

CENTRAL ADMINISTRATIVE TRIBUNAL

CALCUTTA BENCH

No. O.A. 533 of 1997

Present : Hon'ble Mr. D. Purkayastha, Judicial Member

AJOY SARKAR & ANR.

VS.

UNION OF INDIA & OTHERS

For the applicants : Mr. T.K. Biswas, counsel

For the respondents : Mr. K. Sarkar, counsel

Heard on : 26.3.2001

Order on : 26.3.2001

O R D E R

This application has been filed jointly by two applicants praying for a direction upon the respondents to provide employment to the applicant No.1 on compassionate ground. Father of applicant No.1 and husband of applicant No.2 Sri Saktisadhan Sarkar who was working under the respondents as Painter Gr.II, died on 10.2.93 while on service. The

No. 2 applicant thereafter by a representation dated 14.5.93 applied to the Senior Divisional Personnel Officer, S.E. Rly. Kharagpur for an employment on compassionate ground in favour of her son, Sri Ajoy Sarkar i.e. the applicant No.1 in this O.A. On the basis of such prayer the applicants were intimated by the respondent authorities by a memo of August, 1994 to furnish a no objection statement from one Smt. Narayani Sarkar who was also the wife of late railway employee concerned. The said Smt. Narayani Sarkar allegedly another wife of the

deceased gave her no objection to the appointment of the applicant No.1 on compassionate ground. Thereafter, the DRM, Kharagpur turned down the request of compassionate appointment by order dated 9.5.95. Being aggrieved by the said order of refusal, the applicants have come to this Tribunal for getting appropriate relief.

2. The respondents have contested the application by filing reply. It has been stated that the deceased railway employee had earlier married to one Smt. Narayani Sarkar and gave nomination in her favour in the year 1966. The present applicant No.2 is the second wife of the deceased employee and the applicant No.1 is the son born from the said second wife. After the death of the employee both Smt. Narayani Sarkar and the present applicant No.2, Smt. Srimati Sarkar submitted representation for payment of settlement dues claiming to be widow of the deceased. Then both of them were asked to establish their marital status from court of law. Initially, both of them claimed to be the first wife of the employee but subsequently, they filed a mutual solemnama before the 2nd Court Munsif at Midnapore and family pension was paid to both the wives in equal shares as per the court's order. When the application for compassionate appointment by the present applicant No.1 was received by the respondents an enquiry was held and it was found that the second marriage of the railway employee i.e. the marriage with applicant No.2 took place

in the year 1955. Since as per law second marriage is void where first wife is alive, both the wives made a solenama in order to get the retiral benefits of the deceased employee. However, so far as compassionate appointment to applicant No.1 is concerned, it was decided that since the deceased employee suppressed his second marriage which was legally void, no consideration could be made in favour of applicant No.1 regarding grant of compassionate appointment. However, settlement dues have been disbursed to both the wives as per settlement by court's order.

3. Id. counsel, Mr. T.K. Biswas appearing on behalf of the applicant contended that the marriage between the deceased railway employee and Smt. Srimati Sarkar took place before he entered into the service and during the lifetime of the first wife Smt. Narayani Sarkar. So, the circular under Estt. Srl. No. 20/92 on the basis of which the respondents denied the claim of the applicants, is not applicable in this case. He further submits that the first wife of the deceased did not claim appointment on compassionate ground and has given no objection in favour of applicant No.1. Therefore, he should be considered for employment on compassionate ground.

4. Id. counsel, Mr. K. Sarkar appearing on behalf of the respondents, submits that as per terms and conditions of the solenama the second marriage took place when the first wife of the deceased was alive. Therefore, the applicant No.1 being the son of the second

contd.

widow of the deceased is not entitled to get the benefit of compassionate appointment in view of the aforesaid circular.

5. We have considered the submissions of the 1d. counsel for both sides and have perused the records produced before us. From the solenama annexed to the application it appears that the applicant No. 2 Smt. Srimati Sarker and her children are on the one hand and Smt. Narayani Sarker was on the other hand mutually agreed on the facts stated therein. It appears from the terms and conditions that the deceased employee first married Smt. N. Sarker on 23.4.1952 according to Hindu rights and customs. The said marriage was solemnised at the intervention of the parents of both the parties. However, due to some misunderstanding between the two, the deceased employee married ~~for the~~ ^{second time} to applicant No. 2, Smt. Srimati Sarker and out of the said wedlock 4 children were born who were made plaintiff No. 2 to 5 in that suit. The present applicant No. 2 is the second son of Smt. Srimati Sarker. Both were agreed to be the legally married wives of the deceased employee. It was mutually decided that Smt. Narayani Sarker will get the family pension and the applicants will get other benefits including compassionate appointment. In view of this solenama the present application has been filed by the applicants on being refused of compassionate appointment.

6. It is clear from the aforesaid solenama that the

deceased railway employee married one Smt. Narayani Sarkar in the year 1952 and thereafter during her lifetime he again married the present applicant No.2 in the year 1955 which is illegal as per the Hindu Law. Under the extant rules, the second wife cannot claim any benefit if marriage took place during the lifetime of the first wife of the employee concerned. In the instant case it is admitted fact that the second marriage of the employee with the present applicant No.2 took place before the employee entered into the service. According to the 1d. counsel Mr. Sarkar for the respondents, no declaration has been made by the deceased employee in respect of his second wife at the time of entry into the service. Moreover, it appears that the deceased employee nominated his first wife for getting the settlement benefits and declared Smt. Narayani Sarkar as his legally married wife. So, the respondents are not bound to take into consideration of the case of the second wife of the deceased as per rules. It has been further contended by the respondents that as per the Estt. Srl. No. 20/92 when the railway employee dies in harness leaving more than one widow alongwith children born to the second wife and when settlement dues are settled at intervention of court's order or otherwise on merit, no compassionate appointment was admissible to the children of the second wife unless the administration has permitted the second marriage in any special circumstances. It is quite clear.

that the deceased employee suppressed the fact of his second wife while the first wife is alive which is not legal. In view of the above, the compromise agreement between the two wives of the deceased employee cannot be said to be valid in law and any agreement against law must be held to be invalid.

7. In view of the aforesaid circumstances, I am of the opinion that the applicant No.1 is not entitled to any compassionate appointment as prayed for and I do not find any reason to interfere with the decision of the respondent authorities in this regard. Accordingly, the O.A. stands dismissed awarding no cost.

Mem 26/3/2001
MEMBER(J)