



CENTRAL ADMINISTRATIVE TRIBUNAL

CHANDIGARH BENCH

O.A. No.060/00257/2019

& MA No. 060/00491/2019

Chandigarh, this the 11th February, 2020

(Orders reserved on: 04.02.2020)

HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J)

Kapil Dev aged 28 years about s/o Late Sh. Vijai Kumar Ex Helper unser SSE/Sig./II/Ambala Cantt (Group D) – 133001 R/o 15, Dashmesh Nagar, Rajpura Distt. Patiala (Punjab) - 140401

....Applicant

(BY: MR. KARNAIL SINGH, ADVOCATE)

Versus

1. Union of India through General Manager, Northern Railway, Baroda House, New Delhi – 110001.
2. Divisional Railway Manager, DRM Office Complex Northern Railway, Ambala Cantt – 133001.
3. Sr. Divisional Personnel Officer, DRM Office Complex Northern Railway, Ambala Cantt.

... .Respondents

(BY: MR. YOGESH PUTNEY, ADVOCATE)

ORDER

SANJEEV KAUSHIK, MEMBER (J):

1. Applicant lays challenge to order dated 16.10.2015 (Annexure A-1) whereby his claim for appointment on compassionate grounds has been rejected.
2. Before noticing the arguments raised by the learned counsel for the parties, we would recapitulate the brief facts which led to the filing of the present O.A.



3. Applicant Kapil Dev is son of late Vijai Kumar, who had worked as Helper under Respondent No. 2 and expired on 30.05.2014, leaving behind his widow and two sons. Since the deceased employee was the only bread earner in the family, the mother of the applicant submitted a representation dated 16.10.2014 to the respondents requesting them to grant appointment to her son on compassionate grounds. The respondents asked her to submit a decree to the effect that she is legal heir of the deceased employee. Accordingly, the applicant submitted a decree dated 04.07.2016 passed by the Civil Judge Ambala declaring her mother to be the wife of the deceased Vijai Kumar. However, the request for appointment to the applicant on compassionate grounds has been turned down by the impugned order dated 16.10.2015 (Annexure A-1) on the ground that the mother of the applicant was not legally wedded wife of the deceased employee Vijayi Kumar. Hence the O.A
4. On notice of motion, the respondents filed written statement wherein they disputed the facts and have also submitted that the cause of action arose in favour of the applicant on 16.10.2015 when the application filed by the mother of the applicant was rejected, but the present O.A. has been filed in the year 2019, therefore, the O.A. deserves to be dismissed on the ground of delay and laches.



5. On merits, the respondents submitted that the applicant has no case as he was born out of the wedlock of her mother Krishna Devi and deceased Vijai Kumar which was void as it was solemnised when the first wife of Vijai Kumar was alive and there was no decree of their divorce under Sections 5 and 11 of the Hindu Marriage Act, 1955. It has also been stated therein that her mother Krishna Devi, alleged second wife of the deceased, earlier approached this Tribunal by filing an (O.A. No. 060/00815/2018) with a prayer to direct the respondents to grant her family pension under Rule 75 (a) of the Railway Services (Pension) Rules 1973. This Court, after considering the reply filed by the respondents, did not accept the plea of the applicant (therein) and dismissed the O.A. vide order dated 13.09.2019. Therefore, this O.A. also deserves to be dismissed.
6. The respondents have further taken a plea that even the decree is collusive as the Civil Suit for decree was filed by the mother of the applicant by impleading only general public and the present applicant, and on the basis of the statement made before the Court, decree dated 04.07.2016 was issued in favour of the mother declaring that she is entitled for all the benefits admissible on the demise of her husband Vijai Kumar. As the said Civil Suit was filed without impleading the



legal heirs from the first marriage of the deceased employees and the Railways from which they sought relief, therefore, it is binding inter se the parties and not the Railways. Therefore, it is prayed that the O.A. be dismissed.

