained and produced the instant claim cannot be settled (vide paragraph 17 of the written statement). It is further stated that as soon as the authentic document is produced the claims will be settled.

3. The applicant has filed a reply to the above maintaining that she is the legally wedded wife of deceased Sachindra Kr. Bhowmick. Photocopy of the certified copy of the order dated 28.06.1996 is also produced as Annexure - I and a letter dated 23.10.2003 (Annexure - II).

4. Though notice was served on the 8th Respondent Smt. Sipra Bhowmick, she has not entered appearance nor defended the case by filing any reply.

5. Smt. U. Chakraborty, learned counsel for the applicant submits that the applicant is the legally wedded wife of deceased Sachindra Kr. Bhowmik and that though there was an ex parte decree of divorce dated 28.06.1996 (Annexure - 1 to the rejoinder), the same was later set aside as per order dated 04.09.1997 in Title Suit No. 5/97 (Annexure - X) stating that both the parties amicably settled the dispute between them. The counsel further submits that the alleged marriage with Smt. Sipra Bhowmik mentioned in the impugned order, was subsequent to the setting aside of the ex parte divorce decree and therefore, if at all, (applicant denies) there was a marriage between Smt. Sipra Bhowmick and deceased Sachindra Kr Bhowmik, it was void in view of the Section 5 read with Section 11 of Hindu Marriage Act. It is pointed that Smt. Sipra Bhowmick



in her affidavit filed before the respondents⁵ *had stated* that she was cheated by late Sachindra Kr. Bhowmick by saying that he is unmarried and that she had filed a case M.C. No. 161 of 2001 in the Karimganj which itself shows that there was no legal marriage between Smt. Sipra Bhowmick and late Sachindra Kr. Bhowmick as alleged. Learned Counsel submits that the Respondents did not advert to the aforesaid facts and legal positions while issuing the impugned order. Learned Counsel accordingly submits that the applicant is entitled to get all the benefits due to the premature death of her husband. Counsel also submitted a detailed argument note substantiating the case of the applicant supported by relevant statutory provisions and the decisions of the Supreme Court and of the High Courts (Rameswar Devi Vs. State of Bihar, AIR 2000 SC 735), Nallagondala Kanthamma Vs. Nallagondala Rajyam & Ors. (2004) DMC 467 (AP) and Bulu Das & Ors. Vs. Moni Das & Anr. 2003 (3) GLT 400.

6. On the other hand, learned counsel Ms. B. Devi appearing on behalf of the Respondents, referring to the written statement, submits that the Respondents are not in a position to get the order dated 04.09.1997 in Title Suit No. 5/97 relied upon by the applicant and the order dated 28.06.1996, whereas the Respondent are in possession of a copy of the order dated 21.07.1998 passed in Title Suit No. 5/97 which should show that since the applicant was absent on many occasions, the said case filed by the applicant was dismissed for default and that the deceased husband is held to be free to re-marry, if he so desires. Counsel further submitted that since there are disputed claims for the final settlement of

the dues of late Sachindra Kr. Bhowmick, who was an employee under the Respondents and since the documents submitted by the applicant, particularly Court proceedings, created suspicion on the issue, the appropriate course for the applicant is to get a decision as to who is the legally wedded wife entitled to get the benefits due on account of late Sachindra Kr. Bhowmick from a competent Civil Court. The Railway Counsel submitted that the respondents could not so far settle the claim only in the above circumstances.

7. I have considered the rival submissions made by the counsel for the parties. Admittedly, the applicant was the legally wedded wife of deceased Sachindra Kr. Bhowmick and in that marriage children are begotten. Various documents produced by the applicant including the impugned order (Annexure - XVI) is to this effect. The only case of the respondents is that deceased Sachindra Kr. Bhowmick had divorced the applicant as per decree in T.S. No. 1/96. Further Mrs. Sipra Bhowmick claiming to be wife of late Sachindra Kr. Bhowmick had also preferred a claim for the benefits claimed by the applicant. Certain circumstances in that regard are also stated in the written statement (Para - 12). Hence, the respondents could not take a decision as to the entitlement till today. However, it is stated that the children born in the wedlock of the applicant and late Sachindra Kr. Bhowmick are entitled to the claim. The applicant insists that her claim must be allowed. In the circumstances, the short question to be decided is as to whether the applicant continued to be the legally wedded wife of late Sachindra Kr. Bhowmick till his death on

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07.10.2002. If the answer is yes, she alongwith her children born in the wedlock with late Sachindra Kr. Bhowmick, being the legal heirs of late Sachindra Kr. Bhowmick, will be entitled to get the various reliefs due on account of the premature death of deceased employee under the Hindu Succession Act. Now, there are rival claims for the above benefits, one by the applicant and the other by Smt. Sipra Bhowmick. Annexure - I to the rejoinder of the applicant shows that late Sachindra Kr. Bhowmick had divorced the applicant as per decree in T.S. No. 1/96 dated 28.06.1996. Annexure - X document dated 04.09.1997 in T.S. No. 5/97 shows that there was amicable settlement and the decree dated 28.06.1996 is set aside. However, another proceedings dated 21.07.1998 passed in T.S. No. 5/97 shows the Suit was dismissed and late Sachindra Kr. Bhowmick was free to remarry, if he so desires. The applicant who was a party to both the above proceedings ^{has} have not so far produced certified copies of the proceedings dated 04.09.1997 in T.S. No. 5/97 and proceedings dated 21.07.1998 in T.S. Case No. 5/97 to clear the doubt created by those documents. Divorce decree dated 28.06.1996 in T.S. No. 1/97 was an ex parte decree. Similarly, the order dated 21.07.1998 in T.S. No. 5/97 was also an ex parte one. The order dated 04.09.1997 in T.S. No. 5/97 was passed on mutual consent. Thus as stated by the respondents in paragraph 13 of their written statement certified copy of those proceedings are absolutely necessary to decide the issue.

8. If, as a matter of fact, the ex parte decree of divorce dated 28.06.1996 passed in T.S. No. 1/96 was set aside by order dated 04.09.1997 in T.S. No.

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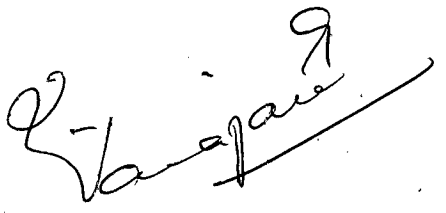
5/97 the applicant continued to be the legally wedded wife of late Sachindra Kr. Bhowmick till his death and consequently by virtue of the provisions of Section 5 read with Section 11 of the Hindu Marriage Act, 1955 any marriage solemnized during the subsistence of valid marriage is void ab initio. In the instant case, according to the respondents Smt. Sipra Bhowmick got married to late Sachindra Kr. Bhowmick on 03.11.1998. Even if it is found under any circumstances that the applicant ceased to be the wife of late Sachindra Kr. Bhowmick by virtue of the divorce decree dated 28.06.1996, still, unless Smt. Sipra Bhowmick establishes that there was a legal marriage i.e., a marriage according to Hindu rites and customs, she is not entitled to claim the benefits due to late Sachindra Kr. Bhowmick.

9. In spite of various documents produced by the applicant in support of her claim, in the absence of authenticated copies of the crucial documents, just as the respondents found it difficult to decide the issue viz., who is the legally wedded wife of late Sachindra Kr. Bhowmick entitled to get the dues, it is not possible for this Tribunal also to satisfactorily adjudicate the issue. Since the applicant was admittedly the wife of late Sachindra Kr. Bhowmick and children born to them, if as a matter of fact the ex parte divorce decree was set aside in T.S. No. 5/97 there cannot be any doubt that the alleged second marriage with Smt. Sipra Bhowmick is null and void. That apart it was for her, if she was so advised, to approach the competent Civil Court for declaring her rights.

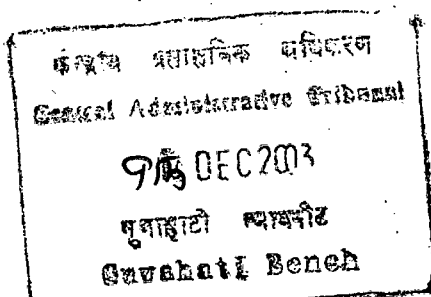
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10. In the circumstances, the impugned order dated 10.07.2003¹⁵ (Annexure - XVI) is set aside and the Second Respondent is directed to consider the matter afresh with reference to all relevant documents, particularly authenticated records in the proceedings in Title Suit No. 1/96 passed by the Deputy Commissioner, N.C. Hills and also in Title Suit No. 5/97 passed by First Class Magistrate Court. If the authenticated copies of those proceedings are not available with the respondents, the applicant will obtain certified copies of the said proceedings and produce the same before the Second Respondent. If the applicant, so desires, may furnish written brief before the Second Respondent as done in this case. The Second Respondent thereafter shall pass a reasoned order within a period of two months. The Second Respondent will afford an opportunity of being heard to the applicant and to Smt. Sipra Bhowmick, who is additional 8th Respondent in this case before passing orders as directed herein above.

11. The O.A. is disposed of as above. Counsel for the Respondents will furnish a copy of this order to the Second Respondent for compliance.


(G. SIVARAJAN)
VICE CHAIRMAN

/mb/



DISTRICT : CACHAR (ASSAM)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH, GUWAHATI.

(AN APPLICATION UNDER SECTION 19 OF THE CENTRAL
ADMINISTRATIVE TRIBUNAL ACT, 1985)

ORIGINAL APPLICATION NO. 274 OF 2003

Smti. Malati Bhowmik,
Wife/widow of Late Sachindra Kumar Bhowmik,
Mahasakti Asram, Tarapur,
P.O. Tarapur,
Silchar-3
Dist. Cachar(Assam).

..... APPLICANT.

-VERSUS-

Union of India & others

..... RESPONDENTS.

I N D E X
= = = = =

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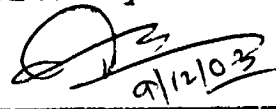
Contd.....2

Filed by
Smti. Malati Bhowmik
- Applicant
through
Mess. U. Chakraborty & Co.
Advocate.

: 2 :

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Filed by


9/12/03

(Mrs. Uma Chakraborty)
Advocate.

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Malati Bhowmik

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
GUWAHATI BENCH, GUWAHATI.

(AN APPLICATION UNDER SECTION 19 OF THE CENTRAL
ADMINISTRATIVE TRIBUNAL ACT, 1985.)

ORIGINAL APPLICATION NO. OF 2003

Smti. Malati Bhowmik,
W/O Late Sachindra Kumar Bhowmik,
Mahasakti Asram, Tarapur,
P.O. Tarapur, Silchar -3
Dist. Cachar (Assam).

..... APPLICANT

~~-VERSUS-~~

Union of India and Others

..... RESPONDENTS.

LIST OF DATE AND SYNOPSIS

7.11.2002	Annexure -I	Photocopy of Death Certificate of Late Sachindra Kumar Bhowmik.
2.10.2002	Annexure -II	Photocopy of Provident Fund Nominati of Late Sachindra Kumar Bhowmik.
2.10.2002	Annexure -III	Photocopy of Nomination for ordinary Gratuity/Death-cum-Retirement gratui
2.10.2002	Annexure -IV	Photocopy of Family Declaration of Late Sachindra Kumar Bhowmik.
26.8.2002	Annexure -V	Photocopy of representation dated 26.8.2002 of Late Sachindra Kumar Bhowmik.
01.10.2002	Annexure -VI	Photocopy of Affidavit executed by

Malati Bhowmik

29.10.2002	Annexure- VII	Late Sachindra Kumar Bhowmik and the applicant, Smti. Malati Bhowmik Photocopy of representation of Smti. Malati Bhowmik.
27.12.2002	Annexure-VIII	Photocopy of representation of Smti. Malati Bhowmik.
20.01.2003	Annexure -IX	Photocopy of application of Smti. Malati Bhowmik for obtaining the certified copy of order dated 4.9.97 passed in T.S.Case No. 5/97.
22.01.2003	Annexure-X	Photocopy of the order dated 4.9.97 passed in T.S.Case No.5/97 by the court of Addl. Deputy Commissioner, N.C.Hills, Haflong.
29.05.2003	Annexure-XI	Photocopy of order passed by the Respondent No.2, the Divisional Railway Manager(P),N.F.Rly., Lumding
25.06.2003	Annexure-XII	Photocopy of representation of Smti. Malati Bhowmik.
26.06.2003	Annexure-XIII	Photocopy of Affidavit executed by Smti. Malati Bhowmik.
03.07.2003	Annexure-XIV	photocopy of representation of Smti. Malati Bhowmik.
04.07.2003	Annexure-XV	Photocopy of letter of Shri Karnendu Bhattacharjee, M.P(Rajya Sabha) issued to the Respondent No.2, the DRM(P), Lumding.
✓ 10.07.2003	Annexure-XVI	photocopy of order issued/passed by the Respondent No. 2.

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M. J. Bhowmik

16.07.2003	Annexure-XVII	Photocopy of Certificate issued by the Judicial Peskar, Haflong Court.
25.07.2003	Annexure-XVIII	Photocopy of Pleader Notice issued to the Respondent No.2 by the Ld. Advocate of Smti. Malati Bhowmik.
30.08.2003	Annexure-XIX	Photocopy of reminder issued to the Respondent No. 2, the DRM(P), Lunding by the Ld. Advocate of Smti. Malati Bhowmik, the applicant
30.08.2003	Annexure-XX	Photocopy of letter issued to the Respondent No.4, Sr. DEN, N.F.RLY., Lunding by the Ld. Advocate of Smti. Malati Bhowmik.
07.10.2002	Annexure-XXI	Photocopy of photographs of Smti. Malati Bhowmik, the applicant with Late Sachindra Kumar Bhowmik along with their two minor children at the time of last breath of Late Sachindra Kumar Bhowmik.

This Original Application is made for seeking a direction from this Hon'ble Tribunal to the Respondents for granting final settlement of dues, family pension, gratuit /death-cum-retirement ~~gr~~ gratuity , other pensionary benefits including provident fund, Group Insurance etc. of Late Sachindra Kumar Bhowmik to the applicant and also to consider the appointment of the applicant in any Grade III or IV in N.F.Railway on compassionate ground and for restraining the Respondents from granting any pensionary benefits to Smti. Sipra Bhowmik who is neither nominee nor widow of Late Sachindra Kumar Bhowmik and not entitled for claiming such benefits at all .

Filed by

Mrs. U. Chakraborty, adv.

Filed by 21
Smti. Malati
Bhowmik
-applicant
through
Mrs. U. Chakraborty
Advocate

IN THE COURT OF CENTRAL ADMINISTRATIVE TRIBUNAL,
GUWAHATI BENCH, GUWAHATI.

(AN APPLICATION UNDER SECTION 19 OF THE CENTRAL
ADMINISTRATIVE TRIBUNAL ACT, 1985.)

ORIGINAL APPLICATION NO. OF 2003

Smti. Malati Bhowmik,
W/O Late Sachindra Kumar Bhowmik,

..... APPLICANT

-VERSUS-

Union of India & others

..... RESPONDENTS.

DETAILS OF THE APPLICANT

PARTICULARS OF THE APPLICANT

Smti. Malati Bhowmik,
Mahasakti Asram, Tarapur,
P.O. Tarapur, Silchar -3,
Dist. Cachar (Assam).

Smti. Malati Bhowmik, the applicant is the sole widow of
Late Sachindra Kumar Bhowmik, Ex- Railway employee working
as SWM(Store Watch Man) under SSE/Works/SCL(Silchar) at
Badarpur, Dist. Haflong in the State of Assam.

Presently residing at Mahasakti Asram, Tarapur,
P.O. Tarapur, Silchar-3,
Dist. Cachar (Assam).

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Malati Bhowmik

PARTICULARS OF THE RESPONDENTS :

1. Union of India
represented by the Secretary, Commissioner to the Central Govt., Department of Railway, Rail Bhawan, New Delhi-1.
2. The Divisional Railway Manager(P),
N.F.Railway, Lumding,
P.O. Lumding, Dist. Nagaon (Assam).
3. The Divisional Finance Manager(DFM),
N.F.Railway, Lumding,
P.O. Lumding, Dist. Nagaon (Assam).
4. The Senior Divisional Engineer(Sr. DEN)
N.F.Railway, Lumding,
P.O. Lumding, Dist. Nagaon (Assam).
5. Shri Dulal Dey,
Welfare Inspector, N.F.Railway,
SSE/Works/SCL (Silchar),
P.O. Badarpur,
Dist. Haflong (Assam).
6. The I.O.W, (Inspector of Works),
N.F.Railway, Silchar
P.O. Silchar, Dist. Cachar (Assam).
7. Smti. Subra Bhattacharjee (Dasgupta),
Welfare Inspector, F.S.(Welfare), N.F.Railway,
P.O. Lumding, Dist. Nagaon (Assam).

* 8. Smti Sipra Bhowmik,
c/o Mohitosh Nath, Vill = Marua,
P.O. = Duttagram,

Malati Bhowmik Dist = Karimganj (Assam)

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Impleaded as
resp. No. 8 vide
court order
dated 29/9/04.

DETAILS OF THE APPLICATION

1. PARTICULARS OF THE ORDERS AGAINST WHICH THE APPLICATION IS MADE :

The instant application is made for direction against non-grant of final settlement of dues of Late Sachindra Kumar Bhowmik Ex, Railway employee working under SSE/Works/SCL, N.F.Railway, Badarpur, Dist. Haflong (Assam) died-in-harness while in service as SWM (Store Watch Man) on 07.10.2002, non-payment of death-cum-retirement gratuity, provident fund, Group Insurance and other benefits of Late Sachindra Kumar Bhowmik to the applicant and not considering the appointment of the applicant in any Grade III or IV post of N.F.Railway on compassionate ground.

The application is also made for seeking a direction from this Hon'ble Tribunal to the Respondents for early settlement of dues and payment of the above pensionary benefits to the applicant, who is sole widow as well as legal heir of Late Sachindra Kumar Bhowmik and for seeking direction against the implement of the order dated 29.05.2003 and order dated 10.7.2003 issued by the Respondent NO.2.

The application is further made for restraining the Respondents from granting any pensionary benefits to Smti. Sipra Bhowmik in pursuance and/or implementation of order dated 10.7.2003 issued by the Respondent No.2, the Divisional Railway Manager(P),

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Malati Bhowmik

N.F.Railway, Lumding, Dist. Nagaon (Assam).

2. JURISDICTION OF THE TRIBUNAL :

The applicant declares that the subject matter of the instant application is within the jurisdiction of the Hon'ble Tribunal.

3. LIMITATION

The applicant further declares that the application is within the period of limitation prescribed under section 21 of the Administrative Tribunal Act, 1985.

4. FACTS OF THE CASE

Facts of the case in brief are given below :

4.1) That your humble applicant is a permanent resident of Tarapur, Silchar-3, Dist. Cachar in the State of Assam and is a bonafide citizen of India by birth and as such, she is entitled to all the rights and privileges and protection guaranteed by the Constitution of India and other laws presently in force.

4.2) That the applicant begs to state that her husband, Late Sachindra Kumar Bhowmik (here-in-after referred to as "the deceased") was a permanent employee of N.F.Railway working as SWM(Store Watch Man) under SE/Works/SCL(Silchar) in the State of Assam died -in-harness on 07.10.2002 at Railway Hospital at Badarpur, Dist. Haflong while in service after his suffering from prolong illness due to Cardiac Disorder leaving behind him surviving his wife, the applicant namely, Smti. Malati Bhowmik, aged about 32 years, one minor son, namely, Shri Rajib Bhowmik, aged about 17 years and one minor daughter, namely, Miss Priyanka alies Reshmi Bhowmik, aged about 9 years. At the relevant time he was working under the Respondent

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No. 5 , i.e. the Welfare Inspector, SE/ Works/SCL, Badarpur, Dist. Haflong (Assam). It may be stated that the applicant along with her two minor children are the only surviving legal heirs of the deceased, Late Sachindra Kumar Bhowmik.

Annexure -I is the death Certificate of Late Sachindra Kumar Bhowmik.

4.3) That the applicant begs to state that the deceased during his life time while in service made declaration regarding his family and submitted Provident Fund Nomination U/R 1334(2) & R.1 and Nomination for Ordinary Gratuity/ Death-Cum-Retirement Gratuity as per provisions of Rules have been extended to the railway servant on pensionable establishment under the Family Pension Scheme, 1964.

Annexure-II is the photocopy of Provident Fund Nomination of the deceased, Late Sachindra Kumar Bhowmik

Annexure -III is the photocopy of Nomination for Ordinary Gratuity/Death-Cum-Retirement Gratuity.

Annexure -IV is the Family Declaration of the deceased, Late Sachindra Kumar Bhowmik.

