

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.471 of 2023

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Kanchan Kumari, W/o Late Sudhir Kumar, R/o Near Gangajal High School,
Village- Bharpura, P.S.- Sonapur, Dist.- Saran, Pin Code- 841101.

... .. Petitioner/s

Versus

1. The Union of India through its General Manager, East Central Railway, Hazipur, Pin- 844101.
2. The General Manager, East Central Railway, Hazipur, Pin- 844101.
3. The General Manager (Personnel), East Central Railway, Hazipur, Pin- 844101.
4. The Principal Financial Advisor and Chief Accounts Officer, East Central Railway, Hazipur, Pin- 844101.
5. The Divisional Railway Manager, East Central Railway, Sonapur, Pin- 841101.
6. The Senior Divisional Personnel Officer, East Central Railway, Sonapur, Pin- 841101.
7. The Senior Division Operating Manager, East Central Railway, Sonapur, Pin- 841101.
8. The Senior Divisional Financial Manager, East Central Railway, Sonapur, Pin- 841101.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Shiw Kumar Prabhakar, Advocate Mr. Gautam, Advocate
For the Respondent/s	:	Mr. Abhay Shankar Jha, Advocate

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CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE ARUN KUMAR JHA)

Date : 28-03-2023

Heard learned counsel for the petitioner and learned
counsel for the respondents-Railways.

2. The present writ petition has been filed claiming the
following reliefs :-



“(i) To set aside the order dated 07.09.2022 passed by Hon’ble Mr. Justice M.C. Verma Judicial Member and Hon’ble Mr. Sunil Kumar Sinha, Administrative, Member of Central Administrative Tribunal Patna Bench, Patna, passed in OA/050/00634/2022 (Annx-10)

(ii). To order the OPS/ Respondents concerned for grant/ release of Lump sum Ex-gratia compensation amount to the petitioner with statutory interest upon that on account of death of her husband namely Sudhir Kumar who died on 24.12.2009 in harness.

(iii). For any other relief (s) for which the petitioner would be found entitled by this Hon’ble High Court Patna in the facts and circumstances of the case.”

3. The short facts, according to the petitioner, are that the husband of the petitioner, namely, Late Sudhir Kumar was a Railway employee and was posted as Traffic Porter at Hajipur. On 24.12.2009 while he was discharging his duty at Railway Crossing No.54A at about 08:00-16:00 hrs, he had been bitten by a snake, as a result of which he succumbed to death during the course of treatment. Thereafter, a Joint Enquiry



Report/Special Report issued by Senior Divisional Operating Manager, Sonapur and Station Manager, East Central Railway, Hajipur also confirmed the death of the husband of the petitioner in course of discharge of duty. The petitioner filed representations dated 24.09.2013, 22.01.2014, 25.03.2019 and 29.03.2022 before the authorities concerned for release of the lump sum *ex-gratia* compensation amount on account of death of her husband. When no response was received upon the representations, the petitioner submitted an application under the Right to Information Act, 2005, in response to which, she has been communicated vide letter dated 18.10.2021 issued by the office of Senior Divisional Personnel Officer, Sonapur that the petitioner had not instituted any F.I.R. and she had not got done the postmortem of her husband. It has been further intimated that the lump sum *ex-gratia* compensation amount payable to family of an employee after his death is not payable in the case of Late Sudhir Kumar, i.e., the husband of the petitioner. The petitioner has never been communicated any decision by the respondent authorities regarding her claim except what has been communicated in response to her application under the Right to Information Act. She again submitted a representation dated 29.03.2022 to the DRM (P),



ECR, Sonapur and copies of the same have been communicated to Senior Officials of Railway but again no action has been taken. Thereafter, the petitioner filed an Original Application bearing O.A. No. 050/00426 of 2022 which was allowed to be withdrawn vide order dated 12.07.2022 with liberty to file fresh O.A. In the light of aforesaid liberty, the petitioner again filed O.A./050/00634/2022 before the Central Administrative Tribunal, Patna Branch, Patna. The respondents appeared and filed their written statements opposing the compensation/*ex-gratia* payments to the petitioner. The learned CAT heard the matter and rejected the claim of the petitioner as barred by limitation vide order dated 07.09.2022. Hence, the present writ.

