

CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH, KOLKATA



No. O.A. 1673 of 2016

Date of order: 17.12.2019

Present : Hon'ble Ms. Bidisha Banerjee, Judicial Member
Hon'ble Dr. Nandita Chatterjee, Administrative Member

Smt. Pramila Tudu,
Wife of Late Gangadhar Tudu,
Aged about 42 years,
81/F, Railway Quarter (3rd Floor),
Post & P.S. – Sonarpur,
District – South 24 Parganas,
Pin – 700 150,
Working as Booking Clerk at
Champahati, Railway Station,
Eastern Railway, 24 Parganas (S).

... Applicant

- V E R S U S -

1. Union of India,
Service through the General Manager,
Eastern Railway,
17, Netaji Subhas Road,
Kolkata – 700 001.
2. The Divisional Railway Manager,
Eastern Railway,
Sealdah Division,
Sealdah,
Kolkata – 700 014.

... Respondents

For the Applicant : Mr. J.R. Das, Counsel

For the Respondents : Mr. D. Basak, Counsel

O R D E R (Oral)

Per Dr. Nandita Chatterjee, Administrative Member:

The applicant has approached this Tribunal under Section 19 of the Administrative Tribunals Act, 1985, in fifth stage litigation in her

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quest for Rupees Twenty lakhs as lump sum ex-gratia compensation on account of expiry of her spouse, an ex employee, during performance of his duties. The following relief has been sought for in particular:-

- (i) An order directing the respondents to quash and set aside the speaking order dated 18.7.2016 and disburse the claim of the applicant as per Railway Board Circular.
- (ii) An order directing the respondents to consider the representation dated 12.6.2014 and disburse the Lump-Sum Ex-Gratia compensation rest Ten lakhs as per Railway Board circular dated 25.1.2011.
- (iii) An order directing the respondents to transmit and submit before the Hon'ble Tribunal all the records and paper in connection with the case.
- (iv) Any other relief or reliefs as may be admissible on the basis of the adjudication of the matter.
- (v) Cost of the proceedings."

2. Heard rival contentions of both Ld. Counsel, examined pleadings and documents on record as well as contents of RBE No. 136 of 2008, which the Ld. Counsel for the respondents would furnish in compliance to directions of this Tribunal. Despite opportunities, no written notes of arguments have been furnished by any of the parties.

3. The facts, in a narrow compass, is that the applicant's spouse, an ex-employee with the respondent authorities had expired on 10.2.2008 while on duty, and, that, the applicant thereafter approached the respondent authorities on several occasions for lump sum compensation on account of the demise of her husband.

As the respondent authorities failed to respond, the applicant filed an O.A. No. 217 of 2013 which was disposed of on 11.4.2013 by directing the competent respondent authority to look into the grievance of the applicant with regard to payment of ex-gratia due to her husband within a period of three months from the date of receipt of a copy of the Tribunal's order with admissible statutory interest. The respondent authorities, in compliance with the said order, remitted an account payee cheque amounting to Rs. 10 lakhs only, which, the applicant admittedly received on 17.12.2013.



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The applicant, however, relying on CPO Srl. No. 09/2011 dated 25.1.2011 and RBE No. 4/2011 dated 22.2.2011, claimed further Rs. 10 lakhs as Ex-Gratia Lump Sum Compensation. In response, she received a communication dated 12.5.2014 (Annexure A-6 to the O.A.) from the respondent authorities, clarifying that, while RBE No. 4/2011 has raised the ceiling on the aggregate amount from compensation receivable from various sources of funding, the provisions of RBE No. 136 of 2008 will apply to her spouse, having expired on account of accident in course of performance of duties which limits the ex gratia compensation in such cases to Rs. 10 lakhs.

Being aggrieved, the applicant thereafter filed O.A. No. 1300/2014 which was disposed of on 20.4.2015 by the Tribunal with the following observation:-

“..... Admittedly, the applicant does not come within the purview of the ingredient under which compensation should be more than ten lacs. This is not a forum to make a roving enquiry to find out the nature of the death for payment of the compensation.

In view of the above, this O.A. is disposed of with liberty to the applicant to approach the appropriate forum as desired, seeking enhancement of the compensation amount already paid to her. There shall be no order as to costs.”

The applicant once again approached the Tribunal in O.A. No. 350/01921/2015 which was disposed of vide orders dated 18.2.2016 giving liberty to the applicant to prefer a representation seeking the said benefit of further 10 lakhs of Ex-Gratia Lump Sum Compensation and in case the applicant was found to be entitled to higher payment, the same was to be extended to her within one month thereafter in terms of RBE No. 4/2011.

