

ANIL KUMAR GUPTA

A

v.

UNION OF INDIA & ORS.

(Writ Peittion (Civil) No.68 of 2011)

JULY 05, 2016

B

[T.S. THAKUR, CJI AND UDAY UMESH LALIT, J.]

Constitution of India – Art. 32 – Petition under – In public interest – In respect of a tragedy which ensued pursuant to a recruitment drive by Indo-Tibetan Border Police (ITBP) where more than two lakhs aspiring candidates reached Bareilly (U.P.) – In view of swelling number, the ITBP authorities postponed the drive – Thereafter the crowd rushed to railway station – Hundreds of people climbed the rooftop of a train – At 60 km from Bareilly an accident took place at Railway over-bridge as the gap between the train roof and the bridge was not enough – This resulted in around 20 deaths and injuries to many – Petitioners sought directions inter alia for finding out reasons for loss of lives, for grant of compensation to the victims and for laying down guidelines for necessary precautions and care to be taken to avoid such tragedy – Railways in its enquiry report stated that the cause of accident was not of railway staff – However, in para 9.2 of the report it was recommended that Railway must ensure that there are no infringements to dimensions as per Indian Railways, Schedule of Dimensions, Revised 2004 for overhead fixed structures – ITBP in its affidavit stated that standing Order No. 1 of 2011 dated 14.2.2011 and standing Order No. 5 of 2013 dated 26.2.2013 ensuring that only 600 candidates would be called for recruitment in one drive – Held: Railway administration was responsible for the accident – Reasonable care was expected from the administration as administration alone was in a position to know about the infringement with regard to certain structures and possible implications if the trains were to run at a great speed (75 km ph) with large number of people on roof-top – Direction to Railway Administration to pay due compensation to the kin of the dead and to the injured – In order to avoid such tragedy, Railway Administration is directed to have assessment of infringement and

C

D

E

F

G

H

A *create a road-map to remove them – A Committee is directed to be constituted to have assessment of such infringements and chalk out action plan to remove such infringements – Further all Central Police Organisations are directed to issue guidelines or Standing Orders akin to Standing Order Nos. 1 of 2011 dated 14.2.2011 and 5 of 2013 dated 26.2.2013 – Compensation.*

B

Disposing of the petition, the Court

HELD: 1.1 The Report dated 09.09.2011 indicates that requests were made by the Railway and Civil Officials to get the roof riders come down from the roof and announcements were made in that behalf. Though the roof riders refused to come down, in view of the volatile situation, a decision was taken to move the train out of Bareilly. According to the Report, the civil and police officials insisted for the movement of the train as quickly as possible with an idea to disperse the crowd. One may accept this as a reasonable and proper exercise, as the crowd had to be dispersed which had congregated in Bareilly. However, this does not explain and justify further movement of the train for more than 60 KMs from Bareilly Station. What is more worrisome is that the fact that train was running at a speed of 75 kilometers per hour. Those who were in charge of Railway Administration in the concerned Divisions ought to have taken sufficient precaution. The Administration can certainly be taken to be aware of the fact that the Foot-Over Bridges or any structures on the way could possibly be a hindrance and could have caused such incident with people in large number on roof top. The Administration alone would be in a position to know about the existence of infringements with regard to certain structures and what could be possible implications if the train were to run at a great speed with large number of people on roof top. Reasonable care would naturally be expected of those incharge of the Administration. Therefore, the Court cannot agree with the conclusion in the Report that Railway Administration was not responsible. [Para 12-13] [952-F-H; 953-A-C]

Chairman, Railway Board v. Chandrima Das (2000) 2 SCC 465; 2000 (1) SCR 480; M.S. Grewal v. Deep Chand Sood (2001) 8 SCC 151; 2001 (2) Suppl. SCR 156 – relied on.