4.4) That the applicant state and submits that when the deceased was posted at Haflong in the year 1996, some disputes and differences and/or misunderstanding had arose between the applicant and the deceased in their matrimonial life and the deceased filed a Title Suit bearing No. 1/96 before the Court of Addl. Deputy Commissioner, N.C.Hills, Haflong, Dist. Cachar (Assam) for his divorce or judicial separation on the basis of his allegations made before that Court. The Court of Addl. Deputy Commissioner, N.C.Hills, Haflong was pleased to pass an exparte order for judicial

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seperation of the deceased from the applicant vide order dated 28.06.96 without affording a reasonable opportunity of being heard and/or issuing any show cause notice to the applicant to defend herself against the allegations made by the deceased. The Court passed that order/decree in matrimonial suit without having any satisfaction that there had sufficient legal evidences to support that decree or order.

4.5) That the applicant begs to state that aforesaid order dated 28.06.96 passed in T.S. Case No. 1/96 was neither communicated to the applicant by the said Court nor informed by the deceased to the applicant but the applicant was residing ignorantly with the deceased under the same roof along with their two minor children without having any knowledge about the same.

4.6) That the applicant humbly states and submits that when the applicant came to know that she had been judicially seperated from her husband, the deceased and she had been required to stay seperately from her husband, the deceased, then being aggrieved by the illegal attitude of the deceased, she preferred a petition before the Court of Addl. Deputy Commissioner, N.C.Hills, Haflong u/s 125 of the Criminal Procedure Code, 1973 for claiming her maintenance since she had no any independent income sufficient for herself and for her two minor children's support. The aforesaid petition was registered as T.S. Case No. 5/97. The hearing of the aforesaid case was fixed on 04.09.97 and at the hearing on the same date both the applicant and the deceased were present and they amicably settled their disputes and differences or misunderstandings had arose earlier betwen them. Upon hearing the same, the Court of Addl. Deputy Commissioner was pleased to drop the proceedings of the said T.S. Case No. 5/97 and also was pleased to set aside the order dated 28.06.96 passed in the case, T.S. Case No. 1/96.

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4.7) That on amicable settlement made between the applicant and the deceased, the deceased subsequently filed an affidavit declaring the legal status of the applicant as his legal wife before the said Court of Addl. Deputy Commissioner, N.C.Hills, Haflong, and since the date of mutual, amicable settlement i.e. 04.09.97 both the deceased and the applicant had been living together as husband and wife along with their minor two children under the same roof till the date of death of the deceased which can be accepted with corroboration either by witnesses or by said strong surrounding circumstances.

4.8) That the applicant begs to state that during the pendency of the aforesaid T.S. Case No. 5/97 filed by the applicant, the deceased being ragged with the applicant, deleted the name of the applicant as his legal nominee from his service record book but on amicable settlement, their peaceful living as well as proper care and of the applicant towards his husband, the deceased during his serious illness/ailments due to Cardiac Disorder and his treatment, the deceased intended that in his service record book his legal nominee was to be his wife which was inadvertently deleted 5(five) years back without any reason and further intended to endorse the name of his wife, the applicant and their two minor children as his legal nominees in his service book which is evident from the declaration made by the deceased during his life time before the concerned authority of N.F. Railway, Silchar vide his representation dated 26.08.2002 with a request to endorse the name of the above mentioned persons as his legal nominees. Further an affidavit was also executed by the deceased on 01.07.2002 before the Addl. Dist. Magistrate, Cachar, Silchar to produce as a evidence before the said concerned authority/authorities of N.F. Railway, ^{← Silchar} Imding for insertion

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of the name of aforesaid nominees in his service record book and the same was submitted before the concerned authority of N.F.Railway, Lumding.

Annexure-V is the photocopy of the representation dated 26.08.2002 of the deceased, Late Sachindra Kumar Bhowmik.

Annexure-VI is the photocopy of the affidavit dated 01.10.2002 executed by the deceased, Late Sachindra Kumar Bhowmik.

4.9) That the applicant humbly states that upon the death of the deceased the applicant being sole widow as well as legal nominee of the deceased claimed relief before the Respondent No.2, the DRM(P), N.F.Railway, Lumding on account of final settlement of dues of the deceased and fixation of family pension by submitting the representations on 29.10.2002, 27.12.2002 by stating all relevant facts and circumstances in support of relevant documentary evidences.

Annexure -VII is the photocopy of the Representation dated 29.10.2002 of the applicant, Smti. Malati Bhowmik.

Annexure -VIII is the photocopy of the representation dated 27.12.2002 of the applicant, Smti. Malati Bhowmik.

4.10) That the applicant begs to state that on requirement of the aforesaid copy of the order dated 04.09.97 passed in T.S. Case No.5/97 by the Respondent No.2,3,4,5 and 6 regarding final settlement of dues payable to the deceased and fixation of pension to the family members of the deceased, the applicant filed an application before the Addl. Deputy Commissioner, N.C.Hills, Haflong. The applicant

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had obtained the aforesaid certified copy of the order dated 04.09.97 from the Court of Addl. Deputy Commissioner, N.C.Hills, Haflong on 22.01.2003 and accordingly submitted the aforesaid certified copy of the order before the Respondent No. 2,3 and 5 with request for early settlement of dues and fixation of the family pension to the applicant.

Annexure -IX is the photocopy of the application dated 20.01.2003 of the applicant, Smti. Malati Bhowmik for obtaining the certified copy of the order dated 04.09.97 passed in T.S.Case No.5/97.

Annexure -X is the photocopy of the order dated 04.09.97 obtained on 22.01.2003 passed in T.S. Case No. 5/97 by the Addl. Deputy Commissioner, N.C.Hills, Haflong(Assam).

4.11) That the applicant begs to state that the Respondent No.2, the Divisional Railway Manager(P), N.F. Railway, Lumding being a competent as well as top brass authority of N.F.Railway instead of redressing grievances of the applicant by removing anomalies in the matter of final settlement of dues and fixation of family pension in time, issued an order vide order No.E/FS/Engg/10/2002 dated 29.05.2003. The Respondent No. 2 issued the aforesaid order dated 29.05.2003 with an information that the applicant is not entitled for pensionary benefits under Rule 75(12) of the Railway Services (Pension) Rules, 1993 and only her children are entitled for such benefits because the applicant is judicially separated as per Court's Order dated 29.06.96 passed in T.S.Case No. 1/96 .

Annexure -XI is the photocopy of the order dated 29.05.2003 passed by the DRM(P), N.F.RLY, Lumding.

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Malati Bhowmik

4.12) That the applicant begs to state that she being aggrieved by the aforesaid order dated 29.05.2003 passed by the Respondent No. 2 preferred a representation on 25.06.2003 by stating all the relevant facts and circumstances of the case along with an affidavit executed by the applicant on 26.06.2003 before the Ist. Class Magistrate, N.C.Hills, Haflong by declaring all the relevant legal facts in order to proof her legal status as widow of the deceased.

Annexure -XII is the photocopy of the representation dated 25.06.2003 of Smti. Malati Bhowmik, the applicant.

Annexure -XIII is the photocopy of the affidavit dated 26.06.2003 executed by the applicant, Smti. Malati Bhowmik.

4.13) That the applicant states that she further preferred another representation on 03.07.2003 before the Respondent No.2 with a request to arrange for granting family pension to the applicant by stating all the relevant facts regarding her legal status as sole widow of the deceased.

Annexure -XIV is the photocopy of the representation dated 03.07.2003 of the applicant, Smti. Malati Bhowmik.

4.14) That the applicant begs to state that she is the sole first category legal widow as well as heir of the deceased, Late Sachindra Kumar Bhowmik under the Hindu Law. As such, she is entitled for such pensionary benefits including gratuity, provident fund, group insurance etc. But the Respondent No. 2 with a motive behind refused to entertain her claim. Hence, finding no other way for getting such relief approached before the Member of Parliament

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(Rajya Sabha), namely, Shri Karnendu Bhattacharjee for taking any step for informing the Respondent No.2 for granting pensionary benefits to the applicant. On request of the applicant Shri Karnendu Bhattacharjee issued a letter ^{on 4.7.2003} to the Respondent No. 2 with a request for granting and disbursing all the dues and pension benefit etc. to the applicant. But inspite of the aforesaid letter dated 4.7.2003 issued by the said Member of Parliament, the Respondent No. 2 did not take any step in this matter.

Annexure -XV is the photocopy of the letter dated 04.07.2003 of Shri Karnendu Bhattacharjee, Member of Parliament(Rajya Sabha) issued to the Respondent No.2, the DRM(P), N.F.RLY., Lumding.

4. 15) That the applicant states that the Respondent No. 2 inspite of considering the request of Shri Karnendu Bhattacharjee, M.P rejected the claim of the applicant on non-exixting ground wherein he made the observations as made in his previous order dated 29.05.2003(Annexure -XI) but instead of judicial seperation the word 'Divorce' has been used. Further, it has been stated that one Smti. Sipra Bhowmik has claimed settlement of dues stating herself as widow of the deceased.

Annexure - XVI is the photocopy of the order dated 10.07.2003 issued by the Respondent No.2, the Divisional Railway Manager(DRM)(P), N.F.RLY. Lumding.

4.16) That the applicant states that since the applicant failed for getting her legitimate ^{relief} further approched before the Respondent Nos. 2 and 3 ~~for~~ with a request for granting her family pension tec. and further approached for seeking appointment in any grade/^{III} or IV post on compassionate ground before the Respondent No.4

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but no such any appropriate relief has been granted to the applicant for the end of justice. As such, having no other alternative way for getting such appropriate relief from the Respondent Nos. 2, 3 and 4, the applicant had to issue a Legal Notice through her Advocate on 25. 07. 2003 demanding the settlement of dues and fixation of pension and other pensionary benefits etc. in order to mitigate the hardships of the poor family of the deceased. After waiting for a long period of one month from the date of receipt of the aforesaid Legal Notice, the Advocate of the applicant further issued reminder dated 30.08.2003 to the Respondent No.2 and issued another letter dated 03.08.2003 to the Respondent No.4 for granting appropriate relief to the applicant as claimed by the applicant. But no fruitful result has yet come out from the Respondents. Hence finding no other alternative the applicant is compelled to approach this Hon'ble Tribunal for seeking justice in this matter since the applicant is entitled to inherit all the legal properties and assets of the deceased, Late Sachindra Kumar Bhowmik because she is only the sole legal widow of the deceased which evident from the certificate issued by the Judicial Peskar, Haflong Court vide Certificate dated 16.07.03.

Annexure -XVII is the photocopy of the Certificate dated 16.07.2003 issued by the Judicial Peskar, Haflong Court.

Annexure -XVIII is the photocopy of the Pleader Notice dated 25.07.2003 issued to the DRM(P), N.F.RLY., Lunding.

Annexure -XIX is the photocopy of the reminder dated 30.08.2003 issued to the DRM(P), N.F.RLY., Lunding.

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Annexure -XX is the photocopy of letter dated 30.08.2003 issued to the Respondent No.4, the Senior Divisional Engineer(Sr. DEN), N.F.Railway, Lunding by the Learned Advocate of the applicant.

4.17 That the applicant respectfully submits that it has not been understood how the Respondents have accepted any thir person/ Party, Smti. Sipra Bhowmik who claimed as widow of the deceased without recording any evidence, witness or any documentary evidence to proof her as widow of the deceased. The applicant in her representation dated 25.06.2003 had already stated that there has no any second wife of the wideceased to the best of her knowledge and belief. Further it is submitted that even assuming but agreeing that the deceased had second wife, he was not entitled to remarry again without permission of the Railway authorities unless he proved his first wife was not living with him and/or fulfil the conditions laid down u/s 5(1) of the Hindu Marriage Act, 1955. Thus, where a person marries afresh during the subsistance of the first marriage, the subsequent marriage would be come null and void under section 11 of the Hindu marriage Act, 1955 as well as the violation of Rule 21 of the Railway Services(Conducts) Rules, 1966. Any such decree for re-marriage also cannot be passed by any court of law during the subsistance of the first marriage. Hence, the question of acceptance of the claimes of Smti. Sipra Bhowmik does not arise. In view of the above, the impugned order dated 10.07.2003 is illegal, improper, unreasonable, malafide and not maintainable in law and liable to be set aside and/or quashed.

4.18 That the applicant humbly submits that the Respondent No.2 has stated ~~once~~, the applicant is judicially seperated and again divorced in his two different orders dated 29.05.2003 and 10.7.2003 respectively without communicating any relevant documentary evidences in respect thereof. It may be mentioned that on the same dated in the same case

Malati Bhowmik

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i.e. T.S. Case No. 1/96 two decree cannot be passed. Moreover, the ~~xxx~~ said order dated 28.06.96 passed in T.S. Case No. 1/96 exparte, in fact, that exparte order could not be passed in matrimonial suit since the Court always remains under obligation of satisfying itself that there is sufficient legal evidences to support the decree/order. Thus, the Court committed a manifest error of law by granting such exparte decree/order dated 28.06.96 of judicial separation without affording any reasonable opportunity to the applicant, without recording the evidence and decided the same on mere submissions/ allegations of the deceased. Even then, when on amicable settlement made between the deceased and the applicant the above mentioned order dated 28.06.2003 had been set aside vide order dated 04.09.97 and both the deceased and the applicant filed an affidavit declaring the legal status of the applicant as the legal wife of the deceased, the order dated 28.06.96 passed in T.S. Case no. 1/96 has no legal effect in this regards. Further it is submitted that since the date of mutual settlement of the deceased and the applicant, both of them had been living together as husband and wife along with their minor two children till the date of last breath of the deceased i.e. 07.10.2002 and on the perusal of all documentary evidences as made by the deceased and also furnished before the concerned authorities of N.F. Railway during his life time, it is revealed that there is no any such admission of his second marriage contracted by the deceased with Smti. Sipra Bhowmik.

Annexure -XXI is the photocopy of the photographs of the applicant along with her two minor children with the deceased at the time of his last breath as evidence to proff her legal status as sole widow of the deceased, Late Sachindra Kumar Bhowmik.

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4.19 That the applicant respectfully submits that the authorities Respondents being competent authorities of Welfare Government cannot exploit the pensionary benefits of its citizen by taking advantages of their helpless conditions. The requirement of the pensionary benefits as well as appointment on compassionate ground of the applicant cannot be denied. The Respondent No.2 being a competent authority was bound to look after the welfare of the dependent of the deceased by considering the relevant facts and circumstances of the case and also the relevant provisions of law in favour of the applicant in order to mitigate the hardship of the applicant and her two minor children and to save them from the jaw of death. Instead of granting or releasing the pensionary benefits and appointment on compassionate ground to the applicant in consideration of her legal status as widow of the deceased, her critical, tide, unbearable conditions of departing Railway employee from the jaw of death, the applicant has been denied from claiming such benefits without any justification arbitrarily and with a malafide intention to harass the applicant. Further, the Respondent No. 2 has accepted the claims of Smt. . Sipra Bhowmik who demanding herself as widow of the deceased which is absolutely improper, illegal, unreasonable since the date of death of the deceased nobody of the locality of the deceased at Badarpur or Silchar has seen her with the deceased and not even in the cremation of the deceased at Silchar. Moreover, the Respondent No.5 , the Welfare Inspector, SE/Works/SCL, Badarpur had paid Rs 1500/- (Rupees one thousand five hundred only) to the applicant for the cremation of the deceased and further, the applicant had performed the shradh ceremonies of the deceased by begging Rs 10/20/50 from the office staff of the deceased and other officer of the said office. In view of the above, it is submitted that the Respondents have withheld the lawful claims for pensionary benefits and appointment on compassionate ground with a malafide intention not to grant any relief to the applicant.

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4.20 That the applicant submits that while passing the impugned order dated 10.7.2003 (Annexure - XVI) as well as the impugned order dated 29.05.2003 (Annexure - XI) the authority Respondent No.2 was not guided by the fair principles of law, equity and justices rather it was influenced by the irrelevant and extraneous consideration with a malafide intention to harass the applicant and same are violative of the provisions of the Articles 14,21 of the Constitution of India as well as under the Directive Principles of State Policy contained under Articles 38,39(a) and 41 of the Constitution of India.

4.21 That the applicant submits that instead of repeated prayer or request made before the Respondents, they have failed to do the needful in time on humanitarian ground by merely sitting over the claims of the applicant silently on an unreasonable and extraneous consideration with an intention to release the same to Smt. Sipra Bhowmik. It is submitted that there could not be any impediment on the Respondent No. 2 to release the pensionary benefits to the applicant under Rule 89 of the Railway Services (Pension) Rules, 1993 which should not be intended to wait for a number of months or years to extend the benefits to the nominees/legal heirs/members of the bereaved family of ex-Railway employee on the basis of unreasonable ground. It is further submitted that if such pensionary benefits are granted to Smt. Sipra Bhowmik who does not have any legal status of widow of the deceased, the applicant shall suffer from irreparable loss and injury.

4.22 That the applicant submits that the applicant tried her best to get relief regarding final settlement of dues, pensionary benefits including gratuity, death-cum-retirement gratuity, provident fund, group insurance and other benefits and appointment of her on compassionate ground etc. from the Respondent Nos. 2,3, and 4. But no such fruitful result has come out till this date. Having failed to get

Malati Bhowmik

any such relief from the Respondents, the applicant has approached this Hon'ble Tribunal for getting necessary /appropriate relief by filing this Original Application under section 19 of the Central Administrative Tribunal Act, 1985. Hence, it is fit case for interference by this Hon'ble Tribunal regarding release of pensionary benefits as well as appointment on compassionate ground to the applicant immediately.

4.23 That ^{the} applicant submits that the applicant is running from pillar to post for getting appropriate legitimate relief from the Respondents but the Respondents instead of granting her claims and/or releasing her pensionary benefits of her husband, Late Sachindra Kumar Bhowmik deprived her from such benefits for which the applicant is suffering from severe economic hardship and difficulties.

4.24 That the applicant has no other efficacious alternative remedy available in the present case and the remedy prayed for in this application will be just, adequate and complete.

4.25 That the applicant demanded justice but the same has been denied by the Respondent No.2.

4.26 That this present application has been filed bona fide and for the end of justice.

5. GROUND FOR RELIEF WITH LEGAL PROVISIONS :

5.1 For that the order dated 29.05.2003 passed by the Respondent No. 2, the Divisional Railway Manager(P), N.F. Railway, Lumding denying the applicant from the pensionary benefits under Rule 75(12) of the Railway Services(Pension) Rules, 1993 on the ground of Judicial Separation is bad in law as well as on facts and liable to be set aside and/or quashed.

Malat Bhowmik

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5.2 For that the impugned order dated 29.05.2003 passed is improper, unreasonable, not tenable in law as much as the same has been passed without proper application/ appreciation of the facts of the case, submissions advanced, documentary evidences furnished in the course of proceeding and the relevant laws having a bearing on the issue involved.

5.3 For that the Respondent No. 2 was not justified in confirming the order dated 28.06.96 passed in T.S. Case No. 1/96 by holding that the applicant is not entitled to get pensionary benefits of Late Sachindra Kumar Bhowmik, Ex-SWM/SSE(W)/SCL as she has been judicially separated but her children are entitled to get pensionary benefits without issuing show cause notice and/or affording a reasonable opportunity of being heard in support of the documentary evidences produced before him to defend the applicant herself against such decision or conclusion.

5.4 For that the Respondent No. 2 ought to have appreciated the relevant facts stated by the applicant and relevant order dated 04.09.97 passed in T.S. Case No. 5/97 and affidavit executed by the deceased and the applicant on amicable settlement of disputes in pursuance thereof and also required to allow the applicant to proceed for final settlement of dues and pensionary benefits of Late Sachindra Kumar Bhowmik to the applicant under the provisions of Rule 75(13) of the Railway Services (Pension) Rules, 1993 as claimed by the applicant, there is no justification on the part of the Respondent No. 2 to disallow the claim of such benefits without ~~granting~~ granting reasonable opportunity of being heard is arbitrary, illegal, improper, violation of the principles of natural justice and liable to be set aside.

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Malati Bhowmik

5.5 For that the Respondent was not justified in passing another order dated 10.07.2003 by confirming the observation made in the aforesaid impugned order dated 29.05.2003 as well as by holding the word 'Divorce' in place of 'Judicial Separation' without proper application of mind in judicious manner, without appreciating the contentions advanced before him and without appreciating the relevant documentary evidences in support thereof in arbitrary, illegal, ~~improper~~ improper, unreasonable and not tenable in law.

5.6 For that there was no justification on the part of the Respondent No.2 in taking two different words-judicial separation and divorce in his two different orders dated 29.05.2003 and 10.7.2003 on the same applicant and in the same matter by mentioning incorrect date of order dated 29.6.96 instead of correct date 28.06.96 which was passed in T.S.Case No.1/96 and set aside vide order dated 4.9.97 passed in T.S.Case No. 5/97. Both the above orders were passed by the Court of
/Addl. Deputy Commission, N.C.Hills, Maflong.

