IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.

109 **CM-7665-CII-2020 in**
CR-8105-2019
Date of Decision: 14.08.2020.

Mushrraf ....Petitioner.

Versus

Union of India and another ....Respondents.

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CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present: Mr. Narender Kaajla, Advocate for the petitioner.

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Suvir Sehgal, J.

This matter has been taken up for hearing through video conferencing due to Covid-19 pandemic.

CM-7665-CII-2020

Prayer made in the application is for preponing the hearing of the main case from 11.11.2020 to an early date.

Notice of the application to contesting-respondent No.1 only.

On asking of the Court, Mr. Karminder Singh, Advocate, who is available on conference call, accepts notice on behalf of respondent No.1 and he has no objection to the advancement of the date of hearing of the main case.

Application is allowed. The hearing of the main case is preponed from 11.11.2020 to today and the same is taken on board today itself.

CR-8105-2019

The instant petition has been filed under Article 227 of the Constitution of India for setting aside the impugned order dated 05.11.2019 (Annexure P5) passed by Railway Claims Tribunal, Chandigarh Bench in CM/CDG/57/2019 in case titled *Mushrraf and another Vs. Union of India,* OA-II/31/2016, whereby the application filed by the petitioner for releasing of the FDR has been dismissed by the Tribunal and for directing the concerned authority/bank to release the FDR of the petitioner.

Facts, in brief, are that on 24.10.2015, Salman, a 17 years old student, was travelling on a valid journey ticket on Intercity Express Train from Mazaffarnagar to Ambala Cant. Due to over-crowding he fell from the train and died. His friend, who was travelling with him informed the railway authorities at railway station Ambala Cant where upon the incident was registered. Petitioner No.1, who is father of the deceased along with Tamanna, his wife jointly filed a claim petition before the Railway Claims Tribunal, which was accepted and vide order dated 10.07.2018 (Annexure P1) the Tribunal awarded a sum of Rs.8,00,000/- proportionately to the claimants as compensation for the death of their son. The operative part of the order passed by the Tribunal is reproduced as under:-

> *" In the result, the original application is allowed on contest and an award for Rs.8,00,000/- (Rupees Eight lacs only) proportionately alongiwth simple interest @ 9% per annum from the date of this award till payment, is made in favour of the applicants and against the respondent. The amount of compensation shall be payable by the respondent to the applicants in equal shares i.e. Rs.4,00,000/- (Rupees Four Lacs*

only) each.

Out of the compensation amount payable to the applicants, initially a sum of Rs.1,00,000/- (Rupees One lac only) along with interest accrued thereon shall be released to each of them immediatelty through ECS and the balance amount of Rs.3,00,000/- (Rupees Three lacs only) each along with interest shall be invested in the FDRs in their favour for a period of three years. On maturity, they can withdraw the amount without permission of the Court."

In pursuance to the order, one FDR of Rs.3,03,729/- in the name of the petitioner was prepared for a period of three years by the Punjab National Bank, Bhikhaji Cama Place, New Delhi, with the date of issue as 26.04.2019 and its maturity on 25.04.2022 (Annexure P2). The parents-claimants, filed an application dated 26.07.2019 (Annexure P3) before the Railway Claims Tribunal, Chandigarh Bench, under Rule 35 read with Rule 44 of the Railway Claims Tribunal (Procedure) Rules, 1989 praying that the FDR of the petitioner be ordered to be released in his favour along with up to date interest. This application was rejected by the Tribunal vide impugned order dated 05.11.2019 (Annexure P5).

Counsel for the petitioner has contended that the request made before the Tribunal was for releasing of the amount of one FDR, in view of the fact that their residential house was in a bad condition and required repairs and that the applicants were in need of money to meet their day to day expenses.

Counsel for repsondent No.1 has argued that the balance amount has to be kept in an FDRs for a period of three years in terms of the order passed by the Tribunal, before it can be released to the petitioner.

I have considered the submission of the parties.

The petitioner has claimed that two FDRs have been prepared for a period of three years. By way of the application he has sought encashment of only one of the two FDRs to meet his reuqirements. The claim of the petitioner was verified by the Commercial Inspector Claims, who issued a certificate dated 25.09.2019 (Annexure P4) to the following effect:-

" ***CM/57/19 in case No.OA-II//31/2016***

Mushrraf and another

I visited the house of claimant Sh. Mushrraf resident of village Sambhal Hera, Tehsil Jansath district Muzaffar Nagar and seeing the house of claiment. The house was very old and in dilapidated condition. Sarpanch has also seen the house. Statement of claimant is enclosed herewith.

R.K. Ahuja
Commercial Inspector, claims
25.09.2019"

From the perusal of the certificate and examination of the contents of the application it stands established that the petitioner is in dire need of money. This Court is of the view that once the need of the claimant stood established, Tribunal should have exercised the power vested in it under Rule 44 of the Railway Claims Tribunal (Procedure) Rules, 1989, and passed orders for releasing of the amount. Rule 44 ibid, lays down that nothing in the procedure rules should be deemed to limit or otherwise affect the inherent powers of the Tribunal to make such orders as it may deem necessary to meet the ends of justice or to prevent the abuse of the process of the Tribunal. These inherent powers have been vested in the Tribunal to meet the ends of justice which in the opinion of this Court would be met in a case like the present one. Therefore, the impugned order passed by the Tribunal dismissing the application of the petitioner, cannot be sustained.

Accordingly, the revision petition is allowed. The impugned order dated 05.11.2019 (Annexure P5) is set aside and the FDR of Rs.3,03,729/- (Annexure P2) is ordered to be encashed and is directed to be paid alongwith accrued interest to the petitioner by way of a ECS transfer to his bank account by the Bank/ Tribunal after verifying the identity of the petitioner and his bank account particulars. The needful be done within a period of one month from the date of receipt of certified copy of this order.

(SUVIR SEHGAL)
JUDGE

14.08.2020
komal

Whether speaking/ reasoned : Yes/ No

Whether Reportable : Yes/ No