

**CENTRAL ADMINISTRATIVE TRIBUNAL**  
**GUWAHATI BENCH**  
**GUWAHATI-05**

(DESTRUCTION OF RECORD RULES, 1990)

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SECTION OFFICER (Judl.)

Kalita  
24.10.17

CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH:

ORDERS SHEET

1. Original Application No. 151/06
2. Misc Petition No. \_\_\_\_\_
3. Contempt Petition No. \_\_\_\_\_
4. Review Application No. \_\_\_\_\_

Applicant(s) S. Borgohain & ors

Respondant(s) Wor 2 ors.

Advocate for the Applicant(s) Dr. S. Deka, .....  
M.S. M. Dey, .....

Advocate for the Respondant(s) Standing Counsel, Smt. B. Devi  
Railway - Mrs. D. Borgohain  
Miss Mira Borah

Notes of the Registry

Date

Order of the Tribunal

Page 5

20.06.2006 Present: Hon'ble Sri K.V. Sachidanandan  
Vice-Chairman.

This application is in form  
is filed/C. F. for Rs. 50/-  
deposited vide IPO/BD

No. 266 324508

Dated 9.6.06

[Signature]  
Dy. Registrar

Steps taken

[Signature]  
19.6.06

Heard Dr. (Mrs.) S. Deka, learned  
counsel for the Applicants and Dr. J.L.  
Sarkar, learned standing counsel for the  
Railways.

The applicants' son late Kanon  
Borgohain was working as Senior  
Sectional Engineer under Divisional  
Mechanical Engineer, N.F. Railway, New  
Guwahati Diesel Shed. The grievance of  
the applicant is that her son died on  
01.08.2005 leaving behind his old and  
ailing parents and widow, i.e. the  
Respondent No. 5 and pensionary benefits  
has already been granted to the  
Respondent No. 5. Now, the applicants'  
claim is that they are entitled to get 50%  
retirement benefits since they are solely  
dependant the son/parent.

Contd/-

OA 15/06

: 2 :  
Contd/-

20.06.2006

Considering the larger issue involved in this O.A., the O.A. has to be admitted. Admit. Issue notice to the Respondents.

Notice & order  
Sent to D/Section  
for issuing to  
resp. nos. 1 to 5  
by regd. A/D post.

Six weeks time is granted to the Respondents to file reply statement. Post on 03.08.2006.

27/6/06 D/No-674 to 678  
Dt= 6/7/06

Vice-Chairman

/mb/

Notice duly served  
on resp. nos. 2, 3 & 4.

03.08.2006 Present: Hon'ble Sri K.V. Sachidanandan  
Vice-Chairman.

Hon'ble Sri Gautam Ray,  
Administrative Member.

Learned counsel appearing for the parties wanted to file reply statement.

Post on 05.09.2006.

1-8-06

No. written statement  
has been filed.

Member

Vice-Chairman

mb

05.09.2006 Present: Hon'ble Sri K.V. Sachidanandan  
Vice-Chairman.

No. wk has been  
filed.

Mrs. B. Devi, learned Railway Counsel and Ms. D. Buragohain, learned Counsel appeared for the Railways and the 5th Respondent respectively and submitted that they have filed reply statement. Let it be brought on record, if it is otherwise in order. Learned Counsel for the Railways also submitted that she has filed a Misc. Petition, which was not numbered. Let it be posted on the next date alongwith O.A.

Contd/-

Contd/-

05.09.2006

Since larger issue is involved in this case regarding grant of pension to the parents, Ms. U. Das, learned Addl. C.G.S.C. is appointed as amicus curie to speak about the CCS (Pension) Rules, whether such provision is there. The Registry is directed to provide all the papers to enable her to speak about the CCS (Pension) Rules.

Post on 21.09.2006.

Vice-Chairman

/mb/

21.9.2006

Dr.(Mrs)S.Deka, learned counsel for the applicant submits that she is not keeping well and hence sought for an adjournment. Adjourned accordingly.

Post on 2.11.2006.

Vice-Chairman

bb

2.11.2006

Heard Mrs.M.Devi, learned counsel for the applicants, Mrs.B.Devi, learned Railway counsel, Ms.U.Das, ~~xxxxxx~~ Addl C.G.S.C. learned amicus curie and Ms.D. Buragohain, learned counsel for the respondents No.5.

Reserved for orders.

Vice-Chairman

bb

22.12.06.

Judgment delivered in open Court. Kept in separate sheets. Application is dismissed. No costs.

Vice-Chairman

lm

order dt. 5/9/06  
duly completed.

7/9/06.

6.9.06

W/s filed by the

Respondents Nos. 1, 2, 3, 4, & 5

W/s

W/s has been  
filed.

1.11.06.

Recd  
29/12  
MA

For (Rly J.C.  
Respondents)

22/1/07

Certified copy of  
the judgment has been  
collected by the  
applicant and respondents  
No.5.  
Ht.

12/1/02

A copy of  
the Indst has  
been sent to  
the Chairman,  
BTH Pay Commission  
Velle D. No. 151/2006/  
Indst/42 of 12/1/02  
by speed post.

est.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH, GUWAHATI

O.A. No.151 Of 2006

DATE OF DECISION 22.12.2006

Smti Subarnna Borgohain & Another

.....Applicant/s  
Ms.M.Devi

..... Advocate for the  
Applicant/s

- Versus -

U.O.I. & Ors.

.....Respondent/s

Mrs.B.Devi, Railway Counsel, Ms.D.Borgohain for 5th  
Respondent & Ms.U.Das, Amicus curie

.....Advocate for the  
Respondents

CORAM

THE HON'BLE MR. K.V. SACHIDANANDAN, VICE CHAIRMAN

1. Whether reporters of local newspapers may be allowed to see the Judgment? Yes/No
2. Whether to be referred to the Reporter or not? Yes/No
3. Whether to be forwarded for including in the Digest Being complied at Jodhpur Bench & other Benches ? Yes/No
4. Whether their Lordships wish to see the fair copy of the Judgment? Yes/No

22/12/06  
Vice-Chairman

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH

Original Application No. 151 of 2006

Date of Order : This, the 22nd Day of December, 2006.

**The Hon'ble Sri K.V. Sachidanandan, Vice-Chairman.**

1. Smti. Subarnna Borgohain  
W/o - Shri Basanta Borgaohain
2. Shri Basanta Borgaohain  
S/o - Late B. Borgogain  
Both are resident of Salaguri Pahigaon,  
P.O. - Kalugaon, P.S. - Joysagar  
District - Sibsagar, Assam.

... Applicants.

By Advocates: Dr. (Mrs.) S. Deka and Ms. M. Devi.

- Versus -

1. The Union of India,  
Through - The Secretary to the Government of India,  
Railway Ministry, Rail Bhawan,  
New Delhi.
2. The General Manager ( ),  
N.F. Railways, Maligaon,  
Guwahati - 781 011.
3. The Divisional Mechanical Engineer,  
N.F. Railway,  
New Guwahati Diesel Shed,  
Guwahati - 781 021.
4. The Finance Advisor and Accounts Officer  
N.F. Railway, Maligaon,  
Guwahati.
5. Smti. Kabita Arandhara (Borgohain),  
W/o Late Kanan Borgaohin  
D/o - Shri Jogadhar Arandhara  
R/o - Salaguri Pahigaon  
P.O. Kalugaon, P.S. - Joysagar  
District - Sibsagar, Assam.

... Respondents.

By Advocates : Mrs. B. Devi, Railway Advocate for the Official  
Respondents,  
Ms. M. Bora and Ms. D. Borgohain, Advocates for  
the Respondent No. 5; and  
Ms. U. Das, Addl. C.G.S.C. Amicus Curie.

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O R D E R

K.V. SACHIDANANDAN, (V.C.)

