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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No.554 of 2012
Cuttack this the 22nd day of April, 2016

Tinku Majhi...Applicant

-VERSUS-

Union of India & Ors...Respondents

FOR INSTRUCTIONS

1. Whether it be referred to reporters or not ?
2. Whether it be referred to CAT, PB, New Delhi for being referred to various Benches of this Tribunal or not ?


(A.K.PATNAIK)
MEMBER(J)

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No.554 of 3012
Cuttack this the 23rd day of April, 2016

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HON'BLE SHRI A.K.PATNAIK, MEMBER(J)

Tinku Majhi
Aged about 39 years
S/o. late Salgi
At-Belapada
PO-Uchakapatna
PS-Govindpur
Dist-Sambalpur

...Applicant

By the Advocate(s)-M/s.S.B.Jena
S.Behera
C.K.Sahoo

-VERSUS-

Union of India represented through

1. The General Manager
South Eastern Railway
At/PO-Garden Reach
Kolkata
2. Senior Divisional Personnel Manager
South Eastern Railway
At/PO/Dist-Chakradhapur (West Bengal)
3. Divisional Engineer
South Eastern Railway
At/PO-Jharsuguda (Orissa)

...Respondents

By the Advocate(s)-Mr.T.Rath

ORDER

A.K.PATNAIK, MEMBER(J)

Applicant has filed this O.A. under Section 19 of the Administrative Tribunals Act, 1985, challenging the communication dated 28.02.2011(A/5) issued by the Sr.

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Divisional Personnel Officer, Chakradharpur (respondent No.2) whereby provision of compassionate appointment has been rejected. Therefore, applicant has prayed for quashing the said impugned communication (A/5) with direction to be issued to respondents to provide him an appointment on compassionate ground.

2. Facts of the matter in brief are that applicant's mother Salgi, while working as Head Trackman/GP under the S.E.Railways passed away on 21.1.2010, leaving behind her husband, two sons and three daughters. Applicant being the eldest son, submitted an application seeking appointment on compassionate grounds since the family was in distress condition. In consideration of his application, the railway-authorities rejected his prayer on the ground that the deceased employee was the second wife of applicant's father one Dambru. Hence, this Original Application.

3. It is the case of the applicant that even though he is the son of the 2nd wife, who was serving under the Railways, there is no impediment in providing appointment on compassionate ground in his favour, especially, when the family is in distress condition.

4. On the other hand, by filing a detailed counter, respondents have opposed the prayer of the applicant. It has been submitted that applicant's mother, while working as Female Trackman under the Railways expired on 21.1.2000.

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Thereafter, her husband one Dambru applied for employment assistance in favour of the applicant, who is the eldest son of the deceased employee. In course of investigation, it came to light that Dambru had two wives, namely, late Nagi Majhi who was the first wife and the deceased employee, late Salagi, who was the 2nd wife. Employment assistance on compassionate ground was rejected based on the Estt.Srl.No.20/92, which states that children from the second marriage shall be entitled for a share in the settlement dues, but not employment assistance on the ground that such a marriage is to be considered null and void. Respondents have pointed out that Dambru is an ex-Railway employee and he being the head of the family, his illegitimate son, who is applicant herein and other family members are supposed to be dependent on him. Therefore, during the life time of his father who is the breadwinner in the family, provision of compassionate appointment is not admissible even after the death of applicant's mother Smt.Salgi.

5. Respondents have brought to the notice of the Tribunal Railway Board's circular dated 2.1.1992 (Estt.Srl.No.20/92) which states that children of second marriage of the employee shall not be eligible for compassionate appointment unless the employee obtained the permission for second marriage which could have been granted only in special circumstances. But in the instant case, neither the father of the applicant nor his

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mother had ever applied for any such permission. Therefore, in the absence of any prior permission for the marriage, Railway Administration is under an obligation to take cognizance of such 2nd marriage while considering the matter of providing rehabilitation assistance.

6. It has been contended that in terms of Section-5 read with Section 11 of Hindu Marriage Act, any marriage solemnized after the commencement of Hindu Marriage, Act, 1955, in violation of Clause (1) of Section 5 shall be null and void.

