

**CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH**

OA/021/00118/2020

HYDERABAD, this the 8th day of March, 2021

Hon'ble Mr. B.V. Sudhakar, Admn. Member



Shri J.R.Yashwanth, aged 28 Yrs.,
Occ : unemployed S/o Late J.R.Pramila Bai,
Gr.'D', Ex-peon S.C. Railway, R/o H.No.21-41,
Farooq Nagar, Mahaboob Nagar District,
Telangana.

...Applicant

(By Advocate : Mr. G. Pavana Murthy)

Vs.

UOI rep by its,

- 1.General Manager,
S.C.Railway, 3rd Floor, Railnilayam,
Secunderabad, Telangana.
2. The Principle Chief Personnel Officer,
S.C. Railway, 4th Floor, Railnilyam,
Secunderabad, Telangana.
- 3.The Divisional Railway Manager,
S.C.Rly, Hyderabad Division, Hyderabad Bhavan,
Secunderabad.
- 4.The Sr. Divisional Personnel Officer,
S.C. Rly, Hyderabad Division, Hyderabad Bhavan,
Secunderabad.

....Respondents

(By Advocate : Mr. S. M. Patnaik, S.C. for Railways)

ORAL ORDER
(As per Hon'ble Mr.B.V.Sudhakar, Administrative Member)

Through Video Conferencing:



2. The applicant filed the OA for a direction to the respondents to consider his case for compassionate appointment and also payment of settlement dues payable to her mother late J.R. Pramila Bai.

3. Brief facts of the case are that the applicant is the son of the deceased employee Smt. J.R.Pramila Bai, who was appointed on compassionate grounds in the year 1985 due to the death of her husband Sri S. Balraj in 1982, who too had worked for the respondents organization. After 3 years of the death of her husband Sri Balraj, the mother of the applicant informed the respondents vide her letter dated 15.02.1988 that she had remarried Sri A.Devaraj on 29.1.1988 and she was granted maternity leave by the respondents w.e.f. 29.5.1991 (Annexure-A4). The deceased employee was blessed with a son and a daughter. The son is the applicant in the instant case. However, the deceased employee was deserted by her latter husband too. The deceased employee ensured that the name of the applicant is entered in the official records as dependent and in the Railway pass as well. Due to health reasons, the deceased employee was medically de-categorised and was found not fit for any category. Hence, she sought voluntary retirement, which was accepted by the respondents w.e.f. 30.4.2015 vide letter dt. 22.04.20215 (Annexure A-11) and thereafter, she died on 2.7.2015. After her death, applicant sought terminal benefits and compassionate appointment which was rejected by raising questions about

his parentage on 20.11.2015. Representations preferred on 10.9.2018 & 10.12.2019 have not been responded to and therefore, the OA.



4. The contentions of the applicant are that the Railway Board letters dated 25.5.2007 & 30.4.1979 cover the case of the applicant. Respondents were informed about the remarriage of the deceased employee vide her letter dated 15.2.1988 and the same was acknowledged by R-3. Even the maternity leave was granted by the respondents w.e.f. 29.5.1991 and therefore, raising questions about parentage at this stage is unfair. Official records like Railway pass, PTO, Identity Card, Form submitted for medical facilities etc. are supportive of the cause of the applicant. The applicant has passed 10th standard and as per Rule 74 of Railway Servants Pension rules 1993, applicant is shown as the nominee and hence, he is eligible to receive terminal benefits as well as compassionate appointment. Representations submitted have not been disposed of.

6. Respondents in the reply statement state that there is a delay of 3 years in submitting the representation dated 10.9.2018 and the intention to submit the representation was to overcome the limitation aspect. Respondents while confirming the career details of the deceased employee, state that when they were examining the request of the applicant for settlement benefits and compassionate appointment, they found that the date of birth of the applicant was shown as 29.5.1991 and father's name as Sri Jakula Ratna Balraj. When Sri Balraj died in 1982, the applicant could not have been born to him in 1991 and hence his claim was rejected on 20.11.2015. Applicant did not challenge the letter dated 20.11.2015. Further, the official records do not indicate that the deceased employee had

informed about her remarriage with Sri Devraj. The deceased employee has drawn family pension till Nov. 2015 as per bank statement which she should not have, as per rules, after her remarriage. As per para 551 of IREC Vol.I and clarification given by the Railway Board on 3.7.1986, an unmarried female Railway servant can also be granted maternity leave.



Therefore, grant of maternity leave is no ground to decide parentage. It is true that the deceased employee did show the applicant in the family declaration form, but the discrepancy was noticed when the issue was examined for release of settlement benefits and compassionate appointment. However, when the representation of the applicant dated 10.12.2019, was sent to R-2 it was directed on 1.12.2020, to process the request made based on Railway Board order circulated vide circular SC No.56/1997. Accordingly, the release of settlement dues is under process and the grant of compassionate appointment will be examined as per rules and law. Respondents have cited the Hon'ble Apex Court judgment in ***SBI and Anr. v. Rajkumar*** in Civil Appeal No. 1641/2010, to buttress their arguments in respect of compassionate appointment.