Not having received the enhanced amount, the applicant thereafter preferred a CPC No. 350/00122/2016 arising out of O.A. No. 350/01921/2015 which was dropped on 16.8.2016 as a speaking order had already been issued by the respondent authorities on 18.7.2016,

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and, challenging the said speaking order which rejected her claim, the applicant has approached the Tribunal in the instant Original Application.

4. As the speaking order is under challenge, the said is examined in detail. The said speaking order is reproduced as below:-

Speaking Order

Sub. Com. No. O.A. 1673 of the Hon'ble CAT/Calcutta
Passed on 04.03.16, 23.05.16

U.O.T.S. O. -

Hon'ble CAT/Cal by its order dated 13.02.15 has been pleased to direct applicant to submit representation seeking benefit within a period of 15 days from date of receipt of copy of order and upon receipt of such representation, the respondent shall duly consider the same and pass appropriate redressed and speaking order within a period of two months.

In pursuance of above order of Hon'ble CAT/Calcutta, undersigned being respondent No. 2 perused representation dated 04.03.16 and 23.05.16 of the applicant received on 23.05.16 and following observations have been made:

The fact remains that Late Gangadhar Tudu, while working as Technician-III (Mechanical) in Sonarpur unit of Sealdah Division of Eastern Railway, expired on 10.02.2008 out of and in course of his duty. His wife Smt. Pramila Tudu was eligible for compensation amounting to Rs. 3,12,940/- (Rupees three lakh twelve thousand nine hundred forty only) under Workmen's Compensation Act and Ex. Gratia lump sum amounting to Rs. 10,00,000/- (Rupees ten lakh only). Accordingly, Smt. Tudu, the applicant of the present OA was paid an amount of Rs. 15,000/- (Rupees fifteen thousand only) just after death of Late Gangadhar Tudu and balance amount of Rs. 2,97,940/- (Rupees two lakh ninety seven thousand nine hundred forty only) on 28.07.2009 through Commissioner, Workmen's Compensation, West Bengal as compensation under Workmen's Compensation Act. Thereafter, she was paid an amount of Rs. 10,00,000/- (Rupees ten lakh only) as Ex. Gratia lump sum as compensation through Reserve Bank of India cheque no. 657865 dated 13.12.2013 vide Office Order No. E-18(TR)/Compensation/48 dated 13.12.2013.

Subsequently, Smt. Pramila Tudu, the wife of Late Gangadhar Tudu and the applicant of the present OA vide her application dated 13.05.2014 acknowledged receipt of Rs. 10,00,000/- as the Ex. Gratia lump sum amount and requested to enhance the said compensation to Rs. 20,00,000/- While representing she referred to Railway Board's Circular bearing RBE No. 136/2008, D.O.P. P.V's OM dated 11.09.1998 (MIS PRINTED AS 1999) and Index No. 1051/1 (the later one is CPO's serial circular No. 09/2011 that issued Railway Board's RBE No. 04/2011).

The said application was examined over and she was replied vide this office letter No. E-18(TR)/Court/217/2013 dated 12.06.2014 that as per the OM No. 45/55/97 and P.W(C) Dated 11.09.1998 as communicated vide RBE No. 136 of 1999, in certain cases relief is provided from other sources like Prime Minister's Relief Fund, Chief Minister's Relief Fund etc. also. The aggregate of such relief/Ex. Gratia compensation etc. paid from different sources should not exceed Rs. 10 lakh in each individual case RBE No. 04/2011 (The applicant mentioned as Index No. 1051/1) communicated under CPO's serial circular No. 09/2011 indicated that the aggregate amount of such relief/compensations from different sources has been revised from Rs. 10 lakh to Rs. 20 lakh w.e.f. 01.01.2006. It was also indicated that RBE No. 136 of 2008 as communicated under CPO's Serial No. 53/2009 advised that in case of death out of and in course of his duty the Ex. Gratia lump sum as compensation as payable to the family of the deceased family will be Rs. 10 lakh.

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As per laid down procedure vide Railway Board's RBE No. 7/3/2008, circulated through Chief Personnel Officer/Eastern Railway's SI Circular No. 53/09, amount payable to the family of the deceased Railway employee for death occurring due to accidents in the course of performance of duties - Rs. 10.00 lakh.

Therefore an amount of Rs. 10,00,000/- (Rupees ten lakh only) was paid to Smt. Pramila Tudu, the wife of Late Gangadhar Tudu as Ex. Gratia lump sum as compensation through Reserve Bank of India cheque no. 657865 dated 13.12.2013 vide Office Order No. E-18(TR)/Compensation/48 dated 13.12.2013 on the line of that order.