H

1.2 It was expected of the persons concerned to be aware of the inherent danger in allowing the train to run with such speed having large number of persons travelling on roof top. Though the people who travelled on roof top also contributed to the mishap, the Railway Administration, was not free from blame. Therefore, it is directed that the next of kin of those who died in the incident and those who sustained injuries must be duly compensated by the Railway Administration. Those who died were obviously very young in age for they had come to compete for the jobs. Railway Administration is directed to pay: (a) Compensation of Rs.5 lakhs to the next of kin in case of every death; (b) Compensation of Rs.1.5 lakhs in every case of permanent disability suffered by anyone in the incident; (c) Compensation of Rs.75,000/- in case of any grievous injury suffered by anyone; and (d) Compensation of Rs.25,000/- in case of simple injury suffered by anyone. [Para 17] [954-H; 955-A-D]

1.3 In Para 9.2 of the Enquiry Report dated 9.9.2011, it was recommended that Railway must ensure that there are no infringements to any of the dimensions as per Indian Railways, Schedule of Dimensions, Revised, 2004 for any of the overhead fixed structures like FOBs, ROBs, etc. and for this a special drive should be launched by Railway Administration for removal/regularization of the infringements. Despite the recommendations/direction in Paragraph No. 9.2, Railway Administration has not considered collecting data in Divisions other than Lucknow Division whether there are any infringements as per Schedule of Dimensions stated in said Paragraph 9.2. The Administration must take every care so that such tragedy is not repeated. The first step in that behalf is to have an assessment if any such infringements exist and then to create a road-map to remove such infringements. Therefore, the Railway Administration is directed to implement directions stated in Paragraph No.9.2. The Committee headed by a senior officer and assisted by at least three persons from the administration having technical knowledge and expertise be constituted to have an assessment of all such infringements and to chalk out an action plan to remove such infringements. It is possible that in some cases road over-bridges may have been built by State

A

B

C

D

E

F

G

H

A **Governments, Municipal Administrations or such bodies. Nonetheless, the action plan must contemplate ways and means to deal with and remove such infringements. The Committee as aforesaid be constituted within a period of four weeks from the date of this order. As regards the infringements pointed in Lucknow Division, the aforesaid Committee shall take immediate steps. If the clearances are specified and stipulated in Schedule of Dimensions Rules, 2004 the Committee may do well to ensure strict compliance. Every dispensation sought, may be considered threadbare and be granted only as a last resort. The Committee is directed to complete the work as early as possible so that all infringements could be removed in shortest possible time and, in any case, not later than two years. The Committee is further directed to file periodic status Reports every six months in this Court. [Paras 5, 18, 19 and 20] [948-C-E; 955-D-H; 956-B]**

D **2. Further, all Central Police Organisations must issue guidelines or Standing Order akin to Standing Orders Nos. 1 of 2011 and 5 of 2013 of ITBP ensuring that only 600 candidates or such number of candidates as could easily be managed or taken care of be called in one cycle on a particular day. For compliance in that behalf, a copy of this Order be sent by the Registry to the Secretary, Ministry of Home Affairs. [Para 22] [956-D]**

Case Law Reference

2000 (1) SCR 480 relied on Para 14

2001 (2) Suppl. SCR 156 relied on Para 15

F **CIVIL ORIGINAL JURISDICTION: Writ Petition (Civil) No. 68 of 2011.**

Under Article 32 of the Constitution of India.

Anil Kumar Gupta (In-person), B. P. Gupta, Adv. for the Petitioner.

G **Ms. Pinky Anand, ASG, Rana Mukherji, Sr. Adv., Ms. Ranjana Narayan, Ms. Snidha Mehra, Sayeed A. Haseeb, Shalinder Saini, Ms. Sushma Suri, Arvind Kumar Sharma, Shreekant N. Terdal, Anuvrat Sharma, Advs. for the Respondents.**

The Judgment of the Court was delivered by

UDAY U. LALIT, J. 1. This petition under Article 32 of the Constitution of India has been filed in public interest by an Advocate practising in this Court highlighting an incident that occurred on 01.02.2011 near Mohammadabad Crossing in Shahjahanpur Division in State of Uttar Pradesh. The petitioner has prayed for directions, inter alia, for finding out reasons for loss of lives, for assessment of damage to property and for grant of compensation or financial assistance to victims. He has also prayed for directions for laying down guidelines for necessary precautions and care to be taken so that such tragedy is not repeated again.

