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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO.22 OF 2006
DECIDED ON ~~03rd OF SEPTEMBER, 2007~~
OCTOBER ~~2007~~

Arupananda Debendra Senapati & Others Applicants
VERSUS
Railway Board & Others Respondents

FOR INSTRUCTIONS

1. Whether it be referred to reporters or not? *NO* .
2. Whether it be circulated to all the Benches of Central Administrative Tribunal or not? *NO* .


N.D.RAGHAVAN
VICE-CHAIRMAN

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OCTOBER 10

CORAM:

HON'BLE SHRI N.D.RAGHAVAN, VICE-CHAIRMAN

IN THE CASE OF:

1. Arupananda Debendra Senapati, Aged about 23 years, S/O. Late Laxmidhar Senapati.
2. Kunthal Senapati, aged about 52 years, w/O. Late Laxmidhar Senapati, Applicant No.1 & 2 are resident of Vill-Turla, P.O.Jagua, P.S.-Titilagarh, Dist-Bolangir.
3. Lilabati Sahu @ Senapati, aged about 55 years, W/O. Late Laxmidhar Senapati, resident of Village- Sagnamunda, P.O.Luthur Bandha, P.S.-Titilagarh, Dist.Bolangir.

.....Applicants

Advocates for the Applicant

.....M/S.S.K.Rath(1),
U.K.Samal,
B.R.Barik &
C.D.Sahoo.

Versus:

1. Railway Board being represented by its Chairman, Rail Bhawan, New Delhi.
2. East Coast Railway being represented through its General Manager, Rail Bihar, Bhubaneswar, Dist.-Khurda.
3. Divisional Railway Manager (P) East Coast Railway, Sambalpur Division, Town/Dist.Sambalpur.

.....Respondents

Advocate for the Respondents

.....Mr.S.K.Ojha.

Sub:

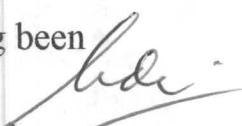
ORDER

SHRI N.D.RAGHAVAN, VICE-CHAIRMAN

In this Original Application under Section 19 of the Administrative Tribunals Act, 1985, the applicants have prayed for the following relief:

- “ i) admit the Original Application,
- ii) call for the records,
- iii) after hearing the parties quash the order under Annexure-4 and the Respondents be directed to give appointment to the Applicant No.1 under the Employment Assistance on compassionate ground within a time to be stipulated by this Hon'ble Tribunal.

2. Brief facts of the applicant's case are that Kuntala Senapati (Applicant No.2) is the second wife of late Laxmidhar Senapati, who while working as Junior Chowkidar under the Section Engineer (Bridge), Titlagarh, passed away on 6.6.2002. Lilabati Sahu @ Senapati (Applicant No.3) is the first wife of the deceased employee. Shri Arupananda Debendra Senapati (Applicant No.1) is the son of the deceased born through the second wife, Kuntala. Admittedly, there was no issue of the deceased through the first wife, Lilabati. The second wife, Kuntala made an application to the Respondent-Railways to provide compassionate appointment in favour of her son (Applicant No.1). Her request having been



turned down vide letter dated 3.12.2004 (Annexure-5), this Original Application has been filed with the prayers referred to above.

2.1 The applicants have based their claim for compassionate appointment on Annexure-A/2, which is a declaration of family members/dependant relatives given by the deceased employee to the Respondent-Railways for the purpose of privilege passes and PTOs. It is also disclosed in the O.A. that the first wife having filed a maintenance case, was being paid Rs.500/- per month.

2.2 After the death of Laxmidhar Senapati, the applicants laid claims for payment of death-cum-retirement benefits as well as compassionate appointment in favour of applicant No.1. The Respondent-Railways having insisted succession certificate, a petition was filed before the Civil Judge. In the said case, a joint petition for compromise was filed by the parties.

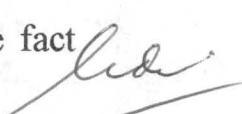
Copies of the comprise petition and order dated 16.7.2003 thereon are at Annexure-A/3 and A/4.

2.3 The grounds urged by the applicants are that in the service records the deceased employee had nominated applicant Nos. 1 and 2 as his son and wife respectively; that applicant No.3 does not make any claim for appointment of applicant No.1; that the circular vide Estt. Srl. No.20/92 is no more good law; and that the family being unable to maintain its

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livelihood, it is a fit case where compassionate appointment should be provided.