4. The learned counsel for the petitioner submitted that while considering the case of the payment of lump-sum *ex-gratia* compensation amount to the petitioner, the respondents have failed to appreciate the fact that the applicant's husband had died on duty and it was the duty of the Railway Authorities to get an F.I.R. lodged for the said incident if any required at all, and also to get the post mortem done. The petitioner being ignorant of the requirement was not supposed to do anything. The scheme regarding payment of lump-sum *ex-gratia* compensation amount to the family of railway servant who die



in performance of *bona fide* official duties was introduced vide Railway Board's letter no. E(w)/99/CP-1/1 05.11.1999 (RBE No. 285/99). The Railway Board vide letter E(w)/2006/CP-1/1 dated 08.02.2006 (RBE No.14/2006) has communicated instructions regarding payment of ex- gratia compensation to the families of railway servants who died in performance of official duties. The learned counsel further submitted that the Railway Board, through its letter bearing no. E(W)/CP-1/7 dated 30.09.2008 (RBE No.136/2008), has updated and revised the provision and amount for the payment of ex-gratia lump sum compensation amount to the families of the railway servants who died in harness. The Railway Board, through its letter bearing no. E(W)2016/EG- 1/4 dated 25.11.2016 (RBE No. 139/2016), has again raised the amount of ex-gratia lump-sum compensation for the implementation of Government's decision on the recommendations of the Seventh Central Pay Commission- Revision of provisions regulating ex-gratia lump-sum compensation to the families of Railway employees who die in harness in performance of bonafide official duties. The learned counsel further submitted that Late Sudhir Kumar left behind him a widow i.e. the petitioner and a handicapped son aged about 16 years and a daughter aged about 14 years. The



learned counsel further submitted that the petitioner cannot be allowed to suffer for the laches on the part of the respondent authorities and in the same way, the respondents cannot be allowed to take benefit of laches caused by themselves. The learned counsel for the petitioner also submitted that in the facts and circumstances of the case, the petitioner is entitled for ex-gratia compensation.

5. *Per contra*, learned counsel for the respondents has opposed the contention of the petitioner. The learned counsel submitted that after the death of Late Sudhir Kumar, DCRG of Rs. 56,617/-, Leave Encashment of Rs. 19345/-, GIS of Rs. 15,308/- and family pension were paid to his wife Mrs. Kanchan Kumari, i.e. the Petitioner. Further, she was also granted compassionate appointment and presently, the petitioner is working on the post of Office Superintendent in the Commercial Department. The learned counsel further submitted that on 24.12.2009, Late Sudhir Kumar was working on day duty (8.00 hrs to 16.00hrs) as per roster at level crossing no. 54A of Hajipur Station. An unknown person, at around 10.45 hours, informed the Station Master that Sri Sudhir Kumar was unconscious at his work place. The said incident was recorded in the station dairy. On getting the said information, another



employee was sent by the Station Master to the concern level crossing 54A but before his arrival, Sri Sudhir Kumar had already been sent to Sadar Hospital, Hajipur by someone else. After initial treatment at Sadar Hospital, Sudhir Kumar was referred to PMCH, Patna. However, instead of bringing him to PMCH, Patna, Sudhir Kumar was taken to a private doctor, Dr. Y.K. Thakur, Pediatrician, Hajipur, where Sri Sudhir Kumar was declared dead due to snake bite. The learned counsel further submitted that after the death of Sudhir Kumar, neither FIR was lodged by the family nor post mortem was done and the last rites were performed due to which the cause of the death of Late Sudhir Kumar could not be ascertained. Since, it was an unnatural death, it was mandatory to lodge an FIR and get the post mortem done, either by the department or by the family members of the deceased employee. However, as the family members of Late Sudhir Kumar, without bringing into the knowledge of the Railway Administration, took away Sudhir Kumar for treatment and despite clear advice of the doctors of the Govt. Hospital (Sadar Hospital, Hajipur) to get him treated at another Govt. Hospital (PMCH, Patna), the family members admitted Sri Sudhir Kumar in a private hospital, run by Dr. Y.K. Thakur, a pediatrician, where Sri Sudhir Kumar was declared



dead. After the death of Sudhir Kumar, the dead body was cremated without post mortem, whereas, it was the responsibility of the family members to necessarily get the post mortem done, as the deceased was with his family members from the time of the incident to the time of his cremation. The learned counsel further submitted that the petitioner, being the wife of Late Sudhir Kumar, demanded payment of Lump Sum, Ex-Gratia (LSEG), wherein, a lump sum amount of Rs. 10 lakh is payable to employee who dies in harness in performance of his bona fide official duty. The learned counsel further submitted that as per Railway Board's directions, in order to prove the death in harness while performing official duties, one is required to produce FIR as well as post mortem report. For payment of LSEG, availability of these documents, i.e. FIR and post mortem report are essential as per Railway Board's letter no. E(NG)99/CP-1/1 dated 10.05.01 and GM(P)/HJP letter no. E/207/O/ECR/HJP/Part-II (Pension) dated 17.05.2001. However, the same were not submitted by the petitioner. The matter on the request of the petitioner was referred to the GM(P)/ECR/Hajipur, vide letter dated 04.12.2014 and 28.05.2015 and request was made to issue guidelines in the referred case. In reply, the GM(P)/ECR/Hajipur enquired vide



