

**Central Administrative Tribunal
Madras Bench**

OA/310/01307/2019

Dated 1st day of July Two Thousand Twenty One

P R E S E N T

Hon'ble Mr. T.Jacob, Member(A)

Smt.Varalakshmi,
W/o late R.Radhakirshnan,
No.60, Narasaiyer Street,
Old Washermenpet,
Chennai 600021.

..Applicant

By Advocate: **M/s. S.M.Deenadayalan**

Vs.

1. Union of India, rep by
The General Manager,
Southern Railway,
Park Town,
Chennai 600 003.
2. The Divisional Personnel Officer,
Personnel Branch,
Tiruchchirappalli Division,
Southern Railway,
Trichy.

.. Respondents

By Advocate **Mr. Y. Prakash**



ORDER

[Pronounced by Hon'ble Mr. T. Jacob, Member(A)]

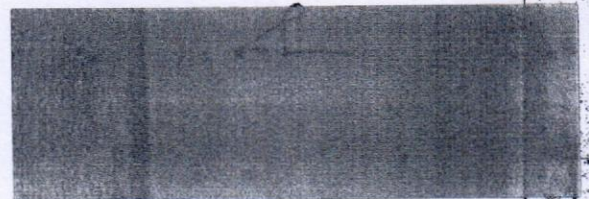
The applicant has filed this OA seeking the following relief:-

“to call for the records related to the impugned order No.T / PC-85/4327 dated 19.7.2019 made by the 2nd respondent and to quash the same and further to direct the respondents to appoint the applicant's daughter, R. Vaishnavi on the compassionate grounds and to make further order/orders as this Tribunal may deem fit and proper and thus render justice.”

2. The facts of the case as stated by the applicant is that the applicant is the wife of R. Radhakrishnan, who died in harness on 16.3.2017 while working as Technician Grade I in the Railway Workshop at Ponmalai of Southern Railway. The applicant made a representation dated 21.5.2018 to the 1st respondent seeking statutory family pension and compassionate ground appointment to her daughter, R. Vaishnavi. As the same was not considered by the respondents, she filed OA 486/2019 before this Tribunal, which was disposed of by order dated 9.4.2019 with a direction to the respondents to consider and pass orders on the representation dated 21.5.2018. In compliance of the order of this Tribunal, the respondents passed the impugned order dt. 19.7.2019 rejecting her claim with a direction to submit Succession Certificate issued by a competent court of law due to rival claim. Aggrieved by the said impugned order, the applicant has filed this OA seeking the aforesaid relief.

3. The applicant seeks compassionate ground appointment to her daughter on the following grounds:-

- (1) The applicant got separated from the deceased by an order of the II Additional Family Court in M. P. No.

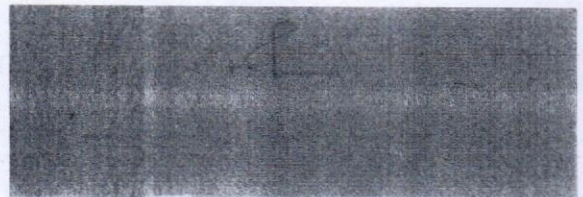


1410/2005 in M. C. No. 233/1996 dt. 26.3.2010 and was receiving the maintenance for self and daughter till the death of the deceased. Therefore, the respondents themselves recognised the applicant as wife before the death of her husband and, thus, there was no necessity for any Succession Certificate. Hence, there is no justification in not considering applicant's daughter who is staying with her widowed mother to look after her.

(2) In so far as the daughters are first class legal heirs of the deceased and they are duty bound to take care of the parents' requirements as commanded by the Maintenance and Welfare of parents and Senior Citizens Act, 2007. As such there shall not be any characteristic distinction among sons and daughters while extending the benefit of compassionate appointment and hence non-consideration of the request made by the applicant is unreasonable and thus impermissible in law.

(3) In the wake of the facts that the claim for pension/settlement dues were made by another lady on the pretext of second wife, which unequivocally establishes that the applicant is the first wife in which event there is no writhed fact so as to reject the claim and hence the impugned order is liable to be quashed.


