

LIBRARY

CENTRAL ADMINISTRATIVE TRIBUNAL  
KOLKATA BENCH, KOLKATA

No. O.A. 924 of 2016

Date of order: 25.11.2019

Present : Hon'ble Ms. Bidisha Banerjee, Judicial Member  
Hon'ble Dr. Nandita Chatterjee, Administrative MemberPravati Saha,  
Wife of late Tapas Saha alias Tapos Saha,  
Village - Gobindapur,  
Post Office - Rautara,  
Police Station - Suri,  
District - Birbhum,  
West Bengal.  
Pin Code - 731 101.

... Applicant

- VERSUS -

1. The Union of India,  
Service through the Chief of Army Staff,  
Ministry of Defence,  
Government of India,  
Department of Army,  
Sena Bhawan,  
New Delhi - 110 001.
2. The GOC,  
Eastern Command,  
Fort William,  
Kolkata - 700 027.
3. Captain,  
Personnel Officer,  
Central Ordnance Depot,  
Chheoki,  
Pin Code - 900 479,  
C/O 56 APO.
4. Sri Shubham Saha,  
Son of Late Tapas Saha alias Tapos Saha,  
Residing at 6/7, Government Colony,  
Corolabag,  
Allahabag,  
Uttar Pradesh,  
Pin Code - 211 001.

hsh



.... Respondents

For the Applicant : Ms. S. Sen, Counsel

For the Respondents : Mr. B. Chatterjee, Counsel (Pvt. Respondent)

**ORDER (Oral)****Per Dr. Nandita Chatterjee, Administrative Member:**

The applicant has approached the Tribunal under Section 19 of the Administrative Tribunals Act, 1985 praying for the following relief:-

- "a) An order directing the respondents no. 1, 2 and 3 to take steps to disburse the pensionary benefits and other benefits of her deceased husband immediately to her as after the sudden death of her husband her family is at stake and there is no other financial support to run her family.
- b) Any further order or orders as your Lordships may deem fit and proper.
- c) Leave may be granted to join the application under Rule 4(5)(a) of Central Administrative Tribunal Act, 1987."

2. Heard both Ld. Counsel, examined pleadings and documents on record.

3. The submissions of the applicant, as made through her Ld. Counsel, is that, she is the second wife of one Tapas Kumar Saha, a deceased employee of the respondent authorities. The applicant had married the ex-employee in the year 1996 and one female child was born on 4.1.1998 out of such wedlock. The ex-employee died on 25.8.2013.


The applicant found to her utter surprise that, despite her marriage with the ex-employee after the demise of his first wife and the fact that they had a daughter out of such wedlock, the ex-employee had designated her stepson, Shri Subham Saha, the son of his first wife as the sole nominee of his terminal benefits.

The applicant had represented on 3.9.2013 seeking her share of terminal benefits but received a reply on 23.9.2013 from the respondent




No. 3, who is the Captain, Personnel Officer, Central Ordnance Depot, Chheoki, intimating that the terminal benefits are admissible to be paid only to the stepson, Shri Subham Saha, and that she has no rightful claim to the terminal benefits of the deceased employee. Accordingly, being aggrieved, the applicant has approached this Tribunal praying for the aforementioned relief.

4. The respondents would dispute the claim of the applicant and argue as follows:-



That, Late Tapas Kumar Saha, resident of Allahabad, died while in service on 25<sup>th</sup> August, 2013. While in service, the ex-employee had submitted his family details on 27.2.1994 wherein he had endorsed the name of his wife as Smt. Sonali Saha and by a further intimation informed that the said Sonali Saha passed away on 27.11.1994. Thereafter, the ex-employee submitted his family declaration on 8.3.2000, in which he had included himself, his mother and his son as the members of his family.

Hence, according to the declaration of the deceased employee, the only surviving child of the deceased employee was Shri Subham Saha, born on 27.11.1994, the date of his wife's expiry. The ex-employee had nominated Shri Subham Saha for Central Government Health Scheme Card, Death-cum-Retirement Gratuity, General Provident Fund, Central Government Group Insurance Scheme as well as Family Pension Scheme.