Late Kanon Borgohain was working as Sectional Engineer under the Divisional Mechanical Engineer, N.F. Railway, New Guwahati Diesel Shed. He entered into service under the Railway in the year 1998 and expired on 01.08.2005 leaving behind his old and ailing parents, i.e. the Applicants herein and his widow, i.e. the Respondent No. 5 as his dependents/legal heirs. The Applicant No. 1 is the mother of the deceased employee aged about 60 years and the Applicant No. 2 is the father aged about 72 years. Both of them were living with the deceased employee and were completely dependant upon him since their other three sons are living separately alongwith their respective families and are not having sufficient incomes. The Applicant No.1/mother in the capacity of Class - I legal heir made a representation on 20.09.2005 before the Respondent No. 3 praying inter alia for making payment of half of the share of all the service benefits including family pension, gratuity, provident fund, group insurance amount, leave salary amount, CTC amount to her as provided under Section - 8 of the Hindu Succession Act. The daughter-in-law i.e, the Respondent No. 5, left her in laws house after the "Shradha" ceremony of their sons and went to her parent's house in the same village. The Respondent No. 5 also made a representation before the authority claiming for pension and other retirement benefits due to her late husband. She has also made an application before the authority for her appointment on compassionate ground and the same is at the final stage of consideration. According to the averments made in the O.A., the

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Respondent authority in a most illegal and arbitrary manner sanctioned the family pension and other retirement benefits only to the Respondent No. 5 thereby depriving the Applicants from their legitimate claim of 50% due share on the aforesaid pensionary benefits. The Applicants made representation before the Respondent authorities, but no reply was given as to why pension and other retirement benefits in proportion was not sanctioned and has not been granted to the Applicants. Aggrieved by the said inaction of the Respondent Authorities, the Applicants have filed this Application seeking the following main reliefs:-

"8.1) That the Respondent authorities be directed/commanded to recover 50% of the retirement benefits already paid to the Respondent No. 5, that is, Rs. 1,14,475.90 and 50% of the pension amount already paid to her and pay the same to the Applicants and further to sanction and pay 50% of the family pension regularly and other due amount if any to the applicants as being the Class - I legal heir (mother and father of the deceased employee.

8.2 That the Hon'ble Tribunal may be pleased to pass any other appropriate order(s) or direction as it deem fit and proper granting adequate relief to the applicants"

2. The Respondent Nos. 1 to 4 and 5 filed written statement separately. The Official Respondents in their written statement averred that the claims of both the Applicants and the Respondent No. 5 were examined as per relevant provisions of the Family Pension Scheme of Railway Servants, 1964 and found that as per rule the Applicants are not entitled to any pensionary benefits as claimed by them. The Respondent No. 5, i.e. the wife of the deceased employee is entitled to the same in accordance with the provision of

the aforesaid rules. There are no provisions in family pension scheme for Railway Servant, 1964 for payment of 50% of pensionary benefits to the mother of the deceased railway employee while his widow is survived nor had late Kanan Borgohain executed any nomination paper in favour of either of the parents for payment of 50% of PF, GIS and DCRG amounts. Hence, the Applicants' claim could not be entertained. The representation submitted by the Applicant No. 1 was disposed of and she was informed by a communication dated 08.11.2005 that as per provision of family pension scheme for Railway Servants, 1964 incorporated in Railway Service (Pension) rule, 1993 pension of a deceased railway employee is payable to his family which includes widow/widower and children of the deceased employee. As such, the prayer of the Applicant is not tenable at all. The Respondent authority issued another letter dated 18.07.2006 in that regards to the Applicants. Therefore, the Application is devoid of merit as no cause of action and liable to be dismissed.

3. The 5th Respondent in her reply statement stated that she was married to the Applicants' son late Kanan Borgohain on 11.10.2004 and he passed away on 01.08.2005, after 9 months of marriage. After her marriage, she resided in her father-in-law's house at Guwahati alongwith her husband and in-laws when her husband was working at Guwahati at that time. The Applicant No. 2 is a retired Government Servant, retired as the Director, Assam State Warehouse Corporation and receiving his pension. Out of the four living sons of the Applicants, the eldest is an Engineer serving in the Assam State Warehouse Corporation and other three are the established businessmen. The Applicants have landed property both at

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Salaguri pahigaon, Sibsagar and R.G. Baruah Road, Guwahati. Her husband met an accidental death after being struck by lightning while visiting their home at Salaguri Pahigaon, Sibsagar. Immediately after her husband's death, she was compelled to flee her in-laws house at Salaguri Pahigaon, Sibsagar under tremendous physical and mental harassment. She was blamed for her husband's death. Moreover, her in-laws tried to forcibly marry her off to her younger brother-in-law with the sole intention of reaping the benefits of the pensionary and other claims due after her husband's death. The Railway authorities sanctioned family pension and other benefits to her as per provisions of the Railway Services (Pension) Rules, 1993. The Applicants were not dependant on their deceased son and the Applicants are not entitled for the pensionary benefits.

4. Heard Mrs. M. Devi, learned Counsel for the Applicants, Mrs. B. Devi, learned Railway Counsel for the Official Respondents, Ms. D. Borahgohain, learned Counsel for the Respondent No. 5 and Ms. U. Das, learned Addl. C.G.S.C. as amicus curie. Learned Counsel for the Applicants submitted that though there may not be any rule for granting pensionary benefits to the Applicants in the event of death of their son, pension being a social right/estate of the deceased as per provisions of Succession Act, the old parents are entitled to get the retirement benefits and pensionary benefits. She also argued that the Applicants are solely dependent upon the deceased person. Learned Counsel for the Official Respondents argued that the deceased person had not made his parents as nominee and as per provisions of the Railway Pension Rules, it is the widow, who gets the family pension and other benefits. In the absence of any rule, the Applicants are not entitled for the same. Learned Counsel for the

Respondent No. 5, on the other hand, argued that her husband lived hardly 10 months after their marriage and died while her husband was in service. Once married, she becomes the family and sole legal heir since no children was born in their wedlock. Therefore, the Respondents are justified in granting the pensionary benefits excluding her parents. I place on record great application for the valuable held rendered by Ms. U.Das, as amicus curie in this case.

5. I have given due consideration to the arguments, pleadings and evidence placed on record. The grievance of the Applicants is that they are entitled to get 50% of the pensionary benefits since they are solely dependent upon the deceased person, who died on 01.08.2005 and other sons are living separately and have no sufficient income. The Applicant No. 1, i.e. the mother of the deceased person in the capacity of Class - I legal heir as per the Section - 8 of the Hindu Succession Act is entitled to get 50% benefits from the pensionary benefits of the deceased person. Therefore, alongwith her husband she has filed this Application. Admittedly, the Respondents had disbursed the following benefits to the Respondent No. 5:-

- "1. Family Pension - Rs. 4,875.00 P.M. upto 1.8.2012 and Rs. 2,925.00 thereafter vide PPO No. 0107050254 dated 25.4.06.
2. Provident Fund Rs. 35,156.00
3. GIS - Rs. 32,780.00
4. Leave Salary - Rs. 10,225.00
5. DCRG - Rs. 1,40,940.00"

It is also borne out from the record that late Kanan Borgohain did not execute any nomination paper in favour of either of the parents for payment of 50% of the retirement benefits. The learned Counsel for the Respondents has brought my notice to the Family Pension Scheme

for Railway Servants, 1964. The relevant provisions of the said Scheme are quoted below :-

"75. Family Pension Scheme for railway servants, 1964 :- (1) The provisions of this rule shall apply:-

- (a) to a railway servant entering service in a pensionable establishment on or after the 1st January, 1964; and
- (b) to a railway servant who was in service on the 31st December, 1963 and came to be governed by the provisions of the Family Pension Scheme for railway employees, 1964, contained in the Railway Board's letter No. F(P) 63 PN-140, dated the 2nd January, 1964 as in force immediately before the commencement of these rules.

Note :- The provisions of this rule has also been extended from 22nd September, 1977, to railway servants on pensionable establishments who retired or died before 31st December, 1963 and also to those who were alive on that date but had opted out of the 1964 Scheme.

- (4)(i) (b) In the event of death of a railway servant after retirement, the Family Pension as determined under sub-clause (a) shall be payable for a period of seven years, or for a period upto the date on which the retired deceased railway servant would have attained the age of sixty-five years had he survived whichever is less.

That in no case the amount of family pension determined under sub-clause (b) of this clause shall exceed the pension sanctioned on retirement from railway service:

Provided further that where the amount of pension sanctioned on retirement is less than the amount or family pension admissible under sub-rule (2), the amount of family pension determined under this clause shall be limited to the amount of family pension admissible under sub-rule (2).

Explanation. - for the purpose of this sub clause "pension sanctioned on retirement" includes the part of the pension which the retired railway servant may have commuted before death.

(5) Where an award under the Railway Services (Extraordinary Pension) rules, 1993 is admissible, no payment of family pension under this rule shall be authorized.

(6) The period for which family pension is payable shall be as follows:-

- (i) In the case of a widow or widower, up to the date of death or remarriage, whichever is earlier;
- (ii) in the case of a son, until he attains the age of twenty five years; and
- (iii) in the case of an unmarried daughter, until she attains the age of twenty five years or until she gets married, whichever is earlier.