5.7 For that the Respondent No.2 was justified in accepting the third person, Smti. Sipra Bhowmik who claimed the release of pensionary benefits of Late Sachindra Kumar Bhowmik as ~~widow~~ his widow and confirming ~~her~~ the claim of pensionary benefits in favour of Smti. Sipra Bhowmik on the basis of the order dated 29.6.96 (28.6.96) passed in T.S.Case No.1/96 without appreciation of relevant facts as well as the provisions of laws.

5.8 For that the Respondent No. 2 has failed to communicate any documentary evidence to the applicant in order to establish the legal status of Smti. Sipra Bhowmik as widow of Late Sachindra Kumar Bhowmik since any decree for re-marriage cannot be passed by the Court during the subsistence of the first marriage of the deceased, Late Sachindra Kumar Bhowmik and if passed, the said marriage would become null and void u/s 11 of the Hindu Marriage Act, 1955 on account

Malati Bhowmik

of violation of section 5 of the Hindu Marriage Act, 1955, Rule 70(4)(i) of Railway Services(Pension)Rules,1993 and the provision of Rule 21 of the Railway Service(Conduct)Rules,1966 and said void and invalid marriage having living spous is a complete nullity in the eye of law and the widow/^{of}such void marriage is not entitled to the benefit of section 125 of the Criminal Procedure Code (Amendment) Act, 2001,Rule 75 of the Railway Services(Pension) Rules, 1993, and the Family Pension Scheme for Railway Servants,1964 under the Railway Services(Pension)Rules,1993.

5.9 For that the impugned order dated 10.7.2003 is highly discriminatory in nature inasmuch as the same has been passed without following the fair principles of law, equity and justice rather it was influenced by the irrelevant and extraneous consideration and hence, the impugned order cannot sustain the judicial scrutiny and not maintainable in law liable to be set aside.

5.10 For that confirmation of Smti. Sipra Bhowmik as widow of the deceased, Late Sachindra Kumar Bhowmik and rejection of the genuine, undisputed and legitimate claims of the applicant is most improper, illegal, unreasonable, violation of the provisions of Rule 70,71,73,74 and 75(13) of the Railway Services (Pension) Rules,1993 and the provisions of Article 14,16 and 21 of the Constitution of India as well as under the Directive Principles of State Policy contained under Articles 38,39(a) and 41 of the Constitution of India. Hence, the impugned order dated 10.7.2003 is improper, illegal, unauthorised and not sustainable in law and is liable to be struck down and/or set aside.

5.11 For that the action of the Respondents for not releasing pensionary benefits as well as appointment on the compassionate ground to the applicant is malafide, illegal, arbitrary and violation of the principles of natural justice.

Malati Bhowmik

5.12 For that the Respondents have deprived the applicant from her legitimate claim of pensionary benefits and appointment on the compassionate ground and as such the Respondents committed a manifest error of law with a malafide intention or motive behind and such act of the Respondents is not maintainable in the eye of law.

5.13 For that the Respondents have violated the fundamental rights of the applicant by abusing their colourable exercise of power and as such, the action of the Respondents is illegal, ~~arbitrary~~ arbitrary, malafide and not sustainable in law in any view of the matter.

5.14 For that the applicant's case is genuine and also need a sympathetic consideration of the matter by the Respondents and the same could be done in time under Rule 89/^{92, 95, & 96} of the Railway Services (Pension) Rules, 1993 without intending to wait for a months or years to extend the benefits by the Respondents to the applicant and the Respondents cannot deny it on an unreasonable, illegal, invalid extraneous consideration.

5.15 For that in any view of the matter, the impugned orders dated 29.5.2003 and 10.7.2003 are not at all maintainable in law /as well as facts and the same are liable to be set aside and/or quashed.

5.16 For that being a top-brass authority and model employer the Respondent Nos. 2, 3, and 4 cannot deprive the applicant to give the similar benefit with similarly situated persons.

5.17 For that the applicant craves permission to take up further and/or additional ground or grounds at the time of hearing of the Original Application.

Mahat Bhoawnieu

6. DETAILS OF REMEDIES EXHAUSTED :

That there is no other alternative and efficacious remedy available to the applicant except invoking the jurisdiction of this Hon'ble Tribunal under Section 19 of the Central Administrative Tribunal Act, 1985.

7. MATTERS NOT PREVIOUSLY FILED OR PENDING
IN ANY COURT :

That the applicant further declares that she has not ~~filed~~ filed any application, Writ Petition or Suit in respect of the subject matter of the instant application before any other Court, authority, nor any such application, Writ Petition or suit is pending before any of them.

8. RELIEF SOUGHT FOR :

Under the facts and circumstances stated above the applicant most respectfully prayed that Your Lordships may be pleased to admit this application, records may be called for and after hearing the parties on the cause or causes that may be shown and on perusal of the records grant the following relief to the applicant :

8.1 To direct the Respondents to release the pensionary benefits including gratuity, death-cum-retirement gratuity, provident fund, group insurance etc. becoming payable as a result of the final settlement of dues of the deceased, Late Sachindra Kumar Bhowmik, Ex-SWM/SSE/Works/SCL to the applicant ;

8.2 To direct the Respondents to make payment of interest in delayed payment of gratuity as well as

Malati Bhowmik

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: 23 :

8.3 To direct the Respondents for not proceeding in implementation of the orders dated 29.5.03 and 10.7.2003 (Annexures -XI & XVI) respectively

8.4 To direct the Respondents Nos. 2 and 4 to consider the case of the applicant for appointment in any grade III or IV of N.F. Railway on compassionate ground.

9. INTERIM RELIEFS SOUGHT FOR :

That the applicant further prays that pending disposal of this Original Application Your Lordships may be pleased to grant the following interim reliefs to the applicant :

9.1 To stay the operation of the impugned order dated 29.05.2003 (Annexure -XI) and order dated 10.07.2003 (Annexure -XVI).

✓ 9.2 To restrain the Respondent No.2 from granting pensionary benefits to Smti. Sipra Bhowmik who claimed as widow of the deceased, Late Sachindra Kumar Bhowmik.

The above reliefs are prayed for on the grounds stated in para 5 above of this instant application.

10. DETAILS OF POSTAL ORDER :

I.P.O. NO. : 33Q 387303 dated 9.12.03

Date of issue :

Issued from : Guwahati C.P.O.

Payable at : Guwahati.

Malati Bhowmik

C ontd...24

: 21 :

11. LIST OF ENCLOSURES :

As stated in the index.

Vrification

Malati Bhawani

V E R I F I C A T I O N

= = = = =

I, Smti. Malati Bhowmik, sole legal widow of Late Sachindra Kumar Bhowmik, aged about 34 years, permanent resident of Tarapur, Silchar-3, Dist. Cachar in the State of Assam do hereby declare and state as follows :

1. That I am the applicant in the instant application and as such, I am fully conversant with the facts and circumstances of the case and competent to declare and state that the statements contained in paragraphs 1, 2, 3, 4.1, 4.2, 4.4, 4.5, 4.6, 4.9, 4.13, 4.14, 4.16, 4.17 to 4.20.6 and 7 of the accompanying application are true to my best of knowledge and believe to be true, those made in paragraphs 4.3, 4.8, 4.10, 4.11, 4.12 and 4.15 being matters of records are true to my information derived therefrom which I believe to be true, those made in paragraph 5 are grounds with legal provisions and the rests are my humble submissions before this Learned Tribunal.

I signed this verification on this 9th day of December, 2003 at Guwahati.

Malati Bhowmik

Smti. Malati Bhowmik,

Applicant.

①

Sl. No. 0031300
ক্রমিক নং



GOVERNMENT OF ASSAM
(অসম চৰকাৰ)
DIRECTORATE OF HEALTH SERVICES
(স্বাস্থ্য সেৱা সঞ্চালকালয়)
CERTIFICATE OF DEATH
(মৃত্যুৰ প্ৰমাণ পত্ৰ)

ISSUED UNDER SECTION 12/17 of the Registration of Births and Deaths Act, 1969.
(জাৰি কৰা হৈছে পঞ্জীয়ন আইন ১৯৬৯ ৰ ১২/১৭ অংশত নিৰ্ধাৰিত)

This is to Certify that the following information has been taken from the original record of Death which is in the register for Dr. R. S. S. S. S.
Registration unit of Badarpur of District Kamrup of the State of Assam.

ইয়াক দ্বাৰা প্ৰমাণিত কৰা হয় যে নিম্ন লিখিত তথ্য অসম ৰাজ্যৰ ----- জিলাৰ ----- থকা/
জিলাৰ ----- মৌজাৰ অন্তৰ্গত ----- পঞ্জীয়ন গোটেৰ পঞ্জীয়ন মূল অভিলেখৰ পৰা
লৈ উদ্ধৃত কৰা হৈছে।

Name Sachindran Kr. Bhownick

Sex Male

Date of Death 7-10-02

Place of Death R.L. Hospital Badarpur

Registration No. 103

Date of Registration 7/11/02

Mother/Husband Sarada Bhownick

Signature of issuing authority

Designation/পদবী

Date/তাৰিখ

Seal/মুদ্ৰা

R. S. S. S. S.
Registrar

Birth & Death
Badarpur S.H.C. Kamrup.

note of particulars regarding the cause of death as entered in the Register. See proviso to Section 17 (1)

Certified to be true & correct

Mrs. Uma Chakraborty
Deputy Registrar

पू० री०-पी० रेलवे/N. F. Railway

नियम 1334 (2) आई. 1 देखें/See Rule 1334 (2) R. 1

भविष्य निधि नामन/Provident Fund Nomination

प्रमाण सं./Deposit No.....

क्रम सं./Serial No.....

मैं..... प्रत्यक्षात् घोषित करता हूँ कि राजकीय रेलवे भविष्य निधि के मेरे प्रमाण सं..... में मेरी राशि के समान मेरे नाम जो स्वयं जमा है नियम राजकीय रेलवे भविष्य निधि नियम 1314 के अन्तर्गत स्वीकार्य विशेष अंशदाता शामिल नहीं है, उस निम्नलिखित..... की (उनके नाम के सामने दिने गये ढंग से) दिया जाएगा/Sachin Chandra Singh hereby direct that the amount of my credit in my account No..... of the State Railway Provident Fund at the time of my death, not including the..... contribution, admissible under Rule 1314 of the State Railway Provident Fund Rules shall be paid to the following..... (in the manner shown against their name):-- persons

निधन या निधियों पर प्रमाण और पता (Name and address of the nominee or nominees)	अंशदाता के नाम नामित व्यक्ति का संबंध, यदि हो (Nominee's relationship, if any, with the subscriber)	नामित व्यक्ति का उम्र (Age of nominee)	नामित व्यक्ति की वेतन निधि में जमा की राशि या हिस्सा (Amount of share of accumulation in the Fund to be paid to the Nominee)	वर्तमान नियमों के तहत जो कोई भी संयोगिताएँ (Contingencies on the happening of which the nomination shall be deemed invalid see Note 3 also)	अंशदाता से पहले नामित व्यक्ति के पते पर उस व्यक्ति का नाम पता और संबंध, यदि हो (Name and address and relationship of the person, if any, on whom the right of the nominee is conferred in the event of his predeceasing the Subscriber)
Malati Bharamdar	wife	6 1/2	full	—	Rajib Bharamdar (son)

(1) हस्ताक्षर/Witness Sachin Chandra Singh Kaur साक्षर/Signature Sachin Chandra Singh Kaur (अंशदाता/Subscriber)
 पता/Address S. E. / W. 2000/30 L 3-10-2002 पदनाम/Post held Seamy 30
 (2) साक्षी/Witness K. S. K. Ch. बोल्ट-12-12-1000
 पता/Address N. E. 2000/30 L 3-10-2002
 स्टेशन/Station R. E.
 तारीख/Date 2/10

नोट/Note-1. चोपरा कालम पर प्रत्यक्ष रूप से पूरा किया जाना चाहिए/Column 4 should be filled in so as to cover the whole amount at credit
 2. यदि केवल एक व्यक्ति नामित किया जाय तो 'व्यक्ति' शब्द और कोष्ठ के शब्दों को हटा दिया जाना चाहिए/The word 'person' and the words in brackets shall be struck off if only one person is nominated.
 3. यदि अंशदाता हिन्दू, मुसलमान, बौद्ध या कोई अन्य व्यक्ति नहीं है, तो नियम भारतीय उत्तराधिकार अधिनियम 1925 (1925 का XXXIX), लागू नहीं होती है। यदि अंशदाता कोई अन्य व्यक्ति है, तो नियम के तहत वे भी पुनर्गठन के तहत समाप्त हो जायेंगे/Where a subscriber is not a Hindu, Mohammedan, Buddhist or any other person exempted from the operation of the Indian Succession Act, 1925 (XXXIX of 1925) this nomination shall forthwith stand cancelled in its entirety on his marriage or re-marriage.

Certified to be true copy

Mrs. Uma Chakraborty

Nomination for benefits under the Central Government employees Group Insurance Scheme, 1980.

When the Govt. servant has a family and wishes to nominate one member more than one member thereof.

I hereby nominate the Pension(s) mentioned below, who is/are member(s) of my family, and confer on him/them the right to receive to the extent specified below any amount that may be sanctioned by the Central Government under the Central Govt. employees Group Insurance Scheme * 1980, in the event of my death while in service or which having become payable on my attaining the age of superannuation my remain un-paid at my death.

Name & Address of nominee/nominees	Relation ship with Govt. servant.	Age	Share to be paid to each **	Contingencies on the happening of which the nomination shall be deemed invalid.	Name, address & relationship of the person if any to whom the right of the nominee shall pass in the event if his producing the Govt. servant
------------------------------------	-----------------------------------	-----	-----------------------------	---	---

1.					
2.	Sat. Malati Bhoornick	wife	11 2/24	full	Rajesh Bhoornick (Son)

5. *[Signature]*

N: B- The government servant should draw line across the blank space below his last entry to prevent insertion of any names after he has signed.

Date: The 215 Oct / 02

at _____

Signature of the witness

① Sandhya Rani Kar 2-10-2002
② Kholeen Ch. Kar

[Signature]

Signature of Government servant.

** This column should be filled in so as to cover the whole amount may be payable under the Insurance scheme.

Tap an / 96 / 96

Certified to be true copy

[Signature]
Mrs. Uma Chakraborty
Advocate

NOMINATION FOR ORDINARY GRATUITY/DEATH-cum-RETIREMENT GRATUITY

When the Railway servant has a family and wishes to nominate one member thereof.

I hereby nominate the person mentioned below, who is a member of my family and confer on him the right to receive any gratuity that may be sanctioned by Government in the event of my death while in service, and the right to receive on my death any gratuity which having become admissible to me on retirement may remain unpaid at my death.

Name & Address of the nominee	Relationship with Railway servant	Age	Contingencies on the happening of which the nomination shall become valid	Name, address & relationship of the person or persons, if any, to whom the right conferred on the nominee shall pass in the event of nominee pre-deceasing the Rly. servant or the nominee dying after the death of the Rly. servant but before receiving payment of the gratuity.	Amount or value of gratuity payable to each
-------------------------------	-----------------------------------	-----	---	--	---

Malati Shoromide wife
Rajesh Shoromide (son)
Full

This nomination is superseded by one made by me earlier on (date) which shall be null and void.

Date this 15/10/1992 at Elb

Witnesses to signature

1. Sandhya Kame Kar
 2. Sashibhakt Shoromide

Note: This nomination should be filed with the R.R. Form No. 10 of Railway servant.

(To be filled in by the Railway servant in the case of non-gazetted Rly. servants)

Nomination by

Sig. of Head of Office

Designation

Date

Office

Designation

ACKNOWLEDGEMENT BY THE HEAD OF OFFICE/ACCOUNTANT OFFICER

To

The receipt of your nomination/cancellation dated of the nomination made earlier, in respect of P.W. Gratuity in Form No. is hereby acknowledged. The same has been duly placed on record.

Sig. of Head of Office Accountant Officer

Dated

Designation

N. E. R. Form No. 105, 8/11/1991

Certified to be true copy

Mrs. Uma Chakraborty

Advocate

ever grateful to

Sashibhakt Shoromide

NORTH EAST FRONTIER RAILWAY

Office of the
General Manager (CON)
Silchar.

FAMILY DECLARATION FORM

1. Name of the employee :- Sri. Sachindra K. Bhowmick
 2. Name of the section :- SE (WORK) / self
 3. Date of appointment :-
 4. Pay at present :- Rs.
 5. Father alive or not :- not alive.

SN	Name of the parents for whom passes/PTOs may be required	Relationship	Age on 1st Jan/2000 or date of birth
----	--	--------------	--------------------------------------

- | | | | |
|-----|-------------------------------------|--|---------|
| 1. | Sri. Sachindra K. Bhowmick - Self - | | |
| 2. | Miss. Malati Bhowmick - wife - | | 32 yrs. |
| 3. | Sri. Rajib Bhowmick - son - | | 17 yrs. |
| 4. | Smt. Priyanka Bhowmick - daughter - | | 9 yrs. |
| 5. | | | |
| 6. | | | |
| 7. | ✓ | | |
| 8. | | | |
| 9. | | | |
| 10. | | | |
| 11. | | | |
| 12. | | | |

Signature in full

Designation

Section/Sub-Section

We certify that to the best of our knowledge the protons as shown above are residing with and are wholly dependent upon the employees.

WITNESS

- | | |
|--|--|
| 1. Sandhya Rani Kar
(Signature in full) | 2. Khokan Ch. Datta
(Signature in full) |
| 3. Khalsi
(Designation) | 4. R.R. Cook / Silchar
(Designation) |
| 5. SE (WORKS) / SCL
(Section) | 5. _____
(Section) |

(Specimen Signature of the employee)

Sachindra K. Bhowmick

ma 20499

(Signature of immediate Controlling Officer)

Certified to be true copy

Mrs. Uma Chakraborty
Attorney

To

The I.O.W.
N.F. Railway, Silchar, Cachar.

Sub:- Request to endorse the name of nominee in my Service Record Book.

Sir,

I have the honour to inform you that, I have been working in Rly. Deptt. in the post of Night Gaurd(Gr.IV) and have been discharging my duties with full satisfaction of the authority.

At present I have attacked by stoke and became paralysis and hospitalised at Badarpur Rly. Hospital. My wife Smti Malati Bhowmick and our children regularly paying visit to me and nursing my body and person carefully. About 7 years back inadvertantly and due to some misunderstanding with my wife I did negligence to my wife and children, as a result my wife was bound to knock the door of the judicial decision by filing a maintenance case U/S 125 Cr.P.C. being No.5/97 before the Judicial Magistrate, 1st Class Halflong N.C. Hill and the said case was dismissed and subsequently I became raged and deleted the name of my wife Smti Malati Bhowmick from my Service Record as nominee.

After dismissal of the case we both mutually settled our problems amicably and have been residing with my wife and children peacefully and happily.

I intend that in my service record book my nominee is to be my wife and children namely (i) Smti Malati Bhowmick, age about 32 years, (ii) Sri Rajib Bhowmick, age about 17 year, and (iii) Miss Priyanka Bhowmick, age about 9 year and their names are required to be inserted in my service record book.etc. wherever necessary.

Under the circumstances as stated above it is prayed that your goodself would graciously be pleased to endorse the name and my wife Smti Malati Bhowmick and my both children namely Sri Rajib Bhowmick and Miss Priyanka Bhowmick as my legal nominee and for this act of your kindness, I shall remain ever grateful to you.

Certified to be true copy


Mrs. Uma Chakraborty
Advocate

Sachindran Bhowmick
26.8.2007



A F F I D A V I T

Sachindra Kr. Bhowmick
Malati Bhowmick

We, (1) Sri Sachindra Kr. Bhowmick, S/O Lt. Sarada Bhowmick aged about 47 years, residing at ^{near} Rly. Qr, Silchar, P.O. & P.S. Silchar, Occupation - Railway employee, hereinafter called the 1st party and (2) Smti Malati Bhowmick, W/O Sri Sachindra Kr. Bhowmick aged about 32 years, hereinafter called the 2nd party, both are Hindu by faith, Indian by nationality do hereby solemnly affirm on oath and declare as under :-

1. That, we both are residing in the aforesaid address.
2. That, we were married on social negotiation in the year 1984 and were residing as husband wife and out of the said wedlock we got two children namely (i) Sri Rajib Bhowmick age about 17 years and (ii) Miss. Priyanka Bhowmick age about 9 years.

Certified to be true copy

Contd...P/2

[Signature]
Mrs. Uma Chakraborty
Advocate



3. That, when we were at Halflong on posting, due to some differences and negligence of the 1st party some disputes was arosen, as a result the 2nd party became bound to file a suit against the 1st party at Halflong court being No.5/97 U/S.125 Cr.P.C. and the said case was dismissed due to absence of the 2nd party, as the communication to Halflong was closed for three months due to land slide at that time and 2nd party was at Lumding.