7. Applicant has not filed rejoinder to the counter-reply.

8. Heard the learned counsel for both the sides and perused the records. I have also gone through the written notes of submission filed by both the sides. In the written notes of submission, applicant has reiterated the same averments as made in the O.A.

9. On the other hand, respondents in order to fortify their stand have placed reliance on the decision of the Hon'ble Supreme Court in ***State Bank of India & anr. Vs. Raj Kumar (2010)118 SCC 661*** and the decision of Hon'ble High Court of Jharkhand ***Basanti Devi, CWJC No.4416 of 2008***, wherein it has been observed that the children of the second wife of the deceased employee who contracted second marriage during the life time of his first wife without prior approval of the Railway Authority as per the Railway Service (Conduct) Rules, 1966, has

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no legal right to claim appointment on compassionate ground, in view of the Railway Board circular circulated by S.E. Railway, vide Estt.Srl.No.20/1992.

10. I have considered the rival submissions and given my anxious thoughts to the arguments as advanced.

9. From the pleadings of the parties, the short point that arises for consideration is whether a ward of the 2nd wife is entitled to be considered for compassionate appointment or otherwise.

11. Recently, this Tribunal in O.A.No.915 of 2012 disposed of on 4.4.2016, relying on the decision of the CAT, Principal Bench in O.A. O.A.No.3424 of 2012 decided on 29.1.2014 (**Pankaj Kumar vs. Union of India**). In this order, the CAT, Principal Bench had dealt with the Railway Board Circular dated 2.1.1992 and held that it did not deprive the children of second wife of the right to be considered for appointment on compassionate ground. A perusal of the orders of the Principal Bench reveals that it is based upon the judgment of the Hon'ble Apex Court in Rameswari Devi case, and also the judgment of Hon'ble Calcutta High Court in Namita Goldar case. The Hon'ble High Court of Calcutta in Namita Goldar case observed that in view of the decision of the Hon'ble Apex Court in Rameswari Devi, the children of the second wife cannot be treated as illegitimate and referring to Section 16 of the Hindu Marriage Act specifically held that the children of a void marriage are

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legitimate. The Hon'ble High Court of Calcutta in Namita Goldar case held as under.

"We are, however, of the opinion that the circular issued by the Railway Board on 2nd January, 1992 preventing the children of the second wife from being considered for appointment on compassionate ground cannot be sustained in the eyes of law in view of the specific provision of the Hindu Marriage Act, 1955 and pursuant to the decision of the Hon'ble Supreme Court in Rameswari Devi(supra).

In the aforesaid circumstances, the aforesaid circular issued by the Railway Board on 2nd January, 1992, stands quashed to the extent it prevents the children of the second wife from being considered for appointment on compassionate ground".

12. Incidentally, it is to be noted that while deciding O.A.No.915 of 2012, this Tribunal had also taken note of the decisions in ***State Bank of India & anr. Vs. Raj Kumar (2010)118 SCC 661*** and the decision of Hon'ble High Court of Jharkhand ***Basanti Devi, CWJC No.4416 of 2008*** relied on by the Railways and held that the ward of the 2nd wife is entitled to be considered for appointment on compassionate ground.

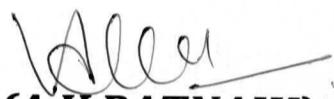
13. Since Railway Board's circular dated 2nd January, 1992 (Estt.Srl.No.20/1992) preventing the children of the second wife from being considered for appointment on compassionate ground has already been quashed by the Hon'ble High Court of Calcutta in Namita Goldar's case, respondents were not justified in rejecting the claim of the applicant while considering him for compassionate appointment. In view of this, the point in issue is

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answered to the effect that a ward of the 2nd wife is entitled to be considered for compassionate appointment.

14. Accordingly, impugned letter dated 28.2.2011(A/5) is quashed and set aside and the respondents are directed to reconsider the case of the applicant for compassionate appointment within the provisions of the scheme set out in this regard and pass appropriate orders within a period of 120 days from the date of receipt of this order.

In the result, the O.A. is allowed as above. No costs.


(A.K.PATNAIK)
MEMBER(J)