Provided that if the son or daughter of a railway servant is suffering from any disorder or disability of mind or is physically crippled or disabled so as to render him or her unable to earn a living even after attaining the age of twenty five years, the family pension shall be payable to such son or daughter for life subject to the following conditions, namely :-

.....

(7)(ii) Where the deceased railway servant or pensioner is survived by a widow but has left behind eligible child or children from another wife who is not alive, the eligible child or children shall be entitled to the share of family pension which the mother would have received if she had been

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alive at the time of the death of the railway servant or pensioner :

(8)(i) Except as provided in clause (d) of sub rule (6) and clause (i) of sub-rule (7), the family pension shall not be payable to more than one member of the family at the same time.

(ii) If a deceased railway servant or pensioner leaves behind a widow or widower, the family pension shall not be payable to the widow or widower, failing which to the eligible child.

(12) Where a female railway servant or a male railway servant dies leaving behind a judicially separated husband or widow and no child or children, the family pension in respect of the deceased shall be payable to the person surviving:

Provided that where in a case the judicial separation is granted on the ground of adultery and the death of the railway servant takes place during the period of such judicial separation, the family pension shall not be payable to the person surviving, if such person surviving was held guilty of committing adultery.

(18)(b) "family", in relation to railway servant, means -

(i) wife in the case of a male railway servant or husband in the case of a female railway servant;

(ii) a judicially separated wife or husband, such separation not being granted on the ground of adultery and the pension surviving was not held guilty of committing adultery

(iii) son who has not attained the age of twenty-five years and unmarried daughter who has not attained the age of

twenty-five years, including such son and daughter born after retirement or adopted legally before retirement but shall not include a son or daughter adopted after retirement;

(c) "pay" means;

- (i) the emoluments as specified in clause (a) or rule 49, or
- (ii) the average emoluments as referred to in rule 50 if the emoluments of the deceased railway servant has been reduced during the last ten months of his service otherwise than as penalty :

Provided that the element of dearness allowance which has been treated as dearness pay under the Railway Board's letter No. PC III/79/DP/1 dated the 11th June, 1979, shall not be treated as pay of the purpose of this rule."

In the said rule/definition nowhere it is stated that the parents are entitled to get the pensionary benefits at any point of time. Therefore, as per the Family Pension Scheme for Railway Servants, 1964, the Applicants are not entitled to get the family pension.

6. Obviously, the rule making authority have not granted the pensionary benefits to the parents for the reasons best known to them and in order to enable them the family pension, one would have to redefine the family in the Railway Pension Rules or at best for the mother at Hindu Succession Act, which is yet to be made. In the circumstances, as per the Railway Rules the Applicants are not entitled to get the pension. But learned Counsel for the Applicants argued that this issue can be evaluated in broad perspective in socio

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economic scenario of many of the family of the Indian Society. As per Section 8 of the Hindu Succession Act mother no doubt is Class - I legal heir. In the conservative mindset of the Indian Society the parents have greater expectations on their children to take care of them in the old age. For that reasons too, they take care of their children and give good education for obtaining employment. The unexpected demise of their son probably could have put the parents in great sorrow/helplessness and insecurity. The pain suffering sense of vacume suffered by them is unimaginable. The learned Counsel for the Applicant submitted that if parents are not included in the family definition of the Railway Rules it could be a omission and contra to the law governing succession. The learned Counsel also argued that pension and pensionary benefits are the property declared in legal term. Learned Counsel for the Applicants for that purpose taken my attention to the following decisions:-

- (i) (1999) 5 SCC 237, S.L. Bhatia Vs. Union of India & Another and argued that right cannot be defeated by making a nomination to the contrary. The operative portion of the said judgment is reproduced below:-

"5. In the light of the aforesaid provisions and there being as .... Between the husband and wife even though the very might be staying ... the appellant husband would be entitled to the family pension in terms of the rules as noted aforesaid and the authorities, therefore, committed error in granting family pension to the appeallant relying upon the nomination by the deceased wife of the appellant. The impugned order is, accordingly, set aside and this appeal stands allowed."

- (ii) The Hon'ble High Court in the case of **Mustt. Anima Khatun and Others Vs. Mustt Jahura Khatoon and Others** held as follows :-

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"It is not disputed that the deceased Majar Ali died leaving behind three wives and children, as discussed above, and the second wife did not contest the suit filed by the plaintiffs. It is true that the pension will not be payable to more than one member of the deceased employee, but under the Note and the proviso to rule 143 of the Rules, 1969, it has been laid down that in cases where there are two or more widows, pension will be payable to the next surviving widow, if any. The term "eldest" would mean seniority with reference to the date of marriage, and apart from that rule 9 of the Rules of 1969, lays down that except when the term "Pension" is used in contra-distinction to Gratuity, "Pension" includes Gratuity and Death-cum-Retirement Gratuity. The Apex court as well as this court have interpreted the term "Pension" over the above the provisions of law pertaining to "pension" under the Assam Services (Pension) Rules, 1969. It is well-settled that pension is not a bounty payable at the sweet will and pleasure of the Government, and on the other hand, right to pension is valuable right vesting in a government servant. In other words, it is personal property of the employee concerned. At this stage, certain reference can be made, namely, the decisions rendered by the Apex Court in Deokinandan Prasad vs. State of Bihar, reported in AIR 1971 SC 1409. The parties of this case again approached the Apex Court as there was inordinate delay in settling the dues, and the Apex Court dealt with the matter again which is reported in AIR 1984 SC 1560. Another decision of the Apex Court is also important and relevant in the instant case and the same is reported in AIR 1984 SC 1560, Deokinandan Prasad vs. State of Bihar."

The Hon'ble High Court observed that pensionary benefit is personal property of the employee concerned and the same should be disbursed amongst the legal heirs in terms of Section 39 and 41 of the Mahomedan Law read with Section 63 of the said Law.

Learned Counsel for the Respondents argued that the decision pertains to Mahomedan Law which cannot be equated in the present case. However, though above finding seems to be Mahomedan Law, the Hon'ble Gauhati High Court made the

above observation on the basis of the decision of the Hon'ble Supreme Court.

(iii) It is also brought to my notice to the amendment Section 125 of the Cr. P.C., which is reproduced below :-

"11. Section 125 of the Code at the point of time when the petition for maintenance was filed reads as follows:-

"125(1)-If any person having sufficient means neglects or refuses to maintain -

- (a) his wife, unable to maintain herself, or
- (b) his legitimate or illegitimate minor child, whether married or not, unable to maintain itself, or
- (c) his legitimate or illegitimate child (not being a married daughter) who has attained majority, where such child is, by reason of any physical or mental abnormality or injury unable to maintain itself, or
- (d) his father or mother, unable to maintain himself or herself,"

Father or mother unable to maintain himself or herself refuse or neglect for entitlement of maintenance from the child having sufficient means. The Hon'ble Supreme Court also in the case of **Savitaben Somabhai Bhatia V. State of Gujarat and Others**, 2005 (5) SCJ 22 observed that *"this provision is enacted for social justice and specially to protect women and children as also old and infirm poor parents and falls within the constitutional sweep of Article 15(3) reinforced by Article 39 of the Constitution of India, 1950 (in short the 'Constitution')*. *The provision gives effect to the natural and fundamental duty of a man to maintain his wife, children and parents so long as they are unable to maintain themselves. Its provisions are applicable and enforceable whatever may be personal law by*

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*which the persons concerned are governed."* The Court further observed that "The sections of statutes calling for construction by courts are not petrified print but vibrant works with social functions to fulfill. The brooding presence of the constitutional empathy for the weaker sections like women and children must inform interpretation if it has to have social relevance."

The, learned Counsel for the Applicants argued that the same ratio should apply in disbursing of the pensionary benefits to the old parents, keeping aside the Personal Law on the basis of a social obligation.

(iv) In a celebrated decision of Full Bench of the Hon'ble Supreme Court of India reported in (1983) SCC (L&S) 145, **D.S. Nakara and Others Vs. Union of India** observed that "Pension is neither a bounty nor a matter of grace depending upon the sweet will of the employer, nor an ex gratia payment. It is a payment for the past service rendered. It is a social welfare measure rendering social economic justice to those who in the hey-day of their life ceaselessly toiled for the employer on an assurance that in their old age they would not be left in lurch. Pension as a retirement benefit is in consonance with and furtherance of the goals of the Constitution. The most practical *raison d'être* for pension is the inability to provide for oneself due to old age. It creates a vested right and is governed by the statutory rules such as the Central Civil Services (Pension) Rules which are enacted in exercise of power conferred by Articles 309 and 148(5) of the

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Constitution". It is also observed that "Since the advent of the Constitution, the State action must be directed towards attaining the goals set out in Part IV of the Constitution. While interpreting or examining the constitutional validity of legislative/ administrative action, the touchstone of Directive Principles of State Policy in the light of the Preamble will provide a reliable yardstick to hold one way or the other. The discernable purpose thus underlying pension scheme or a statute introducing the pension scheme must inform interpretative process and accordingly it should receive a liberal construction and the courts may not so interpret such statute as to render them inane." The concept is that pension is a socio economically back grounded concept and the Applicants reiterated this decision and further emphasised that it is social welfare measure.

