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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH; CUTTACK.

ORIGINAL APPLICATION NO. 259 OF 2000.
Cuttack, this the 1st day of January, 2000.

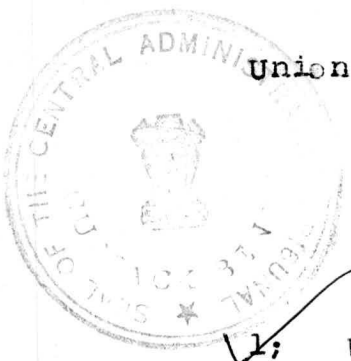
Sri D. Ganapati Rao & another. Applicants.


- Versus -

Union of India & others. Respondents.

FOR INSTRUCTIONS

1. ✓ whether it be referred to the reporters or not? Yes.
2. ✓ whether it be circulated to all the Benches of the Central Administrative Tribunal or not? Yes.


(SOMNATH SOM)
VICE-CHAIRMAN


(GITYANANDA PRUSTY)
MEMBER (JUDICIAL)

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO.259 OF 2000.
Cuttack, this the *1st* day of *January*, 2002.

C O R A M:

THE HONOURABLE MR.SOMNATH SOM, VICE-CHAIRMAN
A N D

THE HONOURABLE MR.NITYANANDA PRUSTY, MEMBER(J)

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1. Sri D.Ganapati Rao, Aged about 24 years,
S/o.Late D.Appa Rao,
2. Smt. D.Savitri, Aged about 40 years,
W/o.Late D.Appa Rao,

Both are of Village: Sankainchapur,
Po: Kalyanpur, Dist. Ganjam.

: Applicants.

By legal practitioner: M/s.P.V.Ramdas, P.V.Balkrishna,
Advocates.

- Versus -

1. Union of India represented by the General Manager,
S.E.Railway, Garden Reach, Calcutta-43.
2. Divisional railway Manager(P), S.E.Railway,
Khurda Road, PO: Jatni, District-Khurda.

: Respondents.

By legal practitioner: M/s.R.Sikdar, A.Sikdar, S.Dutta,
Additional Standing Counsel(Rlys.).

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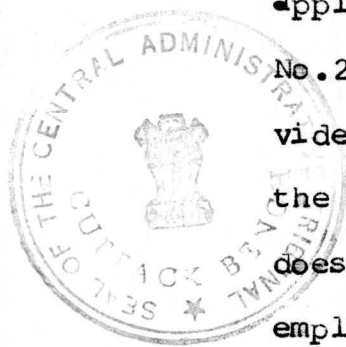
O R D E R

MR.NITYANANDA PRUSTY, MEMBER(JUDICIAL):

The applicants, who are the son and wife of one D.Appa Rao, have filed the present Original Application for quashing the order at Annexure-1 rejecting the representation for providing employment assistance on compassionate ground, with a further prayer for a direction to the Respondent No.2 to provide employment assistance on compassionate ground to applicant no.1, who is the son of the deceased railway employee.

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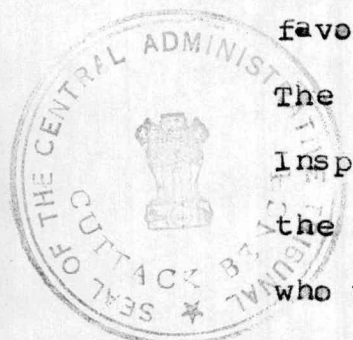
2. The case of the applicants, in short, is that the applicant No.1 is the son of late D.Appa Rao and applicant No.2 is the wife of late D.Appa Rao and is the step mother of applicant No.1. The deceased Rly. employee, late D.Appa Rao was working as Senior Telephone Clerk in the South Eastern Railway, at the relevant time posted at Bhadrak and died in harness on 9.4.1990. At the time of the death, the applicant no.1 was a minor aged about 14 years. Hence her step-mother, applicant no.2 made an application to Respondent No.2 on 6.10.1990 for extending employment assistance on compassionate ground to applicant no.1 but the Respondents did not bother to reply the said representation. Applicant no.1, after attaining the majority, on 22.4.1994 made an application for employment assistance under the above said scheme on 1-4-1995. Similar applications have also been made by the applicants on 6.12.1996, 11.5.1998 and 25.9.98. Respondent No.2 considering the applications made by the applicants, vide letter dated 25.10.1999 seen at Annexure-1 informed the applicant no.1 that his application dated 1-4-1995 does not merit consideration and accordingly relief for employment assistance on compassionate ground was rejected. The main ground on which the order under annexure-1 was challenged by the applicants is that the order has been passed without application of mind and does not disclose the reason for such rejection. Thus, the order is in breach of principles of natural justice. It has further been stated by the applicants that the circular of the Railway Board are very clear to the effect that compassionate appointment has to be provided to the son or daughter of the deceased



