

Open court.

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH,  
ALLAHABAD.

....

original Application No. 64 of 2001

this the 14th day of July 2003.

HON'BLE MRS. MEERA CHHIBBER, MEMBER(J)

Smt. Leelawati, aged about 40 years, w/o late Sri Ghanshyam Dass Kalloo, R/o 26, Pulliya No.9, Tredraha, Jhansi.

Applicant.

By Advocate : Sri U. Nath for Sri R.K. Nigam.

Versus.

1. Union of India through General Manager, Central Railway, Mumbai CST.
2. Chief Workshop Manager, Central Railway Workshop, Jhansi.

Respondents.

By Advocate : Sri Lalji Sinha.

ORDER (ORAL)

By this O.A., applicant has sought the following relief(s):

"(i) to issue a writ, order or direction in the nature of Certiorari quashing the impugned order dated 2.12.2000 [ Annexure A-1].

(ii) to issue another writ, order or direction in the nature of Mandamus thereby commanding the respondents to issue appointment order in favour of the petitioner on compassionate grounds for which a time bound direction be given.

(iii) -----.

(iv) -----."

2. She has challenged the order dated 2.12.2000 whereby she was informed that her case has been considered by the competent authority, but she cannot be given compassionate appointment as according to the Railway Board's letter dated 2.1.1992 second wife or his children cannot be given compassionate appointment unless the employee has been given permission by the competent authority to marry second time .



3. It is submitted by the applicant that she married late Sri Ghanshyam Dass Kalloo about 22 years back with all Hindu religion, customs and traditions after his first wife had died, therefore, her marriage is valid in accordance with law and was never challenged by any-one. Not only this, even railway administration had through-out recognised the petitioner as wife of the deceased employee inasmuch as they have issued railway passes for various journeys in favour of the applicant alongwith the deceased employee, which is evident from Annexure 2 & 3. Even in the railway medical card, she has been shown as wife of the deceased employee (Annexure-4) and after the death of her husband she was also given PPO in respect of regular family pension in which a photograph affixed showing to be the wife of the deceased (Annexure-5). Even in the Identity card issued by Cultural Academy of the Workshop, applicant has been shown as wife of the deceased employee (Annexure-6). She was also recognised by the Central Railway Employees' Co-operative Credit Society Ltd, Byculla, Mumbai, as wife of the deceased employee (Annexure-7). Apart from all this, even in the ration card, applicant has been shown as wife of the deceased employee and after his death she has been shown as head of the family.

4. She has submitted that after the death of her husband, she was given only family pension to the tune of Rs. 2400/- per month which is too nominal, therefore, she applied for compassionate appointment, but the same has been rejected on a ground which is absolutely wrong, illegal and not sustainable in law. She has, thus, sought the relief(s) as mentioned above.

5. The respondents on the other hand have opposed this O.A. and have submitted that the deceased employee did not inform the administration about the death of his first wife, nor did he take permission of the second marriage as required under the rules. As far as family pension is concerned

they have submitted that since there was no other claimant, petitioner was given pension and other settlement dues. They have further submitted that the applicant is getting an amount of Rs. 2400/- as family pension with no liability besides family settlement dues to the extent of Rs. 138703/- and since she was the second wife, her claim for compassionate appointment was not permissible as per Railway Board's letter dated 25.2.92 annexed as Annexure CA-1. The Railway Board's letter dated 25.2.92, for ready reference, reads as under :

"यह स्पष्ट किया जाता है कि ऐसे रेल कर्मचारियों के मामले में जिनकी सेवा के दौरान मृत्यु हो जाती है और वे अपने पीछे एक से अधिक विधवा और दूसरी पत्नी से जन्मे पुत्रों को छोड़ जाते हैं, हालांकि अदालती आदेशों के कारण या उपन्यता प्रत्येक पावले के गुण दोष के आधार पर पाने की राशि दोनों विधवाओं द्वारा जीयर की जाय लेकिन अनुकम्पा के आधार पर दूसरी विधवा और उसके बच्चों की नियुक्तियों के बारे में तब तक विचार नहीं किया जाना है जब तक कि प्रशासन ने व्यवितरण कानूनों को ध्यान में रखते हुए, विशेष परीस्थितियों में दूसरी शादी की अनुमति न दें दी हो ।

१२१ यह तथ्य प्रारम्भिक नियुक्ति की पेशकश में सचित की गई शर्तों में निर्विवाद रूप से स्पष्ट किया जाता है कि दूसरी शादी अनुमेय नहीं है ।

