

Central Administrative Tribunal
Hyderabad Bench
OA No.021/1073/2019

Hyderabad, this the 12th day of March, 2020

Hon'ble Mr. B. V. Sudhakar, Member (A)

Shri I. Shivaraj
 S/o Late I. Nagesh
 Aged 28 years
 Occ: unemployed, Res: No.H.No.25-6-88/18
 A.R.R. colony near vegetable market
 Kazipet, Warangal Urban, Telangana – 506 003. .. Applicant
 (By Advocate: Shri G. Pavana Murthy)

Vs.

Union of India rep by its

1. The Chairman
 Railway Board, Rail Bhavan
 New Delhi.
2. The General Manager
 3rd Floor Rail Nilayam
 South Central Railway,
 Secunderabad.
3. The Chief Personnel Officer
 4th Floor Rail-nilyam
 S.C.Railways, Secunderabad.
4. The Divisional Railway Manager (P)
 South Central Railway, Sanchalan Bahavan
 Secunderabad Division,
 Secunderabad. ... Respondents

(By Advocate: Sri Bhim Singh proxy of Sri V.V.N.Narasimham, SC for Railways)



O R D E R (Oral)

2. The OA is filed challenging the orders of Respondent No.3, dated 27.09.2019, whereby the case of the applicant for compassionate appointment was rejected, and also challenged the Railway Board's letter (RBE No.42/2018) dated 21.03.2018, as the same is not only illegal, arbitrary and violation of Articles 14, 16 and 21 of the Constitution of India, but also contrary to the Judgement of the Hon'ble High Court of Telangana in WP No.20619 of 2013, dated 17.07.2017 and Judgement of the Hon'ble Supreme Court in **Union of India and Anr. v. V.R.Tripathi** [Civil Appeal No.12015 of 2018 and Civil Appeal No.12016 of 2018, dated 11.12.2018].

3. Brief facts of the case are that the applicant's father, Shri I. Nagesh, while working as Khalasi in the respondents' organization, died in harness on 22.03.1995, leaving behind his wife Smt. I. Prameela and three minor children, viz., one daughter and two sons. Consequent on the death of his father, family pension was sanctioned to his mother Smt. I. Prameela vide letter dated 07.12.1995. The applicant's natural mother Smt. I. Pramella, who is legally wedded wife of late Shri I. Nagesh also died within one year of the deceased employee's death. One Smt. I. Jaya, who is a sister of I. Pramella claiming to be the wife of late Shri I. Nagesh has obtained a decree of guardianship of all the three children of the deceased employee. She also received the settlement dues of



 the deceased employee. The applicant, after attaining majority, requested for compassionate appointment as per the Scheme existed in respondents organization, and the same was rejected vide order dated 31.07.2015 on the ground that he is a ward of second wife and as such he is not entitled for compassionate appointment as per the Railway Board's circular No.05/1992. Aggrieved by this, the applicant made an appeal on 25.05.2016 to General Manager, S.C. Railways to reconsider his case for compassionate appointment. During the pendency of the aforesaid appeal, the applicant approached this Tribunal by filing OA No.770/2017 challenging the rejection order dated 31.07.2015, which was allowed vide order dated 21.08.2019. In compliance of the directions of this Tribunal in OA No.770/2017, the respondents passed the Order dated 27.09.2019, which was challenged in the instant OA.

4. Though several contentions have been raised in para 5 of the OA, the relevant para 5.4 indicates that the impugned order dated 27.09.2019 was passed, based on a Railway Board's Circular No.05/1992. However, the cited Railway Board order has been quashed and set aside by the Hon'ble Calcutta High Court vide its order dated 10.02.2010 in **Namita Goldar and Anr. V. Union of India and Others**, reported in SLR 2010 (3) HC Calcutta page 57, hence, the impugned order lacks legal validity. The applicant also relied on several judgements of various Courts in support of his claim.

5. Though notices have been issued to the respondents, they have not yet filed the reply, however, the learned proxy counsel for the respondents' counsel reiterated the pleas taken in the impugned order and stated that the OA is liable to be dismissed.

6. Heard both the learned counsel and perused the pleadings on record.

7. (I) At the very outset, across the Bar, the learned counsel for the applicant has drawn attention of this Tribunal to the Order passed in OA No.627/2019 by this Tribunal and submits that the issue involved in this OA is same as the one in OA 627/2019, referred to above. The said OA was disposed of on 29.01.2020 with the following observations:

“7 (i) Respondents have taken a preliminary objection that the claim is stale by referring to certain judgements of the Hon’ble Supreme Court. In this regard, applicant has submitted a representation on 28.08.2011 which is still pending before 1st respondent and has not been rebutted by the respondents in their reply statement. Hence the question of limitation does not arise as the respondents have not taken any action on the representation made by the applicant. Further, here is a case which involves question of law and therefore rejecting a legitimate claim on grounds of delay would lead to injustice. Hence the case deserves adjudication and is taken up for hearing. Besides, after the OA has been admitted, objection raised at a later stage in regard to admissibility with reference to limitation, does not stand to reason.

