CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A No. 442/2011

Thursday, this 19th day of January, 2012.

CORAM

HON'BLE Dr K.B.S.RAJAN, JUDICIAL MEMBER
HON'BLE Mr K. GEORGE JOSEPH, ADMINISTRATIVE MEMBER

1. Palaniammal,
W/o (late) C.Sekaran,
(Ex.Sr. Trackman/Tirupur Railway Station,
Southern Railway),
Residing at: Door No.33, Malayampalayam,
Savakkattupalayam, Olalakovil,
Gopichettipalayam, Erode-638 460.

2. S.Palanisamy,
S/o (late) C.Sekaran,
(Ex.Sr. Trackman/Tirupur Railway Station,
Southern Railway),
Residing at: Door No.33, Malayampalayam,
Savakkattupalayam, Olalakovil,
Gopichettipalayam, Erode-638 460. ....Applicants

(By Advocate Mr TC Govindaswamy)

v.

1. Union of India represented by the
General Manager, Southern Railway,
Headquarters Office, Park Town.P.O.
Chennai-3.

2. The Senior Divisional Personnel Officer,
Southern Railway, Palghat Division,
Palghat-678 002.

3. The Railway Board (Ministry of Railways),
Rail Bhavan, New Delhi-110 001
through its Secretary. ....Respondents

(By Advocate Mr Thomas Mathew Nellimoottil)

This application having been finally heard on 16.01.2012, the Tribunal on 19.01.2012 delivered the following:

ORDER

HON'BLE Dr K.B.S.RAJAN, JUDICIAL MEMBER

The facts in brief:

One Shri C. Sekaran was functioning as Sr. Trackman in Tirupur Railway Station and while in service he expired on 24-05-2001. He had a family consisting of his wife and a daughter. The applicant in this OA is the second wife of the said C. Sekaran and the second applicant is the son born to the said C. Sekaran and the first applicant. It is the case of the applicant No. 2 that his status as a legitimate son of the said C. Sekaran has been recognized by the Railways when it granted certain facilities including the benefit of privilege passes, medical facilities and family pension etc., At the time of the demise of C. Sekaran, the second applicant was only a minor and he could attain the age of a major just recently and thus with the hope that in the same way, the applicant would be granted compassionate appointment as per the extant scheme, he applied for grant of compassionate appointment. However, his case was turned down by Annexure A-1 order dated 02-06-2010 on the ground that as per Annexure A-2 Railway Board circular dated 02-01-1992, the applicant is not eligible for compassionate appointment. Hence this OA, challenging Annexure A-1 order dated 02-06-2010 and Annexure A-2 Railway Board Circular dated 02-01-1992 on various grounds adduced in para 5 thereof.

2. Respondents have contested the O.A. They have stated that the question of legal validity of Railway Board circular dated 02-01-1992 is no longer *res-integra* as the Bombay Bench of the Tribunal already held the same as legally valid and in yet another case of a single Bench of the said Bench, it was once again held as legally valid. In so far as the case of the applicant is concerned the

respondents have contended that the late C. Sekaran being a Hindu, was subject to the provisions of Hindu Marriage Act, which prohibits polygamy and thus, he prohibited from marrying a second time during the life time of his first wife. Even where second marriage is permissible under the personal laws, in so far as Railway Servants are concerned, permission to contract the second marriage has to be obtained. Thus, his second marriage being void, the applicant No. 2 is not entitled to any compassionate appointment, which is based on a scheme framed by the Railways.

3. Counsel for the applicant argued that the law relating to compassionate appointment especially with reference to dependents, should be read in line with the provisions available in the Hindu Marriage Act. Section 16 of the said Hindu Marriage Act legitimizes the children born to a couple whose marriage may not be held legally valid. The children are entitled to inherit the property of the parents. The counsel submitted that in so far as terminal benefits are concerned, the applicant No. 2 had been held to be entitled to certain shares thereof. As such, in matters of compassionate appointments also, when the first wife or her daughter did not apply for such appointment, the applicant being a legitimate son of the deceased C. Sekaran, Sr. Gangman/PO/TUP should be considered for such appointment.

4. The following decisions have been cited in support of the case of the applicant:-

(a) **Jane Antony v.** Siyath [KLT 2008(4) 1002] wherein in para 32 the High Court has stated as under:-

"No child is born in the world without a father and a mother. As said earlier the child has no role to play in his/her birth. Many such

illegitimate children may not know who their progenitors are. The children born to unchaste women belong to that class. The mother of such children also may not know who is the father of the child. But the fact remains that all children both legitimate and illegitimate are born to their father and mother. In the present world by scientific means or tests, identity of the father of any child can be established. The children born to a mother and father who co-habited for a considerable period of time as husband and wife and being regarded by their neighbours and friends as husband and wife and their parents also acknowledged them as their children and so described in documents like ration are, voters' list and School Register, there is a strong presumption that the children are legitimate children. The Parliament recognised all the children both legitimate and illegitimate to be maintained by their father under the Code of Criminal Procedure. If there is no discrimination between legitimate and illegitimate children for maintenance why should these children be also not allowed under law to succeed to the estate of their parents. Such class of illegitimate children born to the father and mother who lived as husband and wife are to be presumed to be legitimate and we hold that such children shall be entitled to inherit the properties of their parents along with the children born in valid marriage."