That, on the expiry of the ex-employee, his son reported to the office of the respondent authorities, submitted his father's death

/

certificate and prayed for payment of all terminal benefits. Departmental actions have been initiated accordingly.

On 3.9.2013, however, the applicant represented that she was the second and only surviving wife of the ex-employee with a female child born out of such wedlock. According to the respondents, however, as the Govt. employee, during his lifetime, had only nominated his son as the sole nominee of his terminal benefits, his son from his first wife was the only legal heir entitled to receive such terminal benefits. On being declined payment of settlement benefits, the applicant had filed a Writ Petition bearing No. 33024(W) of 2013 with C.A.N. 8851 of 2014, upon which the Hon'ble Court issued an interim order as follows:-



"not to disburse any amount to the Private Respondent No. 4, Shri Subham Saha, the son of the Govt. employee until further order of this court."

The Writ Petition was finally disposed of directing that the petitioner was at liberty to approach the Tribunal in accordance with law (Annexure R13 to the reply) and, hence, the applicant has approached the Tribunal with the instant O.A.

5. The only issue to be considered herein is the legal right of the applicant to claim the settlement benefits on behalf of herself as well as her daughter purportedly borne out of the wedlock with the ex-employee.

6. The private respondent No. 4, who is the stepson of the applicant, has challenged the jurisdiction of this Tribunal in the context that his father, the ex-employee, did not serve in the jurisdictional area of this Tribunal and that the Tribunal has no jurisdiction to respondent No. 1 and 2 as impleaded in the array of respondents. As the applicant, however, resides within the jurisdiction of this Tribunal and has also received the rejection letter of the respondent authorities to her address

*[Handwritten signature]*

in Birbhum, which is very much within the jurisdiction of this Tribunal, we invoke the jurisdiction of this Tribunal to adjudicate the instant matter.

7.1. At the outset, it is seen that, although the applicant claims to be the legally married wife of the ex-employee, she has produced no marriage certificate in support. In response to specific queries during hearing, Ld. Counsel for the applicant would vociferously agitate that inhabitants of rural Bengal are not empowered to obtain marriage registration certificates and the applicant is not in a position to furnish the same to certify the genuineness of her marriage with the ex-employee.



7.2. We further find from the pleadings, that, according to the applicant, she married the ex-employee in 1996. The ex-employee passed away on 2013, while in harness. Hence, it is surprising as to why the ex-employee did not register the applicant or their daughter purportedly borne out of such wedlock, within the next 17 years, when the ex-employee was very much alive and reportedly in a marital relationship with the applicant. By way of explanation, Ld. Counsel for the applicant would submit that the applicant was subjected to intense torture of the ex-employee/spouse and was consequently compelled to leave her matrimonial house to avoid domestic violence with the result that the ex-employee did not register her name or their daughter's name in the family declaration during his lifetime.

7.3. The respondents have enclosed the provisions of CCS (Pension) Rules, particularly Rule 53 therein on nominations of death benefits of a deceased employee. The said Rule 53 is reproduced as under:-

*hnd*

**"53. Nominations**

(1) A Government servant shall, on his initial confirmation in a service or post, make a nomination in Form 1 or 2, as may be, as appropriate in the circumstances of the case, conferring on one or more persons the right to receive the <sup>3</sup>[retirement gratuity/death gratuity] payable under Rule 50 :

Provided that if at the time of making the nomination -

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

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



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

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

Provided further that where a Government servant has only one member in his family, and a nomination has been made in his favour, it is open to the Government servant to nominate alternate nominee or nominees in favour of any person or a body of individuals, whether incorporated or not ;

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

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

(5) A Government servant may, at any time, cancel a nomination by sending a notice in writing to the <sup>1</sup>[Head of Office] :

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

(6) Immediately on the death of a nominee in respect of whom no special provision has been made in the nomination under clause (i) of sub-rule (3) or on the occurrence of any event by reason of which the nomination becomes invalid in pursuance of clause (ii) of that sub-rule, the Government servant shall send to the <sup>1</sup>[Head of Office] a notice in writing cancelling the nomination together with a fresh nomination made in accordance with this rule.