(4) As per the Railway Services (Conduct) Rules, 1966, no railway servant shall enter into, or contract, a marriage



with a person having a spouse living. No railway servant having a spouse living shall enter into, or contract, a marriage with any other person. Admittedly, in the present case, no such permission is obtained by the deceased while he was in service to have contract of alleged second marriage when the first wife is admittedly living and is before this Tribunal. There is prohibition of bigamous marriage under the Rule 21 of the Railway Services (Conduct) Rules, 1966.


(5) When the Regulation prohibits second marriage, question of considering alleged second wife's claim shall not at all arise and should have been rejected at the first instant. The second respondent themselves knowing fully well but encouraging illegal wife's claim in the name of rival claim would amount to total misconduct and reflect biasness on the part of the second respondents for their pecuniary profits.

(6) The contention of the respondents that one Smt. R. Amudha also entered into a wedlock with the deceased employee consequent to the applicant's separation from the deceased employee and claimed that she is also entitled for the benefits of the deceased employee and submitted supporting documents such as Ration Card, Adhar Card etc., are not tolerable in law and the same would not be valid reason for denying compassionate appointment to daughter of the legally born to the applicant being the first wife. If the husband and wife during the subsistence of their



marriage, think it fit to live with some other man or woman respectively, without obtaining a divorce from the Court as contemplated by law, their marriage would not get dissolved automatically. The parties have to approach a competent court and obtain a decree for dissolution of their marriage, and till such time as they get their marriage dissolved, it subsists irrespective of the fact whether they are faithful to each other or not, or are living a life on their own with some other man or woman respectively. The husband during subsistence of marriage even cannot nominate another woman who is not his wife to receive death or retiral benefits. When such is the position in the law, the respondents cannot deny compassionate appointment of legally wedded first wife's daughter due to rival claims.

(7) Further, Smt. R. Amudha, the alleged second wife never submitted any court order/decreed to prove separation between the deceased employee and the applicant. In the absence of any such proof for dissolution of the applicant's marriage with the deceased, the question of rival claim from the third parties claiming to be second wife does not arise as per the statement of the respondents. Smt. R. Amudha neither claimed any compassionate appointment nor objected for applicant's daughter's compassionate appointment. Therefore, as long as the applicant's position of legally wedded-wife is not disputed by anyone, the question of submitting Succession Certificate by a competent court of law by the applicant is not a bar so as to enable the applicant to seek compassionate appointment to




her daughter and the denial of the respondents on any flimsy and fragile ground is not maintainable and tenable in law.

(8) Furthermore, the Hon'ble Supreme Court held that that the Succession Certificate merely enables to collect the dues of the deceased between the deceased and the applicant. It is clear that a Succession Certificate is not a document to substantiate genuineness of a person, neither it confers any status upon him nor does prove any relationship.

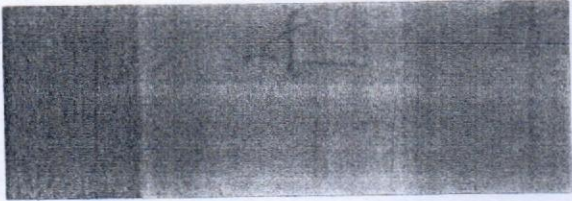
4. The applicant has relied on the decision of the Hon'ble High Court of Jharkhand dt. 12.05.2016 in WP(S) No. 3426 of 2015 in the case of Kiran Kumari versus Bharat Coking Coal Limited and Anr. in support of their submissions.

5. The respondents have filed a reply contesting the claim of the applicant. It is stated that the deceased employee declared Smt. R. Papa, widowed mother, as family member in the Family Composition Pass while he was in service. He has not declared the applicant and her daughter in the Family Composition Register dated 2.1.2017. He has also not declared anyone in the nomination form for Central Government Employees Group Insurance Scheme, 1980. After his death, one Smt. R. Amudha said to be the wife of the deceased gave a representation on 28.3.2017 wherein she has stated that the deceased employee married her on 5.6.1991 due to difference of opinion with the applicant, Smt. Varalakshmi and a son, named, R. Sathishkumar was born to her on 13.1.1993 out of their wedlock. Smt. Amudha submitted one letter to the District Collector dated 27.3.2017 and the same was