7. Applicant has also moved an M.A (No. 060/00491/2019) seeking condonation of delay of 877 days in filing the accompanying O.A. to which the respondents have filed reply.
8. Heard learned counsel for the parties on application for condonation delay as well as on merit.
9. Mr. Karnail Singh, learned counsel for the applicant vehemently argued that the applicant submitted a representation dated 16.10.2014 which was decided on 16.10.2015. The applicant could not earlier approach this Court because he, along with her mother, was before the Civil Court to obtain a decree of succession in their favour qua the property acquired by the deceased employee, which was granted by the Court vide its order dated 04.07.2016. Thereafter, without there being any delay, he approached this Court, by filing the present O.A., therefore, the delay be condoned.
10. On merits, learned counsel argued that since the applicant is legitimate child of alleged void marriage, he is entitled to appointment on compassionate grounds. To buttress his plea, reliance has been placed upon a



judgment of the Hon'ble Supreme Court in the case of **Rameshwari Devi Vs. State of Bihar & Others**, 2000 (2) SCC 431 and order passed by the Principal Bench of this Tribunal in the case of **Pankaj Kumar Sharma Vs. G.M. Northern Railway and Others** (O.A. No. 3424 of 212 decided on 29.01.2014)

11. Per contra, Mr. Yogesh Putney, learned counsel for the respondents, with equal vehemence, opposed the prayer of the applicant and prayed that the O.A. be dismissed because once in earlier round of litigation (O.A. NO. 815/2018), this Court dismissed the plea of the mother of the applicant for grant of pensionary benefits, on the ground that her marriage with the deceased employee was not legal then the plea of her son for appointment on compassionate grounds cannot be accepted. It is further argued that if it is presumed that he was born out of void marriage which is contrary to Section 5 and 11 of the Hindu Marriage Act 1955, even then he cannot claim appointment on compassionate grounds in terms of Railway Board letter No. E(NG)II/2018/RC-1/5 dated 21.03.2018 on the subject. Therefore, it is prayed that the O.A. be dismissed not only the ground of delay but on merits also.

12. I have given thoughtful consideration to the entire matter and I am of the view that this O.A. deserves to be



dismissed on the ground of delay as well as on merit for the following reasons.

13. Applicant has failed to satisfy this Court that after rejection of the application for appointment on compassionate grounds submitted by her mother way back in 2016 then why has he not approached this Court at that point of time, and that too, when his mother also approached this Court in the year 2018 for grant of retiral benefits in her favour, which was though ultimately turned down by this Court. Also, in the application filed for condonation of delay, no convincing reason has been given to condone such huge delay.

14. On merit also, the applicant has no case in terms of Railway Board Circular dated 21.03.2018 whereby a conscious decision has been taken by the Competent Authority, after considering the pronouncement by the Hon'ble Supreme Court in the case of **State Bank of India & Another Vs. Raj Kumar** (Civil Appeal No. 1641 of 2010) and by the Hon'ble High Court of Jharkhand (Ranchi) in Writ Petition No. WP (S) 16 of 2014 pronounced on 24.07.2014 , which is quoted hereunder:-

"If aforementioned legally wedded surviving widow does not want herself to be considered for compassionate grounds appointment, she can nominate, for CG appointment, a bread winner for the family from amongst the following:

- (a) In cases of those Railway servants who are governed by Hindu Marriage Act 1955: Son (including adopted son); or daughter (including widowed/ adopted / married/divorced daughter). However, if such Railway servant has left



sons/daughters, who have been treated as legitimate or deemed to be legitimate, under Section 16 of Hindu Marriage Act, 1955, neither widow can nominate them as bread winner of CG appointment nor such sons/daughters can claim CG appointment.

- (b) In cases of those Railway Servants who are governed by their respective Personal Laws: Son (including adopted son); or daughter (including widowed/ adopted/ married/ divorced daughter: However, if such Railway Servant has left sons/ daughters/ through second/ subsequent legally valid marriages, i.e. other than through first wife and deceased Railway Servant have failed to obtain requisite permission for such second/subsequent marriage as required under Section 21 (relating to restrictions regarding marriage) of the Railway Services (Conduct) Rules 1966, neither first widow/ second/ subsequent widow can nominate such sons/ daughters as bread winner for CG appointment nor such sons/daughters can claim CG appointment. Moreover, such second/ subsequent widow also would not have any right to seek compassionate grounds appointment. "

A bare perusal of above extracted para makes it clear that legitimate son/daughter from the void marriage cannot claim appointment on compassionate grounds, even if they have been nominated by the widow whose marriage with the deceased employee had been solemnised as per Hindu Marriage Act 1955.

15. In view of the foregoing reasons, the O.A. is dismissed on the ground of delay and on merit as well. No costs.

(Sanjeev Kaushik)
Member (J)

Place: Chandigarh
Dated: 11.02.2020

'mw'