7(ii) Marriage dissolution in the presence of elders as per customs is valid as per law, as observed by the superior judicial forum as under :



Hon'ble High Court of Punjab & Haryana in Jasbir Singh v. Inderjit Kaur (AIR 2003 P H 317/(2003) 135 PLR 170), dated 11.12.2002, dealt with a similar issue and observed as under:

19. *Section 29(2) of the Hindu Marriage Act, 1955, reads as under:-*

"29(2). Nothing contained in this Act shall be deemed to affect any right recognised by custom or conferred by any special enactment to obtain the dissolution of a Hindu Marriage, whether solemnised before or after the commencement of this Act."

20. *In view of the special provision in the Hindu Marriage Act, referred to above, it would be clear that if there, is a custom recognising divorce amongst Hindus, the same shall be protected even after the commencement of Hindu Marriage Act. XXXXXXXXX*

21. *In view of the above, in my opinion, it can safely be held that there is a custom among Jat Sikhs of District Sangrur, permitting dissolution of marriage by divorce through writing executed by the parties in this regard and such a divorce would be recognised in view of Section 29(2) of the Hindu Marriage Act and the law laid down by the Hon'ble Supreme Court and Delhi High Court in the cases referred to above. I am further of the opinion, that the learned Additional District Judge had rightly found that the marriage between the petitioner and respondent could not be annulled under Section 11 of the Hindu Marriage Act, inasmuch as respondent had validly obtained a divorce from her previous husband Lachman Singh, at the time when her marriage had taken place with the petitioners. Accordingly, I affirm the findings of the learned Additional District Judge in this regard.*

(II) The Hon'ble High Court of Andhra Pradesh in Loya Padmaja @ Venkateswaramma v. Loya Veera Venkata Govindarajulu (1999 (6) ALD 413)) in AAO No.588/1997, dated 07.09.1997, has observed as under:

*"16. The question, therefore, is whether the customary divorce dissolving the **marriage** of the appellant with her first husband Jamalaiah, obtained by the appellant before the caste elders, is recognised by the **Hindu Marriage Act, 1955**.*



17. Section 29 of the Hindu Marriage Act, 1955 provides for 'Savings' and it reads thus:

'29. **Savings** :--(1) A **marriage** solemnised between **Hindus** before the commencement of this Act, which is otherwise valid, shall not be deemed to be invalid or ever to have been invalid by reason only of the fact that the parties thereto belonged to the same gotra or pravara or belonged to different religions, castes or sub-divisions of the same caste.

(2) Nothing contained in this Act shall be deemed to affect any right recognised by custom or conferred by any special enactment to obtain the dissolution of a **Hindu marriage**, whether solemnised before or after the commencement of this Act.

(3) XXXXX XXXXX XXXXX

(4) XXXXX XXXXX XXXXX

18. Sub-section (2) of Section 29 of the Act makes it abundantly clear that the right recognised by custom or conferred by any special enactment to obtain the dissolution of a Hindu marriage, whether solemnised before or after the commencement of this Act, is saved. When there is a custom prevalent in a community either for dissolution or for performance of a marriage which is accepted and recognised, the same shall not be affected by any provisions of the Hindu Marriage Act, 1955.

(III) Even the Hon'ble Principal Bench of this Tribunal in OA.No.1771/2007, dated 17.07.2008, has observed as under:

"10. Since the said divorce was not by a court of law, hence for ascertaining the legality of the divorce and permission to remarriage under Conduct Rule 21 of CCS (Conduct) Rules, the matter was referred to the Ministry of Law, Department of Legal Affairs advised as under:-



'Hindu marriage can be dissolved by a decree of divorce under Section 13 of the Hindu Marriage Act, 1955, but divorces under customary rights continue to have force of law in terms of the provisions of Section 29 (2) of the Act of 1995. It is, therefore, incorrect to say that a divorce is valid only when a decree is obtained from a court of law as a marriage can be validly dissolved according to custom prevalent in any area, community or family.'

Therefore, the dissolution of first marriage holds good. Objection raised by the respondents stating that the dissolution is illegal is not tenable.

7(iii) Tribunal concurs with the view of the respondents that compassionate appointment is not a matter of right. However, the right to be considered for compassionate appointment cannot be denied. Moreover, facts on record, establish that the respondents have entered in their records that the applicant is the wife of the deceased employee. Therefore, benefits due to be extended to the widow of the deceased employee have to be granted. Respondents, did in fact, released the terminal benefits to the applicant including grant of pension. Surprisingly, when it came to providing compassionate appointment they are dragging their feet. Law indeed is in favour of the applicant as was held in a catena of judgements of superior judicial forums, referred to by the respondents in their letter RBE No.218/2019, dated 30.12.2019 .