2. The incident highlighted in the petition was:-

a. In a recruitment drive aimed at filling up 416 posts of Class IV employees, Indo Tibetan Border Police (ITBP, for short) had called candidates from eleven States at its headquarter located at Bareilly, a small town in Uttar Pradesh on 1.2.2011. The aspiring candidates for said posts were required to remain present in person and submit their forms for registration. In response to said recruitment drive, aspirants started arriving at Bareilly and by morning of 1.02.2011 more than two lakh aspirants had arrived. The gathering was swelling and increasing in number. The officers of ITBP found themselves incapable of managing the situation because of such large gathering and as such they suspended and postponed the drive.

b. The consequent resentment and shouting of slogans in protest by aspirants provoked the higher officers of ITBP to use lathi charge to push the crowd. This resulted in a chaotic situation with some aspirants resorting to violence. The armed police then had to use tear gas shells to disperse the crowd. Massive disturbance and lawlessness prevailed all over the town causing law and order problem. Some buses were burnt and damage was caused to public and private property. In the backdrop of such situation the crowd of aspiring candidates rushed to rail and road terminals to return back to their homes.

c. Because of congestion and crowd in large members, the train coaches were all jam packed. Hundreds of young men then climbed atop Himgiri Express that was on its way to eastern U.P. and Bihar from where large number of aspirants had come.

A d. When Himgiri Express left Shahjahanpur Railway Station with
 hundreds of men on roof top and headed towards Rosa town, an
 accident took place at Hathaurda Railway Over Bridge near
 Mohammadabad crossing in Shahajahanpur. The Railway Over
 B Bridge was not tall enough and the gap between the roof of the
 coach and the bottom of the over bridge was hardly three feet.
 The train was speeding fast and by the time the young men on
 roof top saw the approaching bridge it was too late. At least 14
 young men were crushed there and then with 20 others seriously
 injured having been hit by the Over Bridge and fallen from roof
 C top. At this time, some high tension wire broke and fell over the
 train as a result of which some received electric shocks. Despite
 this mishap, the train continued running for a while and it finally
 stopped some 3 kms from the place of incident.

D e. The roof top of coaches was full of blood. The dead bodies and
 injured were brought down. People rushed back to find out those
 who had fallen from the roof top. The train driver, guard and
 other employees had run away from the spot.

E f. The incident provoked those young aspirants, some of whom
 torched two coaches of the train. What followed thereafter was
 total chaos putting tremendous pressure on the Administration in
 carrying out relief work and taking injured to Hospitals for medical
 attention.

3. With the aforesaid assertions this petition was filed on 7.2.2011.
 In the meantime Railway Administration had ordered an enquiry. By
 F interim order passed by this Court the respondents were directed to
 submit the Report pursuant to enquiry instituted by them. Consequently,
 Enquiry Report dated 09.09.2011 by Mr. Raj Kumar Kardam,
 Commissioner of Railway Safety, Northern Circle, New Delhi was placed
 on record. The record indicates that this Report was preceded by
 Preliminary Report dated 23.02.2011. The relevant portions of Chapter 7
 of the Report dated 09.09.2011 under heading "Discussion" are as under:-

G **"Time of the accident**

H As per the statement of loco pilot, assistant loco pilot and
 guard of train no. 12332 Dn Jammu Tawi-Howrah Himgiri Express,
 the train passed Shahjahanpur station at 16:23 hrs. The other
 records also show that this train passed Shahjahanpur station at

16:23 hrs a few passengers travelling on the roofs of the coaches of this train got struck against the Public Foot Over Bridge located at LKO (East) end in Shahjahanpur Yard near the end of the platform. A

7.2 Speed of the train at the time of accident:

Diesel loco No. 11133 WDM-3D LKO of train no. 12332 Dn Jammu Tawi-Howrah Himgiri Express was provided with Medha Speed Time Distance Recording System Type MRT 918. Analysis of speedometer recording of his loco was made CRSE/CHg/NR in his technical note on the accident. Copy of the same is enclosed as Annexure-X. As per the speed and time observations analysis done by CRSE/Chg./NR, the speed of the train no. 12332 Dn at the time of passing under the public foot over the bridge located at LKO (East) end in Shahjahanpur Yard was assessed as 75kmph. A few passengers travelling on the roofs of the coaches of this train got struck against the Public Foot Over Bridge located at LKO (East) end in Shahjahanpur Yard near the end of the platform. B C D

From the above, the speed of the train no. 12332 Dn at the time of accident is thus considered as 75 kmph.