Now the Applicant has referred to Railway Board's RBE No. 4/20 circulated vide Chief Personnel Officer/Eastern Railway's SI Circular No. 09/2011 which did not deal with the amount payable as Ex. Gratia lump sum as compensation to the family of the employee for his death occurring due to accidents in the course of performance of duties but "the aggregate of the relief/ex. gratia compensation paid from different sources of workmen compensation viz. compensation under WCA, compensation under Section 124 of the Railways Act 1989 as applicable etc". In the said policy later enhanced "the ceiling on aggregate amount" (not the Ex. Gratia lump sum as compensation to the family of the employee for his death occurring due to accidents in the course of performance of duties) from Rs. 10 lakh to Rs. 20 lakh. Section 124 of Railway Act 1989 applies to train accidents. Similarly P.M.'s relief fund and C.M.'s relief fund paid only in cases of disaster etc. These are not applicable in this case.

Before payment of the said amount of Rs. 10,00,000/- (Rupees ten lakh only) as Ex. Gratia lump sum as compensation, she was further paid with an amount of Rs. 3,12,940/- (Rupees three lakh twelve thousand nine hundred forty only) under Workmen's Compensation Act - partly immediately after death of her husband and the rest amount of Rs. 2,97,940 (Rupees two lakh ninety seven thousand nine hundred forty only) on 28.07.2009 through Commissioner, Workmen's Compensation, West Bengal as compensation under Workmen's Compensation Act. The applicant did not disclose the fact before the Hon'ble Tribunal. Due to misconception and misinterpretation of Railway Board's above quoted circulars, applicant has made several representations on different dates to the respondent authority.

It is evident from aforesaid findings that the amount paid by the Railway Administration as ex. gratia lump sum as compensation to the family of deceased employee for his death occurring due to accident in course of employment was just and proper.

In view of above observations and in consonance with Railway Board's above quoted Circular, undersigned being respondent authority is not in a position to extend any benefit as prayed for and additional amount of 10 lakh compensation is not tenable and hence rejected.

The matter is disposed of accordingly in pursuance of above order of Hon'ble CAT/Calcutta.

(-Besudev Panda)
Dm. Railway Manager
&
Respondent No.2

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The following is inferred from the above noted speaking order:-

- (i) That, admittedly, the deceased employee, namely, the spouse of the applicant, had expired due to accident in course of performance of his duties.
- (ii) His widow, the applicant in the present O.A., was eligible for compensation under Workmen's Compensation Act and, an amount of Rs. 3,12,940/- was duly remitted to her on such amount. Thereafter she was paid an amount of Rs.

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10,00,000/- as Ex-Gratia Lump Sum Compensation vide orders dated 13.12.2013 which was acknowledged as received by the applicant.

(iii) The applicant has been relying on Railway Board's Circular RBE No. 4/2011, which, while referring to relief provided from various sources, such as Prime Minister's Relief Fund, Chief Minister's Relief Fund etc., enhanced the ceiling of aggregate compensation from Rs. 10 lakhs to Rs. 20 lakhs w.e.f. 1.1.2006.

(iv) RBE No. 136 of 2008, however, had advised that, in case of death out of and in course of duty, Ex. Gratia lump sum as compensation is payable to the family of the deceased, would be limited to Rs. 10 lakhs only.

(v) Hence, the applicant had actually received Rs. 10 lakhs as Ex-Gratia Lump Sum Compensation as well as Rs. 3,12,940/- under Workmen's Compensation Act and the aggregate compensation received on account of the demise of her spouse amounted to Rs. 13,12,940/- only.

5. The bone of contention in this matter is the applicability of RBE No. 4/2011 vis-à-vis RBE 136/2008 to determine the compensation payable to the applicant. We proceed to examine both as under:-

5. The contents of RBE No. 4/2011 are as follows:-

[Signature]

Estt. Srl. No. 022/2011

RBE No. 04/2011

No. P/W/16/Misc.

Dated: 22.02.2011

SUB: Payment of Ex-gratia lump-sum compensation to families of Railway employees who die in harness on duty.

Ref: Railway Board's letter Nos.