(v) In another decision reported in (1971)2 SCC 330, **Deokinandan Prasad V. The State of Bihar and Others**, the Hon'ble Supreme Court held as follows :-

"33. Having due regard to the above decisions, we are of the opinion that the right of the petitioner to receive pension is property under Article 31(1) and by a mere executive order the State had no power to withhold the same. Similarly, the said claim is also property under Article 19(1)(f) and it is not saved by sub-article (5) of Article 19. Therefore, it follows that the order, dated June 12, 1968, denying the petitioner right to receive pension affects the fundamental right of the petitioner under Articles 19(1)(f) and 31(1) of the Constitution, and as such the writ petition under Article 32 is maintainable. It may be that under the Pension Act (Act 23 of 1871) there is a bar against a civil court entertaining any suit relating to the matters mentioned therein. That does not stand in the way of writ of mandamus being issued to the

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State to properly consider the claim of the petitioner for payment of pension according to law."

The Court declared that pension is a property under Articles 31(1) and 19(1)(f) of the Constitution.

(vi) It is also brought to my notice to the decision reported in AIR 1999 SC 1212, Dr. Uma Agrarwal V. State of U.P. and Another and Hon'ble Supreme Court held that delay in disbursing of retiral benefit will be followed by interest payable. The issue of that case is not germane so far as the issue involved in this case is concerned.

(viii) The decision reported in (1999) 9 SCC 12, State of Punjab and Another Vs. Devinder Kaur in which parents are not included in the family pension but Hon'ble Supreme Court decided the matter. The direction of the Hon'ble Supreme Court was in a peculiar circumstance and held that it should not be treated as precedent. It was in an unmarried government servant wherein parents are included in the family definition. The relevant portion of the said judgment is quoted below:-

11. It becomes, therefore, clear that at least from 1-1-1996 the definition of "family" as found in the erstwhile Rule 6.17 of the Punjab civil Services Rule Vol. II has undergone a change and the parents of the deceased concerned are made eligible to get family pension subject to their satisfying the condition mentioned in this amended Scheme. So far as the second condition is concerned as Daljit Singh had died much prior to 1-1-1996 the same will not be applicable to the respondent. However, drawing an analogy from these rules on the peculiar facts of this case and not as a precedent we find

L ✓

that if Daljit Singh had died after 1-1-1996 the respondent mother would have got total amount of at least Rs. 2619 per month as family pension if she was wholly dependent upon him when Daljit Singh died. We have already seen above that when Saljit Singh died in 1985 the respondent mother was dependent on him as her husband, the other claimant had already retired and was aged 65. But even that apart, the report of the Deputy Superintendent of Police, CID Unit, Ludhiana which is also produced on record shows that deceased Kharak Singh was maintaining a parallel family life and was staying with another woman Harinder Kaur and had two daughters through her. In view of these peculiar facts and circumstances, therefore, the respondent mother of the deceased Daljit Singh had only Daljit Singh to fall back upon as otherwise her husband Kharak Singh did not appear to be taking any interest in her. In the light of these facts, therefore, even though the Scheme if it had applied, her total income from all sources should not have exceeded Rs. 2619 per month to get the benefit of even the amended Scheme if it had applied. The appellant State granted Rs. 2500 per month by way of pension to her because Kharak Singh, her husband was killed by terrorists. Consequently, even if the Scheme of 1998 had applied she would have got Rs. 119 per month more. Thus this amount can be made available to her at least from 1-8-1999 as we are deciding this matter in the first week of August 1999. Accordingly, the appeal is allowed. The judgment of the learned Single Judge as well as that of the Division Bench are set aside. Writ Petition filed by the original respondents is dismissed subject to the following directions :-

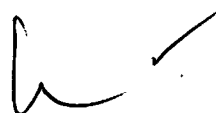
1. Despite of dismissal of the writ petition if any amount has been paid until now pursuant to the orders of the High Court to the respondent it shall not be recovered by the appellant.
2. From 1-8-1999, not as a precedent but on the peculiar facts of this case and on compassionate grounds, the appellant State will pay Rs. 119 per month additionally to the respondent."

*h* ✓

The Hon'ble Supreme Court is of the view that the definition of family should undergo a change and the parents of the deceased concerned are made eligible to get family pension subject to the satisfying the condition mentioned in the amended scheme.

The relief that has been granted under Article 142 of the Constitution cannot be invoked by this Court which is the prerogative of the Apex Court as per the Constitution. But taking into confidence of the ratio and larger issue involved in this case, I am of the view that it is a time to redefine the family, where the deserving parents should also be included to get a portion of the family pension of the deceased employed children and other retrial benefits. It appears that it is a policy matter of the Government and in the absence of any rule in existence the relief cannot be granted by this Tribunal. Since such matters are to be decided by an expert committee, this Tribunal is of the view that it should be referred to the 6th Central Pay Commission. Therefore, this Court direct the Respondents to refer the issue of "granting family pension to the deceased employee's deserving parents" to the 6th Central Pay Commission for obtaining their views and recommendations or to redefine the family so as to enable such dependant parents to be eligible to get share of the family pension on such terms/conditions, as the case may be, or the competent authority is at liberty to make rules to their logical wisdom to ensure social security to the aged parents. The Registry is also directed to send a copy of this order to the 6th Central Pay Commission as an abundant caution.

7. This Court has great sympathy to the parents/applicants who spent their best of lives in bringing up their son and the neglect,





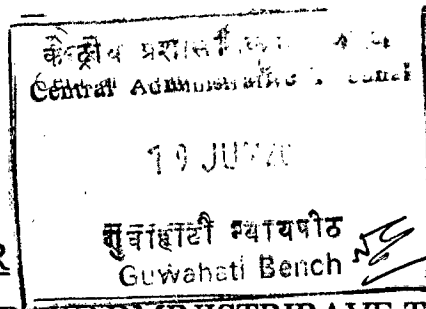
desolation and denial of even pensionary benefits is of great concern and hard reality. In the absence of any provision/rule, this Court cannot give any relief to the Applicants in this O.A. Therefore, the O.A. is dismissed with a direction to refer this issue to the 6th Central Pay Commission or granting liberty to the competent authority to make rules to their logical wisdom to ensure social security to the aged parents by granting a share of pension from the pensionary benefit of the deceased employee.

8. The O.A. is dismissed with the above observations. In the circumstances no order as to costs.



( K. V. SACHIDANANDAN )  
VICE-CHAIRMAN

/mb/



DISTRICT : SIBSAGAR

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH ; GUWAHATI

ORIGINAL APPLICATION No. 151 OF 2006

SMTI SUBANNA BORGHAIN AND  
ANOTHER.

... APPLICANTS.

-Versus-

THE UNION OF INDIA AND ORS.

.... RESPONDENTS.

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Filed On : June"2006.

Filed by :  
Monjuli Das  
Advocate.

DISTRICT : SIBSAGAR

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH ; GUWAHATI

ORIGINAL APPLICATION No. 151 OF 2006

SMTI SUBANNA BORGHAIN AND  
ANOTHER.

... APPLICANTS.

-Versus-

THE UNION OF INDIA AND ORS.

.... RESPONDENTS.