7.3 Cause of the Accident:

From the particulars of injuries suffered by the roof travelers, it was observed that most of the persons injured had been hit in the upper portion of their heads. It was also evident that injuries were caused to passengers, who were traveling and sitting/standing on the roof of the coaches. An incident of hitting of an obstruction resulting in such type of injuries to the roof riders could be caused, in all probabilities by striking against the existing foot over bridge, road over bridge etc. E F

.....

Evidence available reveals that before starting the trains, all possible efforts were made by the railway and civil officials to get the roof riders come down from roof. Continuous announcements were made through public address system and loud hailer. ADRM, Sr. DSC/RPF, SP/Railway and civil authorities were continuously monitoring the situation. However the roof riders refused to come down from the roof top of the coaches. They G H

A were also throwing stones on passengers and officials. Large
 number of “JYREENS” had also gathered at railway station and
 approached ADRM for help and protection. In this situation,
 possibilities of taking incidence a turn to communal violence were
 very much there, as this area is a communal sensitive area and
 has passed through communal violence very recently (March 2010
 B and August 2010). In view of above, the situation had become
 highly volatile and had the decision to move the train was not
 taken at that time by the railway; the violent crowd would have
 damaged the station property and trains on the platforms and could
 have resulted in stampede and unmanageable situation at the
 C railway station. DM/BE, IG/BE, DIG/BE, SP/BE and other Civil
 and Police officials were themselves available at Bareilly station
 to watch and control the situation. They also insisted for the
 movement of the trains as quickly as possible and in whatever
 manner. The idea was to disperse the crowd as early as possible.
 D The situation was even being watched at Rampur station by DM/
 Rampur and SP/Rampur who were themselves available at
 Rampur station. At Rosa station also ADM, ASP, Co were present
 themselves to control the situation.

.....

E In the above circumstances, when 2332 Dn Jammu Tawi-
 Howrah Himgiri Exp. Train running at a speed of 75kmph
 approached the Shahjahanpur public foot over bridge at km
 1237.255 km with passengers travelling and sitting/standing on
 the roof of the coaches, few passengers sitting and traveling on
 F the roofs of the coaches got struck against the Public Foot Over
 Bridge situated at the Lucknow (East) end of Shahjahanpur
 railway station.

G 7.5.2 There was an infringement of 55 mm in the vertical
 clearance at the Public Foot Over Bridge, Shahjahapur as per the
 Indian Railways, Schedule of Dimensions, Revised, 2004. CE/
 P&D/NR prepared a technical note in this connection and a copy
 of the same is enclosed as Annexure-XIV. Details have been
 given in his letter No. 1-W/0/Accident/MB/Pt. IV dated 04.05.2011,
 a copy of which is enclosed as Annexure-XV. Northern Railway
 Administration has given his comments on item No. 2 of my
 H immediate recommendations of Preliminary Report vide CSO/

NR's letter No. 10T/Spl./Occurrence/MB/2011 dated 20.06.2011 (Annexure XXVIII) and as per this railway has to take further action in removing/regularizing the infringements. A

Railway must ensure that there are no infringements to any of the dimensions as per Indian Railways, Schedule of Dimensions, Revised, 2004 for any of the overhead fixed structure like FOBs, ROBs etc. For this a special drive should be launched by Railway Administration for removal/regularization of the infringements. B

7.5.3 On scrutiny of the Steel Structure Register of IOW/SPN and Bridge Inspection Register for ROB/FOBs of ADEN/SPN, it was seen that though the inspections were being carried out regularly but the vertical clearances from the rail level to this fixed structures like FOB, ROBs were not being measured during the inspections as this have not been prescribed in the Proforma available for recording the various parameters. Clearance is an important item as these may get changed due to track renewals, change in ballast cushion or any other reason resulting into the rail level being raised and may infringe the Schedule of Dimensions. Therefore it is very much essential that proper record and upkeep of such an important item is kept. C
D

Railway Administration should issue a standard Proforma for Steel Structure Register and Bridge Inspection Register to be maintained for the inspection of ROB/FOBs which should also include the item of measurements to be taken for clearances. E

7.6 Role of Railway officials and others:

No railway officials were found to be responsible for the accident as such this aspect is not discussed in the Report. F

The primary responsibility rests with those persons who travelled on the roofs of coaches in violation of Section 156 of the Indian Railways Act, 1989."