3. Respondent-Railways have filed their counter opposing the prayer of the applicants. They have stated that after the death of Laxmidhar Senapati, his first wife refused to accept the employment assistance due to her old age and sickness and that she had requested the authority with her consent in the representation dated 12.12.2003 to provide compassionate employment in favour of her son (applicant No.1), born through the second wife. In consideration of the same, the representation was rejected in view of specific bar imposed by the Railway Board's letter No. E(NG)11/91/RC-1/136 dated 2.1.1991, circulated vide Est. Sl. No. 20/92 "that the second wife and the children born through the wife are not entitled to get any benefit of any such appointment under the Scheme". They have also submitted that the applicants have produced no such documents^{or} it could be ascertained that at any point of time the deceased employee was permitted to have the second marriage and therefore, in the absence of such permission or any law accepting the second marriage as valid one, they are bound by the instructions of the Railway Board. It has also been submitted by them that the deceased employee had given false pass declaration and availed privileges and benefits during his service period, notwithstanding the fact



that his wife is alive, but they did not choose to take any action since the fact of the second marriage was not within their knowledge and it came to their knowledge only after the claim application for death benefits was made.

With these submissions, the Respondent-Railways have prayed that the O.A. being devoid of merit, is liable to be dismissed.

4. The applicant has filed a rejoinder to the counter and the same has been taken note of.

5. Heard Shri S.K.Rath-1, the learned counsel for the applicant and Mr.S.K.Ojha, the learned Standing Counsel (Railways) for the Respondents and have also perused the materials available on record.

6. In the fitness of things, at the outset, it would be proper to quote hereunder the relevant rules governing compassionate appointment as laid down under Annexure-R/1(Estt.Srl.No.20/92 dated 20.1.92:

“Appointment on compassionate grounds – cases of second widow and her wards.

It is clarified that in the case of railway employees dying in harness etc. leaving more than one widow along with children born to the 2nd wife, while settlement dues may be shared by both the widows due to Court orders or otherwise on merits of each case, appointments on compassionate grounds to the second widow and her children are not to be considered unless the administration has permitted the second marriage, in special circumstances, taking into account the personal law etc.

2. The fact that the second marriage is not

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permissible is invariably clarified in terms and conditions advised in the offer of initial appointment.

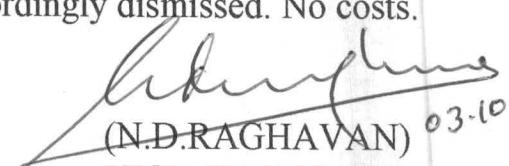
3. This may be kept in view and the cases for compassionate appointment to the second widow or her wards need not be forwarded to Railway Board".

7. From the above, it is clear that the Respondent-Railways were not wrong in rejecting the prayer for compassionate appointment in favour of applicant No.1. Since the Railway Board's letter dated 2.1.1992 circulated as Estt.Srl.No.20/92 (Annexure R/1) has not been challenged and until it is set aside and/or quashed by the Court of Law, it would hold the field. ————— This apart, the order dated 16.7.2003 having been passed by the Civil Judge (SD) on the compromise petition, the succession certificate was granted in respect of the amount relating to provident fund, CGEIS and leave encashment only. The applicants have not filed legal heir certificate to show that applicant No.1 and 2 are legal heirs of the deceased employee too. No document has also been produced except Annexure-A/2 to show that the deceased employee declared his marital status with applicant No.2 before the Respondent-Railways. On mere conjecture and surmise, the Tribunal cannot conclusively hold that applicant No.1 is entitled to compassionate appointment, more particularly when the Railway Board's instruction stands as an embargo. The averments in Para-6 of the counter that the Respondent-




Railways could come to know that the deceased employee had 2nd wife when the claim for death benefit was made, has not been refuted by the applicant in the rejoinder, except a bland assertion that for all purposes, applicant No.3 had deserted the deceased employee and hence it could not be said that the deceased employee had given false declaration of his family members.

8. Having regard to the above facts and circumstances of the case, I do not find any merit in this O.A. which is accordingly dismissed. No costs.


(N.D.RAGHAVAN) 03-10-07
VICE-CHAIRMAN

PPS

fix for pronouncement.