

CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH

THIS THE 2<sup>nd</sup> DAY OF Jan, 2001

Original Application No.226-A of 1998

CORAM:

HON.MR.JUSTICE R.R.K.TRIVEDI,V.C.

Yogendra Narain Singh, Son of Late  
Sita Ram Singh Yadav, R/o Lutha Khurd  
P.O. Lutha Kala, District Varanasi

... Applicant

(By Adv:S/Shri S.K.Dey/S.K.Mishra)

Versus

1. Union of India through  
The General Manager, Eastern Railway  
Calcutta.
2. The Divisional Railway Manager  
Eastern Railway, Mughalsarai  
District Varanasi.
3. Suresh Kumar Singh, S/o Late Sita Ram  
Yadav, R/o Village Luntha,  
P.O. Chaubepur, District Varanasi.

... Respondents

(By Adv: Shri A.K.Gaur)

O R D E R(Oral)

(By Hon.Mr.Justice R.R.K.Trivedi,V.C.)

The dispute in this OA is regarding appointment on compassionate ground. The facts in short giving rise to this application are that Sita Ram Singh Yadav, father of the applicant was serving as Shunt Man at Mughalsarai. He died on 11.11.1997 leaving behind his widow Smt. Dhaneshra Devi and three sons. Two sons Ravindra Pratap Singh aged 30 years and Suresh Prasad Singh aged 16 years <sup>are</sup> from Dhaneshra Devi. The third son Yogendra Narain Singh (applicant in this case) is from second wife Smt. Shakuntala Devi who died during life time of deceased Sita Ram Singh. Applicant Yogendra Narain Singh applied for appointment on compassionate ground stating that he has

..p2

been thrown out from the house by his step mother and he has no means of livelihood. The step mother Dhaneshra devi has filed objection against the claim of the applicant. As respondents have not appointed applicant he has filed this application u/s 19 of the A.T. Act 1985 before this Tribunal for a direction to the respondents to consider him for compassionate appointment.

A counter affidavit has been filed ~~registering~~ <sup>resisting</sup> the claim of the applicant, where material facts have not been disputed but paragraphs 5,6 & 7 of the counter affidavit appear to be very material for resolving the controversy in hand, hence they are being reproduced below:-

5- "That the father of the applicant had two wives the first wife's name Smt. Dhaneshra devi is the legal wife and is still alive. The second wife namely Smt. Shakuntala devi was his illegally married wife who expired about 20 years ago.

6- That the applicant is the son of second wife. The first wife Smt. Dhaneshra devi has applied for compassionate appointment of her second son namely Sri Suresh Kumar Singh who is minor at present. He will attain majority on 14.4.99. As per rule the real widow is entitled for compassionate appointment if she does not want to take service then she may apply for her son/daughter for compassionate appointment. As such widow has applied for appointment of her son Sri Suresh Kumar Singh. The petitioner has been given his due share in retirement/death benefit of his father late Sita Ram Singh Yadav as per extant rules.

That however, no appointment has been made till now because first Sri Suresh Kumar Singh the second son of the first wife Smt. Dhaneshra devi is still a minor second his step brother i.e. the petitioner Yogendra Narain Singh, son of second wife has filed the present case before this Hon'ble Court which is still sub-judice."

I have heard Shri S.K.Dey and Shri S.K.Misra counsel for the applicant and Shri A.N.Ambasta holding brief of Shri A.K.Gaur counsel for the respondents.

The learned counsel for the applicant has submitted that though there is nothing on record to show that the second marriage of the deceased Sita Ram Singh with Smt. Shakuntala devi was illegal, the fact has lost relevance as she died 20 years before. So far as the applicant is concerned he shall be treated to be legitimate son and appointment to him on compassionate ground cannot be denied as he is the most deserving having been thrown out from the family by <sup>the</sup> ~~a~~ step mother. The learned counsel for the applicant has relied on the judgement of Hon'ble Supreme Court in case of Rameshwari Devi Vs. State of Bihar and Others 2000 Supreme Court Cases (L&S) pg276.