4. In Chapter 8 titled "Conclusions" it was stated in the Report as under:- G

"8.1 Cause of the accident:

8.1.1 Having carefully considered the factual, material and circumstantial evidences available at my disposal, I have come to the conclusion that unusual occurrence to a few passengers H

A travelling on the roofs of the coaches of train no. 12332 Dn Jammu Tawi-Howrah Himgiri Express at km 1237.255 in Shahjahanpur Yard between Shahjahanpur and Rosa railway stations on Moradabad-Shahjahanpur-Lucknow, Broad Gauge, Double Line, non-electrified Section of Moradabad Division of Northern Railway on 1.02.2011 occurred due to a few passengers sitting and travelling on the roof of the coaches got struck against the Public Foot Over Bridge situated at the Lucknow (East) end of Shahjahanpur railway station.

B The accident is classified under the heading of “FAILURE OF PERSONS OTHER THAN RAILWAY STAFF”.

C 5. In Chapter 9 titled “Remarks and Recommendations” Paragraphs 9.2 and 9.3 of the Report were as under:-

D “9.2 Railway must ensure that there are no infringements to any of the dimensions as per Indian Railways, Schedule of Dimensions, Revised, 2004 for any of the overhead fixed structures like FOBs, ROBs, etc. For this a special drive should be launched by Railway Administration for removal/regularization of the infringements.

E 9.3 Railway Administration should issue a standard Proforma for steel structure register and bridge inspection register to be maintained for the inspection of ROB/FOBs which should also include the item of measurements to be taken for clearances.”

6. After hearing the counsel and considering the aforesaid Report and other documents on record, while reserving the matter for orders, this Court passed following order on 17.2.2016:-

F “Arguments heard.

Judgment reserved.

G Learned counsel for the respondents-Union of India and Railways shall within three weeks from today file an additional affidavit along with the relevant documents indicating the following:

1. Names and particulars of the persons who died or were injured in the incident that took place on 1st February, 2011 involving Train No.12332 Dn. Jammu Tawi-Howrah Himgiri Express in Shahjahanpur Yard.

H 2. Whether any ex-gratia payment has been made to the next of

kin to those dead or to the persons who sustained injury, if so, the amount paid to them. A

3. The steps that have been taken by the Railways to remove infringement of Foot Over-Bridges (FOB) in Lucknow Division as set out in Annexure XXVIII/2 to Report dated 9th September, 2011 submitted by Mr. Raj Kumar Kardam, Commissioner of Railway Safety, in regard to the incident mentioned above. B

4. Whether the Railways are aware that there are similar other infringements, FOB or ROB, in regard to the other railway divisions, if so, whether any steps have been taken to identify such infringements and to rectify the same, in particular, whether the Railways have taken any steps in regard to Recommendation 9.2, made by the Commissioner of Railway Safety in the Report mentioned above. If no steps have been taken the reasons for the omission and the time-frame within which the Railways shall do the needful. C

5. The steps that have been taken or proposed to be taken by the Government to avoid situations like the one referred to in the writ petition where lakhs of people descended simultaneously in the town of Bareilly in connection with the proposed recruitment for I.T.B.P., in the matter of streamlining/rationalising the method of recruitments and procedures to avoid the unmanageably large crowds who came to participate in such recruitment rallies. D

6. Circulars/orders/notifications, if any, issued to regulate such recruitment process, rallies and crowds that assemble in connection with the same shall also be placed on record. E

Needful be done within a period of three weeks.” F

7. In compliance of the aforesaid Order dated 17.2.2016, an affidavit has been filed by J.N.Meena, Div. Commercial Manager, Northern Railway, Moradabad. With regard to directions 1 to 4 above-named. The affidavit states that following 20 persons died as a result of the incident in question:- G

“1. Deepak s/o Mohit, Age 22 years, R/o Village. Mohva Bujurg PS Choori Chooria Distt. Gorakhpur.