**SYNOPSIS OF THE CASE:**

The brief fact of the case is that, the applicants' son Late Kanon Borgohain was working as Sectional Engineer under Divisional Mechanical Engineer, N.F. Railway, New Guwahati Diesel Shed. He entered into service under the Railway in the year 1998. He expired on 01.08.05 leaving behind his old and ailing parents/petitioners and his widow/Respondent No. 5 as his dependents/legal heirs the applicant No. 1 is the mother of the deceased employee aged about 60 years and the applicant No. 2 is his father and aged about 72 years, Both of them were living with the deceased employee and were completely dependent upon him since their other three sons are living separately along with their respective family and are not having sufficient incomes. The mother/applicant No. 1 in the capacity of Class – I Legal heir

made a representation on 20.09.05 before the Respondent No. 3 praying inter alia for making payment of half of the share of all the service benefits including family pension, gratuity, Provident fund, Group insurance amount, leave salary amount, C.T.C amount to her as provided under Section - 8 of the Hindu Succession Act. The daughter-in-law is the Respondent No. 5, left her in laws house after the "Shradha" ceremony of their sons and went to her parents house in the same village. The Respondent No. 5 also made a representation before the authority claiming for pension and other retirement benefits due to her Late Husband. She has also made an application before the authority for her appointment on compassionate ground and the same is at the final stage of consideration. The Respondent authority in a most illegal, and arbitrary manner sanctioned family pension and other Retirement benefits only to the widow/Respondent No. 5 thereby depriving the petitioner from their legitimate claim of 50% due share on the aforesaid pensionary benefits. The petitioner made representation before the Respondent authorities, but they did not bothered to dispose of the representation made by the petitioner No. 1' and did not assigned any reason as to why pension and other retirement benefits in proportion was not sanctioned and has not been granted to the petitioners. The Respondent authorities have adopted indifferent callous and biased attitude towards the legitimate claim of the petitioner, which is required to be interfered by this Hon'ble Court for the ends of justice.

## LIST OF DATES.

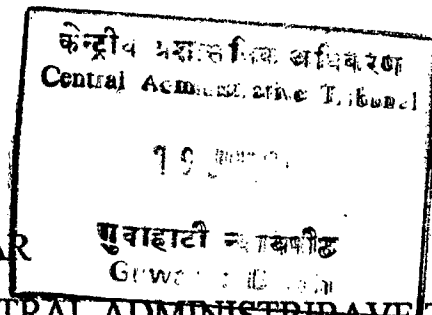
|    |            |   |
|----|------------|---|
| 1. | 01.08.2005 | The son of the appellant's expired leaving behind his old and ailing parents/applicants and his widow /Respondent No. 54 as his dependents /legal heirs.  |
| 2. | 10.09.2005 | The copy of the death certificate of the petitioner's son.<br><u>(ANNEXURE -1)</u>  |
| 1. | 20.09.2005 | The copy of the representation made before the Respondent No. 3 praying inter alia for making payment of half of the share of all the service benefits including family pension, gratuity, Provident fund, Group insurance amount leave salary amount, C.T.C amount to her as provided under Section - 8 of the Hindu Succession Act.<br><u>(ANNEXURE - 2).</u> |

Filed By

(Filed by ).

DISTRICT : SIBSAGAR

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH ; GUWAHATI



Filed by 30  
The Applicant  
Basanta Borgohain.  
Subanna Borgohain  
through  
Atorjuli Devi  
14.6.06

ORIGINAL APPLICATION No. 151 OF 2006

IN THE MATTER OF :

1. SMTI SUBANNA BORGOHAIN  
W/o Sri Basanta Borgohain.
2. SRI. BASANTA BORGOHAIN,  
S/o Late B. Borgohain,

Both are resident of Salaguri Pahigaon,  
P.O – Kalugaon, P.S. – Joysagar,  
District – Sibsagar, Assam.

... APPLICANTS.

-Versus-

1. THE UNION OF INDIA  
Through – THE SECRETARY,  
to the Government of India,

Railway Ministry, Rail Bhawan,  
New Delhi.

2. THE GENERAL MANAGER,  
N.F. Railway, Maligaon,  
Guwahati – 781 011.

3. THE DIVISIONAL  
MECHANICAL ENGINEER,  
N.F. Railway,  
New Guwahati Diesel Shed,  
Guwahati – 781 021.

4. THE FINANCE ADVISOR  
AND ACCOUNTS OFFICER,  
N.F. Railway, Maligaon,  
Guwahati.

5. SMTI. KABITA ARANDHARA  
( BORGOHAIN),  
W/o Late Kanan Borgohain,  
D/o Sri Jogadhar Arandhara,  
R/O Salaguri Pahigaon,  
P.O Kalugaon,  
P.S. – Joysagar,  
District – Sibsagar, Assam.

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 Basanta Borgohain.  
 Subarna Borgohain

RESPONDENTS.

Basanta Borgohain - 32  
Subarna Borgohain.

## DETAILS OF APPLICATION

### 1. PARTICULARS OF THE ORDER AGAINST WHICH THE APPLICATION IS MADE :-

The application is made against the illegal action of the respondent authorities denying pension and retrial benefits to the applicants and for directing the Respondent authorities to recover 50% of the Retirement benefits already paid to the Respondent No. 5, i.e. Rs. 1,14,475.90 and 50% of the pension amount already paid to her and pay the same to the applicants and further to sanction and pay 50% of the family pension regularly and other due amount if any to the applicants as being the class I legal heir of the deceased employee.

### 2. JURISDICTION OF THE TRIBUNAL:-

The applicants declare that the subject matter of the application is within the jurisdiction of this Hon'ble Tribunal.

### 3. Limitation :

The applicants declare that the application is within the period of limitation under Section 21 of the Administrative Tribunal Act, 1985.



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Basanta Borgohain  
Subarna Borgohain

4. Facts of the case.

- 4.1) That the applicants are the citizen of India and permanent resident of the above mentioned address, as such they are entitled to all the rights and privileges as enshrined under Part – III of the Constitution of India, and other laws of the land as applicable and amended from time to time.
- 4.2) That the applicants state that , their son Late Kanon Borgohain was working as Sectional engineer under Divisional Mechanical Engineer, N.F. Railway, New Guwahati Diesel Shed. He entered into service under the Railway in the year 1998. He died in harness on 01.08.2005 leaving behind his old and ailing parents /applicants and his widow/Respondent No. 5 as his dependents/legal heirs.

The Copy of the death Certificate dated 10.08.2005 is annexed herewith and marked as ANNEXURE No. 1.

- 4.3) That the applicants state that, the applicant No. 1 is the mother of the deceased employee aged about 60 years and the No. 2 is his father and aged about 72 years. Both of them were living with the deceased employee and were completely dependent upon him since their other three sons are living separately along with their respective family and are not having sufficient incomes.
- 4.4) That after the expiry of their sons, the mother /applicant No. 1 in the capacity of Class – I Legal heir made a representation on 20.09.2005 before the Respondent No. 3 praying inter alia for making payment of half of the share of all the service benefits

including family pension, gratuity, provident fund, Group insurance amount, leave salary amount. C T G. amount to her as provided under Section – 8 of the Hindu Succession Act.

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Basanta Borgohain  
Subarna Borgohain

The copy of the representation dated 20.09.2005 is annexed herewith and marked as ANNEXURE No. 2.

- 4.5) That the applicants state that, the petitioner No. 2, the father of the deceased employee is also a legal heir within the meaning of the Act ( Class – II legal heir).
- 4.6) That the applicants state that, the daughter-in-law is the Respondent No. 5, left her in laws house after the "Shradha" ceremony of their sons and went to her parents house in the same village.
- 4.7) That, the Respondent No. 5 also made representation before the authority claiming for pension and other retirement benefits due to her Late. Husband. She has also made an application before the authority for her appointment on compassionate ground and the same is at the final stage of consideration.
- 4.8) That the applicants state that, the respondent authority in a most illegal, and arbitrary manner sanctioned family pension and other Retirement benefits only to the widow/Respondent No. 5 thereby depriving the applicants from their legitimate claim of 50% due share on the aforesaid pensionary benefits. The Respondent authorities already paid gratuity amount of Rs. 1,41,570/- (Rupees One lakh, forty one thousand, five hundred and Seventy)

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Basanta Borgohain  
Subarna Borgohain

only, provident fund amounting to Rs. 35,156/- ( Rupees Thirty five thousand, one hundred and fifty six) only, and Group Insurance amounting to Rs. 32,700,80/- ( Rupees Thirty two thousand, seven hundred and paise eighty ) only on 21.12.2005. Leave Salary amount Rs. 10,225/- ( Rupees Ten Thousand, two hundred and twenty five) only on 03.01.2006 and C.T.G. amount of Rs. 9,300/- ( Rupees Nine thousand three hundred) only. Total amount of Rs. 2,28,051.80/- ( Rupees Two Lakhs twenty eight thousand nine hundred fifty one and paise eighty ) only to the Respondent No. 5 although the applicants are legally entitled for 50% of the aforesaid amount that is Rs. 1,14,475.90/- ( Rupees One Lakh Fourteen Thousand, four hundred seventy five and paise ninety ) only.

