

**CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH, PATNA
OA/050/01052/2018**

Reserved on: 16.01.2020
Pronounced on: 17.01.2020

C O R A M

HON'BLE MR. DINESH SHARMA, ADMINISTRATIVE MEMBER

1. Mostt. Sona devi, Widow of Late Ramrikeshwar Ray.
2. Kamlesh Kumar, Son of Late Ramrikeshwar Ray.

Both residents of Village- Ashapur Bhawani, P.O. Silot, P.S.- Maniyari,
District- Muzaffarpur.

.... Applicants.

By Advocate: - Mr. G. Bose

-Versus-

1. The Union of India through the General Manager, East Central Railway, Hajipur- 844100.
2. The General Manager (P), East Central Railway, Hajipur- 844101.
3. The Divisional Railway Manager, East Central railway, Samstipur- 848101.
4. The Divisional Railway Manager (P), East Central Railway, Samastipur- 848101.
5. The Senior Personnel Officer (Recruitment), east Central railway, Hajipur- 844101.
6. The Assistant Divisional Personnel Officer, East Central Railway, Hajipur- 844101.

.... Respondents.

By Advocate: - Shri Bindhyachal Rai

ORDER

Dinesh Sharma, A.M:- In the instant OA, the applicants have prayed for quashing letters dated 24.10.2018 enclosing another letter dated 08.08.2015 (Annexure A/1 and A/2 of the OA) by which it has been conveyed to the applicant no. 1 that her request for grant of



compassionate appointment to the child born from a second marriage of the deceased employee while the first wife was still alive, is not acceptable. The applicants have also prayed for directing the respondents to re-consider the case of compassionate appointment in favour of applicant no. 2 (son of the second wife). The applicants have claimed that this request is in accordance with various decisions of this Tribunal, Hon'ble High Court and the Hon'ble Supreme Court.



2. The respondents have filed a written statement in which they have quoted RBE No. 1 of 1992 where it is stipulated that appointment on compassionate ground to the second widow and her children are not to be considered unless the administration has permitted the second marriage. The written statement also cites a number of cases decided by the Hon'ble High Court of Patna and that of this Tribunal (specifically a decision in OA/050/00049/2018 dated 26.04.2019 in the case of **Triveni Devi & Ors. Vs. Union of India & Ors.**). The written statement also quotes RBE 42/2018 where it is stated that sons/daughters treated as legitimate or deemed to be legitimate under Section 16 of Hindu Marriage Act, 1955 cannot be nominated for CG appointment.

3. A rejoinder has been filed by the applicants in which they have reiterated their claim quoting Full Bench decision of the Hon'ble Patna High Court reported in 2019(3) BLJ 347 in case of **Bihar State Electricity Board & Ors. Vs. Chandra Shekhar Paswan & Ors.** The

rejoinder also quotes the decision of the Apex Court in **Union of India & Ors. Vs. B.R. Tripathi** dated 11.12.2018 reported in AIR SCW 2019 (SC) 666 where it is held that child born out of second marriage is legitimate and is entitled for grant of compassionate appointment.

3. I have gone through the pleadings and heard the arguments made by the learned counsels for both the parties. During the course of arguments, the learned counsel for the applicant also produced a copy of RBE No. 218 of 2019 (Railway Boards letter No. E(NG)II/2016/RC-1/CR/12(Pt) dated 30.12.2019) where, citing a decision of Bombay High Court and the decision of Hon'ble Supreme Court in the case of **Union of India Vs. V.R. Tripathi**, it has been clarified that a child born to the second wife can be considered for such appointment only after there is no objection to this from the first wife or her children. The learned counsel for the respondents brought to the attention of this Tribunal its decision dated 26.04.2019 cited above where this Tribunal had not agreed to a similar request in the light of its earlier decision.

4. After going through the pleadings and hearing the arguments, it is clear that after the issue of RBE 218/2019 dated 30.12.2019 there should be no doubt in anyone's mind about the eligibility of a child born to the second wife for consideration of appointment on compassionate ground provided there is no objection from the first wife or her children and provided it needs all other requirement of the rules for appointment under compassionate ground.



The decision of this Tribunal cited by the learned counsel for the respondents was passed before issuance of this new circular and incidentally, the decision itself mention about the prima facie illegality of the Department's earlier circular (RBE 42/2018) which prohibited nominating the children born out of a second marriage.



5. In the light of the new circular issued by the Railway Board themselves, the impugned orders dated 06.08.2015 and 24.10.2018 are quashed. The respondents are directed to consider the request of the applicants for compassionate appointment in favour of applicant no. 2 in the light of their recent guidelines and provide employment in an appropriate category, if the request otherwise meets all the conditions required for such appointment. The OA is disposed of accordingly. No costs.

[Dinesh Sharma]
Administrative Member

Srk.