

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH
KOLKATA

OA. 350/799/2019
MA. 350/442/2019

Date of order: 09.02.2021

Present :Hon'ble Ms. Bidisha Banerjee, Judicial Member

1. Jharna Mondal, W/o Late Sankirtan Mondal, Ex. MCM. (Fitter), T/No. 16/431, aged about 54 years, by profession- Housewife.
2. Bablu Kumar Mondal, S/o late Sankirtan Mondal, Ex. MCM, (Fitter), T/No. 16/431, aged about 31 years, by profession- unemployed.

Both the applicants are residing at Vill. Tara Chatia, P.O. Sagjuria, P.S. Nala, Dist- Jamtara (Jharkhand), Pin- 815355.

.....Applicant.

-versus-

1. Union of India through General Manager, Chittaranjan Locomotive Works, Chittaranjan , Dist- Burdwan, Pin- 713331.
2. The Principal Chief Personnel Officer, Chittaranjan Locomotive Works, Chittaranjan, Dist- Burdwan, Pin- 713331.
3. Secretary, Railway Board, Rail Bhawan, New Delhi- 110001.

.....Respondents.

For the Applicant : Mr. C. Sinha, Counsel

For the Respondents : Mr. K. Sarkar, Counsel



ORDER (Oral)Per Ms. Bidisha Banerjee, JM:

Heard both.

2. MA. 442/2019 filed by the applicants for joint prosecution is allowed.
3. Ld. Counsel for applicant submits that the applicants' application to seek compassionate appointment as a son of second wife of the deceased employee was rejected by the respondent authorities vide their letter dated 16.02.2006 and 30.03.2016. The applicant had preferred a detailed representation which has yielded no response. Thereafter, the applicant had approached before this Tribunal in OA. 1686/2016 which was decided on 12.12.2018 when the Hon'ble Member having noted the decision of the Hon'ble High Court of Calcutta in the case of **Smt. Namita Golder & Anr.** wherein the Railway Board Circular RBE. 1/1992 stood already quashed, ordered as follows:



"6. Having heard Id. Counsel for the parties, without going into the merit of the matter, I grant liberty to the applicant to approach Respondent No. 2 through a detailed representation, along with the orders/judgments relied upon by them within a period of one month from the date of receipt of copy of this order. This OA is, accordingly, disposed of remanding the matter back to the Respondent No. 2 to consider the representation to be preferred by the applicant, keeping in mind the orders/judgment to be referred therein, and pass a reasoned and speaking order as per rules and regulations communicating the same to the applicants within a period of six weeks from the date of receipt of the representation. I make it clear that if after such consideration the grievance of the applicants is found to be genuine then expeditious steps be taken within a further period of six weeks to give appointment under compassionate ground in favour of applicant No. 2."

In view of aforesaid direction, the applicant had preferred a detailed representation on 17.01.2019 citing the decision of **Namita Golder (supra)**.

Thereafter, on the said representation a speaking order was issued by the respondent's authority vide their communication dated 23.03.2019 where they have states as follows:

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"The issue of considering appointment on compassionate grounds (CG) to sons/daughters, born through other than first legally married wife has been reviewed by Railway Board, in the backdrop of partial quashing of CG related instructions contained in this Ministry's letter dated 02.01.1992 regarding such appointments, by the Hon'ble High Court /Calcutta in the case (WPCT 20 of 2009) Namita Golder & Ors. vs. UOI & Ors. Railway Board vide letter No. E(NG)II/2018/RC-1/5 dated 21.03.2018 (RBE No. 42/2018) had superseded the RBE No. 01/1992 and decided that in the case of Railway Servants who are governed by the Hindu Marriage Act, 1955 died in harness leaving more than one widow, neither widow can nominate the son/daughter of Railway Servant who has been treated as legitimate or deemed to be legitimate under Section 16 of Hindu Marriage Act, 1955, as bread winner for CG appointment nor such son/daughters can claim CG appointment.

In the light of the above stated Railway Board's instruction circulated vide letter No. E(NG)II/2018/RC-1/5 dated 21.03.2018 (RBE No. 42/2018), Sri Bablu Kumar Mondal is not eligible for CG appointment."

4. Ld. Counsel for applicant submits that recently the Hon'ble Apex Court in **V. R. Tripathi's** case has settled the issue that the second wife can seek appointment on compassionate ground of her children. Para 15 and 20 of the said judgment reads as under:

"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."

"20. Finally, it would be necessary to dwell on the submission which was urged on behalf of the respondent that once the circular dated 2 January 1992 was struck down by the Division Bench of the Calcutta High Court in Namita Goldar (supra) and which was accepted and has been implemented, it was not thereafter open to the railway authorities to rely upon the same circular which has all India force and effect. There is merit in the submission. Hence, we find it improper on the part of the Railway Board to issue a fresh circular on 3 April 2013, reiterating the terms of the earlier circular dated 2 January, 1992 even after the decision in Namita Goldar (supra), which attained finality."



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5. Ld. Counsel for applicant would submit that in view of such, respondents should consider the matter and quash the RBE No. 42/2018 which was issued on 21.03.2018, prior to delivery of the judgment by Hon'ble Apex Court in the case of ***Union of India & Anr. v. V. R. Tripathi*** rendered on 11.12.2018.

6. Ld. Counsel for respondents would vehemently oppose the prayer of the applicant on the ground that the issue stands settled by the Railway Board by issuing RBE No. 42/2018.

7. I have considered the rival contentions and in view of the fact and the decision of the Hon'ble Apex Court on an issue is the law of the land that binds the Railway Authorities alike, I direct the respondent authorities to consider the case of the applicant in light of ***V. R. Tripathi's*** case enumerated (supra) ignoring the contents of RBE No. 42/2018 and pass an appropriate order, within a period



of 3 months from the date of receipt of a copy of this order.

8. Thus, the OA would stand disposed of. No costs.

(Bidisha Banerjee)
Member (J)

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