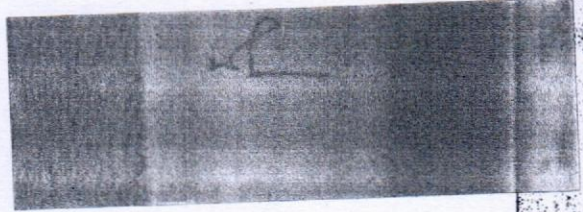


forwarded to the Divisional Railway Manager on 11.4.2017 for claiming the terminal benefits. She has also submitted the Ration Card, Voter's Identity Card and the Certificate Issued by the Tiruchchirappalli Municipality Burial ground-report of death and demanded terminal benefits, pension and compassionate ground appointment. Therefore, due to rival claim, the applicant and Smt. R. Amudha were advised to submit Succession Certificate from the appropriate court of law to establish their claim of legally wedded wife of the deceased employee on 2.5.17. An enquiry was made by Staff and Welfare Inspector in connection with rival claim and submitted his report on 8.5.2017 stating that the applicant and Smt. R. Amudha married with Shri R. Radhakrishnan and both had child due to their wedlock and submitted relevant documents to substantiate their claim. Hence, the Railways concluded to obtain legal heir certificate/succession certificate from the court of law.

6. The applicant filed OA No.1472/2018 which was disposed of by the Central Administrative Tribunal, Madras Bench with a direction to dispose the representation which was stated to be submitted to the respondents. The same was disposed by letter No.T/P500/Settlement. The applicant filed another O.A. No. 486/2019 before the CAT Madras Bench therein stating that she has submitted a representation dated 21.05.2018 seeking action on her representation for family pension and appointment to her daughter under compassionate grounds. The Hon'ble Tribunal disposed of the OA on 09.04.2019 with the direction to dispose of the representation dated 21.5.2018. The respondent once again nominated a Chief Staff and Welfare Inspector to inquire the dependency of the applicant with the ex-employee. But no cooperation was




received from their end in response to inquiry or submission of documents. Her representation was disposed of on 19.07.2019 advising to submit succession certificate by a competent court of law mentioning all the relevant facts duly impleading the administration. Instead of submitting succession certificate, the applicant now filed this OA No. 1307/2019 with the prayer of compassionate ground appointment to her daughter. It is submitted by the respondents that in case where the dependency of a candidate is not covered by pass declaration for appointment on compassionate grounds, the dependency may be established through Ration Card or through investigation by Welfare Inspectors. In this case, the Welfare Inspector also advised to obtain succession certificate to find out the correct legal heir. Further, the respondents have not denied consideration of applicant's daughter's case for compassionate ground appointment and have asked for relevant documents. Hence, the respondents prayed for dismissal of the O.A.

7. The applicant has filed rejoinder reiterating the stand taken in the OA.
 8. Heard the learned counsel for the respective parties and perused the pleadings and documents on record.
 9. Admittedly, this is the third round of litigation. Earlier the applicant filed OA 1472/2018, on this issue and the same was disposed of by this Tribunal on 31.10.2018 with a direction to the respondents to dispose of the applicant's representation dated 21.8.17. The respondents disposed the applicant's representation on 18.1.19 wherein it was stated that "due to rival claim you are requested to submit succession certificate issued by the competent court duly impleading the Railway
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Administration as one of the party, enabling to substantiate your claim for settlement dues of Shri R. Radhakrishnan." The applicant has filed another OA No.486/2019 before this Tribunal with a prayer for appointment to her daughter, Selvi R. Vaishnavi due to the death of her husband, R. Radhakrishnan. The said OA was disposed of by order dt. 9.4.19 with a direction to dispose the representation dt. 21.5.18. The respondents once again nominated a Chief Staff and Welfare Inspector to enquire the dependency of the applicant with ex-employee. Thereafter, the representation was disposed on 19.7.19 advising to submit succession certificate issued by the competent court duly impleading the Railway Administration. Aggrieved by the said impugned order, the applicant has filed this OA.