१३२ इस बात को ध्यान में रखा जाय और दूसरी विधवा या उसके आश्रितों को अनुकम्पा के आधार पर नियुक्ति के मामले बोर्ड को भेजने की जरूरत नहीं है ।

१४२ कृपया पावती दें ।"

6. I have heard both the counsel and perused the pleadings as well.

7. The counsel for the respondents was trying to show from this letter that the children of the second widow cannot be considered for compassionate appointment, unless the administration has given permission to the employee concerned keeping in view the special circumstances to re-marry. I have read this letter very carefully and ~~do~~ not agree with the interpretation given by the counsel for the respondents for the following reasons:

The first paragraph talks about two eventualities but the basic fact is that both the eventualities have to be seen on the condition that the railway employee dies while in service leaving behind more than one widow or children from the second wife. The reason that the sentence is <sup>is</sup> conjectured, ~~that~~ but meaning thereby that second part has to be read alongwith the first part of the sentence. The second part cannot be read in isolation, nor can it be ~~severe~~ and read without reference to the context. Infact, bare perusal of this letter shows that the administration had clarified that in those cases where the railway employee <sup>than</sup> dies leaving behind more/one widow or sons from the second wife, even though due to court case direction, they should be entitled to get equal share. As far as question of considering the second widow or his children for compassionate appointment is concerned, it would not be considered unless the administration has given permission for the second marriage. It was also stated in this very letter that it is also clear that at the time of initial appointment, that the second marriage is not permissible, therefore, the request for compassionate appointment of the second widow or her dependents need not be sent to the Railway Board. At this juncture, it would be relevant to refer to Chapter 12 of Swamy Compilation Master Manual for DDOS & Head of Office part II relating to offer of appointment at page 136 against para 11, it is



stated as under :

"11. In accordance with the relevant rules in force in regard to the recruitment to services under the Government of India,

(a) No person who has more than one wife living or who having a spouse living, contracts a second marriage, though such marriage is void by reason of its taking place during the life time of such spouse, shall be eligible for appointment to service provided that the Central Government may, if satisfied that there are special grounds for so ordering, exempt any person from the operation of this rule."

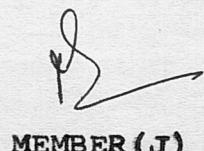
8. According to me, this clause would apply if the first wife is living and the employee wants to contract a second marriage and rightly so because such marriage would be void in the eyes of law. However, in certain cases for example in Muslim law four marriages are permissible, but nonetheless so long his first wife is alive, they should not be permitted to marry second time, unless they take permission from the competent authority. Similarly, there may be certain other instances where looking <sup>at</sup> <sub>at</sub> the circumstances prevalent in the family, it becomes necessary for the employee to re-marry, while the first wife is still alive. It would be in that context that permission would be required to re-marry second time.

9. In the instant case, admittedly, the deceased employee's <sup>Jack R</sup> first wife had died more than 22 years and he had married with the applicant after her death, which cannot be considered to be illegal, in any ~~xxx~~ way because after the death of the first wife, the man can always re-marry. Now, the question arises whether it is open to the department to say that the deceased employee had not taken permission from the competent authority. The applicant has annexed sufficient documents to show that the deceased employee had given information in the office about his second marriage that is why she has been shown as wife of the deceased employee in various documents issued by the respondents themselves, which has been referred to above and need not be repeated. Admittedly, respondents have issued pension and settlement dues to the applicant by treating her the wife

of the deceased employee. They have entered her name in the medical card and have issued railway passes from time to time, which means that even if the deceased employee had not given specific intimation in writing for taking permission of the authorities, but indirectly the said permission has been granted by the authorities because they have accepted her as wife of the deceased employee. It is also admitted by the respondents that there was no other claimant for family pension meaning thereby that the applicant's averments is correct, with regard to the deceased employee first wife having died long back, otherwise definitely after the death of the employee, she would have also put up her claim.

10. In view of the above discussions, I am satisfied that the interpretation being given by the authorities to the letter dated 25.2.92 is not correct, therefore, the impugned order dated 2.12.2000 is quashed and set aside. Since the respondents have not even considered the case of the applicant, therefore, this case is being remitted back to the authorities with the direction to consider her application and then by examining the various factors as laid down in the Government instructions and various judgments of Hon'ble Supreme Court decide her case within a period of three months from the date of communication of this order by passing a reasoned and speaking order under intimation to the applicant.

11. With the above directions, O.A. stands disposed of with no order as to costs.



MEMBER (J)

GIRISH/-