

(4)

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

O.A. NO.1957 of 2004

New Delhi, this the 1st April, 2005

HON'BLE SHRI SHANKER RAJU, MEMBER (J)

1. Smt. Sulochana Baskey
W/o late Binod Chourey,
R/o 61/A2, Rly. Colony,
Tughlakabad,
New Delhi-110 044.
2. Smt. Surodhani @ Rani Hansada
W/o Late Binod Chourey,
R/o Vill. Lakrjoriya, P.S. JAMA
Distt. Dumka,
Jharkhand

Now staying at 61/A2, Rly. Colony,
Tughlakabad, New Delhi-110 044.

.....Applicants.

(By Advocate : Shri K.N.R. Pillay)

Versus

1. Union of India, through :
The General Manager,
Northern Railway,
Baroda House,
New Delhi.
2. Divl. Railway Manager,
Delhi Division Northern Railway,
State Entry Road,
New Delhi-110001.Respondents

(By Advocate : Shri R.C. Malhotra)

ORDER (ORAL)

Heard the learned counsel.

2. It is trite law that only one person from the family of the deceased is to be considered for compassionate appointment.
3. Applicants impugn respondents' order dated 12.5.2004 whereby first applicant's request has been rejected on the ground that being

a second widow, when first wife is not legally divorced, she has no right to claim compassionate appointment.

4. Learned counsel of the applicants states that as per the provisions of Hindu Marriage Act and in the light of the decision of the Apex Court in Criminal Appeal 186/2001 in the case of **Dr. Surajmani Stella Kujur v. Durga Charan Hansdah & Anr.**, JT 2001 (2) SC 631, wherein it has been held that second marriage is permissible as per the prevailing custom, the second widow is legally entitled to claim compassionate appointment. In this view of the matter, it is stated that legally wedded wife, being covered within the definition of spouse, her claim for compassionate appointment cannot be turned down, keeping in view the indigent circumstances of the family.

5. On the other hand, learned counsel for the respondents opposed the contentions raised by the learned counsel for applicants and stated that irrespective of personal law, once the rules framed by the Ministry of Railways restrict second marriage without permission and also in the light of RBE No.1 of 1992 dated 2.1.1992 wherein it has been provided that appointments to the second widow and her children, where the marriage was not permitted, cannot be considered for accord of compassionate appointment.

6. Learned counsel for respondents further stated that after the selection of first applicant i.e. second wife, applicant no.2 i.e. first wife of the deceased has served upon respondents a legal notice dated 12.6.2003 wherein it is apprehended that first applicant (second wife) might claim herself as legally wedded wife by practicing fraud upon the Railways

authorities and misappropriate the entire outstanding dues and other benefits of the deceased husband of first wife.

7. It is stated by the learned counsel for applicants that an affidavit of applicant No.2, i.e. first wife, which is annexed as Annexure A VIII, clearly shows that she is unable to leave the village and also waived of her claim for compassionate appointment.

8. Be that may so, when customary law allows second marriage, which has been upheld by the Apex Court, though in the context of a criminal proceeding, the fact that when contracting second marriage is not an offence and the marriage is not proved to be void or voidable, it remains a valid marriage. Even Hindu Marriage Act, 1955, in such a situation, does not extend its jurisdiction over ST community where the customary procedure permits second marriage.

9. Moreover, from the perusal of the Railways' Rules on the subject i.e. Rule 21 of the Railway Servants Conduct Rule provides permissibility of second marriage, if personal law allows the same, but permission is to be sought. If no permission is sought for contracting a second marriage that would not per se amount to misconduct and in the circumstances, when a person, who contracts the second marriage and does not survive, for want of any misconduct attributed and proceeded to be initiated against him, the marriage cannot be declared as nullity.

10. In the result, marriage of applicant no.1 with the deceased is a valid legal marriage and she is covered under the definition of 'spouse'.

11. As regards Railway Circular RBE No. 1 of 1992 which provides that appointment on compassionate grounds to the second widow and her children are not to be considered unless the administration has

permitted the second marriage. In special circumstances, taking into account the personal law etc., as ruled by the Hon'ble Supreme Court, any administrative decision, which infiltrate into the arena, covered by the judicial pronouncement is a nullity. As such, marriage of applicant no.1 cannot be treated as void marriage even for the purpose of grant of compassionate appointment.

12. As regard the contention of applicant no.2 requesting the respondents for compassionate appointment, it is too late in the day to claim compassionate appointment when she had herself waived of her claim for the same by filing an affidavit in this regard.

13. In the result, for the foregoing reasons, despite notice to respondent no.2 and waiving of her claim for compassionate appointment by filing an affidavit, impugned order is set aside. Respondents are directed to consider accord of appointment to applicant no.1 to the post of Ticket Collector within a period of one month from the date of receipt of a copy of this order. No costs.

S. Raju
(SHANKER RAJU)
MEMBER (J)

/ravi/