- 4.9) That the applicants state that, the Respondent authorities assured the applicants to writ per sometime to settle the matter but surprisingly, without disposing the representation made by the applicant No. 1 they released all the retirement benefits to the Respondent No. 5 not even bothering to inform the applicant No. 1 and giving any reason as to why proportionate retirement benefits were not sanctioned and given to her. After many effort, the applicants came to learn from the Respondent authorities that they have already released to amount to the Respondent No. 5 and as such the applicants had no knowledge about release of the retirement benefit earlier and could not approached this Hon'ble Court immediately.

- 4.10) That the applicants state, that, they have no source of income, and they could not earn livelihood at this fag end of their life.

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Basanta Borgohain  
Subarna Borgohain

5. GROUND FOR RELIEF:

- 5.1) That the applicants submit that the mother has been denied as Class I legal heir along with son, daughter and widow under Section – 8 of the Hindu Succession Act, 1956, and the Father as a Class – II heir. The act provides that the property of a male Hindu dying interstate shall devolve firstly upon Class – I legal heir to the exclusion of all other legal heirs. When there are more than one Class – I legal heirs, the property shall devolve in equal shares among them. Therefore, the applicant No. 1 mother is legally entitled for 50% on the properties including pensionary and other retirement benefits due to her deceased son. As such, the act of the Respondent Authorities in not sanctioning and paying 50% of the foresaid pension and Retirement benefits to the applicants is absolutely illegal, arbitrary, and bad in law, being in gross violation of Section – 8 of the Hindu Succession Act, 1956. As such, it is a fit case where the Hon'ble Tribunal would be pleased to interfere into the matter and direct the Respondent authorities to recover 50% i.e. Rs. 1,14,475.90 (Rupees One Lakh fourteen thousand, four hundred seventy five and paise ninety) only from the Respondent No. 5 and 50% of the pension already paid to her and pay the same to the applicants, and sanction and pay 50% of the pension and other dues if any to the petitioners.
- 5.2) That the applicants submits that, the aforesaid action of the authorities in not paying 50% of the pension and other retirement benefits to the applicants although the applicants made such claim before the authority, without assigning any reason and without affording any opportunity of hearing of the applicants, is not

only illegal, arbitrary, discriminatory, and bad in law, but is also gross violation of the principles of natural justice, equity, and good conscience, and administrative fairness.

- 5.3) That the applicants submits that, the aforesaid action of the Respondent authorities depriving the applicants from 50% pensionary and other retirement benefits and giving the whole of the same to the widow/Respondent No. 4 is in violation of Article – 14, 15, 16, 19 and 21 of the Constitution of India.
- 5.4) That the applicants submits that, the Respondent authorities have adopted indifferent callous and biased attitude towards the legitimate claim of the applicants, which is required to be interfered by this Hon'ble Court for the ends of justice.
- 5.5) That the applicants submits that, prima facie they have a good case on merit, balance of convenience and irreparable loss in their favour and if the interim relief as prayed for herein is not granted by this Hon'ble Court, the applicants will be highly prejudiced, suffer irreparable loss and injury if the interim order is passed.
- 5.6) That the applicants demanded justice, which have been denied to them.

6. DETAILS OF THE REMEDIES EXHAUSTED :-

There is no remedy under the Rule and this Hon'ble Tribunal is the only forum for redressal of the grievances.

7. MATTER NOT PREVIOUSLY FILED OR PENDING WITH ANY OTHER COURT.

Basanta Borgohain  
Subarna Borgohain

The applicants declare that they had not filed any other case in any Tribunal/Court or any forum against the illegal action of the respondent authorities.

8. RELIEFS SOUGHT :-

Under the above facts and circumstances of the case the applicants pray for the following beliefs.

8.1) That the Respondent authorities be directed /commanded to recover 50% of the retirement benefits already paid to the Respondent No. 5, that is, Rs. 1,14,475.90 and 50% of the pension amount already paid to her and pay the same to the applicants and further to sanction and pay 50% of the family pension regularly and other due amount if any to the applicants as being the Class I legal heir (mother) and father of the deceased employee.

8.2) That the Hon'ble Tribunal may be pleased to pass any other appropriate order(s) or direction as it deem fit and proper granting adequate relief to the applicants.

9. INTERIM RELIEF PRAYED FOR :

In the interim it is also prayed that pending disposal of the Original Application the Hon'ble Tribunal may be pleased to direct the Respondent authorities to pay Rs. 1,14,475.90/- to the applicants by recovering the same from the Respondent No. 5 immediately and further directing the Respondent authorities to 50% of the pension and other retirement benefits to the applicants.

Basanta Borgohain  
Subarna Borgohain

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10. That this application is filed through Advocate.

Dr. Stuti Deka  
Ms. Monjuli Dey  
Ms. L. Talukder  
Ms. P. Deb

11. PARTICULARS OF THE POSTAL ORDER :-

IPO No. 269. 324508

DATE 13.6.06

PAYABLE AT GUWAHATI G.P.O

12. LIST OF ENCLOSURES :-

An index as in the Index

Basanta Borgohain  
Subarna Borgohain

VERIFICATION

I, Smti Subanna Borgohain, W/o Sri Basanta Borgohain, aged about 60 years, resident of Salaguri Pahegaon, P.O – Kalugaon, P.S. – Joysagar, in the district of Sibsagar, Assam, one of the applicants, being well acquainted with the facts and circumstances of the case and being authorized by the co-applicant states and verifies that the statements made in para 109 of the application are true to my knowledge and in para \_\_\_\_\_ are true to my legal advise and I have not suppressed any material facts.

And I set my hand on this verification today the 19<sup>th</sup> day of June, 2006 at Guwahati.

Subarna Borgohain  
Signature of the Applicant.



ANNEXURE - 1.

Form No. 6

Sl. No. 0111288

GOVERNMENT OF ASSAM  
DIRECTORATE OF HEALTH SERVICES  
CERTIFICATE OF DEATH

Basanta Borgohain  
Subarna Borgohain

ISSUED UNDER SECTION 12/17 of the Registration  
of Births and Deaths Act, 1969.

This is to certify that the following information has been  
taken from the original record of Death which is in the register  
for Sivasagar Civil Registration unit of CHSH of District  
Sivasagr on the State of Assam.

Name : Late Kanan Borgohain.

Sex : Male

Date of Death : 1.8.05

Place of Death : Sivasagar Civil Hospital ( Post Mortem done)

Registration no. 229

Date of Registration : 10-8.05.

Name of Father/Mother/Husband : Shri Basanta Borgohain.

Sd/- Signature of issuing authority

Designation

Date : 10.8.05

Seal.

Certified to be  
true Copy

Mo Yali Da  
Advocate

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- 152(A)

Ax No-1

Form No. 6  
ফর্ম নং ৬

Sl. No 0111288  
ক্রমিক নং



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

ISSUED UNDER SECTION 12/17 of the Registration of Births and Deaths Act, 1969.  
(জন্ম আৰু মৃত্যুৰ 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 Sivasagar Civil Registration unit of C.H. S. of District Sivasagar the State of Assam.

ইয়াৰ দ্বাৰা প্ৰমাণিত কৰা হয় যে নিম্ন/নিৰ্ধাৰিত স্থান অসম ৰাজ্যৰ ----- জিলাৰ ----- বঙাই/পৌৰসভাৰ ----- মৌজাৰ অন্তৰ্গত ----- পঞ্জীয়ন গোটৰ পঞ্জীৰ মূল অভিলেখৰ পৰা সংগৃহীত কৰা হৈছে

Name/নাম Late Kanan Borgohain

Sex/লিংগ Male

Date of Death/মৃত্যুৰ তাৰিখ 1.8.05

Place of Death/মৃত্যুৰ স্থান Sivasagar Civil Hospital (Post Mortem den)

Registration No./পঞ্জীয়ন নং 229

Date of Registration/পঞ্জীয়নৰ তাৰিখ 10/8/05

Name of Father/Mother/Husband Shri Basanta Borgohain

(পিতৃ/মাতৃ/স্বামীৰ নাম)

Signature of issuing authority/জাৰী কৰা অফিচৰ স্বাক্ষৰ  
Designation/পদবী Superintendent  
Date 10/8/05  
Seal CIVIL HOSPITAL

No disclosure shall be made of particulars regarding the cause of death as entered in the Register. See proviso to Section 17 (f)

Certified to be  
true Copy  
[Signature]  
Advocate

[Signature]  
Bijaya Kumar B. da  
Asst. Branch Officer  
LIC, Dibrugarh

Annexure - 2

To

New Gauhati Diesel  
N.F. Railway,  
Bamunimaidan, Guwahati ( Assam).