2. Ram Asrey S/o Masaipal, Age 20 years, R/o Khemapur Jansa, Varanasi. H

- A 3. Anil Kumar, S/o Sh. Ameer Chandr Bathora, Age 25 years, R/o Ps. Dhanapur Chandauli.
4. Rahul Kumar, S/o Vedehi Saran, Age 25 years, R/o Hiroosa Ps Rohan Jhansi.
- B 5. Sarvoday Kumar, S/o UdayKumar Singh, Age 20 years, R/o Village Bansekhan Tola Ps Aurangabad.
6. Shayam Sundar Yadav. S/o Bhola Nath Yadav, Age 26years, R/o Village Yuvrajpur PS. Shoej, Gajipur.
7. Sukh Ram, Age 30 years, R/o Unknown
- C 8. Arun Kumar Pandey, S/o Ram Chandra Pandey, Age 20 years, R/o Village Bhanhi Pandeypurva, P/S Munshiganj Garuriganj Sultanpur.
9. Sunil Kumar Yadav, S/o Ved Prakash Yadev, Age 22 years, R/o Laxhmanpur, P/S Choori Choorra Gorakhpur.
- D 10. Devendra, S/o Bhasol Singh, age 20 years, R/o Vill Lahara, P.S. Kotwali Dehat, Distt. Aita.
11. Ram Pravesh, S/o Ramaserey, R/o Mahuava Ps. Choori Choorra, Gorakhpur.
- E 12. Ajay Kumar, S/o Sukhraj, R/o Vill Seepur Rakva, Post Raipur Rakwa P/S Choori Choorra Gorakhpur.
13. Ravi Kher, S/o Prakash Kher, R/o Singar P.S Gursaray Jhansh
14. Shailesh, S/o Mithailal, R/o Maupur Chota Tola, Choori Choorra Gorakhpur.
- F 15. Purushottam, S/o Gayalal Yadav, R/o Maupur Chota Tola P.s Choori Choorra Gorakhpur.
16. Angad Avdhesh Chauhan, S/o Jiut Chauhan R/o Maupur Chota Tola, P.S Choori Choorra Gorakhpur.
- G 17. Rajiv Jaiswal, S/o G.N. Jaisural, R/o Devmoov PS Gauribaja, Distt. Devariya.
18. Satish Kumar, S/o Pawan Kumar, Age 24 years, R/o Village Mahuani, P/S Avtar Nagar Chhapra Bihar.
- H 19. Soun Kumar Gupta, S/o Bayag Bapu Prasad, Age 21 years,

R/o Village Mahuani, P/S Avtar Nagar Distt. Chhapra Bihar.

A

20. Saleam Ansari, S/o Barkhu Ansari, R/o Village Aurai Kalan,
P/S Bheampra, Distt. Baliya.”

8. The affidavit further stated that no ex-gratia payment was made to any injured or relative of any person who died in the incident. As regards direction No.3 regarding Lucknow Division it was stated:-

B

“Steps taken by Railways to remove infringement of Foot Over Bridge in Lucknow Division. In this respect it is submitted that the action plan for the removal of infringement of FOBs in Lucknow Division submitted by Sr. DEV/C Northern Railways Lucknow vide letter no. DRM/LKO/Engg/ FOB/15 dated 29.02.2016 is annexed with this affidavit.”

C

A tabular chart giving details regarding required clearances and actual available clearances as well as the nature and extent of infringement in respect of 17 cases from Lucknow Division was also appended to the affidavit.

D

9. With respect to direction No. 4 what has been placed on record are communications dated 17.03.2011 and 28.5.2012 which were issued after the Preliminary Report dated 23.02.2011 and the aforesaid Report dated 09.09.2011 respectively. These communications quoted relevant paragraphs of the respective Reports and stated that a special drive be undertaken. We also have on record a letter dated 04.03.2016 from Railway Board addressed to Chief Claim Officer, Headquarter Office, New Delhi, saying that a special drive was launched vide letter dated 17.03.2011. What happened as a result of such special drive has however not been placed on record. Nothing has been placed on record if similar infringements are found present in Divisions other than Lucknow Division and if so what safety measures are undertaken or are to be undertaken and what is the road map for removing such infringements. It appears that despite Paragraph 9.2 of the Report dated 09.09.2011 no assessment of any kind has been undertaken in Divisions other than Lucknow Division and consequently nothing has been placed on record.

