

14.07.2021
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CO 3314 of 2019
(Via Video Conference)

In Re : Lalji Tewari

....Petitioner

Mr. Biswajit Tiwari
Mr. A. Das Sharma

..... For the petitioner
Ms. Soma Roy Chaudhuri

..... For the UOI

Judgment and order dated 5.8.2019 passed by the Railway Claims Tribunal, Kolkata Bench in claim application no. OA(IIu)/KOL/2014/0128 is under challenge inter alia on the ground that the learned tribunal ought to have evaluated the incoherence in the depositions and the observations made by the learned Tribunal in the judgment and order assailed. But the learned Tribunal has failed to appreciate the factual matrix of the modification petition preferred by the applicant/petitioner in connection with the judgment and order dated 3.10.2018 in the said Claim Application.

It is pointed out that the opposite party had made fixed deposit of the awarded compensation to the tune of 90% of the awarded amount for a period of 10 years instead of 5 years in violation of the order of the learned Tribunal itself which was subsequently rectified by the State Bank of India.

It is submitted on behalf of the opposite party that it was not due to fault of the tribunal as the State Bank of India open and such fixed deposit for a period of 10 years instead of 5 years in violation of direction of the learned

Tribunal. It is clear that 90% of the awarded amount is under fixed deposit with the State Bank of India as per the direction of the learned Tribunal vide order dated 3.10.2018. The petitioner preferred an application for modification of the main order dated 3.10.2018 for release of 75% of fixed deposit amount as the petitioner is in the urgent need of money and as such by the impugned order dated 5.8.2019 the learned Tribunal having failed to appreciate the submission of the petitioner, rejected the application for modification for disbursement of 75% of the fixed deposit amount and the ground for rejection by the learned Tribunal is that the impugned order basically passed by the Tribunal was to protect the money from being misappropriated and, therefore, the modification of the order for release of 75% of fixed deposit amount claimed by the petitioner was turned down.

It is pointed out by Mr. Biswajit Tiwari, learned advocate appearing for the petitioner that the learned Tribunal has not appreciated the fact that the petitioner is a senior citizen and only claimant of the claim awarded in his favour because the awarded amount is required by the petitioner being a senior citizen for his treatment.

The facts leading to this case is that on 29.4.2012 the son of the petitioner namely Biswanath Tewari @ Anjan (since deceased) was returning from Rampurhat railway station to Bolpur railway station by 234 Dn Rampurhat Burdwan Passenger. The train was over

crowded and the son of the petitioner was standing on the foot board as he had to get down at Bolpur station. When the train was about to reach Bolpur station due to overcrowding of the passengers and jostling, the son of the petitioner fell down in the gap between the train and the platform and succumbed to his injury. He was taken to Bolpur hospital and from there to Bolpur S.D hospital where he was declared dead.

The claim was awarded in favour of the mother of the deceased son and subsequently the mother of the said son also died. Thereafter the petitioner being father was substituted and he was granted the claim for a sum of Rs. 8 lakh as being the sole dependant/parent of the deceased Biswanath Tewari. The direction was given by the learned Tribunal for getting 90% of the total awarded amount in a fixed deposit scheme in a nationalized bank for a period of 5 years. However, 10% awarded amount was released through ECS in favour of the petitioner. Such order was passed by the learned Tribunal on 3rd October 2018 and the said order was sought to be modified before the Tribunal by the petitioner for release of 75% of the fixed deposit amount.

It would appear from the order dated 5.8.2019 passed by the learned tribunal while rejecting the application of the petitioner for release of 75% of the fixed deposit amount that it was the sheer disobedience of the Tribunal's order by the respondent railway who had not

taken due diligence while satisfying the decree in compliance of the Tribunal's order in the matter of fixed deposit scheme for a period of 5 years whereas the fixed deposit was made opened in respect of the 90% of the awarded amount for a period of 10 years through mistake which got rectified. Such observation made by the learned tribunal cannot be faulted with. However, the point which has been taken for consideration is that modification of the order would amount to touching the main order while the direction was given for deposit of 90% claim amount with fixed deposit scheme in order to protect money from being misappropriated.

Ms. Soma Roy Chaudhuri, learned advocate appearing for the Union of India submits that since the main order was sought to be modified by the Tribunal, the learned Tribunal has rightly rejected the prayer as made on behalf of the petitioner for release of 75% of fixed deposit amount because the order impugned could be challenged in appeal under the provisions of section 23 of the Railway Claims Tribunal Act 1987 which provides as follows:

“23. Appeals. (1) Save as provided in sub-section (2) and notwithstanding anything contained in the Code of Civil Procedure, 1908 (5 of 1908) or in any other law, an appeal shall lie from every order, not being an interlocutory order, of the Claims Tribunal, to the High Court having jurisdiction over the place where the Bench is located.

2) No appeal shall lie from an order passed by the Claims Tribunal with the consent of the parties.

3) Every appeal under this section shall be preferred within a period of 90 days from the date of the order appealed against.”

Thus it is very clear that the petitioner has leeway for relief by way of appeal under Section 23 of the Railway Claims Tribunal Act, 1987. Although the petitioner has not preferred any appeal under the said Act, nevertheless revisional power being the discretionary power of the high Court by jurisdictional authority, this Court finding the petitioner as the sole heir of his deceased son, modification of order for release of at least 50% of amount under fixed deposit for his well being and treatment could be made in the interest of justice as there can be no apprehension of misappropriation of the money.

With the above observations the revisional application being CO 3314 of 2019 is disposed of directing the learned Tribunal to reconsider the prayer of the petitioner in the light of the observation.

All parties shall act in terms of copy of this order downloaded from the official website of this Court.

(Shivakant Prasad, J.)