

## Dalia Dutta Vs Union of India (UOI) and Others

**Court:** Calcutta High Court

**Date of Decision:** March 20, 2007

**Acts Referred:** Administrative Tribunals Act, 1985 " Section 19  
Constitution of India, 1950 " Article 226, 227

**Citation:** (2008) 1 CHN 136 : (2007) 113 FLR 1135

**Hon'ble Judges:** Kishore Kumar Prasad, J; Bhaskar Bhattacharya, J

**Bench:** Division Bench

**Advocate:** Krishhanu Banik, Naba Kumar Das, for the Appellant; Tapan Dutta Gupta, for the Respondent

### Judgement

1. This application under Article 226/227 of the Constitution of India is at the instance of an unsuccessful applicant and is directed against the order

dated December 17, 2003 passed by the Central Administrative Tribunal, Calcutta Bench, in O.A. No. 762 of 2002 thereby dismissing an

application u/s 19 of the Administrative Tribunals Act filed by the present writ petitioner.

2. The following facts are not in dispute:

One Shyamal Kumar Dutta, the deceased husband of the writ petitioner, was an employee of the South Eastern Railway, who died-in-harness on

October 18, 2000 in South-Eastern Railway Central Hospital, Garden Reach. In the wedlock between the writ petitioner and the said Shyamal

Kumar Dutta a son was born and at present the said minor son in custody of the mother of the deceased employee, i.e., his grandmother.

After the death of the deceased employee, the writ petitioner approached the employer for release of Provident Fund, Gratuity and other service

benefits including the family pension payable to her. The employer having advised the writ petitioner to approach the Civil Court for declaration of

her right, she came up with an application u/s 19 of the Act before the Tribunal.

The application was opposed by the employer contending that the deceased employee had executed a Will thereby depriving the writ petitioner of

the property left by the deceased employee and in the Will it was indicated that she was living adulterous life with a third person.

There is also no dispute that the mother of the deceased filed an application for succession certificate for the purpose of realization of the service

benefits of the deceased employee, but such application was dismissed.

The learned Tribunal on consideration of the aforesaid materials on record, came to the conclusion that so far the benefits other than family pension

are concerned, those being the properties left by the deceased employee, cannot be distributed to his heirs so long the probate proceeding is not

disposed of.

At this stage, it will not be out of place to mention here that the sister of the deceased has filed an application for probate of the Will alleged to

have been executed by the deceased and the same is pending.

So far the family pension was concerned, the learned Tribunal after relying upon a decision of the Supreme Court in the case of Smt Violet Issaac

and Others Vs. Union of India (UOI) and Others, came to the conclusion that the widow of the deceased is entitled to get such family pension

even if any Will is executed by which she is deprived of such right; in other words, according to the Tribunal, an employee has no right to deprive

his wife of the benefit of family pension by way of testamentary disposition. In spite of arriving at such conclusion, the learned Tribunal, however,

did not give any relief to the petitioner as according to the Tribunal there was doubt as to whether the writ petitioner continued to be the wife as the

husband during his life-time has made specific allegation that she married another person named in the Will. On that ground the learned Tribunal

concluded that without any declaration being obtained in Court of Law that she was the widow of late Shyamal Kumar Dutta, she was not entitled

to get even the benefit of family pension.

3. Being dissatisfied, the writ petitioner came up before us.

4. Mr. Das, the learned Advocate appears for the employer and Mr. Pal, the learned Advocate intervenes in the matter by appearing on behalf of

the mother and minor of the deceased employee.

5. Since a pure question of law arises for determination in this application and for the purpose of disposal of such application no disputed question

of fact is involved, we have decided to hear out the application itself without inviting the employer to file any affidavit-in-opposition.

6. After hearing the learned Advocates for the parties and after going through the materials on record, we are at one with the learned Tribunal that

so far the benefits other than the family pension are concerned those being the property of the deceased, cannot be bequeathed to somebody else

depriving the legal heirs in accordance with the law of succession applicable to the deceased.

7. Therefore, in the case before us, the deceased having allegedly executed a Will depriving the writ petitioner of his property and such probate

proceeding being pending, before disposal of such proceeding the learned Tribunal was quite justified in passing no direction.

8. However, so far as the observation of the learned Tribunal as regards the family pension is concerned, we are unable to approve such

conclusion.

9. There is no dispute that the deceased married the writ petitioner in accordance with law and in their wedlock a son is born. Once the marriage

between the deceased employee and the writ petitioner is admitted, so long there is any assertion on the part of the deceased employee that he

obtained any decree of divorce from a Competent Court of Law, the writ petitioner continued to be the wife of the deceased. Even if we assume

for the sake of argument that she became unfaithful to the deceased, nevertheless she continued to be a wife, and, thus, became the widow on the

death of the deceased employee.

10. Therefore, the learned Tribunal was not justified in asking the writ petitioner to get a declaration that she was the widow of the deceased from

a Competent Court of Law for the purpose of obtaining the benefit of family pension.

11. The law is now well-settled that so long the widow is alive, the other dependant son, daughter, etc. do not get any right to the family pension.

12. Therefore, in the fact of the present case, it was the duty of the Tribunal to pass direction upon the employer to release the family pension in

favour of the writ petitioner as it is nobody's case that the deceased employee during his life-time obtained any decree of divorce against the writ

petitioner from any Competent Court of Law.

13. We also find substance in the contention of Mr. Banik that the writ petitioner having been found to be the widow of the deceased, the

employer should consider her case of compassionate appointment in accordance with law as it stood at the time of death of the employee. Such

decision should be taken within two months after giving opportunity of hearing to the writ petitioner.

14. We make it clear that in this writ application arising out of a proceeding u/s 19 of the Act, we are not called upon to decide whether the son of

the deceased is entitled to get maintenance from the writ petitioner in the fact of the present case.

15. We, therefore, modify the order impugned the order by directing the railway authority to release the family pension in favour of the writ

petitioner from the date of death of the employee.

Such payment should be released within one month from today.

16. So far the arrears are concerned, the writ petition will be entitled to get interest @ 8% per annum from the date of such pension became due

and payable till actual payment.

17. As regards the other service benefits are concerned, those will abide by the result of the pending probate proceeding and in the event the

probate proceeding fails, the writ petitioner will get 1/3rd of total amount left by the deceased, she having inherited 1/3rd share in case of intestate

successor; otherwise payment of those amount will be guided by the provisions contained in the Will except the family pension.

The application is, thus, disposed of with the above observation.

In the facts and circumstances of the case, there will be no order as to costs.

Let xerox certified copy of this order be given to the parties within one week from the date of making of such application.

B. Bhattacharya and K.K. Prasad, JJ.