E

F

G

10. An affidavit has also been filed by Harendra Kumar, Senior Administrative Officer, Directorate General, Indo Tibet Border Police Force, Ministry of Home Affairs, Government of India dealing with Direction Nos.5 and 6. In response to Direction No.5 the affidavit states as under:

H

A **“Reply to Direction No.5** - It is respectfully submitted that after
this incident the respondent/ITBP has not conducted open rally
based recruitments. The candidates are now being called for
physical efficiency test and physical standard test by post only
under the supervision of a Nodal Officer in a limited and controlled
B manner. State administrative authorities at district and higher levels
are being informed well in advance regarding, the time venue,
date and timing of recruitments and are requested to ensure
adequate arrangements to maintain law and order outside the ITBP
recruitment venues. The Presiding Officers of recruitment boards
and Nodal Officer have been directed to maintain close liaison
C with district administration. A provision has been made in the
Standard Operating Procedure of the recruitment that not more
than 600 candidates will be called at one recruitment center at a
time for recruitment test of physical efficiency test and physical
standard test etc. In the case of Constable (Tradesmen) recruitment,
D 600 candidates are being called in two days cycle at each centre.”

11. As regards Direction No.6, the Affidavit goes on to state that
Standing Order No.1 of 2011 dated 14.02.2011 and Standing Order No.5
of 2013 dated 26.02.2013 were issued ensuring that only 600 candidates
would hereafter be called in one cycle on a particular day. To similar
effect is the Standing Order dated 26.02.2013. However these Standing
E Orders pertain to ITBP alone and it is not clear whether similar Standing
Orders are issued and are in operation as regards other Central Police
Organisations.

12. The Report dated 09.09.2011 indicates that requests were made
by the Railway and Civil Officials to get the roof riders come down from
F the roof and announcements were made in that behalf. Though the roof
riders refused to come down, in view of the volatile situation, a decision
was taken to move the train out of Bareilly. According to the Report, the
civil and police officials insisted for the movement of the train as quickly
as possible with an idea to disperse the crowd. One may accept this as
G a reasonable and proper exercise as the crowd had to be dispersed
which had congregated in Bareilly. However, this does not explain and
justify further movement of the train for more than 60 KMs from Bareilly
Station. What is more worrisome is that the fact that train was running
at a speed of 75 kilometers per hour.

H 13. Those who were in charge of Railway Administration in the

concerned Divisions ought to have taken sufficient precaution. The Administration can certainly be taken to be aware of the fact that the Foot-Over Bridges or any structures on the way could possibly be a hindrance and could have caused such incident with people in large number on roof top. The Administration alone would be in a position to know about the existence of infringements with regard to certain structures and what could be possible implications if the train were to run at a great speed with large number of people on roof top. Reasonable care would naturally be expected of those incharge of the Administration. We therefore do not agree with the conclusion in the Report that Railway Administration was not responsible.

A

B

C

14. In *Chairman, Railway Board v. Chandrima Das*¹, while considering the liability of Railways when some of the employees had taken a lady from Bangladesh to Rail Yatri Niwas and subjected her to rape, it was observed by this Court,

“42. Running of the Railways is a commercial activity. Establishing the Yatri Niwas at various railway stations to provide lodging and boarding facilities to passengers on payment of charges is a part of the commercial activity of the Union of India and this activity cannot be equated with the exercise of sovereign power. The employees of the Union of India who are deputed to run the Railways and to manage the establishment, including the railway stations and the Yatri Niwas, are essential components of the government machinery which carries on the commercial activity. If any of such employees commits an act of tort, the Union Government, of which they are the employees, can, subject to other legal requirements being satisfied, be held vicariously liable in damages to the person wronged by those employees.”

D

E

F

15. In *M.S. Grewal v. Deep Chand Soof*² this Court considered the concept, “Duty of care” in a fact situation where teachers who had accompanied school children for a picnic on the bank of a river when the mishap happened and stated as under:-

G

“16. Duty of care varies from situation to situation — whereas it would be the duty of the teacher to supervise the children in the playground but the supervision, as the children leave the school,

¹ (2000) 2 SCC 465

² (2001) 8 SCC 151

H

A may not be required in the same degree as is in the playfield. While it is true that if the students are taken to another school building for participation in certain games, it is sufficient exercise of diligence to know that the premises are otherwise safe and secure but undoubtedly if the students are taken out to a playground
 B near a river for fun and a swim, the degree of care required stands at a much higher degree and no deviation therefrom can be had on any count whatsoever. Mere satisfaction that the river is otherwise safe for a swim by reason of popular sayings will not be a sufficient compliance. As a matter of fact the degree of care required to be taken, especially against the minor children, stands
 C at a much higher level than adults: children need much stricter care.

