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CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH
KOLKATA

O.A. No.350/01062/2014.

Date of order :This the 24th Day of September, 2019.

Hon'ble Mrs. Bidisha Banerjee, Judicial Member

Hon'ble -Dr.(Ms) Nandita Chatterjee, Administrative



1. Smt Sukhia Debi, widow of Late Dilip Kumar Singh, aged about 48 years, residing At 14, N.S. Path, P.O. Kanchrapara, Dist. North 24 Parganas, Pin-743145.

.....Applicant

By Advocate Mr B.C. Deb

- Versus -

1. Union of India, service through the General Manager, Eastern Railway, 17 Netaji Subhas Road, Kolkata-700001.
2. The Chief Works Manager, Eastern Railway, Kanchrapara Workshop, P.O. Kanchrapara, Dist. 24 Parganas (North) Pin 743145.
3. The Workshop Personnel Officer, Eastern Railway, Kanchrapara Workshop, P.O. Kanchrapara, Dist. 24 Parganas (North) Pin 743145.

.....Respondents

By Advocate Mr B.P. Manna

ORDER

MS BIDISHA BANERJEE, MEMBER(J)

This application has been preferred to seek the following reliefs :

"a) Leave may be granted to the applicants to file this application jointly u/s 4(5)(a) (Procedure) Rules, 1987.

b) Direction upon the respondents to cancel and/or set aside and/or quash the impugned order dated 28.08.2013 as set out in Annexure A-5 to this Original Application.

- c) Direction upon the respondents to give an appointment to the applicant No.2 on compassionate ground in Group 'D' post in the Eastern Railway.
- d) Any order and/or further order or orders as the Hon'ble Tribunal may deem fit and proper."

2. The order impugned in the present O.A is extracted hereunder for clarity :

"Sub: Appointment on Compassionate grounds in Group 'D' category.

Ref: Your application dated 15.03.2013.

Late Dilip Kr. Singh married to you during existence of his 1st wife, Smt. Sunita Singh and thus the 2nd marriage is a void marriage.

In terms of instructions circulated by Railway Board, the appointment on Compassionate grounds to the second widow and her children are not to be considered unless the administration extended the permission for 2nd marriage.

Hence, it is regretted to inform you that the claim for Employment assistance on Compassionate grounds in favour of your daughter can not be considered as there is no provision exists in the Rule governing compassionate appointment."

3. Learned counsels were heard and materials on record were perused.

4. At hearing it transpired that the applicant No.1 is the 2nd wife of the deceased and applicant No.2 is her son from the employee. The issue that falls for determination is whether the children of deceased from his second wife are entitled to claim employment assistance on compassionate ground.

4. Respondents, to refute the claim of the applicant, the 2nd wife and her son from the employee, would bank upon a Board's Circular dated 21.03.2018 numbered RBE42/18, that reads as under :

"Sub: Appointment on compassionate grounds

The issue of considering appointment on compassionate grounds (CG) to sons/daughters born through other than first legally married wife has been engaging the attention of this



Ministry for quite some time, in the backdrop of partial quashing of CG related instructions contained in this Ministry's letter dated 02.01.1992 regarding such appointments, by the Hon'ble High Court Calcutta in the case (WPCT 20 of 2009) Namita Goldar & Ors. Vs UOI & Others.

2. In this regard, Railway Board has taken into account following observations of the Hon'ble Supreme Court, on the subject of CG appointment, in the case of State Bank of India & another Vs. Rajkumar (Civil appeal No. 1641 of 2010).

"It is now well settled that appointment on compassionate grounds is not a source of recruitment. On the other hand it is an exception to the general rule that recruitment to public services should be on the basis of merit, by an open invitation providing equal opportunity to all eligible persons to participate in the selection process. The dependants of employees, who die in harness, do not have any special claim or right to employment except by way of the concession that may be extended by the employer under the Rules or by a separate scheme, to enable the family of the deceased to get over the sudden financial crisis. The claim for compassionate appointment is, therefore, traceable only to the scheme framed by the employer for such employment and there is no right whatsoever outside such scheme..."

3. Railway Board has also taken into account following observation of Hon'ble High Court of Jharkhand (Ranchi) in writ petition No. WP(S) 16 of 2014 (pronounced on 24.07.2014) "Compassionate appointment is a matter of policy of the employer and the employer cannot be compelled to provide compassionate appointment contrary to its policy/scheme. When there is specific circular which clearly provides that the children of second marriage of the employee shall not be eligible for compassionate appointment, no direction can be issued to the respondents to consider the case of the petitioner."