4. After that we both the parties mutually settled our problems amicably and have been residing together as husband and wife with our children most peacefully.

5. That at present the 1st party is Hospitalised at Badarpur due to illness and he wants to endorse the name of his wife(2nd party) and children in his service record book as his legal nominee.

6. This affidavit is necessary to produce before the Railway authority concern to declare the nominee of Sri Sachindra Kr. Bhowmick in the service Record Book.

The statements made above are true to the best of our knowledge and belief and we both put our signature in this affidavit on this 18 day of Oct., 2002.

Identified by me,
Sachindra Kr. Choudhury
 01.10.02.
 Advocate, Silchar.

- 1) *Sachindra Kr Bhowmick*
- 2) *malati Bhowmick*

Deponent

Sworn before me,

Certified to be true copy

Mrs. Uma Chakraborty
 Advocate

Magistrate, Silchar.

Addl. Dist. Magistrate
 Cachar, Silchar.

To,

Honourable D.R.M.(P),
Lumding, N.F. Railway,
P.O. Lumding, Dist. Nowgaon, Assam.

Sub:- Prayer for getting necessary payments from
the deptt to endorse my name as nominee &
to start pension at the earliest.

Sir,

I have the honour to inform you that my
husband Sachindra Bhowmick died on 7-10-82 at
Railway Hospital Badarpur & thereafter I brought
him at Silchar for cremation & at that time I received
Rs. 1500/- (Rupees one thousand five hundred) only
for his cremation from the Railway deptt. Through
Welfare Officer.

My husband was an employee of N.F. Railway
Silchar as 'SWA' under SE/Works/Silchar. His date
of appointment was on 17-10-1976.

During life time my husband worked at
different Stations of the N.F. Railway & when he
was posted at Halflong, some dispute and differences
where arose in our matrimonial life and as a result
I became bound to file a suit against my husband
being No. 5/97 u/s 125 Cr.P.C. & ultimately due to
self inconvenience the said case was dismissed.

My name was recorded in the service record
book of my husband & during the pendency of the

Certified to be true copy


Mrs. Uma Chakraborty
Advocate

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aforesaid case my husband ~~and~~ had deleted my name as a nominee. Latteron we both mutually solved our family problems & was staying most peacefully along with our children.

That on 26/8/02 my husband wrote a letter to IOW/ Silchar regarding the above narrated matters & requested to insert my name & my children's name as nominee in his service record book. In Medical card also my name & our children's name have been recorded since long.

I performed the 'shraddh' ceremony of my husband by begging Rs. 10/20/50/ Rupees from his office staffs & officers. At present I have been passing my days with severe financial crisis along with our ^{two} ~~few~~ minor Children.

Under the circumstances as stated above it is prayed that your Honour would graciously be pleased to endorse the ~~husband's~~ nomination as per request letter of my husband on 26/8/02 and arrange to get my all monetary benefits at the earliest as per law & to start pension of my husband in my name at the earliest for our survival & for this act of your kindness the petitioner shall ever pray.

Yours faithfully,

Dated: Silchar.

Malati Bhawnick

The 29/10/02

C.C. 1) Welfare officer, NF Rly,
Badarpur, Dist. Karimganj, Assam.

2) SE, NF. Rly, Silchar,
for information and necessary
action please.

Certified to be true copy


Mrs. Uma Chakraborty
Advocate

21 27-12-02

To
The Hon'able Divisional Rly. Manager,
N.F. Railway, Lumding.

Subj: Prayer for payment of Final Settlement dues
and fixation of pension in favour of m(1).o.
Smt. Malati Bhowmick w/o Late S.K. Bhowmick,
Ex. SWM under SE/Works/SILOHAR.

Respected Sir,

With due respect and humble submission I beg to put before you the following few lines regarding payment of Final settlement dues as well as fixation of pension for your kind consideration and necessary action please.

- (1) That Sir, my husband Late Sachindra Kumar Bhowmick Ex. SWM was working under SE/Works/SCL had expired on 07-10-02 at Rly. Hospital/Badarpur.
 - (2) That Sir, my husband Late S.K. Bhowmick had not submitted the family nomination form for which during the period of indoor treatment at Badarpur Rly. Hospital, he had filled up the family nomination as well as declaration from on 02-10-2002 along with the witness of (1) Sandhya Rani Kar, SWM under SE/Works/SCL and (2) Khokan Ch. Dutta, R.R. Cook under SS/SCL & in presence of on duty staff nurse Smt. Supriya,
 - (3) That Sir, the said nomination form duly filled up and submitted to Sri Dulal Dey, Clerk under SE/W/SCL on 03-10-02 since T/keeper of the said office was not on chair.
 - (4) That Sir, on death of my husband on 07-10-2002, a death certificate was issued on 7-11-02 from the concerned authority (copy enclosed) which I have submitted the said certificate to the T/Keeper (Sri Ghutia) in 7 copies on 11.11.02 duly attested by DMO/SCL.
 - (5) That Sir, the nomination form which was submitted on 3-10-02 was returned back to me by Sri Ghutia, T.K. on 10-11-02 with advised that to submit to Sri Dulal Dey Welfare Inspector after enquiry the nomination form he had advised me to submit the same to the Time Keeper. Thereafter T. Keeper had advised me to take the attestation from the DMO/BPB. Accordingly I have took the attestation from DMO/BPB & submitted to T. Keeper. But Time Keeper told me that your concerned documents regarding final settlement have been sent to DRM(P)/LMS so, your nomination can not be received.
 - (6) That Sir, my husband had made a Court Affidavit on 01-10-02 reg. endorsement of the name of his wife Smt. Malati Bhowmick along with children in his service record book as his legal nominee. Accordingly, this Affidavit was not received by the T.K. as well as Welfare Inspector/BPB (Court's affidavit copy enclosed for your ready reference).
- Hence, since the death of my husband Late S.K. Bhowmick Ex. SWM/SCL under SE/W/SCL on 7.10.02 to uptill the date I am badly harrasing between the Time Keeper and Welfare Inspector but till now I could not able to submit that nomination form due to which the final settlement dues as well as fixation of Pension are not being processed.

Certified to be true copy


Mrs. Uma Chakraborty
Advocate

contd.....2

-37-

- 2 -

Therefore, I pray your honour that kindly investigate the matter and arrange to finalise the final settlement case of my husband in favour of me please.

For this act of your kindness I shall ever grateful to you.

Enclo.

- 1) Photo copy of Nomination paper in eight sheet.
- 2) Court's affidavit in two sheets.

Dated.

Yours faithfully,

(Smti Malati Bhowmik)
W/o Late S.K. Bhowmik.
Ex.SWM under SE/W/SCL.

Copy to Sr.DPO/LMG for necessary action please.

Malati Bhowmik

(Smti Malati Bhowmik)

.....

[Handwritten signature]
27.12.02
DRD (P) M...

(20)
27.12.02
DRD (P) M...

Certified to be true copy

[Handwritten signature]
Mrs. Uma Chakraborty
Addressee



From:

Malati Bhomik,
W/O Lt. Sachindra Bhomik,
Haflong, N.C.Hills.

To,

The Addl. Deputy Commissioner,
N.C.Hills, Haflong.

Sub:-

Request to issue Certified copy of the order of
withdraw passed in T.S Case NO.1/96 .

In connection with the subject cited above, I would like to inform you that as per court judgement dated 28.6.96 . I was judicially separated . In the mean time I preferred another petition U/s. 125 of Cr.P.C against my husband , Shri Sachindra Bhomik before this Court for claiming my maintenance and the said case was registered as T.S C/NO.5/97. At the hearing of the said Case both the parties were present and we both the parties amicably settled the dispute between us . Hence, proceeding of the said Case was dropped vide order dated 4.9.97 and after that we both the parties had been residing together as husband and wife under the same roof till the date of my husband which is evident from the affidavit executed by my husband on 1.10.2002 . A copy of the aforesaid affidavit is enclosed herewith for the sake of your ready reference and record.

It may be mentioned that in pursuance of the order dated 4.9.97 passed in the T.S.Case NO.5/97, my husband was pleased to withdraw the T.S C/NO.1/96 filed by him and accordingly, your honour was pleased to set aside the order dated 28.6.96 passed in T.S case NO.1/96 on the same date i.e on 4.9.97.

Therefore, I am requesting you kindly to issue a certified copy of the aforesaid order dated 4.9.97 of getting aside the order dated 28.6.96 passed in T.S C/NO.1/96 on request of my husband (Sachindra Bhomik) for its withdrawn and/or set aside the same.

Thanking you .

Yours faithfully,

Malati Bhomik

(SMT. MALATI BHOMIK)

Dated: 20.1./2003.

Certified to be true copy

[Signature]
Mrs. Uma Chakraborty
Advocate



प्रतिलिपि के लिए आवेदन की तारीख Date of application for the copy.	स्टाम्प और फोलियो की अपेक्षित संख्या सूचित करने की निश्चित तारीख Date fixed for notifying the requisite number of stamps and folios.	अपेक्षित स्टाम्प और फोलियो देने की तारीख Date of delivery of the requisite stamps and folios.	तारीख, जबकि देने के लिए प्रतिलिपि तैयार थी Date on which the copy was ready for delivery.	आवेदक को प्रतिलिपि देने की तारीख Date of making over the copy to the applicant.
20/11/03	20/11/03	22/11/03	22/11/03	22/11/03

ANNEXURE X

CERTIFIED COPY OF ORDER PASSED IN TITLE SUIT NO.5/97
BY SHRI L. KHAWBUNG, ADDL. DEPUTY COMMISSIONER, N.C.HILLS,
HAFLONG ON XXXXXX 4-9-97.

T/S Case No.5/97

Smti Malati Bhomik Vs Shri Sashindra Bhomik.



4-9-97 Both parties present. Heard them. Both the parties amicably settle the dispute between them. Hence proceeding of the suit is dropped. The Order dated 28-6-96 passed the T/S Case No.1/96 earlier is set aside.

SD/- L. KHAWBUNG,
Addl. Deputy Commissioner,
N.C.Hills;;;Haflong.

Typed by *[Signature]*
22/11/03

Compared by *[Signature]*
22/11

CERTIFIED TO BE TRUE COPY
[Signature]
Held Assistant,
Deputy Commissioner's Office
North Central Hills Dist
Haflong.

Certified to be true copy

[Signature]
Mrs. Uma Chakraborty
Advocate

Contd...P/2

NO. - E / FS / Engg / 10 / 2002

DRM(P)/LMH
 dt. 29-5-2003

To.
 Smt. Malati Bhowmick (Wife)
 W/O. Late Sachindran Bhowmick,
 Ex-SWM / SE(W) / SCL. PO-Silchar.
 Dist - Cachar

Subj - F.S. of Late Sachindran Bhowmick
 Ex-SWM / SE(W) / SCL.

Ref. - your Application dt. 29-10-2002.

As per court judgement call
 NO. 1/96 dt. 29-6-1996. You have been
 judicially separated.

In terms of Rule-75-(12) Rly
 service pension Rule 1993 you
 are not entitled to get the pensionary
 benefits of Late Sachindran Bhowmick
 - CM, Ex-SWM / SSE(W) / SCL. But your
 children are entitled to get pensionary
 benefits.

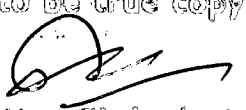
This is for your information.

S. M. S. / LMH
 N. F. 12/4

copy for information and necessary
 action to -

- ① Sri Dulal Ch. Jey - C.P.I / BPB } He is
 required to collect all the
 form in favour of children
 and and wife of Late Sachindran
 Bhowmick. Ex-SWM / SE(W) /
 SCL.

Certified to be true copy


 Mrs. Uma Chakraborty
 (Signature)

S. M. S. / LMH
 N. F. 12/4

To:
The Divl. Rly. Manager (F),
N.F. Railway, Lunding.

Sub:- Grant/Sanction of Family Pension in
respect of Late Sachindra Bhowmick,
Ex.SWM under S.E.(Works)/Silchar.

Ref:- Your letter No.E/FS/Engg./10/2002
dated 29.5.2003.

Sir,

With reference to the subjected cited above, I beg to
most respectfully to state the following facts for your kind perusal
and necessary action & consideration please.

That my husband - Sachindra Kr. Bhowmick, Ex.SWM-SE(W)SCL
who expired on 07.10.2002 at Railway Hospital/Badanpur (Death Certi-
ficate is enclosed herewith) leaving the following family members
at the time of death.

- (1) Smt. Malati Bhowmick, - myself (W/wife).
- (2) Shri Rajib Bhowmick, - M/Son.
- (3) Smt. Priyanka Bhowmick, Minor U/M daughter.
(Rasmi)

During the period of life-time of my deceased husband, had
submitted Provident Fund Nomination U/R. 1384(2)R.I. and Nomination
for ordinary Gratuity/Death-Cum-Retirement gratuity along with Fam-
ily Declaration which was duly attested and witnessed by (1) Smt. Sandh-
ya Rani Kar, Khalasi - SE(Works)/SCL and (ii) Khokan Ch.Dutta,
R.R.Cook/Silchar and countersigned by Sr.DMO/EPB wherein myself
has been appointed as Nominee.

In the said letter you have written that "as per Court
Judgement Case No.1/96 dt. 29.6.1996 myself have been judicially
separated." I think you have failed to interpret and apprise the
Verdict of the Court rather even a Divorcee is entitled to get all
benefits. I am to know where is the Order that only the Knith
& Kin are entitled to get benefits etc. for of a deceased person
ignoring the status of their widow mother?

That subsequently I filed M.R. Case No.5/97 U/S.125CPC
i.e. Maintenance Case against my said deceased husband which was
finally disposed-off on the basis of the mutual Agreement amongst
us i.e. both of us were live together as husband and wife peacefully
and it is a second suit, first suit being No. TS.1/96 was a title
suit and the order was passed in my absence ex-parte. Everything
is mentioned in the second case and that my deceased husband
withdraw the earlier case filing an affidavit declaring my legal
status i.e. wife before the Cond.Court. So, whatever is written in
the earlier case has no effect due to mutual decision of the
parties in the subsequent case.

Secondly, the 2nd.wife that I heard has claimed that is
afflictibus person and with mala fide intention to grab the
property of my deceased husband claimed to the second wife. In the
case of Law, so long the first is alive and without due permission

Certified to be true copy

(Contd....2.)

Mrs. Uma Chakreborn
Advocate

P/2

from the Court, the second marriage is illegal and file case of ~~Malati Bhowmick~~. So, I failed to understand how all the Pensionary benefits including other benefits be given to the ~~2nd wife~~.

Therefore, it is prayed that your honour would be kind enough to consider my case i.e. the case of legal married wife and also entitled to get all the Pensionary benefit of my deceased husband as per rules at any early date estopping the vague and ambiguous claims of the so-called 2nd.wife - ~~Malati Bhowmick~~ and for your act of kindness myself remain ever grateful to you.

Encl:- One

Dated,

The 25th June/2003.

Yours faithfully,

Malati Bhowmick
(Malati Bhowmick.)

W/O. Late S.K.Bhowmick.
Ex.DWM under S.E.(Worker)/Silchar
P.O. - Silchar(Cachar) Assam

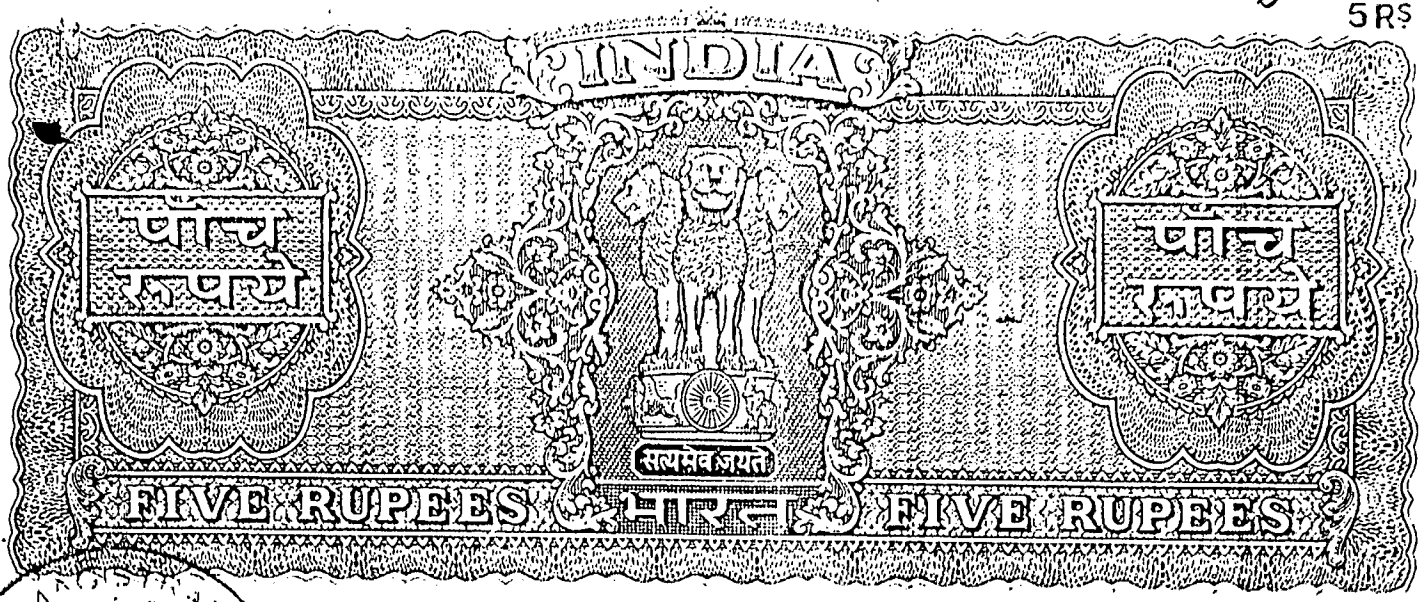
-10001-

25/6/03
श्री मन्मथ सिंह प्रबन्धक (का.)
श्री. श्री. देवेंद्र, लार्मिंग
Sr. Divl. Rty. Manager (P)
H. F. Rty. Lumding

Certified to be true copy



Mrs. Uma Chakraborty
Advocate



A F F I D A V I T

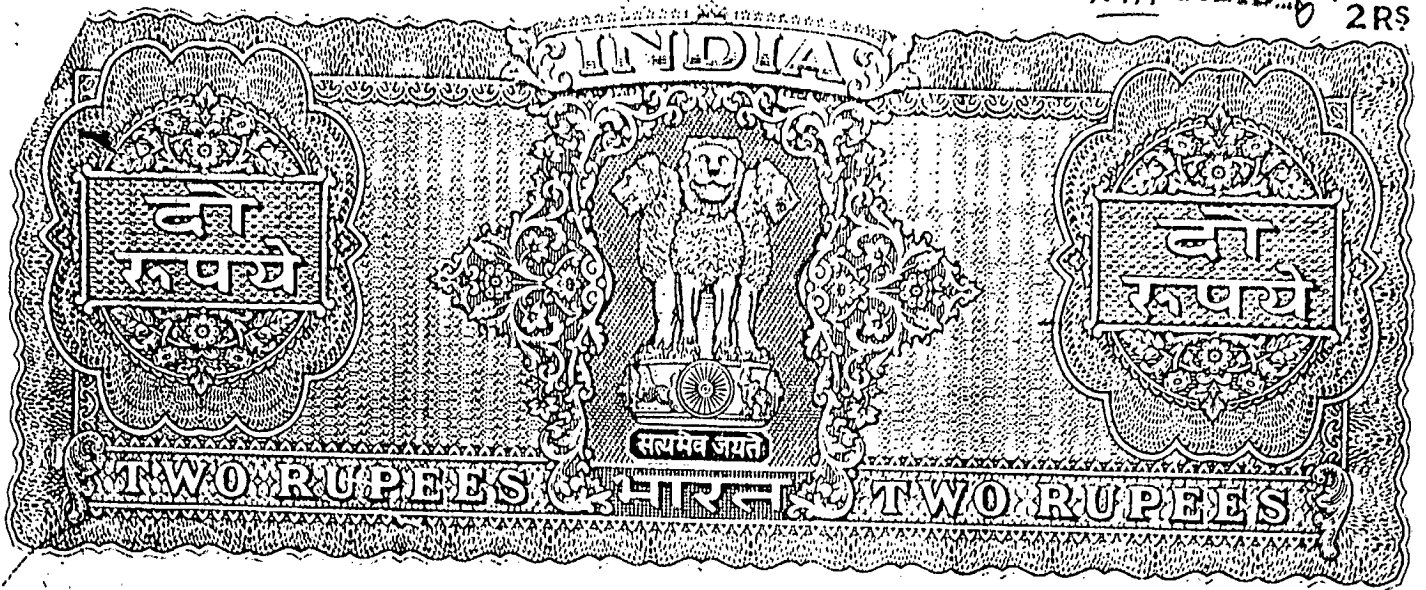
I, Smt. Malati Bhowmik, w/o late Sachindra Kr. Bhowmik, aged about 35 years, by religion Hindu, by profession Housewife and a resident of Near Rly. Cr. Silchar, Tarapur under PO/PS: Silchar, Cachar in the district of Cachar, Assam, do hereby solemnly affirm and declare as follows:-

1. That I am a Permanent resident of the above mentioned address, and a bonafide citizen of India.
2. That I am the legal wife of deceased Sachindra Kr. Bhowmik who was a Railway Employee.
3. That out of the wed-lock two children were born (i) Shri Rajib Bhowmik aged about 18 Yrs. and (ii) Miss Priyanka Bhowmik aged about 9 years she is also known as Miss Rashmi Bhowmik.
4. That in the year 1997 I have filed a T/S. Case NO.5/97, U/S.125 Cr.P.C which was amicably settled and dropped, again in the year 1998 in connection with the T/ Case NO.5/97 the Case was dismissed for the fault (Certified copy of order enclosed herewith).
5. That after amicably settling the matter both of us lived together as husband and wife.