letter dated 12.06.2015 as to how and why an unnatural death occurred during working hours and no post mortem was done. Further, vide letter dated 29.10.2015, it was communicated that FIR and post mortem reports are essential not only as per JPO but also as per Railway Board's circulars. Thus, in absence of copy of FIR and Post Mortem Report, LSEG could not be sanctioned. The learned counsel further submitted that in the light of aforesaid facts, it is evident that in absence of FIR and Post mortem report, it could not be established by the petitioner that death of her husband occurred due to accidental injury while performing bona fide official duty, for the purpose of employees' compensation and LSEG compensation as per Railway Board's extant rules and regulations. Thus, the claim of the petitioner is not tenable and the writ petition is fit to be dismissed.

6. Having considered the material available on record and further considering the rival submission, in the present writ petition, the core question which arises is whether the petitioner is entitled to *ex-gratia* lump-sum compensation or not in the given facts and circumstances.

7. It is not in dispute that on 24.12.2009, the husband of the petitioner namely, Late Sudhir Kumar was working on day



duty (8.00 hrs to 16.00 hrs) as per roster at level crossing no. 54A of Hajipur Station. The Station Master was informed by an unknown person, at around 10.45 hours, that Sri Sudhir Kumar was unconscious at his work place. The said incident was recorded in the station dairy. The husband of the petitioner was sent to Sadar Hospital, Hajipur for treatment where the doctor found the husband of the petitioner in semi conscious status and suspected snake bite and he has been referred to PMCH, Patna. Unfortunately he died. These facts have also been admitted by the official respondent. So, it can be said that the death occurred due to accident in the course of performance of duties. Now, the government scheme, brought out in Office Memorandum dated 11.09.1998 and modified from time to time, provides payment of ex-gratia lump-sum compensation in certain specified circumstances to the Central Government civilian employees who die in harness in performance of their *bona fide* duties under various circumstances and one such circumstance is that the death occurred due to accident in the course of performance of duties.

8. It is also a fact that a Joint Enquiry Report dated 10.12.2013 has mentioned the fact about death occurred during the course of performance of railway duty. It is also a fact that



while the husband of the petitioner was performing the work at Railway Crossing No.54(A), he had been bitten by a snake, as a result of which, he succumbed to death during treatment. The husband of the petitioner was sent to Sadar Hospital, Hajipur for treatment where the doctor found the husband of the petitioner in semi conscious status and suspected snake bite. He was referred to PMCH, Patna for specialized treatment. However, instead of bringing him to PMCH, Patna, the husband of the petitioner was taken to another private doctor, where he was declared dead due to snake bite.

9. Further, the fact is not to be lost sight of that office memorandum regarding *ex-gratia* lump-sum is part of welfare scheme of the government and has been provided to alleviate the hardship suffered by the survivors of the civilian employees. So, in view of the aforesaid discussion, we are unable to agree with the conclusion reached by the learned CAT. Furthermore, insistence of the official respondent on production of FIR and post-mortem report is not in the spirit of the scheme. It is further not the case of the official respondents that death of the husband of the petitioner was due to some other reason.

10. In the light of discussion made hereinabove and under the facts and circumstances of the case, the present writ



petition deserves to be allowed in part and is accordingly allowed in part. The order of learned CAT dated 07.09.2022 is set aside.

11. However, from the records, it appears that though the husband of the petitioner died on 24.12.2009 in course of discharge of official duty, but the petitioner has filed first representation for release of lump sum ex-gratia compensation amount on 24.09.2013 i.e. after delay of about four years. On this account, the petitioner must apportion the blame and hence under the circumstances, this Court directs the respondents to pay the half of the admissible *ex-gratia* lump-sum compensation amount i.e. Rs. 5,00,000/- to the petitioner within a period of three months from the date of receipt/production of a copy of this judgment, failing which the petitioner would be entitled to payment of further amount of Rs. 50,000/- towards litigation cost.

(P. B. Bajanthri, J)

(Arun Kumar Jha, J)

V.K.Pandey/-

AFR/NAFR	A.F.R.
CAV DATE	N.A.
Uploading Date	06.04.2023
Transmission Date	N.A.