Dated : 20.09.2006.

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Basanta Borgohain - 43  
Subarna Borgohain

Sir,

With due respect I beg to lay down the following few lines  
for your favour and necessary action.

1. That Sir, I am the mother of Late Kanan Borgohain who was working an Section Engineer, under your establishment.
2. That, Sir, my son i.e. the said Late Kanan Borgohain died on 01.08.2005 at Sivasagar due to thunderbol hit.
3. That Sir, I am the Class - I legal heir of my son Late Kanan Borgohain along with this wife i.e. my daughter in law namely Smt. Kabita Arandhara Borgohain and as such, I am entitled to all the benefits e.g. pensionary benefits, Gratuity P.F. and so on and so forth to the extent of 50% of the total due of my Late son.
4. That, Sir the basis of my claim is the law of Hindu Succession. It is not out of place to mention here that, under section 8 of the Hindu Succession act, 1956 property of a male Hindu, dying intestate shall devolve firstly upon the class I legal heirs to the exclusion of all other legal heirs.

Certified to be  
true Copy

M. J. D. D.

Advocate

- 145-
- 44
5. That Sir, my son of the time of his death left behind two (2) Class – I legal heirs i.e. me myself being mother and his wife that is my daughter in law namely Smt. Kabita Arandhara Borgohain.

Therefore, I am entitled to half the share of all the service benefits like pensionary benefits, gratuity, P.F. and other due, to the legal heirs of my late son and accordingly I claim the same from your end.

That Sir, in the facts and circumstances narrated here above, I pray before you to do the needful at an early date to disburse my claim.

Thanking you in anticipation.

Enclosed : Death Certificate ( Xerox)

Yours faithfully,

Sd/-

Subarna Borgohain.

Address for Correspondence :

Subarna Borgohain

C/o Sri Chandan Borgohain

House No. 9,

Jurani Path, R.G. Baruah Road,

Guwahatin -781 005.

Ph. No. 0361 2200784.

Basanta Borgohain.  
Subarna Borgohain

- 16 -

Ax No. 2

The Divisional Mechanical Engineer,  
R.E. Railway,  
Barunailan, Guwahati (Assam).

Date: 20.09.2005.

Sir,

With due respect I beg to lay down the following lines for your favour and necessary action.

1. That Sir, I am the mother of late Kanan Borgohain who was working as Section Engineer, under your establishment.
2. That Sir, my son i.e. the said late Kanan Borgohain died on 01.08.2005 at Sivassagar due to thunderbolt hit.
3. That Sir, I am the Class-I legal heir of my late son Kanan Borgohain along with his wife i.e. my daughter in law namely Smt. Kabitā Arandhara Borgohain and as such, entitled to all the benefits e.g. pensionary benefits, gratuity, etc. and so on and so forth to the extent of 50% of the share of my late son.
4. That Sir, the basis of my claim is the law of Hindu Succession. It is not out of place to mention here that, under section 8 of the Hindu Succession act, 1956 property of a male Hindu, dying intestate shall devolve firstly upon the Class-I legal heirs to the exclusion of all other legal heirs.
5. That Sir, my son at the time of his death left behind two (2) Class-I legal heirs i.e. myself being mother and his wife that is my daughter in law namely Smt. Kabitā Arandhara Borgohain.

Therefore I am entitled to half the share of all the service benefits-like pensionary benefits, gratuity, R.F. and others due, to the legal heirs of my late son and accordingly I claim the same from your end.

That Sir, in the facts and circumstances narrated here above, I pray before you to do the needful at an early date to disburse my claim.

Thanking you in anticipation.

Enclosed: Death Certificate (3erox)

Address for correspondence:

Yours faithfully,

Subarna Borgohain  
C/o Sri Chantan Borgohain,  
House No. 9,  
Juranilath,  
A.C. Baruah Road,  
Guwahati - 781005.  
Ph No: (0361) 2200784.

Subarna Borgohain

(Subarna Borgohain)

Certified to be  
true Copy

Advocate

21/9/05

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL:  
GUWAHATI BENCH AT GUWAHATI**

**O.A. No. 151 of 2006**

**Smti Subanna Borgohain.....Applicant**

**-Vs-**

**Union of India & others..... respondents.**

**WRITTEN STATEMENTS ON BEHALF OF THE  
RESPONDENT NO. 1, 2 ,3 & 4.**

**The Written statements of the Respondents are as follows :-**

1. That a copy of the Original Application No. 151/06( herein after referred to as the " application" has been served upon the respondents . The respondents have gone through the same and understood the contents thereof.

2. That save and except the statements which are specifically admitted by the respondents , the rest of the statements made in the application may be treated as denied.

3. That the statements made in paragraph 4.1 of the application the answering respondent has no comment.

4. That the statements made in paragraph 4.2, 4.3,4.4 & 4.5 of the application the answering respondent has no comment at all unless contrary to the records.

5. That the statements made in paragraph 4.6 of the application are not correct and the same are not acceptable at all.

6. That in regard to statements made in paragraph 4.7 the answering respondent begs to state that Smti Kabita Arandhara Borgohain , wife of Late Kanan Borgohain, submitted her claim of pensionary benefit in prescribed forms in the office of the Divisional Mech. Engineer(D), N.F.Rly, New Guwahati and application for compassionate appointment to the Divisional Railway Manager (P) , Lumding .

7. That in regard to the statements made in paragraph 4.8 the answering respondent begs to state that both the claims of the applicant and

46 Filed by  
 Suresh Kumar Panjan  
 वरिष्ठ म हल याँविक ई: जि(अय/डा)अर  
 न्यू-गुवाहाटी डी.एल.शेड/पू. री. रेल  
 Sr. Div. Mech. Eng'neer/Diesel  
 New Guwahati Diesel Shed/N. F Rly. 5/7/06

the respondent No. 5 were examined as per relevant provisions of the Family Pension Scheme for Railway servants, 1964. As per rule the applicant is not entitled to any pensionary benefit as claimed by her. The respondent No.5 is the wife of the deceased employee is entitled to in accordance with the provision of the aforesaid rules and the following pensionary benefits are sanctioned :-

1. Family Pension - Rs. 4875.00 P.M. upto 1.8.2012 and Rs. 2925.00 thereafter vide PPO No. 0107050254 dated 25.4.06.
2. Provident Fund Rs. 35156.00
3. GIS- Rs. 32780.00
4. Leave Salary - Rs. 10225.00
5. DCRG - Rs. 140940.00

8. That in this connection it may be mentioned herein that there are no provisions in family pension scheme for railway servant, 1964 for payment of 50% of pensionary benefit to the mother of the deceased railway employee while his widow survived nor had Late Kanan Borgohain executed any nomination paper in favour of either of the parents for payment of 50% of PF, GIS, and DCRG amounts. Hence the claim of the applicant could not be entertained.

9. That the allegations made in paragraph 4.9 to the application are untrue allegations and the same are hereby not admitted by the respondent. The answering respondent begs to state that the representation of the applicant was disposed of and she was informed by a communication contained in the letter vide No. E/234/D/M Pt-1 dated 8.11.2005 issued by the Sr. DME/DSL/NGC stating that as per provision of family pension scheme for Rly servants 1964 incorporated in Railway Service (Pension) Rule, 1993 pension of a deceased Rly employee is payable to his family which includes widow/widower and children of the deceased employ. As such the prayer of the applicant is not tenable at all.

10. That it may be mentioned herein that on coming to know about non receipt of the aforementioned letter dated 8.11.05 the authority again issued another letter vide No. E/234/D/M/Pt-1 dated 18.7.06 in the form of remainder of the letter dated 8.11.05.

Copies of letters dated 08.11.05 & 18.7.06 are enclosed herewith and marked as ANNEXURE- A & B respectively

न्यू-गुवाहाटी डीजल शोड / प. सी. रेल  
 Sr. Div. Mech. Engineer/Diesel  
 New Guwahati Diesel Shed/N. F. Rly.

11. That the respondent has not admitted anything in regard to the submissions made in the ground portion of the application and the same are categorically denied by the answering respondent.

12. That the application filed by the applicant is devoid of merit and as such not tenable in the eye of law and liable to be dismissed.

13. That the the applicant is not entitled to any relief as claimed by her. This Hon'ble Tribunal is not the appropriate forum to share the retirement benefit as well as the pensionary benefit of the deceased employee.