Certified to be true copy

Contd....P/2.

Mrs. Uma Chakraborty
Advocate



- : P/2 : -

That this affidavit is made in order to proof that I am the legal wife of deceased Sachindra Kumar Bhownick and there was no dispute between us pending in any Court.

That the statements made in para 1 to 1 are true to the best of my knowledge and belief and in proof whereof I put my hand on this affidavit on this 26th day of June/2003 before the Magistrate 1st Class at Haflong Court.

Identified by me:

Mrs. Dayamani Singh
26/06/03
Advocate, Haflong.

Mukul Bhownick
Signatory of Deponent.

Sworn before me:

Magistrate 1st Class
Haflong
26/6/03

=X=

Certified to be true copy

Mrs. Uma Chakraborty
Advocate

To

The Divisional Rly. Manager, (P)
N.F. Rly. Lumding, Assam.

Sub: Sanction of family pension in respect of
Ex-SWM/SE / Late Sashindra Bhowmik.

Date 3.7.2003

Sir,

With due respect and humble submission I beg to state the following few lines before you for favour of your kind and sympathetic orders.

That sir I am the legal wife of Late Sashindra Bhowmik expired SWM/SE who died on 7-10-2002 at Silchar.

That sir we have two minor children who are living with me at present.

That sir in the year 1996 there was some disputes between my husband and myself and for some differences and mis-understanding my late husband Sashindra Bhowmik filed a title Suit in the Court of A.D.C. Haflong and at that time I was at Lumding for which I could not appear in the court in time. There was disruption of Rly. communications also.

That sir the Additional Deputy Commissioner Haflong passed an ex parte decision in the above case allowing dissolution of our marriage.

That sir later on I came to know and also filed a T/S case in the same Court in 1997 and the Additional Deputy Commissioner after hearing myself and my husband in his Court settled the disputes amongst us and my late husband was agreed to live together with me and according we again lived together like before.

That sir on 7.10.2002 my husband expired due to his illness leaving myself and my two minor children.

As a legal wife of my late husband I am entitled to get all the pensionary benefits of my late husband.

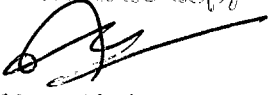
I therefore request you kindly to arrange for granting family pension etc in my favour at an early date.

I have enclosed herewith certified copy of Courts order in T/S Case No.5/97 and also one agreement made by my late husband in the Court for favour of your necessary action.

Enclosed
As stated above.

Yours faithfully,
Malati Bhowmik
(Malati Bhowmik)
W/O Late Sashindra Bhowmik
Ex-SWM/SE/(W)

Certified to be true copy


Mrs. Uma Chakraborty
Advocate

Karnendu Bhattacharjee

MEMBER OF PARLIAMENT (Rajya Sabha)
Member of Urban & Rural Development Standing Committee.
Member of Consultative on Defence.



Ref. No.

Date 04/07/03.

TO
The Divisional Railway Manager (DRM),
N.F. Railway,
Lumding.

Dear Sir,

Invite your kind attention to the following matter that late Sachindra Kumar Bhowmik was a Railway employee at Silchar. He expired few months ago. But, his widow Mrs. Malati Bhowmik is in very difficult alongwith her two Children as because she is not getting the Pension benefit etc. from your Department due to unknown reasons. SO, I co-ordially request you to disburse all the dues & pension benefit etc. to his Widow Mrs. Malati Bhowmik so that she may save with her Children.

It is my hope, you will take appropriate favourable steps immediately on a humanitarian ground.

Thanking You.

Yours Sincerely,

(KARNENDU BHATTACHARJEE),
Karnendu Bhattacharjee
Member of Rajya Sabha,
(Rajya Sabha)

171, North Avenue, New Delhi - 110001. ☎ : (011) 3794704
JOY KUMAR ROAD, Malugram, Silchar - 788 002. ☎ : (03842) 45828, 34025

Noted to be true copy

Mr. D. C. Chatterjee
460630

-47-

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NORTHEAST FRONTIER RAILWAY

Office of the
DRM (Personnel)
Lumding (Assam)
Date : 10.7.2003.

No. E/FS/Engg/10/2002

To,
Smt. Malati Bhowmick (1st wife)
W/O Late Sachindra Kr. Bhowmick
Ex. SWM/SE(Works)/SCL
P.O: Silchar
Dist: Cachar.

Sub: FS of Late Sachindra Kr. Bhowmick, ex. SWM/SE(W)/SCL.

As per decree of divorce granted by Dy. Commissioner, N.C. Hills in Title Suit Case No.1/96, you are divorce of Late Sachindra Kr. Bhowmick, ex. SWM under SE(Works)/SCL.


In view of the above, you are not entitled for payment of any settlement dues of Late Sachindra Kr. Bhowmick. However, children born by you out of the marriage with Late Sachindra Kr. Bhowmick are entitled of share.

In this connection it is also informed that one Smt. Sipra Bhowmick, has also claimed settlement dues stating widow of Late Sachindra Kr. Bhowmick.

This is for your information and necessary action.


(N.B.DAS)
APO/III/LMG
for Divl. Rly. Manager(P)
N.F. Railway/Lumding

Certified to be true copy


Mrs. Uma Chakraborty
Advocate

This is to certify that Late Sashindra Bhomik got his marriage with Smti Malati Bhomik dissolved in T/S Case No. 1/96 in Haflong Court and again re-united by an amicable settlement in T/S Case No. 5/97 in the Court of Addl. D.C. Haflong.

Date 16.7.2003.

Judicial Peskar
Haflong Court.

Judicial Peskar
Haflong Court

Certified to be true copy

Mr. Uma Chakraborty
Advocate

8/12
Mrs. Uma Chakraborty
M. Sc. M. Ed. LL. B.
Advocate
Gauhati High Court, Guwahati

ANNEXURE - XVIII

Phone : 527192

Star Apartment, 1st floor
Lachit Nagar, Main Road,
Guwahati-781007

Date 25.07.2003

NOTICE

Under Rule 75 of the Railway Services (Pension)
Rules, 1993.

To
The Divisional Railway Manager
N.F. Railway,
Jumding, Dist. Nagaon (Assam).

Dear Sir,

Sub : Immediate sanction/grant of final settlement
of dues, family pension, death gratuity and
other death-cum-retirement gratuity/benefits
to the nominees of the Ex- employee, Late
Sachindra Kr. Bhowmik working under SE/Works/SCL.

ON BEHALF OF MY CLIENT

Smti. Malati Bhowmik,
Widow of Late Sachindra Kr. Bhowmik,
C/O Shri Amar Das,
Mahasakti Asram, Tarapur,
P.O. Tarapur, Silchar -3,
Dist. Cachar (Assam).

Under instruction from my client, Smti. Malati Bhowmik
in respect of the subject quoted above, I like to address this
notice to you for granting final settlement of dues and other pensionary
benefits to my client on account of death of Late Sachindra Kr. Bhowmik
died on 07.10.2003 during the period of his service as hereunder
stated :

1. That my said client is widow of Late Sachindra Kr. Bhowmik,
Ex. Rly. employee working as SWM (Store Watch Man) under SE/Works/SCL.
She is a permanent resident of the above mentioned address and a
bonafide citizen of India and as such entitled to all the rights,
protection and privileges as guaranteed under the Constitution of India.
2. That upon the death of Late Sachindra Kr. Bhowmik (here-in-after
referred to as "the deceased") my client being legal wife/widow claimed
relief before you on account of final settlement of dues and fixation
of pension by submitting her representations on various dates by
stating all relevant facts and circumstances in support of relevant
documentary evidences.

Certified to be true copy

ENCLOSURE 2


Mrs. Uma Chakraborty
Advocate

Mrs. Uma Chakraborty

M. Sc. M. Ed. LL. B.

Advocate

Gauhati High Court, Guwahati

Phone : 527192

Star Apartment, 1st floor

Lachit Nagar, Main Road,

Guwahati-781007

: 2 :

Date _____


3. That you being a competent as well as top brass authority of N.F. Railway, instead of redressing grievances of my client by removing anomalies in the matter of final settlement of dues and fixation of her pension in time issued an order dated 29.05.2003 whereby it has been informed that my client is not entitled for pensionary benefits under Rule 75(12) of the Railway Services (Pension) Rules, 1993 and only her children are entitled for such benefits because my client has been judicially separated as per Court's order dated 29.06.2003 passed in T.S. Case No. 1/96 in an extraneous consideration without issuing show cause notice and/or without affording her reasonable opportunities of being heard in support of the documentary evidences produced before you to defend herself against your decision or conclusion. The aforesaid order has been issued without following the due procedure of law. As such, the said order is violative of principles of natural justice as well as the provisions of Rule 70, 71, 73, 74 and 75(13) of the Railway Services (Pension) Rules, 1993.

4. That inspite of considering the relevant facts and circumstances of the case of my client by relying on the submissions made by my client in her application dated 28.06.2003 and affidavits dated 01.07.2002 and 26.06.2003 executed by the deceased during his life time and my client respectively as well as Court's order dated 04.09.97 passed in T.S. Case No. 5/97 by which the deceased and my client further re-united by an amicable settlement of their dispute arose in their matrimonial life and since then both of them had been living together as husband and wife along with their minor children under the same roof, you further issued another order dated 10.07.2003. By the aforesaid order dated 10.07.2003 you have directed with / observation as made in your previous order dated 29.05.2003 but instead of the word judicial separation, the word 'Divorce' is used. Further, it is informed that one Smti. Sipra Bhownik has claimed settlement dues stating widow of the deceased.

5. That on the perusal of the aforesaid orders dated 29.05.2003 and 10.07.2003 it is not understood how you have mentioned two different words- judicial separation and divorce in your two above different orders in respect of the same matter and same order dated 29.06.96 passed in same case T.S. Case No. 1/96 without application of mind in a judicious manner and without communicating any relevant documentary evidence in respect thereof in order to establish the above facts. It may be mentioned that on the same date in the same case two different decrees cannot be passed by the court. Thus you have failed to interpret and apprise the verdict of the court rather even a judicially separated and/or divorced woman is entitled to

Certified to be true copy

Contd...3


 Mrs. Uma Chakraborty
 Advocate

Mrs. Uma Chakraborty
M. Sc. M. Ed. LL. B.
Advocate
Gauhati High Court, Guwahati

Phone : 527192
Star Apartment, 1st floor
Lachit Nagar, Main Road,
Guwahati-781007

: 3 :

Date _____

get all benefits under the provisions of Railway Services (Pension) Rules, 1993, the law of maintenance as amended by the Criminal Procedure (Amendment) Act, 2001.

6. That on the perusal of the aforesaid order dated 10.07.2003 it is further not understood how you have accepted any third person Smti. Sipra Bhowmik who claimed final settlement as widow of the deceased without communicating any documentary evidence to my client in order to establish her legal status as widow of the deceased. It may be mentioned that any decree for remarriage cannot be passed by the Court during the subsistence of the first marriage of the deceased with my client.


7. That even assuming but not agreed that the deceased had contracted second marriage during the subsistence of his first marriage and during period of living with the first wife i.e. my client in violation of the conditions laid down in s 5 of the Hindu Marriage Act, 1955, the subsequent marriage would become null and void under section 11 of the Hindu Marriage Act, 1955 as well as the provisions of Rule 21 of the Railway Services (Conduct) Rules, 1966. In fact, there had no any second wife of the deceased till the date of his death to the best of my client's knowledge and belief. Hence, said Smti. Sipra Bhowmik is not at all entitled for claiming any benefits on account of such void marriage. Further, the marriage of a woman with a man having living spouse is a complete nullity in the eye of law and not entitled to the benefit of section 125 of the Criminal Procedure Code (Amendment) Act, 2001 and Rule 75 of the Railway Services (Pension) Rules, 1993. In such contrasting situation if any benefit is granted to Smti. Sipra Bhowmik would be most illegal, improper, without jurisdiction as well as violations of the provisions of law.

8. That on perusal of the facts and circumstances narrated in the representations of my client as well as other documentary evidences relating to her legal status of widow of the deceased as submitted before you for getting appropriate relief, I am of the opinion that it would be fair, legal, reasonable and justified for you to grant or sanction final settlement of dues and fixation of pension benefits in favour of my client under the relevant provisions of law and to restrain Smti. Sipra Bhowmik from claiming and/or getting such benefits without having any legal status of widow of the deceased as otherwise it will cause prejudice to my client and my client shall suffer from irreparable loss and injury.

9. That on the perusal of the all documentary evidences as made by

Certified to be true copy

Contd...4


Mrs. Uma Chakraborty
Advocate



Mrs. Uma Chakraborty

M. Sc. M. Ed. LL. B.

Advocate

Gauhati High Court, Guwahati

-52-

ANNEXURE XVIII/CONFID- 12

Phone : 527192

Star Apartment, 1st floor

Lachit Nagar, Main Road,

Guwahati-781007

: 4 :

Date _____

the deceased and also submitted before you during his life time, it is revealed that there is no admission by the deceased that he had contracted second marriage. Hence, you have committed a manifest error of law in holding my client as judicially separated/divorced and depriving her from availing such benefits or reliefs without any justification. If you and your official have taken attempt not to grant any relief as claimed by her and/or discharge your liability, I am of the opinion that you would not be entitled to relief in this proceedings as otherwise it must held to be inflected with an abuse of power instead of granting appropriate relief to my client in order to mitigate the hardships of the poor family of the deceased i.e. my client and her two minor children and to save them from the jaw of starvation and death. In view of the above, you and your officials are liable to grant appropriate relief to my client as prayed before you under the provisions of law as well as under the Directive Principles of State Policy contained under Article 38, 39(a) and 41 of the Constitution of India.

Please take notice that you are hereby demanded to grant/sanction final settlement of dues and fixation of pension in favour of my client within 15 (fifteen) days from the date of receipt of this notice. In the event of default, I have clear instruction from my client to initiate legal proceeding against you and your officials with this matter by challenging your orders dated 29.05.2003 and 10.07.2003 respectively for getting appropriate relief in the appropriate Court of competent jurisdiction. It may further be noted that you and your official will be fully liable for all the cost of litigation expenses etc. incurred by my client in this matter.

Hope that you would be pleased to grant such appropriate relief as claimed by my client under the provisions of law in time in order to avoid unpleasant consequences.

Thanking you,

Yours faithfully,

(Mrs. U. Chakraborty)

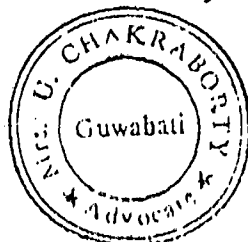
Advocate.

Copy to :

1. The Senior D.P.O., N.F. Railway, Lumding, Dist. Nagaon (Assam) ;
2. Shri S.N. Roy, D.P.O., N.F. Railway, Lumding, Dist. Nagaon (Assam) ;
3. Shri Dulal Dey, Welfare Inspector, SE Works/SCL, Badarpur (Assam) ;
Bhattacharjee (Dasgupta)
4. Smti. Subra Dasgupta, F.S. (Welfare), Lumding, N.F. Railway, Lumding, Dist. Nagaon (Assam).

Certified to be true copy

Mrs. Uma Chakraborty
Advocate



(Mrs. U. Chakraborty)
Advocate.

Mrs. Uma Chakraborty

M. Sc. M. Ed. LL. B.

Advocate

Gauhati High Court, Guwahati

Phone : 527192

Star Apartment, 1st floor
Lachit Nagar, Main Road,
Guwahati-781007

- 53 -

R E M I N D E R

Date 30.08.2003

To

The Divisional Railway Manager,
N.F.Railway,
Lumding.

Dear Sir,

Sub : Immediate sanction /grant of final settlement of dues, family pension, death gratuity and other death-cum-retirement gratuity/benefits as well as the appointment of the dependent/ nominees on compassionate ground under died-in-harness scheme as claimed by the widow of Late Sachindra Kr. Bhowmik, Ex-RLY. employee.

Ref : Notice dated 25.07.2003.

With reference to the subject cited above, I would like to inform you that I served a pleader notice dated 25.07.2003 on you on behalf of my client Smti. Malati Bhowmik, widow of Late Sachindra Kr. Bhowmik, ex-Railway employee working as SWM (Store Watch Man) under SE/Works/SCL regarding immediate sanction and/or grant of her above claims to my above client and her two minor children who are the dependents as well as nominees of Late Sachindra Kr. Bhowmik.

In the above notice all the relevant facts relating to the legal status of widow of Late Sachindra Kr. Bhowmik and her eligibility for claiming all such appropriate reliefs were stated with a demand for settlement of said claims within 15 (fifteen) days from the date of receipt of my said pleader notice dated 25.07.2003.

On perusal of the returned acknowledgement, it has been revealed that above notice was received by you on 09.08.2003. But inspite of receipt of that said above pleader notice, you have not taken any step for doing the needful till this date in order to save a bereaved family from their great hardships and difficulties.

Moreover, it is informed that you have not taken any step regarding the appointment of my client on compassionate ground under died-in-harness scheme of N.F.Railway as she claimed as a right of inheritance as well as eligible dependent of Late Sachindra Kr. Bhowmik irrespective of the nature of service rendered by her husband, Late Sachindra Kr. Bhowmik. The claim of appointment of my client on compassionate ground was not mentioned in my aforesaid pleader notice

Certified to be true copy

Contd....2


Mrs. Uma Chakraborty
Advocate

Mrs. Uma Chakraborty

M. Sc. M. Ed. LL. B.

Advocate

Gauhati High Court, Guwahati

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Date _____

: 2 :

dated 25 07.2003 with a bonafide belief that you would be pleased to consider her claim for appointment on compassionate ground. But you have not yet consider said claim of my client till this date for the reason best known to you.

It is noted that the cause of action for the aforesaid claims arose on 07.10.2003 when her husband Late Sachindra Kr. Bhowmik was died on harness leaving behind him surviving his widow (Smti. Malati Bhowmik) and two minor children within the jurisdiction of the your office and your officials. When my client, Smti. Malati Bhowmik prayed for such above mentioned relief for several time, there could not be any impediment to the final settlement of dues, family pension and other benefits as well as her appointment on compassionate ground and/or to take decision for granting such aforesaid relief on your part. The service of pleader notice arrived at after having given the utmost importance to all aspects of the claims of my client. But you being a top brass authority of N.F. Railway did not take step/action for granting such relief as prayed for. It is a serious failure on your part due to which my client along with her minor two children is suffering from great hardships and difficulties.

Therefore, you are further informed ~~xxxx~~ by issuing this reminder to do the needful immediately within 7(seven) days on behalf of my client without further delay in humanitarian ground in order to mitigate the economic hardships and difficulties of my client and her two minor children for getting appropriate reliefs from your end and otherwise my client shall suffer from irreparable loss and injury.

In the event of failure and/or default, there will not be any other alternative efficacious remedy except filing an application before the Hon'ble Central Administrative Tribunal, Guwahati wherein the Hon'ble court would be pleased to pass necessary orders on the merit of the case with proper directions to you to comply with the same as the Hon'ble Court deems fit and proper.

Under the above facts and circumstances of the case, it would be fair, legal, reasonable and justified for you to grant said appropriate, legal and proper reliefs to the family of Late Sachindra Kr. Bhowmik which should not be intended to wait for a number of months/years to extend them benefits to the nominees/members of bereaved family on the basis of unreasonable reason/grounds for interest best known to you and your officials.

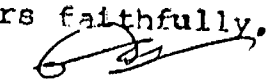
Hope that you would be pleased to grant such reliefs as claimed by my client under the provisions of law.

Thanking you,

Certified to be true copy


Mrs. Uma Chakraborty
 Advocate

Yours faithfully,


Mrs. U. Chakraborty
 Advocate
 Gauhati High Court

Mrs. Uma Chakraborty

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XX

Phone : 527192

M. Sc. M. Ed. LL. B.
Advocate
Gauhati High Court, Guwahati

Star Apartment, 1st floor
Lachit Nagar, Main Road,
Guwahati-781007

Date 30.08.2003

To

The Sr. DEN,
N.F.Railway,
Lumding,
Dist. Nagaon (Assam).