(b) **Rameshwari Devi vs State of Bihar** (AIR 2000 (SC) 735 = (2000) 2 SCC 431

*"**13.** But then it is not necessary for us to consider if Narain Lal could have been charged of misconduct having contracted a second marriage when his first wife was living as no disciplinary proceedings were held against him during his lifetime. In the present case, we are concerned only with the question as to who is entitled to the family pension and death-cum-retirement gratuity on the death of Narain Lal. When there are two claimants to the pensionary benefits of a deceased employee and there is no nomination wherever required the State Government has to hold an inquiry as to the rightful claimant. Disbursement of pension cannot wait till a civil court pronounces upon the respective rights of the parties. That would certainly be a long-drawn affair. The doors of civil courts are always open to any party after and even before a decision is reached by the State Government as to who is entitled to pensionary benefits. Of course, inquiry conducted by the State Government cannot be a sham affair and it could also not be arbitrary. The decision has to be taken in a bona fide, reasonable and rational manner. In the present case an inquiry was held which cannot be termed as a sham. The result of the inquiry was that Yogmaya Devi and Narain Lal lived as husband and wife since 1963. A presumption does*

arise, therefore, that the marriage of Yogmaya Devi with Narain Lal was in accordance with Hindu rites and all ceremonies connected with a valid Hindu marriage were performed. This presumption Rameshwari Devi has been unable to rebut. Nevertheless, that, however, does not make the marriage between Yogmaya Devi and Narain Lal as legal. Of course, when there is a charge of bigamy under Section 494 IPC strict proof of solemnisation of the second marriage with due observance of rituals and ceremonies has been insisted upon.

14. *It cannot be disputed that the marriage between Narain Lal and Yogmaya Devi was in contravention of clause (i) of Section 5 of the Hindu Marriage Act and was a void marriage. Under Section 16 of this Act, children of a void marriage are legitimate. Under the Hindu Succession Act, 1956, property of a male Hindu dying intestate devolves firstly on heirs in clause (1) which include the widow and son. Among the widow and son, they all get shares (see Sections 8, 10 and the Schedule to the Hindu Succession Act, 1956). Yogmaya Devi cannot be described as a widow of Narain Lal, her marriage with Narain Lal being void. The sons of the marriage between Narain Lal and Yogmaya Devi being the legitimate sons of Narain Lal would be entitled to the property of Narain Lal in equal shares along with that of Rameshwari Devi and the son born from the marriage of Rameshwari Devi with Narain Lal. That is, however, the legal position when a Hindu male dies intestate. Here, however, we are concerned with the family pension and death-cum-retirement gratuity payments which are governed by the relevant rules. It is not disputed before us that if the legal position as aforesaid is correct, there is no error with the directions issued by the learned Single Judge in the judgment which is upheld by the Division Bench in LPA by the impugned judgment."*

(c) **Jinia Keotin & Ors v. Kumar Sitaram Manjhi & Ors.** [JT 2002 (10) SC 571],

wherein, in para 4 the Apex Court has stated as under:-

"4. We have carefully considered the submissions of the learned counsel on either side. The Hindu Marriage Act underwent important changes by virtue of the Marriage Laws (Amendment) Act, 1976, which came into force with effect from 27.5.1976. Under the ordinary law, a child for being treated as legitimate must be born in lawful wedlock. If the marriage itself is void on account of contravention of the statutory prescriptions, any child born of such marriage would have the effect, per se, or on being so declared or annulled, as the case may be, of bastardizing the children born of the parties of such marriage.

Polygamy, which was permissible and widely prevalent among the Hindus in the past and considered to have evil effects on society, cam to be put an end to by the mandate of the parliament in enacting the Hindu Marriage Act, 1955. The legitimate status of the children which depended very much upon the marriage between their parents being valid or void, thus turned on the act of parents over which the innocent child had no hold or control. But, for no fault of it, the innocent baby had to suffer a permanent set back in life and in the eyes of society by being treated as illegitimate. A laudable and noble Act of the legislature indeed in enacting section 16 to put an end to a great social evil. At the same time, section 16 of the Act, while engrafting a rule of fiction in ordaining the children, though illegitimate, to be treated as legitimate, notwithstanding that the marriage was void or voidable chose also to confine its application, so far as succession or inheritance by such children are concerned to the properties of the parents only."

5. Counsel for the applicant also argued that the rejection of the case of the applicant No. 2 by the Railways is against the provisions of Art. 16(1) of the Constitution of India.