7(iv) Payment of settlement benefits and grant of pension are not the factors to be considered for rejecting a claim for compassionate appointment but it is the indigent circumstances in which the family of the deceased is placed, which matters. Therefore the contention of the respondents that substantial amounts have been paid towards terminal benefits and sanction of pension are no grounds to reject the claim for compassionate appointment.

7 (v) True to speak, the entire case revolves around the fact that the applicant was married to the deceased employee after the dissolution of the marriage with the first wife. Respondents have granted retiral benefits to the applicant. They have even gone to the extent of issue of Identity cum Medical card to the applicant and other facilities by reckoning the applicant to be the legally wedded wife of the deceased employee. Respondents now taking a stand that she being the second wife of the



deceased employee, her son would not be eligible for compassionate appointment is not a fair submission. In particular, last para of the impugned order is extracted here under, deserves close scrutiny :

“Keeping in view of the rule position and in the absence of any legal divorce between Sri E.Venkataiah and Smt.Kettamma i.e., 1st wife of ex.employee, the marriage between Ex.Employee and Smt.Mallamma cannot be construed as a legal wedding, hence, after careful examination of the case, I find no merits in the case, accordingly, the request for compassionate appointment is regretted.”

7 (vi) Against this observation, learned counsel for the applicant has submitted the Railway Board orders dated 30.12.2019 wherein respondents have taken a policy decision which is tangential to the above observation for considering cases of compassionate appointment of wards of the second wife. The same is extracted here under :

“In the case of Union of India vs. V.R.Tripathi, the Hon’ble Supreme Court had, vide their order dated 11.12.2018 in OA No.12015/2018 (arising out of SLP (C) No.32004/2016) dismissed on merits the Appeal filed against the Hon’ble Bombay High Court’s order in WP No.910/2015 and in WP No.892/2015 in two Central Railway cases that permitted consideration for grant of compassionate appointment to the child of the 2nd wife of the deceased Railway employee. Subsequently, several other judgements of Hon’ble High Courts have been received in which consideration for grant of compassionate ground appointment to a child born to the 2nd wife of the employee has been directed based on similar ratio.

The matter has, therefore, been reviewed by Board in view of above judicial pronouncements considering also the views of the Central Agency Section of the Ministry of Law & Justice. In partial supersession of Board’s Circular No.E(NG)II/91/RC-I/136 dated 02.01.1992 (RBE No.1/1992) referred to, it has now been decided that children born to the second wife may also be considered for compassionate appointment even where the second marriage has not been specifically permitted by the administration. However, since compassionate appointment after demise of the Railway employee can be considered for granting to only one dependent family member on merits, a child born to the second wife can be considered for such appointment only after ascertaining that there is no objection to this from the first wife or her children. Where the first wife (legally wedded wife) opts for such compassionate appointment either for herself or one of her own children, such claim will have priority over any competing claim made by the second wife for any of her children.”



7(vii) Railway Board order is self explanatory. In V.R.Tripathi case Hon'ble Supreme Court has held that the child born out of 2nd marriage even when the 1st marriage subsists, is eligible to be considered for compassionate appointment by delving upon Sub Section (1) of Section 16 of the Hindu Marriage Act. The instant case is better of in the sense that the deceased employee married the applicant after dissolution of the 1st marriage as per prevailing customs.

7(viii) Even, though it may be repetitive, but yet to decide the issue, it has to be stated that as per the Railway Board order cited the children born to the second wife may also be considered even where the second marriage has not been specifically permitted by the administration. Child born to the second wife can be considered for compassionate appointment only if there is no objection from the first wife or the children. Relevant no objection certificate has also been filed by the applicant (Anx-A-11). First wife is remarried and living separately as stated by respondents. Therefore, there is no ostensible reason for the candidature of the 2nd applicant to be rejected in the context of the Railway Board orders referred to.

7(ix) In view of the above, applicant is thus eligible to be considered for compassionate appointment based on rules and law laid down by Hon'ble Supreme Court in Union of India vs. V.R.Tripathi in C.A.No.12016 of 2018 dated 11.12.2018. Therefore, the impugned order dated 10.04.2019 is liable to be quashed and hence quashed. Resultantly, respondents are directed to reconsider the case of the 2nd applicant for compassionate appointment and issue a speaking and reasoned order within a period of three months from the date of receipt of a copy of this order.

7(x) OA is accordingly allowed. There shall be no order as to costs."

Further, it is stated that recently on 30.12.2019, the Railway Board issued orders wherein the respondents have taken a policy decision for considering the cases of compassionate appointment of wards of the



second wife, which was also discussed in the aforesaid Judgement and accordingly allowed the said OA.

(II) Following the aforesaid order in OA No.627/2019, the present OA is disposed of with a direction to the respondents to examine the relief sought by the applicant, in the light of the observations made in OA No.627/2019, and issue a speaking and reasoned order in accordance with rules and law. Time allowed to implement the above direction(s) is 8 weeks from the date of receipt of a copy of this order.

With the above direction, the OA is disposed of. There shall be no order as to costs.

(B. V. Sudhakar)
Member (A)

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