Dear Sir,

Sub : Immediate sanction/grant of final settlement of dues, family pension, death gratuity and other death-~~own~~-retirement gratuity/benefits to the widow, Smti. Malati Bhowmik of Late Sachindra Kr. Bhowmik, ex-railway employee.

Ref : Pleader notice dated 25.07.2003 issued on behalf of Smti. Malati Bhowmik and reminder dated 30.08.2003 issued to DRM, N.F.Railway, Lumding.

In connection with above subject, I would like to inform you that a pleader notice dated 25.07.2003 was served on the DRM, N.F.Railway, Lumding with a demand for early settlement of claims as prayed by my client, Smti. Malati Bhowmik, widow as well as nominee of Late Sachindra Kr. Bhowmik, ex-Rly. employee working as N SWM (Store Watch Man) under SE/Works/SCL who died in service on 07.10.2002 leaving behind him surviving his wife, Smti. Malati Bhowmik and two minor children.

Upon the death of Late Sachindra Kr. Bhowmik, Smti. Malati Bhowmik preferred various applications on different dates and approached several times before the concerned authorities of N.F. railway with a prayer for sanction/grant of her claims as mentioned above in order to save the bereaved family of Late Sachindra Kr. Bhowmik from their serious and critical hardships and difficulties. Further she approached before the concerned authorities with a prayer for granting her appointment on compassionate ground irrespective of the nature of service rendered by her husband, Late Sachindra Kr. Bhowmik.

It is very regret to inform you that instead of repeated prayer or request made before the concerned authorities of the N.F. Railway, the competent authorities have been failed to do the needful in time on humanitarian ground under the provisions of law and/or grant of the said above reliefs as claimed by my client, Smti. Malati Bhowmik. It may be noted that there could not be any impediment on the part of the said competent authorities to take reasonable decision and/or to grant such reliefs as claimed by my said client which should not be intended to wait for a number of months or years to extend the benefits to the nominees/members of the bereaved family of ex-Railway employee on the basis of unreasonable ground which is not at all sustainable in law for the interest best known to the competent authorities and their officials.

Certified to be true copy

Mrs. Uma Chakraborty
Advocate

Contd...2

Mrs. Uma Chakraborty

M. Sc. M. Ed. LL. B.

Advocate

Gauhati High Court, Guwahati

Phone : 527192

Star Apartment, 1st floor
Lachit Nagar, Main Road,
Guwahati—781007

: 2 :

Date _____

The service of pleader notice arrived at after waiting for long period of 7(seven) months from the date of the death of Late Sachindra Kr. B Bhowmik and after having given the utmost importance to all aspects of the claims of my client. But the competent authorities of N.F.Railway did not take any step/action in respect thereof with a view to mitigate the critical crisis, hardships and difficulties of the bereaved family of an ex-railway employee. It is a serious failure on the part of the said authorities due to which my client along with her two minor children ~~xxx~~ is suffering from irreparable loss and injury.

A copy of the said pleader notice dated 25.07.2003 is annexed herewith and marked as Annexure-I.

It is further informed that after waiting for period of 1(one) month 4(four) days from the date of the issue of the aforesaid notice dated ^{25.7.03} and without having response to such pleader notice, a reminder has been issued to the DRM, N.F. Railway for its necessary action within 7(seven) days from the date of receipt of the reminder dated 30.8.2003.

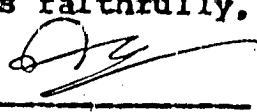
A copy of the said reminder dated 30.08.2003 is annexed herewith and marked as Annexure-II.

Under the above facts and circumstances, you are hereby requested to look into the matter and to take necessary step for its early settlement of the claims as prayed within 7 days from the date of receipt of this reminder. It is a matter of great regret that in the event of failure on the part of the competent authorities of N.F. Railway, there will not be any alternative efficacious remedy except filing an application before the Hon'ble Central Administrative Tribunal Guwahati to get appropriate reliefs in respect thereof.


Hope that you would be pleased to look into the matter and to take immediate steps for granting the valid, genuine and reasonable ~~claims~~ and appropriate reliefs to my client, Smti. Malati Bhowmik.

Thanking you,

Yours faithfully,


 (Mrs. U. Chakraborty)
 Advocate.

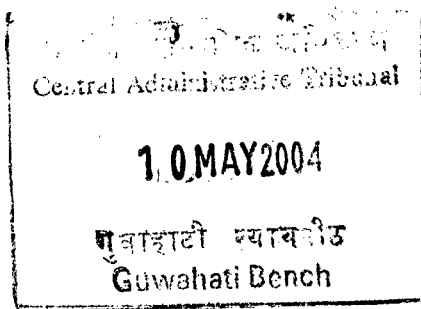
Certified to be true copy


 Mrs. Uma Chakraborty
 Advocate



Certified to be true copy

Mrs. Uma Chakraborty
Advocate



IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

O.A. NO 274/04

Smt. Malati Bhowmick

-vs-

Union Of India & ors.

IN THE MATTER OF:

Written Statement filed by the
respondents.

1. That a copy of the O.A has been served on the respondents and the respondents have gone through the copy of the O.A filed by the applicant and have understood the contents thereof.

2. That save and except the statements which are specifically admitted hereinbelow, other statements made in the O.A are categorically denied. Further the statements which are borne on records are also denied and the applicant is put to the strictest proof thereof.

3. That before dealing with the various contentions made in the O.A the deponent begs to raise the preliminary objection regarding the maintainability of the O.A. The O.A is bad for non-joinder of necessary parties, waiver, estopped and acquiescence. It is stated that the claim made by the applicant contains disputed questions of facts and the applicant ought to have approached the Civil Court having jurisdiction adjudication of the matter and as such same is liable to be dismissed with cost.

4. That with regard to the statement made in para 1,2,3,

Filed by
the Respondent Through
Advocate for
Advocate 78
10/5/04
N. B. Bhowmick

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M. Chatterjee
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and 4.1 the answering respondents admit only those statements which are borne on records.

5. That with regard to the statement made in para 4.2 the answering while denying the contentions made therein the respondents begs to state that Late Sachindra Kr. Bhowmick was a permanent employee of N.F. Railway as Sr. Watchman under SE(W)/Silchar. He died on 7.10.2002 while in service. This family declaration for the 2000, 2001 and 2002 are not available in this office record. But an Affidavit which has been jointly made by the applicant and her husband Late Sachindra Bhowmick on 1.10.2002 has been submitted by the applicant alongwith other documents after death of Late Sachindra Kr. Bhowmick. In the Affidavit it is stated that the applicant and Late Sachindra Bhowmick are living jointly and peacefully as husband and wife. Shri Rajib Bhowmick and Priyanka Bhowmick has been indicated son and daughter.

6. That with regard to the statement made in para 4.3 the answering respondents begs to state that the applicant submitted representation dated 27.12.2002 and 25.6.2003 alongwith the documents, attested xerox copies of nomination from which it is found that Late Sachindra Kr. Bhowmick executed nomination on 2.10.2002 just before his death in favour of Smt. Malati Bhowmick for payment of provident fund money and Death-gratuity duly signed by two witnesses but the same has not been accepted by the competent authority. She also submitted xerox copy of family declaration for payment of pension in which it appears that the same has not been certified by the senior subordinate. But the said documents are not available in the office record. The applicant vide her application dtd. nil received on 30.12.2002 informed the Rly. authority that her husband had not submitted

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nomination form for which during the period of indoor treatment at Badarpur Railway Hospital. He had filed up the family nomination papers along with the family declaration form on 2.10.2002 in presence of two witnesses. However these documents are not available in P/Case of Late Sachindra Kr. Bhowmick. These documents have been submitted by the applicant after death of her husband on 7.10.2002. These documents are not countersigned by the Sr. Subordinate under whom he worked.

7. That with regard to the statement made in para 4.4 the answering respondents beg to state that the attested photo copies of court's orders available with this office suggest that there had been two suit No.T.S.1/96 and T-S 5/97 both between the applicant and Late Sachindra Kr. Bhowmick. The order dated 28.6.96 passed by the Deputy Commissioner, N.C.Hills, Haflong in T.S. case No.1/96 speaks that the decree of divorce in between the applicant and her husband Late Sachindra Kr. Bhowmick, was granted. /The order dated 21.7.1998 passed by the 1st Class Magistrate in T.S 5/97 speaks that the suit was dismissed and late Sachindra Kr. Bhowmick was free to remarry if he so desire. /

8. That with regard to the statement made in para 4.5 the answering respondents do not admit any thing contrary to the relevant records of the case.

9. That with regard to the statement made in para 4.6 the answering respondents beg to state that the Railway respondents are neither aware of the subject matter of the T.S.case No.5/97 nor aware of the order dated 4.9.97 (marked as Annexure-X to the O.A.) as there is no record found available with this office in this connection. However photocopy of the order dated 4.9.97 in TS-5/97 was submitted by the applicant alongwith her application dated 25.6.2003. The order speaks that both the applicant and her

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husband amicably settled the disputes between them and proceeding of the suit was dropped. The order submitted by the applicant differs from the order dated 4.9.97 marked as Annexure-X to the O.A., to the extent that in Annexure-X it is further ordered that the order dated 28.6.96 passed in T.S. Case No. I/96 earlier is set aside.

अतिरिक्त प्रमाणित
Sr. Divl. Person. Officer

10. That with regard to the statement made in para 4.7 the answering respondents beg to state that a photo copy of the Affidavit jointly prepared by the applicant and her husband on 1.10.2002 was received by this office, which was submitted by the applicant alongwith her application, received by this office 30.12.2002.

11. That with regard to the statement made in para 4.8 the answering respondents beg to state that a photo copy of the representation dated Nil signed in the name of Late Sachindra Kr. Bhowmick is available with this office wherein Late Bhowmick requested the Inspector of Works/Silchar to endorse the name of his wife Smt. Malati Bhowmick, Shri Rajib Bhowmick and Miss Priyanka Bhowmick in the service record as his legal nominees. A photo copy of the Affidavit jointly made by the applicant and her husband on 1.10.2002 was received by this office on 30.12.2002 which was submitted by the applicant alongwith her application.

12. That with regard to the statement made in para 4.9 the answering respondents beg to state that the respondents have received several representations of the applicant for the payment of settlement dues for the death of her husband. But the same could not be paid to her due to the fact that a family declaration for the year 1999 submitted by Late Sachindra Kr. Bhowmick indicates Smt. Shipra Bhowmick as his wife. By his application dated 20.4.1999 requested the Railway authority to

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Sr. Divl. Manager, Cr.
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N. B. Rly., L. d.

include the name of Smt. Shipra Bhowmick in the office record whom he claimed to have married on 3.11.98. Further Smt. Shipra Bhowmick submitted application dated Nil alongwith the photo copy of Affidavit dated 23.10.2002 and other documents. In her application she claimed herself as the legal wife of (Late) Sachindra Kr. Bhowmick and asserted that there is no other surviving members of the family of Late Sachindra Kr. Bhowmick. She also requested that authority for the payment of settlement dues.

13. That with regard to the statement made in para 4.10 the answering respondents beg to state that the Hon'ble Court of Addl. Deputy Commissioner's orders dated 4.9.97 in T.S. 5/97 issued on 22.1.2003 appear to be confusive. The copy of the order which was submitted by the applicant read as "Both parties present heard them. Both the parties amicably settled the disputes between them. Hence proceeding of the suit is dropped" The copy of the order which is marked as Annexure-X to the OA (Not found available in the office records) bear the above order with an addition "The order dated 28.6.96 passed in T.S. case No.1/96 is set aside."

The respondents therefore craves leave of the Hon'ble Tribunal for adirection to the applicant to produce the certified copy of the said order at the time of hearing of the case.

14. That with regard to the statement made in para 4.11 the answering respondents beg to state that as per the available records the DRM(P)/LMG issued the letters dated 25.5.2003 and 10.7.2003 as the similar copy of order dated 4.9.97 in T.S.5/97 marked as Annexure-X is not available with this office.

15. That with regard to the statement made in para 4.12 the answering respondents beg to state that so far the

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N. P. Rly., La

representation dated 25.6.2003 is concerned, it is admitted that, the same was received by this office. The affidavit dated 26.6.2003 is not available with this office.

16. That with regard to the statement made in para 4.13 the answering respondents beg to state that the Annexure-XIV to the OA is not available with this office records.

17. That with regard to the statement made in para 4.14 and 4.15 the answering respondents beg to state that the settlement dues of Late Sachindra kr. Bhowmick have not yet been paid to anybody. The Railway administration has no interest in keeping deceased employees settlement dues, withheld, in an illegal manner. The respondent could not pay the same due to the confusion as appeared in this available office records. The Railway respondents is ready to pay the settlement dues of Late Sachindra Kr. Bhowmick to his legal wife in accordance with law. Since there is counter claim of two wives, it is not possible for the respondents to settle the same. In such a situation the appropriate remedy available to the applicant is to approach the appropriate Civil Court having jurisdiction.

18. That with regard to the statement made in para 4.16 the answering respondents beg to state that the Annexure-XVII to OA which was issued on 16.7.2003 is not available with respondents.

19. That with regard to the statement made in para 4.17 and 4.15 the answering respondents beg to state that the following are the records indicated by the applicant to substantiate her claim;

1. Honourable Court of Addl. Deputy Commissioner, Haflong's order dated 4.9.97 in T.S. 5/97 (available with

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N. E. Rly., Lending
Office
N. E. Rly., Lending
Office

this office).

2. Honourable Court of Addl. Deputy Commissioner's orders dated 4.9.97 in T.S.5/97 (marked as Annexure-X to the OA.)
3. Honourable 1st Class Magistrate/Haflong's order dated 21.7.98 (available with the office.)
4. Joint Affidavit dated 1.10.2002 of the applicant and Late Sachindra Kr. Bhowmick declaring the applicant as his wife.
5. Nomination papers for the applicant for payment of pension and DCRG etc. executed by (Late) Sachindra Kr. Bhowmick.
6. The application of Late Sachindra Kr. Bhowmick for inclusion of the name of Smt. Shipra Bhowmick as his wife and the family declaration for the year 1999 indicating her as his wife.
7. The affidavit dated 23.10.2002 submitted along with the application by Smt. Shipra Bhowmick.
8. The fact Smt. Shipra Bhowmick swore in the Affidavit dated 23.10.2002 that Late Sachindra Kr. Bhowmick had said her that he was unmarried and cheated her for which she filed a case No. Misc. 161/2001 in the Karimganj.
9. Personal Inspector/I/Badarpur's reports dated 15.11.2002 and 20.10.2003;

The above document appear to be confusive and contradictory and as such from those documents it is difficult on the part of the respondents to settle dues to the applicant as there are counter claim. It is made clear that the dues are

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lying undisbursed in the office of the respondent but due to such confusion same could not be settled to any one. In such a situation the applicant ought to have clarified the issue by an appropriate Court of Jurisdiction and to submit the same before the Railway authority for early settlement of dues.

20. That with regard to the statement made in para 4.18. to 26 the answering respondents while reiterating and reaffirming the statement made above denies the correctness of the same.

21. That in view of the above facts and circumstances stated above the Q.A is not maintainable and liable to be dismissed with cost.

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VERIFICATION

I Shri Abraham Kispotta, aged about 52,
years, son of Late Andreas Kispotta, resident
of Lumding,
presently working as Senior Divisional Personnel Officer,
N.F. Railway, Lumding do hereby verify and state that the
statement made in paragraphs ...1, 2, 3, 4, 8, 21,
are true to my knowledge and those made in paragraph 5, 6, 7, 9, 10, 20 being
matters of records are true to my information derived
therefrom, which I believe to be true and the rest of my
humble submissions before this Hon'ble Tribunal. I am also
authorised and competent to sign this verification on behalf
of all the Respondents.

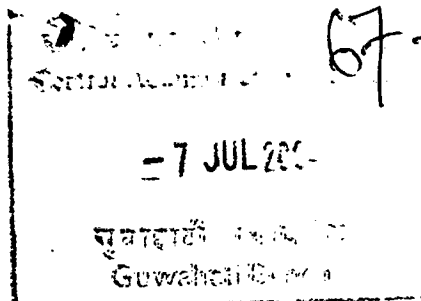
And I sign this verification on this ...5th day
of ...May., 2004.

Abraham Kispotta
Deponent

वरिष्ठ कनिष्ठ अधिकारी
Sr. Divl. Personnel Officer
पु.सो.रेल्व, लुमडिंग
N. F. Rly., Lumding

District: Cachar (Assam)

In The Central Administrative Tribunal,
Guwahati Bench, (Guwahati).



For
Smti Malati Bhowmik
-Applicant of
through
8/7/04.
(Smti Uma Chakraborty)
Advocate.

ORIGINAL APPLICATION NO. 274 OF 2003

Smti. Malati Bhowmik
W/O Late Sachindra Kumar Bhowmik,
Ex. SWM/SE/Works/SCL (Silchar).

.....Applicant.

-VS-

Unions of India and others.

.....Respondents.

IN THE MATTER OF :

AN AFFIDAVIT - IN - REPLY FILED
ON BEHALF OF THE APPLICANT.

AFFIDAVIT - IN - REPLY

I, Smti. Malati Bhowmik, widow of Late Sachindra Kumar Bhowmik, aged about 35 years, permanent resident of Mahasakti Astam, Tarapur, P.O. Tarapur, Silchar -3, District Cachar (Assam), presently residing in Railway Quarter No. 864/B, South Hill Colony, Lumding, P.O. Lumding, Dist Nagaon in the State of Assam, do hereby solemnly Affirm and state as follows :

1. That I am the applicant in the instant application and as such, I am fully conversant with the facts and circumstances of the present case and competent to swear this affidavit.
2. That I have gone through a copy of an affidavit affirmed by Shri Abraham Kispotta, Sr. Divisional Personal Officer, N.F. Railway, Lumding on dated nil here- in- after referred to as the Written Statement. I have received the said copy of Written Statement on 19.05.2004 which had been filed by the deponent on behalf of the Respondents and understood the contents and purport of the same.
3. That the applicant does not admit anything which are born out of and/or contrary to the records. Subject to what has been specifically admitted hereunder all other statements/ allegations of the said written statement shall be deemed as and also are hereby denied.

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4. Before traversing to the statements and allegations made in the written statement it is submitted that :

- (a) It needs to be noted that it is true that when the deceased, Late Sachindra Kumar Bhowmik while in service was posted at Haflong in the year 1996, some disputes and differences and/or misunderstanding arose between the deceased and the applicant in their matrimonial life and the deceased obtained an exparte divorce decree dated 28.06.96 from the Court of Deputy Commissioner, N.C.Hill, Haflong passed in T.S. Case No. 1/96 filed by the deceased. The aforesaid exparte divorce decree was passed on the basis of allegations made by the deceased before the said court inasmuch as without affording a reasonable opportunity of being heard to the applicant applicable under the provisions of law to defend herself against the allegations made by the deceased. Moreover, the aforesaid exparte divorce decree in such matrimonial suit was passed without having any sufficient legal evidences to support the said decree and failed to communicate the same to the applicant in proper time either by the court or the deceased. As such, the said court had committed a manifest error of law by exercising its power of discretion.

A copy of the aforesaid exparte divorce decree dated 28.06.96
Passed by the Court of Deputy Commissioner, N.C.Hill,
Haflong is annexed herewith and marked as Annexure-I

- (b) On receipt of the aforesaid exparte divorce decree/order dated 28.6.96 and being aggrieved, the applicant filed an application before the Court of Addl. Deputy Commissioner, N.C.Hill, Haflong challenging the aforesaid impugned exparte divorce order and claiming maintenance for herself and her children u/s 125 of the Criminal Procedure Code, 1973. The aforesaid application of the applicant was registered as T.S. Case No. 5/97.
- (c) At the hearing of the aforesaid T.S. Case No. 5/97, the matters of matrimonial disputes and differences arose between the deceased and the applicant were settled amicably and on such amicable settlement the Court was pleased to drop the proceedings of the aforesaid T.S. Case NO. 5/97 and also was pleased to set aside the aforesaid impugned exparte divorce decree dated 28.6.96 passed in T.S. Case No. 1/96 vide its order dated 4.9.97 (Annexure-X to O.A). Hence, in view of the aforesaid order dated 4.9.97, the impugned exparte divorce decree

dated 28.6.96 had no legal effect in the eye of law in the subsequent case and accordingly, the deceased during his life time informed the Respondent Nos. 5 and 6 under whom he was working in respect thereof by submitting the aforesaid order dated 4.9.97 passed in T.S. Case No. 5/97 with a request to endorse the name of the applicant in his Service Record Book as his legal nominee which was deleted inadvertently during the pendency of the aforesaid T.S. Case No. 1/96 and the same was within the knowledge of the applicant.