4. The matter has been examined and in supersession of this Ministry's letter dated 02.01.1992 issued under RBE No. 01/1992 and No. E(NG)/II/2012 RC-1/21 dated 03.04.2013, it has been decided that the first right of being considered for compassionate grounds appointment is vested, in cases of death of Railway servants while in service, with the legally wedded surviving widow provided she has not remarried at the time of making request for appointments on compassionate grounds. It is clarified that in cases of those Railway Servants who are governed by the Hindu Marriage Act, 1955, there can only be one legally wedded wife/widow as second marriage, while spouse is living is void/voidable in view of the Section 5(1) read with Section 11 of the Act. In this respect, Railway Board's letter No. DD&A,92 GS 1-1 dated 10.04.1992 connect.

5. 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 the 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 for CG appointment now 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 not such sons/daughters can claim CG appointment. Moreover, such second/subsequent widow also would not have any right to seek compassionate grounds appointment.

6. All Zonal Railway/Ups/Unit are directed to decide cases accordingly.

Please acknowledge receipt.

Sd/-
(Neeraj Kumar)
Director Estt (N) II.
Railway Board"

5. The applicant's counsel has placed a recent decision of the Hon'ble Apex Court in **Union of India & Another vs. V.R.Tripathi** rendered on 11.12.2018 which succinctly holds as under :

"18. The High Court has proceeded on the basis that the recognition of legitimacy in Section 16 is restricted only to the property of the deceased and for no other purpose. The High Court has missed the principle that Section 16(1) treats a child born from a marriage which is null and void as legitimate. Section 16(3), however, restricts the right of the child in respect of property only to the property of the parents. Section 16(3), however, does not in any manner affect the principle declared in sub-section (1) of Section 16 in regard to the legitimacy of the child. Our attention has also been drawn to a judgment of a learned Single Judge of

the Madras High Court in *M Muthuraj v Deputy General of Police, Tamil Nadu*⁷ adopting the same position. In the view which we have taken, we have arrived at the conclusion that the exclusion of a child born from a second marriage from seeking compassionate appointment under the terms of the circular of the Railway Board is ultra vires. A Division Bench of the Madras High Court followed the view of the Calcutta High Court in *Namita Goldar in Union of India v M Karumbayee*.⁸ A Special leave petition filed against the judgment of the Division Bench was dismissed by this Court on 18 September 2017.



19. We may, however, clarify that the issue as to whether in a particular case, the applicant meets all the stipulations of the scheme including financial need and other requirements are matters which will be decided on the facts of each individual case. 7(2016) 5 CTC 50 82017 Lab. IC (NOC 237) 69 9SLP(C) arising out of Diary No.27352 of 2017 14 20.

20. Finally, it would be necessary to dwell on the submission which was urged on behalf of the respondent that once the circular dated 2 January 1992 was struck down by the Division Bench of the Calcutta High Court in *Namita Goldar (supra)* and which was accepted and has been implemented, it was not thereafter open to the railway authorities to rely upon the same circular which has all India force and effect. There is merit in the submission. Hence, we find it improper on the part of the Railway Board to issue a fresh circular on 3 April 2013, reiterating the terms of the earlier circular dated 2 January, 1992 even after the decision in *Namita Goldar (supra)*, which attained finality.

21. For the above reasons, we do not find any merit in the appeal. The authorities shall take a decision in terms of this judgment on the application for compassionate appointment in three months from today. The appeal stands dismissed. No costs. CIVIL APPEAL No.12016 OF 2018 (Arising out of SLP(C) No.34830/2016) 22.

22. Leave granted. 23. In view of the judgment delivered today in companion Civil Appeal No.12015 of 2018 and since the second marriage was in any event permissible under Muslim Personal Law, there is no merit in the appeal. The authorities shall be entitled to scrutinize whether the application for compassionate appointment fulfills all other requirements, in accordance with law. The process of consideration of the application shall be completed within a period of three months from today.

24. The appeal is accordingly disposed of. No costs."

6. Having noted the true import of the decision *supra*, and having discerned that "the exclusion of a child born from a second marriage from seeking compassionate appointment under the terms of the circular

of the Railway Board is ultra vires," we have no hesitation to quash the impugned order and direct the authorities to act in accordance with the decision supra.

7. Appropriate order be issued within 3 months from the date of receipt of a copy of this order.



8. O.A is accordingly allowed. No order as to costs.

(DR NANDITA CHATTERJEE)
MEMBER (A)

(BIDISHA BANERJEE)
MEMBER (J)

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