- (i) E(W) 2002/CP-1/7 dt. 30.09.08
(Estt. Srl. No. 133/08)
- (ii) E(W) 99/CP-1/1 dt. 05.11.99
(Estt. Srl. No. 45/00)
- (iii) E(W) 99/CP-1/1 dt. 09.02.2000
(Estt. Srl. No. 51/00)

Railway Board's letter No. E(W)2007/CP-1/17 dated 10.01.2011
(RBE No. 04/2011) is as under:

In partial modification of this office letter No. E(W) 99/CP-1/1
dated 01.02.2000, the clarification that the compensation payable
under Workmen's Compensation Act (WCA) should be reduced from the
lump-sum amount payable as Ex-gratia compensation is hereby
withdrawn. However, the aggregate of the relief/Ex-gratia
compensation paid from different sources of workmen compensation,
viz. compensation under WCA, compensation under Section 124 of the
Railways Act, 1989 is admissible, etc. is subject to the ceiling laid down
in para 12 of Annexure to Department of Pension & Pensioners' Welfare's
O.M. No. 45/55/97-PEPW(C) dated 11.09.1993 circulated thro' Board's
letter No. E(W)99/CP-1/1 dated 01.11.1999 as amended vide letter No.
(W)2003/CP-1/7 dated 30.09.2003 notifying revised rates of
compensation w.e.f. 01.01.2006. These orders are effective from
01.06.1997.

1. Section 6 is also communicated to revision of the ceiling on
aggregate amount mentioned in Para 12 of Annex to the DOPEPw's
O.M. dated 11.09.1998 (old referred to above from Rs.10 lakh to Rs.20
lakh in each individual case w.e.f. 01.01.2006).

2. This issues with the concurrence of the Finance Directorate of
the Ministry of Railways.

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Advocate

From the above noted RBE No. 4/2011, the following is inferred:-

- (i) This RBE clarifies that the office letter dated 9.2.2000
(whereby the compensation payable under Workmen's
Compensation Act was to be reduced from the lump sum
payable as compensation), stands withdrawn.
- (ii) Relief/Ex-Gratia compensation are payable from different
sources, namely, compensation to Workmen's Compensation

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Act, compensation under Section 124 of the Railway Act, 1989 as applicable, subject to ceiling as noted in O.M. dated 11.9.1998.

(iii) And, that, the aggregate of all such compensation noted at (ii) above would not exceed Rs. 20 lakhs w.e.f. 1.1.2006.

We infer therefore that this RBE No. 4/2011 does not enhance the ceiling of Ex-Gratia Lump Sum Compensation as payable on account of accidental death in course of performance of duties. What it clarifies is that the aggregate of all compensation payable under various statutory provisions would be subject to a ceiling of Rs. 20 lakhs.

6. We next proceed to examine the provisions of RBE No. 136 of 2008, relied upon by the respondents and the relevant contents therefrom are extracted as below:-

"

RBE No. 136/2008

GOVERNMENT OF INDIA
MINISTRY OF RAILWAYS
(RAILWAY BOARD)



File No. E(W)2008/CP-1/7

New Delhi, the 30th September, 2008

The General Managers (Personnel)
All Indian Railways, PUs, etc.

Sub: Payment of Ex. Gratia lump sum compensation to the families of Railway employees who die in harness in performance of bonafide official duties.

Ref.: Board's letter No. E(W)99/CP-1/1 dated 5.11.99.

In partial modification of O.M. No. 45/55/97-P&PW(C) dated 11th Sept., 1998 circulated under Board's letter dated 5.11.99 under reference on the above mentioned subject, sub-paras (a) to (c) under para-5 of the DOP&PW's O.M. dated 11.9.1998 since amended vide their O.M. No. 38/37/08-P&PW(A) dated 2.9.2008 may be substituted and read as under:-

(a) Death occurring due to accidents in the course of - Rs. 10.00 lakh performance of duties.

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2. These orders are applicable in the case of Railway servants who die in harness on or after 1.1.2006.

3. This has sanction of the President and issues with the concurrence of Finance Directorate of the Ministry of Railways.

Sd/-
(Debasis Mazumdar)
Joint Director/Estt.(Welfare)
Railway Board"

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Ld. Counsel for the applicant has not been able to furnish before us any instructions/guidelines/circulars/rules of the respondent authorities which mandates that the singular item of Ex-Gratia Lump Sum Compensation payable to family of Railway employees, who died in harness in course of duty, has been raised from Rs. 10 lakhs to Rs. 20 lakhs. Hence, we are of the considered view that the provisions of RBE No. 136 of 2008 would continue to apply to the applicant and there is no scope of interfering with the speaking order dated 18.7.2016, impugned in the instant O.A.

6. Accordingly, the claim fails and the O.A. is dismissed on merit.

Parties will bear their own costs.



(Dr. Nandita Chatterjee)
Administrative Member

(Bidisha Banerjee)
Judicial Member

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