(d) It would be quite pertinent to mention that since 4.9.97 to till the death of the deceased, both the deceased and the applicant had been residing together as husband and wife as before under the same roof along with their two minor children. On enquiry and perusal of the Service Record Book of the deceased, during his life time, it was found that the Respondent Nos. 5 and 6 had not taken any step for insert of the name of the applicant in his said Service Record Book as his legal wife and nominee till the year 2002. Being aggrieved with the action of the Respondent Nos. 5 and 6 maintaining complete silent in this regard, the deceased during his life time sent a notice/representation dated 26.8.2002 (Annexure-V to O.A) to the Respondent No.6 with a request to insert the name of the applicant in his said Service Record Book as prayed for. Further during the period of his illness, having no other alternative way for authentication of their valid matrimonial relationship, executed an affidavit on 1.10.2002 jointly before the Court of Ist Class Magistrate, Haflong for its authentication and production in evidence on record before the Respondents to take stringent measure to check the menanc

(e) The deceased during life time while in service was required to submit Family Declaration in Form 6 by furnishing the details of his family and Nominations in Form 4 in as usual course under the provisions of Rule 74(1)(i), 74(3)(i) and 75(15) of the Railway Services (Pension) Rules, 1993 and the Family Pension Scheme, 1964 (here-in-after referred to as the Rules in short) and accordingly submitted in each and every year from time to time without fail. The deceased during his period of illness and treatment taken at Badarpur Railway Hospital, Badarpur filled up his Forms of Family Declaration, Forms of Nomination on 02.10.2002 in presence of two witnesses in favour of the applicant and their two minor children as his legal nominees for the year 2002 and accordingly submitted before the Respondent No. 5 through the

applicant on 03.10.2002 (Annexures -II,III and IV to O.A).

- (f) On perusal of the aforesaid Forms of family declaration and nominations submitted by the deceased for the year 2002, it is revealed that there was no such admission of his second wife contracted by second marriage with any stranger, Smti. Sipra Bhowmik till the date of the death of the deceased. Moreover, he neither admitted said Sipra Bhowmik as his legal wife or Nominee in his service record book is within the knowledge of the applic
- (g) During the life time and till the date of the death of the deceased, nobody of that locality of the deceased at Silchar and Badarpur had seen the said woman, Smti. Sipra Bhowmik with the deceased as his wife and even after the death of the deceased in his cremation and shradha ceremony. The applicant being legal wife/widow of the deceased was with the deceased till the date of his death and performed his cremation and shradha ceremony herself is evident from the photographs as shown in Annexure - XXI to O.A
- (h) In consideration of the contentions along with the relevant legal documents the claims for pensionary benefits as well as otheer benefits should be more carefully scrutinised by ensuring that the applicant is legally wedded wife/widow of the said deceased and she is fully entitled to receive the dues of the deceased and amount of pension benefit in respect of the said deceased under the provisions of Rule 75 of the Rules. The claims of said Smti. Sipra Bhowmik as widow of the deceased is totally unfounded and unwarranted as no legal documentary evidences has been furnished for authentication of her legal status as widow of the deceased and support of her said claims in respect of pension benefits in respect of the said deceased. If assumed but not agreed that the deceased contracted his second marriage with said Sipra Bhowmik, such marriage is null and void u/s 11 of the Hindu Marriage Act, 1955 (here-in-after reffered as the Act in short) since the said marriage is contracted in violation of the provisions of section 5(1) of the Act and Rule 21 of the Railway Services (conduct) Rules, 1966. In fact, contraction of second marriage in subsistence of the first wife of valid marriage is biogamy and punishable u/s 17 of the Act as well as under the provision of Rule 21 of the Railway Services (Conduct) Rules, 1966. Hence, in view of the above circumstances, Smti. Sipra Bhpowmik is not at all entitled to claim such pension benefits in respect of the said deceased.

- (i) Having regards to the facts and circumstances of the case, the Respondents had committed serious jurisdictional error while interfering with the quantum of denial of pension benefits to the applicant vide impugned orders dated 29.5.2003 and 10.7.2003 (Annexures-XI and XVI to O.A.) without affording reasonable opportunity of being heard to the applicant. The aforesaid impugned order dated 29.5.2003 was issued after eight months from the date of the death of the deceased which relief was required to grant immediately after the death of the deceased to mitigate the hardships and difficulties as well as to save the family members of the deceased.
- (j) The aforesaid impugned order dated 29.5.2003 was issued by the Respondent No. 2 for repudiating the claims of the applicant under the provision of Rule 75(12) of the Rules with an observation that applicant is judicially separated as per order dated 28.6.96 passed in T.S. Case No. 1/96. However, the Respondent No.2 did not mention any such disputed facts relating to the claims of Smti. Sipra Bhowmik. The impugned order dated 10.7.2003 was issued after two months from the date of issue of the earlier impugned order dated 29.5.2003 by raising such disputed facts itself by the Respondent No.2 without considering and/or appreciating the contentions and legal relevant documents as furnished by the deceased during his life time and the applicant immediately after the death of the deceased is arbitrary, improper, unreasonable, discrimination, violation of the principles of natural justice which leads to miscarriage of justice and caused prejudice to the interest of the applicant by affecting the fundamental rights of the applicant under the provisions of articles 14,21 of the constitution of India.
- (k) It would be quite pertinent to mention here that on consideration of the legal documents and prayer of the applicant for grant of necessary relief, Shri Karnendu Bhattacharjee, Member of Parliament (Rajya Sabha), Joy Kumar Road, Malugram, Silchar wrote a letter dated 04.07.2003 to the Respondent No. 2 with a request to disburse the dues and grant of pension benefit etc. to the applicant so that she may save her with her to minor

children (Annexure-XV to the O.A). In response to the aforesaid letter dated 04.07.2003, the deponent of the written statement made on behalf of the of the Respondents as well as acting on behalf of the Respondent No 2 himself made a reply on 23.10.2003 to the said Member of Parliament after lapse of more than two months from the date of issue of the aforesaid letter dated 4.7.2003. In the aforesaid letter dated 23.10.2003 it has been observed that the applicant is not entitled for any payment since she is divorcee of the said deceased as per decree of divorce dated nil granted by the Dy. Commissioner, N.C.Hill in case No. 1/96 and accordingly, the applicant aforesaid observation in the aforesaid letter dated 23.10.2003 was made without disclosing the real facts and/or concealing the actual facts as raised by the Respondent No.2 in its order dated 10.7.2003 that Smti. Sipra Bhowmik has claimed such pension benefits as a widow of the said deceased. It may noted that the deponent neither stated a single word regarding such disputed fact nor informed him that said Sipra Bhowmik made claim for such benefits. On perusal of the aforesaid letter dated 23.10.2003, it is clearly revealed that the deponent acting on behalf of the Respondent No.2 had misleded the said Member of Parliament by concealing the true facts and/or any disputed facts if arose in this case and played a role in game of hide and seek knowingly with a malafide intention to harass the applicant even after knowing the genuineness of the claims of the applicant in order to deny her claims for the reasons best known to him is improper, arbitrary, discriminatory and not sustainable in law subject to make the applicant sufferer.

A copy of the aforesaid letter dated 23.10.2003 made by the deponent on behalf of the Respondent No. 2 is annexed herewith and marked as Annexure- II

- (1) The findings so arrived in the aforesaid impugned orders dated 29.5.2003 and 10.7.2003 are not conforming to the requirements and/or reasons to be believed without any documentary evidence or corroborating materials under the provisions of law are not valid, tenable in law. The same had been issued on the basis of pure suspicion or fanciful imagination by taking an extraneous view of fraudulent plea of second marriage in fact and in law. The Respondent Nos 2, 3 and 4 being competent authorities of N.F.Railway have inherent power and jurisdiction under the provisions of

Rules to rectify the decision taken wrongly in violation of the provisions of the Act, Rules and Railway Services (Conduct) Rules, 1966 by them on such fraudulent facts as raised by Smti. Sipra Bhowmik on consideration of the legal documents in evidence on record furnished by the applicant.

- (m) It is rather unfortunate that the Respondents have not focused the after effect of fraudulent pleas and fraudulent acts by the Respondents No.2 while passing the aforesaid impugned orders. It must also point out at this stage that the wheel of Justice can move only on true facts. Any mischief including a fraud on the Part of Sipra Bhowmik as well as acceptance of the same by the Respondents in violation of Principles of natural justice would result in derailing the wheel of Justice. Justice is based on truth and truth cannot be trampled by an act of fraud. A litigant has to come to the court with clear hands and an unclean hand has to be shown the door by a court and not an entry to the court. Such entries would pollute the true atmosphere of a temple of justice. It is regret to mention here that all these necessary relevant legal materials of the applicant are not considered and/or appreciated by the Respondents while rejecting the claims of the application on extraneous Consideration. In view of the above, unfortunately, the Respondents have failed to exercise its powers in the matter of rendering justice under the provisions of Rule 75 of the Rules. However, the Respondents have no any information within the meaning of Rules and the Family Pension Scheme, 1964 applicable to the railway employees as well as various relevant provisions under the Act and Hindu Succession Act, 1956 so as to grant family pension validly in the present case. The reason to believe recorded by the Respondent No.2 for arriving at the conclusion for repudiating the claims of the applicant is Improper, irrational, unreasonable, unjustified and not in good faith. The grant of pension and other benefits to the applicant as remedial measure could have become final earlier upon the death of the deceased. But the same had been disturbed or unsettled by issuing such impugned orders in respect of the same claims again in the hands of the another entity.

- (n) The decisions or conclusions of the Respondents are not correct upon the careful Scrutiny of the evidences on record as made by the deceased during his life time while in service and furnished before the Respondent Nos. 5 and 6. The Respondents are not justified in ignoring and/or denying the availability of such documents before them arbitrarily by abusing the powers without any basis or reason. Hence, the applicant has specifically herein challenged the aforesaid

impugned orders dated 29.5.2003 and 10.7.2003 issued by the Respondent No.2 before this Hon'ble Tribunal on the various grounds as specified in the Original Application such disputes as arrived by the Respondent No.2 deliberately and arbitrarily without following the due proceedings of law and in violation of the principles of natural justice. It may be noted that the applicant has not yet challenged the said dispute regarding her legal status of widow with a bonafide believe that there is no such dispute as alleged by the Respondents.

- (o) The administrative as well as disciplinary actions of the Respondent No.2 are issuing the aforesaid impugned orders are arbitrary, discriminatory, unreasonable and violation of principles of natural justice without producing any such documents on record in support of its decision. The Respondents can not refuse to go into facts where it appear to it that there has been in the case a gross failure of justice. The applicant has been condemned unheard intended to prevent the Respondents from acting arbitrarily affecting the rights of the applicant. It is the fundamental rule of law that no such decision must be taken which will affect the rights of any person without first being informed of the case. Non-compliances with principles of natural justice results in arbitrariness as well as discriminatory. As such, the administrations of the respondent No.2 are violation of Articles 14,21 of the Constitution of India and miscarriage of justice. Indeed, if the findings touch any jurisdictional requirement and if the Respondents ignore relevant facts having a bearing on such requirement or takes into consideration of irrelevant facts, such findings will not be binding on this Hon'ble Tribunal in the present case so as to deprive it of the power to correct jurisdictional failure.
- (p) It may also be necessary to point out that though the said woman, namely Smti. Sipra Bhowmik made claims over the pension benefits of the deceased, the Respondent No.2 has not clarified the facts that in what capacity the said woman may claim and how did her claims has been accepted for denying the legislative claims of the applicant under the provisions of Rule 75 of the Rules and the Family Pension Scheme, 1964. Hence, the aforesaid impugned orders have no statutory force and validity of it since the matter relating to the said dispute raised by the Respondent No. 2 without adducing any documentary evidence in support

of the said dispute. Moreover, the said woman neither filed any application nor claimed her legal status as widow of the deceased in any court of law after the death of the deceased by adducing sufficient and satisfactory evidence /evidences. It would be quite pertinent to mention here that if the deceased contracted his second marriage during the subsistence of his first wife, the applicant, as well as in violation of the provisions of section 5(1) of the Act, being after coming into force of the said Act, such marriage would be illegal, void and the question of treating such woman as widow of the said deceased concerned. Thus does not arise at all. Thus, the question of the said woman succeeding to the properties of the said deceased by virtue of the provisions of Rule 1 of section 10 of Hindu Succession Act, 1956 does not arise. As such, the aforesaid impugned orders dated 29.5.2003 and 10.7.2003 are arbitrary, unreasonable, discriminatory and not sustainable in law and liable to be set aside and/or quashed.

5. Now the applicant shall deal with the statements and allegations made in the written statement

6. Save what appears from records the statements made in paragraphs 1,2,7,8,9 of the written statement are within the knowledge of the Respondents intending to deny the claims of the applicant are wrong, misconceived and misleading the Hon'ble Tribunal and denied in toto.

7. That with regard to averments in paragraph 3 of the written statement the applicant submitted as follows:-

- a) There is no dispute about the legal status of the applicant as widow of the deceased as well as the finding or decision so arrived by the Respondent No. 2 subject, however, to the conditions laid down u/s 5 (i) read with section 11 of the Act, and if the second marriage between two Hindus solemnized after the commencement of the Act, is void since the applicant being first and legally married wife resided with the deceased till the date of death of the said deceased as per documents admissible in evidence on records in any proceeding at the trial of the application under the said Act,
- b) In case of contravention of the condition specified u/s five of the said Act, the marriage is bigamy and it not marriage in the eye of law and punishable u/s 17 of the said Act,

- c) The finding so arrived at by the Respondents. That the deceased had married the said women, Smti Sipra Bhowmik is now disputed before the Respondent No. 2 but not before the applicant. This apart, upon careful scrutiny of the evidences on records amply proves that the said deceased had not, indeed, married the said women, Smti Sipra Bhowmik, way back legally as such the wife of such void marriage can not be treated as a widow of the said deceased.
- d) It may be noted that when the deceased and the applicant were living together as legal husband and wife under the same roof and cohabiting for a number of years till the date of the death of the deceased, there would be presumption in law that the applicant is legally wedded widow of the deceased.
- e) Solemnization of second marriage by the Central Government (N.F.Railway) employee is under the control of the Respondents as per the provision of Rule 21 of the Railway Services (Conduct) Rules, 1966. A railway employee is not entitled to solemnize second marriage in violation of the Rule 21 of the aforesaid Rules and the Respondents are also not entitled to permit any employee for second marriage during the subsistence of his valid first marriage with the first wife without adducing any relevant documents in evidence on record in order to prove the reasons as specified under section 5 of the Act. However, notwithstanding the fact, the applicant has denied the said marriage of the deceased with the said woman and hence, it has also not been disputed before the applicant in any view of the matter.
- f) So far the necessary party is concerned, the Respondent No. 2 is the top brass and welfare authority of N.F.Railway, Lumding. It is the competent authority for grant for grant of settlement of dues and pension benefits to the retired railway employee and/or the deceased under the provisions laid by the Rules. The applicant is the legally wedded widow of the deceased as per documentary evidences on record and entitled to receive the aforesaid benefits in respect of the deceased and the Respondent No.2 is the said authority entitled to grant and/or sanction for the same immediately after the death of the deceased to mitigate the hardships and difficulties of the said ill-fated family of the deceased under the provisions of Rule 89 of the Rules. The Respondent No.3 is the top brass authority of Finance Department of N.F.Railway, Lumding vested with the power to sanction the amount of settled dues as well as family pension in respect thereof under the provisions of Rule 75 of the Rules and the family Pension Scheme, 1964. The Respondent No. 4 is the highest,

competent, controlling authority of the Engineering Department of N.F. Railway under which department the deceased was working and the Respondent Nos. 5 and 6 are the immediate authorities of the department of the deceased under whom the deceased was working while in service. The Respondent No. 7 is the welfare Inspector, Finance Department, Lunding Division, N.F. Railway concerned with the matter of the applicant regarding consideration of family pension on the basis of relevant documents to the applicant for welfare of the family of retired person and/or the deceased. The applicant neither concealed anything in her representations made before the Respondents nor alleged anything regarding such alleged dispute as made by the Respondents in its written statement. As such, the Respondents are the competent authorities of N.F. Railway to deal with said claims of the applicant for grant of the said reliefs as prayed for under the facts and circumstances of the case on the basis of relevant legal documents in evidences on record in due discharge of their lawful duties. In fact, the Respondents are the appropriate, proper, competent and necessary authorities in the instant case for the welfare of the ex-employee of N.F. Railway and/or the deceased.

- g) The purpose of another party or parties in the instant case is/are not required to be heard since there is no any such legal obligation in the hands of any stranger/third person to whom the deceased had neither nominated as his family member during his life time nor mentioned anywhere in his record of service book the name of such woman, Sipra Bhowmik under the provisions of Rule 74(3) of the Rules wherein it is provided that if at that time of making the nomination the railway servant has a family consisting of more than one member, the person so specified shall not be a person other than a member of his family. Moreover, the provision of Rule (1)(i) of the Rules provides that the railway servant has a family, the nomination shall not be in favour of any person or persons other than the members of his family. Hence, relied on the above provisions, there is no basis on the part of any person to claim such benefit without any authority of law and the Respondents are also not entitled for repudiating the claims of the applicant by raising the question of imp leading necessary party. Further it has not been mentioned by the Respondents that who will be the necessary party and whom will be needed to be imp leaded as necessary party is arbitrary, improper and not sustainable in law in order to vitiate the proceeding pending before this Hon'ble Tribunal. As such, the allegation of non-joined of necessary party in this instant case has been made mechanically without specifying valid reason, satisfactory evidence on record in as much as without proper application of

independent mind. Hence, the Respondents are misleading this Hon'ble Tribunal and as a result, the applicant has been declined to agree with the averments of the Respondent made in the written statement in this regard.

h) So far the jurisdiction of this Hon'ble Tribunal is concerned to entertain this instant case on account such disputes as raised by the Respondents, it is respectfully submitted that the Respondent has committed manifest error of law while interfering with the quantum of denial pensionary benefits to the applicant and interfering the provision of Rule 75(12) of the Rules. The Respondent NO2. had itself interfered with the facts of the case and passed the aforesaid impugned order dated 29.5.2003 without raising any dispute regarding said Smti. Sipra Bhowmik if it received the documents in her favour earlier before issuing such order as alleged in its written statement. Further, issued another order after two months of the aforesaid order dated 29.5.2003 by raising such dispute for denying the claims of the applicant by abusing its power and exercising its jurisdictional power under the provisions of Rules 74, 75 and 89 of the Rules enabling it to interfere with even on disputed facts in this case so that it is deprived of a jurisdiction which would be co-extensive with that of Civil Court. The right to challenge the said dispute arise only when the Respondents had not exercised such jurisdiction under Rules to issue the aforesaid impugned orders on the facts and circumstances of the case. In fact, the applicant and the said woman who claimed the benefits of the said deceased could had been directed by the Respondent No. 2 to approach before the Civil Court before issuing such impugned orders on the facts as found by it or assumed by it to exist with holding the view that the Respondent No.2 had no such jurisdiction or power to entertain the proceeding in this case. It may be noted that while the Respondent No.2 had already issued the aforesaid impugned order dated 29.5.2003 and 10.7.2003 by denying the pension benefits and other service benefits to the applicant on the same ground under the provisions of the Rules rightly or wrongly in violation of the principles of natural justice resulting the violation of the fundamental rights of the applicant under Articles 14, 21 of the Constitution of India, that cannot be called in any civil court or no civil court can sit on the decision or conclusion so arrived by the Respondent No.2. Hence, it is a fit case for this Hon'ble Tribunal to interfere in the instant case and pass necessary order granting reliefs to the applicant and/or pass necessary order/orders as deem fit and proper.

- i) It would be quite pertinent to mention here that section 22(3) of the Administrative Tribunal Act, 1985 invest this Hon'ble Tribunal with the power and jurisdiction exercisable by the Civil Court in such case under the Code of Civil Procedure, 1908. It may further be noted that the present Original Application has been admitted by this Hon'ble Tribunal vide its order dated 28.4.2004 u/s 19(3) of the Administrative Tribunal Act, 1985 after hearing the parties and being satisfied with the facts and circumstances of the case that it is case for adjudication or trial by it. As such, the proceedings under the relevant service rules as to redressal of grievances in relation to the subject matter of the said application pending before this Hon'ble Tribunal for its adjudication.
- j) The aforesaid impugned orders had been issued on an extraneous consideration by ignoring the relevant legal evidences of the applicant on record under the provisions of law and in violation of the principles of natural justice as well as without adducing any documents on record in support of such dispute. Such illegal actions of the Respondents are failure to exercise its jurisdiction under the Rules.
- k) However, the alleged disputed facts or decision so arrived by the Respondents are without any sufficient materials or documentary evidences on record in support of such decision are improper, unreasonable, discriminatory, not tenable in law and liable to be cancelled and/or struck down. In view of the above, it is fit case to interfere by this Hon'ble Tribunal by exercising its inherent power with the findings of the Respondent No.2 for redressal of grievances of the applicant being a legally wedded widow of the said deceased. Hence, it is denied that the Original Application is not be maintainable as alleged in the written statement.