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employee. Since the applicant no.1 is a matriculate and is in the age-group and also being the son of the deceased Railway employee, who has died in harness, is entitled to compassionate appointment. The circular of the Railway Board which has been relied upon by the applicants has been filed along with the application as seen at Annexures-2 series. On the above grounds, the applicants have come up in this Original Application with the prayers referred to above.

3. Respondents in their reply have stated that the father of applicant no.1 expired on 9.4.1990 while working as Senior Telephone Clerk under the Station Supdt. of Bhadrak. After the death of the ex-employee, the applicant No.2 sought for employment assistance in favour of her son/applicant no.1, on compassionate ground. The case was duly enquired into by deputing one personnel Inspector (PI). From the enquiry report, it was revealed that the deceased Railway employee, married one D. Kannakamma, who was divorced on 27.5.1973 and expired on 6.5.1998 living no issue. Then the deceased railway employee married one D. Sabitri, who also expired on 29.11.1984. She gave birth two sons namely D. Ganapati Rao and D. Rama Rao. Again the deceased employee married one Sakuntala who eloped and had left behind no issue. Lastly late deceased railway employee married another one namely D. Sabitri who is the applicant no.2 in the present application and who had also no issue. As per the records available, the ex-railway employee did not take any permission from the Railway Authorities for his second, 3rd and 4th marriage which is required as per the Rules and Law. As per the extant rules, Railway Board's letter No. E(NG) II/91/KC-1/136, dated 2-1-1992 circulated under the

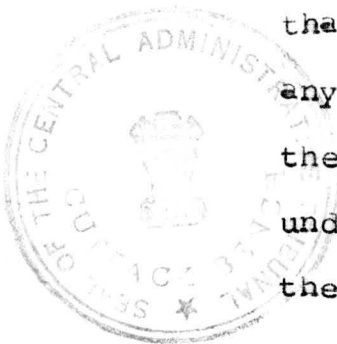


Railway Establishment Sl.No.20/92 from which it reveals as follows:

"In the case of Railway employees dying in harness etc. leaving more than one widow along with children born to the Second wife, whole settlement dues may be shared by both the widows due to court orders or otherwise on merits of each case, appointment on compassionate grounds to the second widow and her children are not to be considered unless the Admn. has permitted the second marriage in special circumstances, taking into account the personal law etc."

In view of the above said guidelines, the applicants' case for compassionate appointment do not come within the purview of compassionate appointment and accordingly it has been decided not to extend such benefit to the applicants. Hence, the applicants were informed regarding the decision vide Annexure-1 to the O.A. The Respondents have further stated that since the deceased Railway employee had not obtained any person for his second, third and fourth marriage, from the authority and as those marriages are not permissible under law, the present application is not maintainable in the eye of law. Hence is liable to be dismissed.

4. Applicants have filed rejoinder and additional rejoinder, which have also been taken note of. In support of their case, applicants in their rejoinder have referred to the Railway Board's circular dated 22-11-1994 which is clear to the effect that where a death has taken place when the son or daughter is minor and an application for appointment is submitted after the son or daughter attains majority, the same should be considered and this has to be brought to the notice of the widow or family by the Welfare Wing. A copy of the said circular has been filed by the applicants seen at Annexure-3 to the rejoinder. Applicants have further



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stated that the compassionate appointment is a welfare measure. An application for compassionate appointment should be based upon a balanced and objective assessment of the financial condition of the family. The order under Annexure-1 is not a speaking order. No reasons are given in the said order and the validity of the order has to be judged by the text of such order and the same can not be supplemented by means of an affidavit or otherwise. Applicants in their additional rejoinder have further stated that the first wife was divorced as per the caste custom. Thereafter, the deceased railway employee married the second wife and through her, he begot the applicant and another son. In this case there is implied permission for second marriage in view of the fact that the second wife of the deceased was given privilege passes, privilege ticket orders, free medical treatment for about 12 years to the second wife. Such privileges extended by the Railway Administration clearly indicate that there is implied permission of the Railway Administration for the second marriage and the two sons which the deceased employee begot through the second wife were also given the above said privileges by the Railway administration. In that view of the matter, the contentions raised by the Respondents in support of their order of rejection is not sustainable in the eye of law. It has further been stated by the applicants that the deceased railway employee died on 9.4.90 and the Railway Rule seen at Annexure-R/1 denying the compassionate appointment to the son through the second wife came into effect from 20.1.92. As such the rule can not be given effect to retrospectively when