10. The contention of the respondents is that as per Rule 75(7)(1)(a) of the Railway Services (Pension) Rules, 1993, "(a) Where the family pension is payable to more widows than one, the family pension shall be paid to the widows in equal shares. (b) On the death of a widow, her share of the family pension, shall become payable to her eligible child". The intention in calling upon the claimants to obtain Succession Certificate is to get a legal document from the competent court so that the claims of the rival parties can be settled once for all and to enable the department to pay the dues, etc., to the rightful claimant. If the department is not satisfied with the legal right of the claimant, they have got every right to approach the competent court to decide to whom the terminal benefits can be disbursed in accordance with the law. The respondent is in the position to safe guard the children born out of void marriage. Accordingly, Shri Sathishkumar said to be the son of the deceased employee is also



eligible for such claim of settlement. Hence, the applicant was advised to submit "Succession Certificate". Mere payment of maintenance by respondent Railway does not preclude that Railway Administration has recognised applicant only as legally wedded wife. The respondent Railways are at obligation to honour the order passed by court of law and they followed it.

11. The respondents have not contended that they cannot make payment to anyone in respect of the terminal/pensionary benefits of the deceased employee. Since there are rival claims, Railways are entitled to ask the claimants to produce Succession Certificate from a competent Court. Soon after marriage, an employee usually updates his nomination papers for terminal/pensionary benefits. It is interesting to note that the deceased employee never nominated the applicant/his daughter in his Service Book. Railways cannot take the risk of making either of the claimants eligible for the benefits arising out of the death in harness of the employee, without a Succession Certificate for disbursal of the due payments/benefits as found appropriate by the Court either on merits or as mutually agreed upon by the claimants.

12. Further compassionate ground appointment cannot be claimed as a matter of right, but needs to be sanctioned by the competent authority taking into consideration whether the family is in indigent condition due to sudden loss of an earning member. In the present case, the applicant and her daughter are living alone for the past 28 years without any dependability of the deceased employee. The compassionate ground appointment cannot be made in the absence of rules or regulations issued by



the Government or a Public Authority. A Succession Certificate establishes who the legal heirs are and the authenticity of the successor. It is a certificate given to the successor of a deceased person who dies without leaving a will.

13. While considering the aspect of extending compassionate ground appointment, the respondent office has no clarity on the beneficiaries whom it can be extended to, since the advices to submit the documents issued by Competent Revenue Authorities were not answered by any of the claimants. Similarly the disposal made by the respondents on 18.01.19 advising to submit a succession certificate from the Competent Court of law duly impleading Railway Administration was also not honoured. Also, a Welfare Inspector was nominated to visit the applicant's premises to ascertain the facts to seek details with duly supported valid documents, but no co-operation for document submission was extended from their end. In the absence of such documents, the claim of settlement benefits and extension of compassionate ground appointment cannot be granted.

14. Hon'ble Supreme Court has held in the case of *Santosh Kumar Dubey v. State of U.P.*, (2009) 6 SCC 481 as under:-

"11. The very concept of giving a compassionate appointment is to tide over the financial difficulties that are faced by the family of the deceased due to the death of the earning member of the family. There is immediate loss of earning for which the family suffers financial hardship. The benefit is given so that the family can tide over such financial constraints

12. The request for appointment on compassionate grounds should be reasonable and proximate to the time of the death of the bread earner of the family, inasmuch as the very purpose of giving such benefit is



to make financial help available to the family to overcome sudden economic crisis occurring in the family of the deceased who has died in harness. But this, however, cannot be another source of recruitment. This also cannot be treated as a bonanza and also as a right to get an appointment in government service."

15. The decision of Jharkand High Court in regard to succession certificate relied upon by the applicant has been considered. In that case there has been a certificate from a public office (The BDO) bearing no. 305 dated 17.09.2013 which suggests that after verification it was found that Kiran Kumari (the party therein who sought for compassionate appointment) is the only daughter of the deceased and is the sole heir and on the date of issuance of the certificate is unmarried. It was under such circumstances, the Hon'ble High Court, relying upon a judgement of the Hon'ble Apex Court held that succession certificate is not a sine qua non. Thus, in the instant case, a succession certificate becomes essential. Thus, the judgment relied upon by the applicant does not lend support to his case.

16. In view of the facts and law stated above, the OA is devoid of merit and is accordingly dismissed leaving the parties to bear their own cost.