<sup>1</sup> (7)	(a)	Every nomination made (including every notice of cancellation, if
------------------	-----	---

*Handwritten signature*

		any, given) by a Government servant under this rule, shall be sent to the Head of Office.
	(b)	The Head of Office shall, immediately on receipt of such nomination countersign it indicating the date of receipt and keep it under his custody :

Provided that the Head of Office may authorise his subordinate Gazetted Officers to countersign nomination forms of non-gazetted Government servants.

	(c)	Suitable entry regarding receipt of nomination shall be made in the service book of the Government servant concerned.
--	-----	---

(8) Every nomination made, and every notice of cancellation given, by a Government servant shall, to the extent that it is valid, take effect from the date on which it is received by the <sup>1</sup>[Head of Office].

Footnote : 1. Substituted by G.I., Dept. of Per. & A.R., Notification No. 6 (1) Pen. (A)/79, dated the 19th May, 1980.

3. Substituted vide G.I., Dept. of P. & P.W., Notification No. 2/18/87-P. & P.W. (PIC), dated the 20th July, 1988. Published as S.O. No. 2388 in the Gazette of India, dated the 6th August, 1988."



The respondents have also enclosed at R-10 to their reply, the procedure to dispose terminal benefits on death of a subscriber with reference to his Provident Fund. The following documents have also been annexed in support of their action:-

- (i) Family details as furnished by the ex-employee in February, 1994.
- (ii) Declaration of the ex-employee on the demise of his wife Smt. Sonali Saha.
- (iii) Index card in which the ex-employee has categorically referred to his family details comprising himself and his son.
- (iv) Nomination for death-cum-retirement gratuity in favour of Shri Subham Saha.
- (v) Nomination of Armed Forces Personal Provident Fund in favour of Shri Subham Saha.
- (vi) Name of Group Insurance Scheme in favour of Shri Subham Saha.

*h*

(vii) Nomination of Family Pension Scheme in favour of Shri Subham Saha.

7.4. The respondent authorities, vide their communication dated 23.9.2013, had informed the applicant as follows:-

"120167/PS/Est(NI)

23 Sep 2013

Smt Pravati Saha  
D/o Shri Sita Ram Saha  
Gobindapur, Post - Rautara,  
Police Station - Suri,  
Distt. Birbhum (W.B)

**DEATH OF P NO 6965761 SSK SHRI TAPAS KUMAR SAHA : PUT OFF  
THE MATTER OF DISBURSING THE SERVICE BENEFITS OF  
DECEASED GOVT EMPLOYEE**

Dear Madam,

1. Please refer your representation No Nil dt 03 Sep 2013.
2. In response to your representation under reference, it is intimated that since death of his first wife Smt Sonali on 27 Nov 1994, the Govt Employee Shri Tapas Kumar Saha has not given any intimation regarding second marriage with you and birth of daughter Km Supriya Saha till the date of his death.
3. As per service document, all the forms relating to terminal benefit and death have been found enclosed in favour of his son Shri Subham and accordingly as per existing rules, all terminal benefits including family pension are admissible to be paid to Shri Subham only.
4. In case you are legally wedded wife of the Deceased Govt Employee, you have (illegible) submitted the authentic documents which cannot be challenged in court.
5. In such situation, the undersigned is unable to put off the terminal benefits as well as family pension based on your ibid representation.

(Sandhya Nautiyal)  
Capt  
Personnel Offr  
For Offg Comdt"

It transpires that the respondents categorically asked the applicant to submit authentic documents which would withstand judicial scrutiny and have also asserted that given the contents of the nomination of the ex-employee and his service records, Shri Subham Saha is the only rightful claimant of his father's death benefits.

8. We find the applicant has not been able to produce any records authenticating her marriage with the ex-employee. She has not furnished

*hi*

any document to authenticate her claim before the respondent authorities and she has also admitted that she had stayed away from her spouse, the ex-employee, on grounds of domestic violence, consequent to which the ex employee consciously refused to enlist her or their daughter as his nominee.

9. Hence, in the absence of any material based on which the applicant could substantiate her claim, we reject the claim as unworthy of merit and dismiss the O.A.

There will be no orders on costs.



**(Dr. Nandita Chatterjee)**  
**Administrative Member**

**(Bidisha Banerjee)**  
**Judicial Member**

**SP**