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the Rule itself does not ~~itself~~ contain any such express provision that it should be made applicable retrospectively. Since the scheme for compassionate appointment is in the nature of welfare measure, the application of the applicants ought to have been considered keeping in view the intention behind the scheme.


5. In support of the contention regarding non-speaking order of rejection, the applicants relied upon the decision of the Hon'ble Supreme Court in the M.S. Gill Vrs. UOI reported in AIR 1978 SC 851 wherein it has been held by the Hon'ble Apex Court that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and can not be supplemented by fresh reasons in the shape of affidavit or otherwise. Further in a similar matter, this Tribunal in the case of Sk. Dildar Hussain Vrs. Union of India and others in O.A. No. 502 of 2000 decided on 29th November, 2001 it has been held as follows:



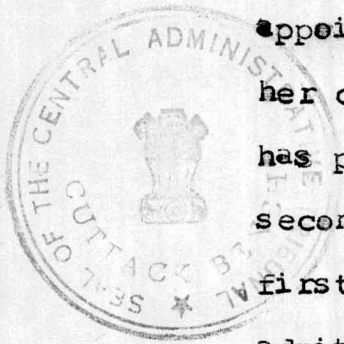
"xx xx xx. question of disentitlement on the ground of absence of permission would arise only when railway employee dies in harness leaving more than one widow. In the instant case the first wife passed away on 21.6.1986 and the applicant's father passed away on 14.11.1996. Thus, on the date of death of the applicant's father, he did not leave two widows and therefore, this prohibition can not be applicable to the case of the applicant".

In the said case, this Tribunal while quashing the impugned order, the Railway Administration was directed to consider the case of applicant for compassionate appointment afresh in accordance with the scheme for such appointment.

6. In the instant case as it appears from the reply filed by the Respondents, the first wife was divorced on



27.5.1973. The deceased employee begot 2 sons admittedly through the second wife. The 3rd wife alleged to have been eloped leaving behind no issue. But no document has been filed by the Respondents in support of their contention regarding the third marriage. The last wife, the present applicant no.2 is the only living wife of the deceased railway employee who had no issue and she is one of the co-applicants alongwith the first son of the second wife. Hence, admittedly, the last marriage was after the divorced of the first wife and death of the second wife. As such, at the time of death of Railway employee, he was having only one living wife. As per the extract of the Railway Board's letter dated 2.1.1992 under Railway Estt. Sl. No. 20/92 railway employee dying in harness etc. leaving more than one widow alongwith children born to the second wife, the whole settlement dues may be shared by both the widows and appointment on compassionate ground to the second wife or her children are not to be considered unless the Administration has permitted the second marriage. In the instant case, the second marriage was admittedly after the divorce of the first wife and as such is legally valid. In view of the admitted divorce of the first wife, no permission is required under law from the Department for the second marriage as the same is in accordance with the provisions of law. Further more in the instant case at the time of the death of the railway employee, only one wife was living who is the applicant no.2 in this case. After the death or divorce of a wife there is no bar under Hindu Law for the second/next marriage. In that view of the matter the bar imposed in the above said circular is not applicable to the instant case following the ratio



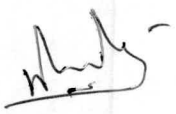
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decided by this Tribunal in OA No.502/2000 stated above.

7. Considering the facts and circumstances stated above, the order of rejection at Annexure-1 is not sustainable in the eye of law and hence the same is quashed. The Respondents, are, therefore, directed to consider the case of applicant No.1 for compassionate appointment afresh in accordance with the scheme for such appointment and in the light of the observations made above. This exercise should be completed within a period of two months from the date of receipt of a copy of this order by a reasoned and speaking order and the result thereof should be communicated to the applicant within a period of one month thereafter.

8. The Original Application is accordingly allowed.
No costs.


(SOMNATH SOM)
VICE-CHAIRMAN
1.1.2022


(NITYANANDA PRUSTY)
MEMBER (JUDICIAL)

KNM/CM.