.....

D “23. Turning attention, however, on to the issue of vicarious liability, one redeeming feature that ought to be noticed at this juncture is that to escort the children was the duty assigned to the two teachers and till such time thus the period of escorting stands over, one cannot but ascribe it to be in the course of employment — the two teachers were assigned to escort the students: the reason obviously being — the children should otherwise be safe and secure and it is the act of utter negligence of the two teachers
 E which has resulted in this unfortunate tragedy and thus it is no gainsaying that the teachers were on their own frolic and the School had done all that was possible to be done in the matter — safety of the children obviously was of prime concern so far as the school authorities are concerned and till such time the children
 F returned to school, safe and secure after the picnic, the course of employment, in our view continued and thus resultantly, the liability of the School.

G 16. In Chandrima Das (supra) compensation of Rs.10 lakhs as awarded by the High Court was upheld while in M.S. Grewal (supra) this Court sustained the order awarding compensation of Rs.5 lakhs in case of death.

H 17. In the backdrop of the aforesaid precedents, in our view, it must be expected of the persons concerned to be aware of the inherent danger in allowing the train to run with such speed having large number

of persons travelling on roof top. Though the people who travelled on roof top also contributed to the mishap, the Railway Administration, in our view, was not free from blame. Concluding so, we direct that the next of kin of those who died in the incident and those who sustained injuries must be duly compensated by the Railway Administration. Those who died were obviously very young in age for they had come to compete for the jobs. Taking all these factors in consideration we direct Railway Administration to pay:

(a) Compensation of Rs.5 lakhs to the next of kin in case of every death;

(b) Compensation of Rs.1.5 lakhs in every case of permanent disability suffered by anyone in the incident;

(c) Compensation of Rs.75,000/- in case of any grievous injury suffered by anyone; and

(d) Compensation of Rs.25,000/- in case of simple injury suffered by anyone.

18. It is distressing that despite Paragraph No.9.2 of the Report, the Railway Administration has not considered collecting data in Divisions other than Lucknow Division whether there are any infringements as per Schedule of Dimensions stated in said Paragraph 9.2. The Administration must take every care so that such tragedy is not repeated. The first step in that behalf is to have an assessment if any such infringements exist and then to create a road-map to remove such infringements. We, therefore, direct the Railway Administration to implement directions stated in Paragraph No.9.2 of the Report dated 09.09.2011. The Committee headed by a senior officer and assisted by at least three persons from the administration having technical knowledge and expertise be constituted to have an assessment of all such infringements and to chalk out an action plan to remove such infringements. It is possible that in some cases road over bridges may have been built by State Governments, Municipal Administrations or such bodies. Nonetheless, the action plan must contemplate ways and means to deal with and remove such infringements. We direct that the Committee as aforesaid be constituted within a period of four weeks from the date of this order. We hope and trust that the Committee shall take appropriate steps in collecting data as stated above and creating road map or action plan to remove such infringements, in the shortest possible time.

A 19. As regards the infringements pointed in Lucknow Division, the aforesaid Committee shall take immediate steps. If the clearances are specified and stipulated in Schedule of Dimensions Rules, 2004 the Committee may do well to ensure strict compliance. Every dispensation sought, may be considered threadbare and be granted only as a last resort.

B 20. We direct the Committee to complete the work as early as possible so that all infringements could be removed in shortest possible time and, in any case, not later than two years. We direct the Committee to file periodic status Reports every six months in this Court.

C 21. We also direct that copies of this Order be sent by the Registry to the Minister, Railways and Secretary, Railways who are requested to ensure compliance of the directions as aforesaid.

D 22. Further, all Central Police Organisations must issue guidelines or Standing Order akin to Standing Orders Nos. 1 of 2011 and 5 of 2013 of ITBP ensuring that only 600 candidates or such number of candidates as could easily be managed or taken care of be called in one cycle on a particular day. For compliance in that behalf, a copy of this Order be sent by the Registry to the Secretary, Ministry of Home Affairs.

23. With these directions, the petition stands disposed of.

E Kalpana K. Tripathy

Writ Petition disposed of.