The learned counsel for the respondents on the other hand, submitted that the applicant is son of illegally married wife and he is not entitled for appointment on compassionate ground. It is submitted that Dhaneshra devi has applied for compassionate appointment of her second son Suresh Kumar Singh who is minor at present. It is also submitted that as per rule the real widow who was entitled for compassionate appointment or she may apply for appointment of her son or daughter. As name of applicant has not been given by the widow he is not entitled for consideration.

I have considered the rival submissions made on behalf of the parties. There is no dispute that applicant is son of Sita Ram Singh from the second wife. U/s 16 of the Hindu Marriage Act son born even from an illegal or void marriage are legitimate and they are entitled for succession under Hindu Succession Act 1956 if male hindu ~~un~~ dies in-testate. In case of 'Rameshwari devi(Supra) the Hon'ble Supreme Court held as under:-

"It cannot be disputed that marriage between Narain Lal and Yogmaya devi was in contravention of Clause (1) of Section 5 of the Hindu Marriage Act and was a void marriage. U/s 16 of this Act, children of a void marriage are legitimate under the Hindu Succession Act, 1956, property of a male Hindu dying intestate devolves firstly on heirs in clause(1) which include the widow and son. Among the widow and son, they all get shares (See Section 8,10 and the Schedule to the Hindu Succession Act, 1956) Yogmaya devi cannot be described as a widow of Narain Lal, her marriage with Narain Lal being void. The sons of the marriage between Narain Lal and Yogmaya Devi being the legitimate sons of Narain Lal would be entitled to the property of Narain Lal in equal shares alongwith that of Rameshwari Devi and the son born from the marriage of Rameshwari Devi with Narain Lal. That is, however, the legal position when a Hindu male dies intestate. Here, however, we are concerned with the family pension and death-cum-retirement gratuity payments which are governed by the relevant rules. It is not disputed before us that if the legal position as

aforesaid is correct, there is no error with the directions issued by the learned Single Judge in the judgment which upheld by the Division bench in LPA by the impugned judgment."

From the aforesaid, it is clear that so far as son is concerned, he is a legitimate son even though born from a second marriage solemnized in contravention of Section 5(i) of Hindu Marriage Act. In the case before the Hon'ble Supreme Court, a detailed inquiry was held regarding the nature of the second marriage and the status of the second wife. In the present case no such inquiry appears to have been done by the respondents. In any view of the matter as mother of the applicant Shakuntala devi died 20 years before the inquiry does not appear necessary. It has not been denied by the parties that applicant is son of deceased Sita Ram Singh. Thus he has to be treated legitimate son alongwith other sons of deceased Sita Ram Singh through first wife Dhaneshra devi.

The another important aspect of this case appears to be the course adopted by the respondents to give primacy to the request made by the widow Dhaneshra devi. Normally, there could not be objection against such a course as mother loves all her sons equally, but in the present case Dhaneshra devi is step mother of the applicant. Normal fairness and equal treatment towards sons cannot be expected from her. She has already filed objection against the claim of the applicant. In my opinion, the compassionate appointment <sup>is</sup> provided under the rules <sup>if</sup> to help the family as a whole left by the deceased employee.

:: 6 ::

The respondents, thus are required to apply their independent mind to make assessment for the most needy and suitable in the facts and circumstances of each case. The consideration of the claim of the applicant for appointment on compassionate ground cannot be thrown out merely on the ground that objection has been filed by his step mother. This approach on the part of the respondents is wholly illegal and unjustified. In my opinion, the applicant being legitimate son of the deceased employee he is <sup>also</sup> entitled for consideration for appointment on compassionate ground.

The application is accordingly allowed. The respondents are directed to consider the claim of the applicant for appointment on compassionate ground in accordance with law in the light of the observations made above.

There will be no order as to costs.

  
VICE CHAIRMAN

Dated: <sup>nd</sup> 2 Jan, 2001.

Uv/