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

7. I. The dispute is about release of settlement dues and grant of compassionate appointment to the applicant. The preliminary objection raised is that the applicant represented after 3 years of rejection of his request for terminal benefits and compassionate appointment. The applicant claims that he is eligible for settlement benefits since he was dependent on the deceased employee. Settlement benefits constitute a continuous cause of action and therefore, limitation would not be an obstacle to examine release

of settlement dues. Further, both the sides have made contentions supporting their stance, as brought out in paras 4 & 5 above. However, the respondents have conceded that the release of settlement dues is under process as per the directions of the R-2 vide letter dated 1.12.2020 wherein instructions were issued to process the case of the applicant based on SCR Serial Circular No. 56/1997. A perusal of SC No. 56/97 would show that, OM dated 02.12.1996 issued by the Dept. of Pension & Pensioners' Welfare on the subject of grant of pensionary benefits to children from the void or voidable marriages, has been circulated by the Railway Board. The Ld. counsel for the applicant has submitted that the Railway Board has issued the latest circular vide RBE No 218/2019 dated 30.12.2019 pursuant to the judgment of the Hon'ble Supreme Court in *Union of India v. V.R.Tripathi* in Civil Appeal No.12015/2018, which permits considering children born to the second wife for compassionate appointment even where the second marriage has not been specifically permitted by the administration. The said instruction of the Railway Board covers the case of the applicant. The relevant portion of the judgment is extracted here under:

“14. The issue essentially is whether it is open to an employer, who is amenable to Part III of the Constitution to deny the benefit of compassionate appointment which is available to other legitimate children. Undoubtedly, while designing a policy of compassionate appointment, the State can prescribe the terms on which it can be granted. However, it is not open to the State, while making the scheme or rules, to lay down a condition which is inconsistent with [Article 14](#) of the Constitution. The purpose of compassionate appointment is to prevent destitution and penury in the family of a deceased employee. The effect of the circular is that irrespective of the destitution which a child born from a second marriage of a deceased employee may face, compassionate appointment is to be refused unless the second marriage was contracted with the permission of the administration. Once [Section 16](#) of the Hindu Marriage Act, 1955 regards a child born from a marriage entered into while the earlier marriage is subsisting to be legitimate, it would not be



open to the State, consistent with [Article 14](#) to exclude such a child from seeking the benefit of compassionate appointment. Such a condition of exclusion is arbitrary and ultra vires.



15. Even if the narrow classification test is adopted, the circular of the Railway Board creates two categories between one class of legitimate children. Though the law has regarded a child born from a second marriage as legitimate, a child born from the first marriage of a deceased employee is alone made entitled to the benefit of compassionate appointment. The salutary purpose underlying the grant of compassionate appointment, which is to prevent destitution and penury in the family of a deceased employee requires that any stipulation or condition which is imposed must have or bear a reasonable nexus to the object which is sought to be achieved. The learned Additional Solicitor General has urged that it is open to the State, as part of its policy of discouraging bigamy to restrict the benefit of compassionate appointment, only to the spouse and children of the first marriage and to deny it to the spouse of a subsequent marriage and the children. We are here concerned with the exclusion of children born from a second marriage. By excluding a class of beneficiaries who have been deemed legitimate by the operation of law, the condition imposed is disproportionate to the object sought to be achieved. Having regard to the purpose and object of a scheme of compassionate appointment, once the law has treated such children as legitimate, it would be impermissible to exclude them from being considered for compassionate appointment. Children do not choose their parents. To deny compassionate appointment though the law treats a child of a void marriage as legitimate is deeply offensive to their dignity and is offensive to the constitutional guarantee against discrimination.

16. The learned Additional Solicitor General submitted that the decision of this Court in *Rameshwari Devi* (supra) arose in the context of the grant of family pension to the minor children born from the second marriage of a deceased employee. That is correct. This Court, in that context, observed that [Section 16](#) of the Hindu Marriage Act, 1955 renders the children of a void marriage to be legitimate while upholding the entitlement to family pension. The learned Additional Solicitor General submitted that pension is a matter of right which accrues by virtue of the long years of service which is rendered by the employee, entitling the employee and after his death, their family to pension in accordance with the rules. Even if we do accept that submission, the principle which has been laid down by this Court on the basis of [Section 16](#) of the Hindu Marriage Act, 1955 must find application in the present case as well. The exclusion of one class of legitimate children from seeking compassionate appointment merely on the ground that the mother of the applicant was a plural wife of the deceased employee would fail to meet the test of a reasonable nexus with the object sought to be achieved. It would be offensive to and defeat the whole object of ensuring the dignity of the family of a deceased employee who has died in harness. It brings about unconstitutional discrimination between one class of legitimate beneficiaries – legitimate children.

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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 2017⁹.

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.”

Following the above verdict of the Hon’ble Supreme Court, the Railway Board issued RBE No. 218/2019 dt.30.12.2019, relevant paras of which are extracted hereunder:

“3. 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-1/136 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.”

II. The Ld. Counsel for the respondents submitted that the relief sought of disposing the representation has been attended to and therefore, the OA has become infructuous. As is seen from the reply statement, respondents are only processing the relief sought and they have not come to a final conclusion. Hence, it is proper and appropriate to take into

consideration the latest Railway Board order dated 30.12.2019 and the Hon'ble Supreme Court judgment cited supra before taking a final decision in the matter in regard to release of settlement dues and grant of compassionate appointment. Delivery of Justice requires that the latest developments on an issue are to be reckoned, if they are material for taking a justified decision on the issue under consideration. In regard to compassionate appointment, the indigent circumstances in which the family members of the applicant are living is to be examined and thereafter, a decision has to be taken as observed by the Hon'ble Apex Court in a catena of judgments.



III. Hence, in view of the above, respondents are directed to consider grant of relief sought by the applicant in terms of the latest Railway Board Circular dated 30.12.2019, letter dated 1.12.2020 of the 2nd respondent and as per the Hon'ble Supreme Court judgment cited supra within a period of 3 months from the date of receipt of this order in accordance with extent rules and as per law.

With the above directions the OA is disposed of with no order as to costs.

(B.V.SUDHAKAR)
ADMINISTRATIVE MEMBER

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