14. That the respondent has rightly passed the order and there is no impediment, infirmity and illegality to interfere by the Hon'ble Tribunal.

15. That in any view of the matter raised in the application and the reasons set forth thereon, there cannot be any cause of action against the respondents at all and the application is liable to be dismissed with cost.

In the premises aforesaid, it is, therefore, prayed that Your Lordships would be pleased to hear the parties, peruse the records and after hearing the parties and perusing the records shall be pleased to dismiss the application with cost. And pass such other orders/orders as to the Hon'ble Court may deem fit and proper considering the facts and circumstances of the case and for the ends of justice.

And for this the humble respondent as in duty bound shall ever pray.

JB

*Serest Kumar Panwar*

वरिष्ठ म डल यांत्रिक ई. जिनियर/डी. जल  
न्यू-गुवाहाटी डी. जल बोर्ड / प. सी. रेल  
Sr. Div. Mech. Engineer/Diesel  
New Guwahati Diesel Shed/N. F. Rly.

VERIFICATION



# VERIFICATION

I, Shri S. K. DASWAN Son of KATE SITRI S.C. DASWAN resident  
 of NEW GUWAHATI at present working as the S.D.M.E/DSC/RE  
 , Guwahati being competent and  
 duly authorised to sign this verification do hereby solemnly affirm and state  
 that the statements made in paragraph 1,2,3,4,5,6,7,8,9 & 10 are true to my  
 knowledge and belief, and the rest are my humble submission before this  
 Hon'ble Tribunal. I have not suppressed any material fact.

And I sign this verification on this 1<sup>st</sup> day of Jan, 2006 at  
 Guwahati.

Suresh Kumar Daswan

वरिष्ठ मॉडल यांत्रिक ई.जिनियर/डीजल  
 न्यू गुवाहाटी डीजल शेड/पू.सी.रेल  
**DEPONENT**  
 Sr. Div. Mech. Engineer/Diesel  
 New Guwahati Diesel Shed/N. F Rly

ANNEXURE-A

N. F. RAILWAY

Office of the  
Sr. DME/DSL/NGC  
Date: -08.11.2005

No. E/234/D/M Pt-I

To  
Subarna Borgohain  
C/O- Sri Chandan Borgohain  
House No.9  
Jumari Path  
R.G Baruah Road  
Guwahati-781005

Sub:- Final Settlement of Late Kanan Borgohain Ex- SE/D/Mech/New Guwahati,  
expired on 01.08.2005.

Ref:- Your Letter No. NIL dated:- 20.09.2005.

Ma'am,

In reference to your aforesaid letter this is to inform you that the Final Settlement case of Late Kanan Borgohain Ex- SE/D/M New Guwahati is being settled up as per provision of family pension scheme for Rly servants 1964 incorporated in Railway service (Pension) Rules 1993.

As per provision of these rules family pension of a deceased Rly employee is payable to his family which include widow/widower and children of the deceased employee.

Sr. DME/DSL/NGC

प्रवर मंडल यांत्रिक अभियन्ता (डी जेन)  
पु. सी. रेलवे, न्यू गुवाहाटी  
Sr. Div. Mech. Engineer (Diesel)  
N. F. Railway, New Guwahati

- 6 -  
N. E. RAILWAY

ANNEXURE-B

74/1

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No. E/234/D/M Pt-I

Office of the  
Sr. DME/DSL/NGC  
Date: -18.07.2006

To  
Subarna Borgohain  
C/O- Sri Chandan Borgohain  
House No.9  
Junari Path  
R.G Baruah Road  
Guwahati-781005

Sub:- Reminder of this Office L/No. E/234/D/M/Pt-I Date: -08.11.2005

Ref:- Your application dated 20.09.2005.

Ma'am,

On having knowledge of not receiving by you this office's letter No. E/234/D/M/Pt-I Date: -08.11.2005 as a reply of your application dated 20.09.05 mentioned in reference above through your OA/151 of 2006, the undersigned is obliged to send a reminder of the same along with a copy of the previous letter for your information please.

DA: Copy of L/NO. E/234/D/M/Pt-I Date: -08.11.2005

Sr. DME/DSL/NGC  
প্রদীপ মন্ডল যান্ত্রিক অফিসার (ডীজেল)  
পৃ. সী. রেগড়ে, নতুন গুৱাহাটী  
Sr. Div. Mech. Engineer (Diesel)  
N. E. Railway, New Guwahati,

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL ;  
GUWAHATI BENCH AT GUWAHATI

Original Application No. 151/2006

Smti S. Borgohain & anr

.....Applicants

-Vs-

Union of India & ors.

.....Respondents

The Respondent No.5 above named beg to file  
her written statements as follows:

1. That the averments made in the Original Application  
(hereinafter referred to in short as the application) are denied by  
the answering respondent save and except what has been  
specifically admitted herein and what appears from the records  
of the case.

2. That before submitting the parawise comments and going  
to the merits of the instant case, the answering deponent crave  
the indulgence of this Hon'ble Court to clarify certain facts  
regarding the case as follows:

- (i) The deponent got married to the applicant's son ,  
Late Kanon Borgohain on 11.10.2004 . Kanon Borgohain  
passed away on 1.8.2005 . Applicants as well as the

8 marks

52  
Filed by  
Respondent No 5  
through Borgohain  
Dipika  
5/9/06

deponent are permanent residents of Salaguri Pahigaon Sibsagar, Assam. After her marriage the deponent resided in her father-in-law's house at R.G.Baruah Road, Guwahati along with her husband and in-laws. The deponent's husband was working at Guwahati at that time.

(ii) The applicant no.2, i.e. the deponent's father-in-law is a retired Government Servant having retired as the Director, Assam State Warehouse Corporation. He is receiving his pension. Out of the four living sons of the applicant the eldest is an engineer serving in the Assam State Warehouse Corporation and the other three are established businessmen.

(iii) The applicants have landed property both at Salaguri Pahigaon, Sibsagar and R.G.Baruah Road, Guwahati. The deponent's husband met an accidental death after being struck by lightning while visiting their home at salaguri Pahigaon, Sibsagar.

(iv) That immediately after her husband's death, the deponent was compelled to flee her in-laws house at Salaguri Pahigaon, Sibsagar under tremendous physical and mental harassment. The deponent was blamed for her husband's death. Moreover, her in-laws tried to forcibly

Mo  
Ramin  
Rafique

marry her off to her younger brother -in-law with the sole intention of reaping the benefits of the pensionary and other claims due after her husband's death.

3. That with regard to the statements made in paragraphs 1,4.8 and 4.9 of the application the answering respondent begs to state that the Railway authorities sanctioned /released family pension and other benefits to her as per provisions of the Railway Services (pension)Rules, 1993.

4. That with regard to the statements made in paragraphs 2,3,4,.1, 4.4., 4.5, 4.7 of the application the answering respondent has no comments.

5. That with regard to the statements made in paragraphs 4.2, 4.3, 4.6 and 4.10 of the application the answering respondent begs to reiterate what has already been stated in paragraphs 2(i), 2(ii) , 2(iii) and 2(iv) of the written statement that the applicants were not dependant on their deceased son. As already stated in the preceding paragraphs the applicant no.2 is a retired Government Servant and he is drawing his pension and their other fours sons are well settled in life. The deponent was compelled to leave her matrimonial house by the unpleasant situation created by her in-laws. As already stated in the preceding paragraphs the applicants tried to forcibly marry off

the deponent to one of her younger brother-in-law with the sole intention of reaping the pensionery and other benefits due to the deponent after her husband's death.

6. That with regard to the statements made in paragraphs 5.1 to 5.6, 8.1. to 8.2 and 9 of the application the answering respondent begs to submit that in view of the facts and circumstances stated above the applicants are not entitled to any of the reliefs sought by them. In fact in view of what has been stated in the preceding paragraphs the application is not maintainable and is liable to be dismissed with cost

7. That with regard to the statements made in paragraphs 6 and 7 of the application the answering respondent has no comments.

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## VERIFICATION

I, Smti. Kabita Amudha Borgohain, wife of Late Kanak Borgohain, aged about 26 years, resident of Salaguri, Pahegaon, P.O. Kalugaon, P.S. Joysagar in the district of Sibsagar, Assam, one of the respondents being well acquainted with the facts and circumstances of the case and verifies that the statements made in para 2, 3, 5 of the written statements are true to my knowledge and in paragraphs 6 are true to my legal advise and I have not suppressed any material facts.

And I set my hand on this verification today the 24rd July, 2006 at Guwahati.

Kabita Amudhena Borgohain  
Signature of the Applicant