8. That with regard to the averments made in paragraphs 5,6 and 10 of the written statement, it is submitted as below:

- a) the deceased being a railway employee while in service was required to to submit Family Declaration in Form 6 by furnishing the details of his family and nomination in Form 4 to the Respondent No.5 in favour of the applicant and their two minor children in as usual course from time to time in each and every year under the provisions of the Rules 74 (1)(i) 74(3)(i) and 75(15) of the Rules. The deceased during his life time while in service submitted the aforesaid relevant documents before the Respondent No.5 for the year 1999,2000, 2001 and 2002 is within the knowledge of the application for its necessary implements.

- b) It would be quite pertinent to mention that during the life time of the deceased while in service, finding nothing regarding insertion of the name of the applicant sent a letter/notice in writing dated 26.8.2002 to the Respondent No. 6 for endorsement of the name of the applicant as his legal wife and nominee . Because the name of the applicant was deleted by the deceased in the year 1996 due to some misunderstanding arose between the deceased and the applicant but the same were settled vide order dated 4.9.97 passed in T.S Case No. 5/97 . In view of the above, the deceased during the period of his illness and treatment at Badarpur Railway Hospital filled up Forms of fresh nomination and Family declaration on 2.10.2002 in presence of two witnesses as per the provisions of Rule 74(5) of the Rules and submitted before the Respondent No.5 on 3.10.2002 along with the affidavit dated 1.10.2002 for its necessary action as reiterated in Annexure- VIII to O. in order to conferred the rights to the applicant and their minor two children to receive such Pension benefits and death-cum-retirement gratuity payable under Rule 70 and 75 of the Rules. Hence, the submission of the aforesaid relevant documents after the death of the deceased as alleged by the Respondents is denied and disputed.
- c) The allegations of non-availability of family declaration for the year 2000,2001 and 2002 are within the special knowledge of the Respondents and the applicant does not admit anything of said purported averments made in this aforesaid paragraph 5 of the written statement purposefully to deny the claims of the applicant .
- d) It would be necessary and important to mention here that immediately on received of the aforesaid documents for the year 2000 and 2001 from the deceased during his service period , the Respondent No.5 had countersigned the same indicating the date of receipt and kept it in his custody but the said documents for the year 2002 as submitted on 3.10.2002 were returned to the applicant on 18.11.2003 as reiterated in Annexure-VIII to the O.A. Re-submission of the said documents after attestation made by the DMO/ Badarpur Railway Hospital as per advise of the Respondent No. 5 were also had been returned to the applicant without any valid reason or basis with an assurance that her claims will be considered in time. As such, question of counter on the said documents as alleged by the Respondents further never arise since the fault is committed by the Respondent No.5 itself with a malafide intention to harass the applicant unnecessarily.
- e) The averments made in the aforesaid paragraphs of the written statement are for

depriving and/or denying the grant of settlement dues and family pension in favour of the applicant. Such illegal rejection of the claims of the applicant on an extraneous consideration in the garb of public interest should not be allowed in any view of the matter. The Respondents in their sweet will cannot make such averments in purported exercise of power without following the due process of law. The Respondent No.2 was not justified for taking such averments knowingly and abruptly putting the applicant acting upon said averments in extreme jeopardy. As such, such abrupt refusal of the benefits to the applicant caused prejudice to the interest as well as the rights of the applicant. Hence, the Hon'ble Tribunal has ample power to intervene and issue mandamus of doing justice.

9. That the allegations made in paragraph 7 of the written statement are denied and disputed. While the exparte divorce decree dated 28.6.96 had been issued in T.S. Case No. 1/96 (Annexure-I to this reply), it cannot be expected that the Respondents failed to understand the meaning of the said impugned order by observing once as 'JUDICIALLY SEPERATED' in its order dated 29.5.2003 and again 'DIVORCEE' in its order dated 10.7.2003 issued simultaneously after two months of the earlier aforesaid order dated 29.5.2003. It had also become impossible for the Respondents to understand that on the same date in the same case two different decrees cannot be passed by the same court and further the court cannot pass exparte decree in matrimonial suit without affording a reasonable opportunity to the party of being heard and to defend against the allegations made by the opposite party. In view of the above, the Court of Deputy Commissioner had committed a manifest error of law and liable to be set aside and/or quashed. Hence, on perusal of the aforesaid exparte decree dated 28.6.96, no court of Magistrate can pass such order dated 21.7.98 for re-marriage of the deceased even after granting the order dated 4.9.97 in T.S. Case No. 5/97. If such order for re-marriage of the deceased was passed and/or obtained by misleading and/or concealing the real and true facts of the case, the said court had committed a manifest error of law in violation of the provision of section 5(1) read with section 11 of the Act as well as violation of the order dated 4.9.97 passed one year before the said order dated 21.7.98. It may be noted that a legal divorced person is not required to obtain any further order from any court of even after expiry of one year from the date of the legal divorced decree under the Act. When the deceased was not legally divorced from the applicant and settled the disputes on 4.9.97, question of obtaining permission and/or granting such permission for re-marriage by the Respondents is not sustainable in law. Since the order and/or permission for re-marriage of the deceased had been granted by the Respondents behind the back of the applicant in violation of the principles of natural justice. The deceased had obtained such permission from the court and the Respondents, if

any, by misleading the said authorities and cheating the applicant during the period of subsistence of his first and valid marriage. Hence, such order dated 21.07.1998 was illegal, discriminatory and liable to cancelled. However, the Respondents relied on the aforesaid order dated 21.07.1998 for supporting the claims of the said woman, Shri Sipra Bhowmik without producing any documentary evidence on record with this written statement for the reason or interest best known to them. It is not understood why the Respondents are such adamant, confirmed and concerned about the claims of Sipra Bhowmik who is not at all legally wedded widow of the deceased and cannot be treated as widow of such void marriage under the provisions of law without having any documents in evidence on record purportedly.

10. That in view of the above background, the aforesaid impugned order dated 10.07.2003 stipulates that the Respondent No. 2 being satisfied with the illegal, unjustified and invalid claims of the stranger, Smti. Sipra Bhowmik without producing the documents relied upon necessary for the public interest so as to hereby deny the claims of the applicant on the reason specified in the said order. Save as aforesaid and all other allegations are misconceived, misleading and are denied.

11. That the allegations made in paragraph 9 of the written statement are denied and disputed. As required by the Respondent No.2 the order dated 4.9.97(Annexure-X to the O.A) for the reason of not finding out the said order in the file of the deceased as submitted during his life time, the applicant obtained the said order from the court of Addl. Deputy Commissioner, N.C.Hill, Haflong on 21.01.2003 and furnished before the Respondent No. on 31.01 2003 for its necessary implementation for grant of relief as prayed for. But the Respondent No. issued the impugned order dated 29.5.2003 after taking time for long period of four months from the date of receipt of the said copy of the order dated 4.9.97 arbitrarily in purported exercise of power without appreciating and considering the aforesaid legal documentary evidences on record inasmuch as without affording reasonable opportunity of being heard and without informing anything that such stranger, Smti. Sipra Bhowmik had also made such claims as widow of the said deceased. Being aggrieved, the applicant further preferred another representation dated 25.6.2003 (Annexure-XII to O.A) and submitted an affidavit dated 26.6.2003 executed by the applicant before the court of Ist class Magistrate, N.C.Hill on 26.6.2003 (Annexure XIII to O.A.) for authentication of her status as legal widow of the said deceased and grant of her reliefs as prayed. The allegations as made in the written statement relating to the order dated 4.9.97 for its submission before the Respondents on 25.6.2003 is totally wrong, misconceived and denied. Moreover, the allegations made in the last part of the aforesaid para 9 regarding the said order dated 4.9.97 is misconceived and misinterpreted by the Respondents and hence, denied.

12. That the allegations made in paragraph 11 of the written statement are denied and disputed. The aforesaid letter/notice dated 26.8.2002 (Annexure- V to O.A) was submitted by the deceased as reiterated in paragraph 8(b) of this reply. The aforesaid letter dated 26.8.2002 had been submitted by putting his own signature which may be authenticated by comparing with his other signatures made in the relevant form of family declaration, nomination and legal affidavit dated 1.10.2002 executed jointly with the applicant. The allegation regarding submission of the said affidavit dated 1.10.2002 before the Respondent Nos. 2 and 5 has already been submitted in Annexure VIII to O.A.

13. That the allegations made in the paragraph 12 of the written statement are denied and disputed. The allegations made therein are misleading and vague. The Respondents took sufficient time in filling their written statement and withheld so called "correct facts". Significantly, it may be noted that it has not been understood that why the deceased made family declaration unfortunately only for the year 1999 but not for other subsequent years, 2000, 2001 and 2002 if towards the insertion of the name of said Sipra Bhowmik as his wife if the deceased was divorced husband of the applicant and married the said woman Smti. Sipra Bhowmik on 3.11.98. The said allegation as made by the Respondents, could not be proved by producing document in evidence on record. From the reading of such allegations it is evident that such admission neither made by the deceased nor requested the Respondents in writing under Rule 21 of the Railway Services (conduct) Rules, 1966 for obtaining permission in respect thereof. The legal documents as furnished by the deceased and the applicant before the Respondents had been rejected deliberately, knowingly with willful negligence towards the claims of the applicant since the documents had been submitted just before the few month/days from the date of death of the deceased and the documents are valid as there is no any contingency provided therein under Rule 74(3)(ii) of the Rules and the applicant is entitled for claiming such pension benefits in respect of the said deceased.

It would be quite pertinent to mention that the applicant has been surprised that how the Respondents accepted the claims of said Smti. Sipra Bhowmik as widow of the deceased and her false assertions as made in her affidavit dated 23.12.2002 executed after long period of the death of the deceased that there is no other surviving members of the family of the said deceased without having any relevant document in evidence on record and/or any enquiry required to be conducted by the concerned authority and to furnish the said report to prove that statement of said Smti. Sipra Bhowmik. But nothing has been done by the Respondents nor afforded reasonable opportunity for hearing to the applicant. The Respondent Nos. 5 and 6 were fully acquainted with the real facts and circumstances of the case whether the applicant is genuine, legal widow of the said deceased or not who paid Rs. 1500/- to the

applicant at the cremation of the deceased from the said railway department and the applicant performed the shradha ceremony of the deceased by begging Rs. 10/20/50 from the other office staffs and officers of the office of the deceased as reiterated in Annexure-VII to O.A. At that time no such woman, namely Smti. Sipra Bhowmik was seen during the illness and treatment as well as on the spot of cremation and shradha ceremony of the said deceased. After death of the deceased, being inspired by the Respondents, she has approached before the Respondents as a bolt from the blue. As such, the claim of said woman is totally unfounded and unwarranted and she is not at all entitled to claim any pension benefits. The living the applicant with the deceased is evident from the photographs as shown in Annexure-XXI to the O.A.

14. That the allegations made in paragraph 13 of the written statement are denied and disputed. The purported decision for holding the aforesaid order dated 4.9.97 passed T.S. Case No. 5/97 as confusive are misconceived and misleading. If the said order was not available before the Respondents before issuing the impugned orders dated 29.5.2003 and 10.7.2003, how did such decision has been arrived by Respondents. The observations of the said order dated 4.9.97 had not been made by the applicant herself. It is obtained from the court and the applicant obtained the certified copy of the said order by preferring an application dated 20.1.2003 (Annexure- IX to the O.A.) and produced the photocopy of the said certified copy of the order before the Respondent No.2 on 30.1.2003 before issue of the aforesaid impugned order dated 29.5.2003. Moreover, the copy of the said order dated 4.9.2003 was certified by Head Assistant of the Deputy Commissioner's office. There is no any fault or dispute on the part of the applicant.

It is also, at this stage, necessary to note that the certificate dated 16.10.2003 (Annexure-XVII to the O.A.) issued by the Judicial Peshkar of the Court of Addl. Deputy Commissioner, N.C.Hill, Haflong which proves that the disputes between the said deceased and the applicant had been settled and they were re-united as husband and wife.

15. That the allegations made in paragraph 14 of the written statement are wrong, misconceived and unjustified. The order dated 4.9.97 passed in T.S. Case No. 5/97 had already been submitted before the Respondent No. 2 on 30.1.2003. The Respondents in one hand admitted that fact that they issued the impugned orders dated 29.5.2003 and 10.7.2003 as per the availability of records and on the other hand issued the aforesaid orders due to non-availability of the similar copy of the order dated 4.9.97 as Annexure-X to the O.A.

In view of the above averments, it is found that no particular contrary to the claims of the applicant has been made. Hence, the Respondents had committed a manifest error of law by issuing the aforesaid impugned orders due to non-availability of the said order dated 4.9.97

without asking the applicant for the same as otherwise the same could be done in favour of the applicant by the Respondents. It is repeated that said impugned order were in colourable exercise of power and not in public interest and issued in utter haste without application of mind on the merit of the same which is for interference by this Hon'ble Tribunal.

Further, it is submitted that it has not been understood that if said Smti. Sipra Bhowmik had made her claims after the death of the said deceased, then why it was not mentioned in the impugned order dated 29.5.2003 and why it is in the impugned order 10.7.2003 after two months of issue of that earlier order. On perusal of the aforesaid impugned orders, it is appeared that such illegal indication was made by the Respondents with a malafide intention to harass the applicant and to deny her claims which was required to be granted in order to save the ill-fated family members of the deceased. Such impugned actions of the Respondents are violation of the principles of natural justice, Articles 14, 21 of the Constitution of India and not sustainable in law and liable to be set aside and/or quashed.

16. That That with regard to the statements made in paragraphs 15, 16 and 18 are within the special knowledge of the Respondents in order to deprive the applicant from claiming such benefits unnecessarily without any valid reason or basis by abusing their power of discretion in a colourable exercise of power, not in public interest causing prejudice to the applicant who is suffering from irreparable loss and injury without any justification.

It is submitted that there is specific challenge regarding such disputes as arose by the Respondents in the original application of the applicant. So, the Respondents did not have such opportunity to meet this point of disputes in this written statement. The matter has been stated in the present original application only as the facts but on scrutiny this point of dispute of widow has no merit in the present case. The provisions of Rule 75 of the Rules are mandatory and it must receive construction which will effectuate the purpose of the Rules. An interpretation must be avoided which will lead to destroy the members of the family of the deceased and/or his legal nominees by taking a shelter under the umbrella of power to avoid and/or deny the claims of the applicant by proper planning. An attempt to prevent fraud or fraudulent transactions by the Respondents adopted as a device to deny the claims of the applicant should be quashed by this Hon'ble Tribunal as it is necessary to protect the true rights of the applicant to mitigate the hardships and difficulties of the said poor family members of the said deceased as otherwise, the applicant shall sufferer from irreparable loss and injury.

17. That the allegations made in paragraph 17 of the written statement are arbitrary, illegal, disputed and hence denied. It is submitted that in order to appreciate the

legislative claims of the applicant being legally wedded wife/widow of the said deceased are genuine and sustainable in facts and in law. The appreciation and acceptance of illegitimate claims of the said woman, Smti. Sipra Bhowmik as widow of the said deceased by the Respondents vide impugned order dated 10.7.2003 is arbitrary, illegal, discriminatory, unreasonable and violation of the principles of natural justice as well as severe failure of the Respondents in following the due process of law. Further, it may be noted that the aforesaid impugned orders had been passed without having proper information of the provision of section 5(1) read with section 11 of the Act and section 17 of the said ACT as well as Rule 1 and 2 of the Hindu Succession Act, 1956. The provisions of Rule 1 of section 10 of the Hindu Succession Act provides that if a Hindu male person, having a legally wedded wife, married another female person after the said Act came into force, then the second marriage would be illegal and the female person who goes under such a second marriage, marriage is void and can not be treated as a legally wedded wife and hence, the question of her being treated as a widow of the said deceased Hindu does not arise.

In view of the above background, neither the question of counter claims of the two widows nor claim of maintenance as pensionary benefits by the said Smti. Sipra Bhowmik does not arise. It is not understood why the Respondents could not pay the pension benefits to the present nominees of the said deceased as per record submitted by the deceased during his life time. There is no bar in paying the pension benefits to the nominees of the deceased as notified by the deceased in his letter dated 26.8.2002, family declaration and nomination forms duly filled up by the deceased himself during his life time under the provisions of Rule 74 (5)(6) and 75 of the Rules.

18. That with regard to the averments made in paragraph 19, it may be noted that the statements made by, Smti. Sipra Bhowmik in her affidavit dated 23. 10. 2003 will clearly indicate that she had been cheated by the deceased that he was unmarried and hence, she filed a case No. Misc. 161 /2001 in the Karimganj. In view of the above, it clearly proves that the deceased had legally wedded wife and he contracted second marriage by cheating her and as such, the said marriage is bigamy and punishable u/s 17 of the Act. The Respondents even after knowing such facts how made such allegation of counter claims of two widows is not understood.

On considerations of the above facts and circumstances of the case, it is respectfully submitted that the applicant is legally wedded widow of the said deceased and entitled for such benefits of final settlement of dues of the deceased and grant of family pension in respect of the said deceased under the provisions of Rules, Act and Hindu Succession Act, 1956 and the Hon'ble Tribunal would be pleased to consider the prayer of the applicant for grant of such benefits to the applicant by passing appropriate order/orders in this regard as otherwise the applicant shall be put to great hardships and difficulties.

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19. That the statements made in paragraphs 1 to 4, 6 to 8, 11 to 14 & 18 of the forgoing affidavit are true to my knowledge and those contained in paragraphs 4(a) & 4(k) are based on information derived from records and believed to be true by me and those contained in paragraphs 9, 10, 15 to 18 are my humble submissions before this Hon'ble Tribunal.

I signed this affidavit on this 8th day of July, 2004 at Guwahati.

Identified by,



Smt. Uma Chakraborty,

Advocate.

Malati Bhowmik
DEPONENT



Date of application for the copy.	Date fixed for notifying the requisite number of stamps and folios.	Date of delivery of the requisite stamps and folios.	Date on which the copy was ready for delivery.	Date of making over the copy to the applicant
21. 7. 98	21. 7. 98	21. 7. 98	21. 7. 98	21. 7. 98

Certified copy of last order passed by Shri P.K.Hajaria,
Deputy Commissioner, N.C.Hills, Haflong on 28.6.96 in
T/S Case No. 1/96.

Shri Sachindran Bhowmik

STVs. Anti. Malati B. Bhaik.

28/6/96

Second party absent. first party present.
Case taken ex parte as the second party
remained absent & there is no chances of
coming to appear before court.

Hence decree of Divorce granted as
prayed by the First party.



Typed by: - *[Signature]*
Compared by: - *[Signature]*

Sd/- P.K.Hajaria,
Deputy Commissioner,
N.C.Hills, Haflong.

CERTIFIED TO BE TRUE COPY

Certified to be true copy

[Signature]
Mrs. Uma Chakraborty
Advocate

[Signature]
Head Clerk,
Deputy Commissioner's Office
North Cachar Hills Dist.
Haflong.

Reg. with A.D.



150 GLORIOUS YEARS



RLY.	BSNL
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ए. किसपोट्टा

व. मंडल कार्मिक अधिकारी

A. KISPOTTA

Sr. Divl. Personnel Officer

Lumding : Nagaoon : Pin - 782447

No. E/FS/Engg/10/2002

Date: 23.10.2003.

To,
Sri Karnendu Bhattacharjee,
Member of Parliament (Rajya Sabha),
Joy Kumar Road, Malugram,
Silchar - 788 002

Dear Sir,

Suo: Payment of pensionary benefit.
Ref: Your letter dtd. 04.7.2003.

With reference to the above, it is informed that Late Sachindra Kr Bhowmick, ex. Store Watchman under Section Engineer (Works)/Silchar expired on 07.10.2002 while in service.

Smt. Malati Bhowmick claimed for settlement dues as admissible after the death of Late Sachindra Kr. Bhowmick.

On scrutiny of the records it is found that Smt. Malati Bhowmick is divorcee of Late Bhowmick as per decree of divorce granted by Dy. Commissioner N.C. Hill in TS case No.1/96. Accordingly she has been informed vide this office letter of even number dtd. 10.7.2003 that she is not entitled for any payment, however, the child/children born by her out of the marriage with Late Sachindra Kr Bhowmick is/are entitled of the shares. But Smt. Malati Bhowmick has not submitted any legal documents in favour of her child/children till date. In absence of legal document no further action can be taken in order to arranging payment in favour of the child/children.

This is for your kind information.

With kind regards,

Yours faithfully,

Certified to be true copy

Mrs. Uma Chakraborty

(A. Kispotta)

Sr. Divisional Personnel Officer