6. Counsel for the respondents argued that vide Annexure R-1 order of the Mumbai Bench, (**Rahul Maruti Sadavarte vs Union of India and others and Ashok Vithal Sapkal vs Union of India and others**) the legal issue in question has been analyzed in full and the contention rejected. This has been followed in another order of the Mumbai Bench in the case of **Monali P. Seal vs Union of India and others**, where, all the contentions as raised by the applicant in this OA have been discussed. The order of the coordinate bench of the Tribunal is normally followed, unless a different view is held by the other coordinate bench, in which the case may have to be referred to a larger bench. The counsel prayed that the order of the Mumbai Bench being applicable to the facts of this case be followed and the OA be dismissed.

7. Arguments were heard and documents perused. The Mumbai Bench has considered exactly the same issue as in this case in OA No. 898 of 1993 and 986 of 1993 vide Annexure R-1 dated 16-02-1999. Para 9 onwards of the order reads as under:-

> "9. One of the Conduct Rules in Government Rules is that no person having a second wife can be appointed in Government service. If a person in service marries a second wife then disciplinary action can be taken against him and he can be removed from service. Therefore, this provision in Service Law that no person can be appointed having two wives living at the time of joining government service and no government servant can marry a second wife after joining service. It may be that a person professing the Religion of Islam may marry four wives at a time under Personal Law, but when he comes to Government Service if he has two wives living, he is not entitled to be appointed in government service or if having one wife at the time of entering into government service, he marries again, then he will lose his job. Therefore, the service rules can certainly make provisions which are not in conformity with Personal Law.
>
> 10. Similarly, under the Personal Law of Hindus, in particular Hindu Succession Act, when a Hindu dies, his son, daughter, widow, mother and some others are made as Class-I heirs and entitled to get the Estate of the deceased in equal shares. But if we go to the Service Law, when an official dies, only his widow is entitled to pension and other heirs like mother of the deceased or children of the deceased are not entitled to any share in the pension during the life time of the widow. Similarly, the widow alone will be exclusively entitled to the gratuity amount. Therefore, the service rules can be different from the Personal Law of the Government Officials.
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> 11. In the Conduct Rules in the Central Civil Services(Conduct) Rules, 1964 there are many Rules which are contrary not only to Personal Law but also to Fundamental Rights.
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> 12. For instance, every Citizen of India has a Fundamental Right to have any view and join any political party he wants. But, once the citizen joins government service, as per the Conduct Rules, in particular, Rule 5(1) no Government servant has a right to join a Political Party.
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> Similarly, under the Fundamental Rights every citizen can own or conduct or participate in the editing or managing of any Newspaper or other Periodical publication. But, conduct rule says under Rule 8.1 that no such activity can be done by a government servant official except with previous sanction of the Government.
>
> Every Citizen of India have a right to criticise the Government and its policies. But, such a freedom is not given to a government servant under Rule 9.

Every citizen of India has a fundamental right to do any trade or business. But, a government servant under Rule 15 has been prohibited from engaging in any trade or business.

There are restrictions on a government servant in purchasing or acquiring movable and immovable properties and disposing of the same except in certain circumstances with prior permission or prior intimation to official superiors.

Then, we come to Rule 21 which clearly says that no government servant shall enter into second marriage when the first spouse is living. Then there is a proviso which says that even if second marriage is permissible under the Personal Law (like Muslims) he shall not undergo a second marriage without the permission of the government.

11. In order to maintain discipline in the government and in order to see the government servant do their work with all honesty and efficiency certain restrictions on the conduct of government servant is inevitable.

It is a policy of the Government that monogamy should be the Rule. We have seen how Hindu Marriage Act has introduced monogamy among Hindus in 1955. Even in case of persons belonging to religions where plurality of wives are permitted, a government servant cannot take a second wife, except with the prior permission of the government. Therefore, in order to encourage monogamy the Government has introduced these conditions which has stood the test of time and not challenged so far by anybody. Therefore, certain restrictions on Fundamental Rights and Personal Law are made in Service rules in the larger public interest and to promote efficiency etc in government servants.

12. If once the second marriage itself is prohibited irrespective of the question whether it is permitted in Personal Law or not, there is no bar for the Government to make it as a policy that even if there is a second wife and children they are not allowed to get compassionate appointment under the service rules. We do not find any illegality if such a rule is made in order to promote and encourage monogamy and to maintain certain discipline among the government servants. The circular says that this prohibition of second widow and children not entitled to compassionate appointment applies even in cases where personal law allows second marriage, unless the second marriage is performed with the permission of the Government. But, so far as Hindus are concerned second marriage is prohibited by Law and is an offence under section 494 of the IPC and in such a case if the Rule makers provide that second widow and her children are not entitled to compassionate appointment, we cannot find any illegality in the said rule. We are not for a moment concerned whether the children of the second wife is legitimate or illegitimate because even when second marriage is permissible in Personal Law this rule applies.

13. The learned counsel for the applicants strongly placed reliance on a decision of the Patna High Court reported in 1998(2) (Administrative Total Judgements) 464 (M/s Bharat Cooking Coal Ltd. And ors. vs. Ujjawal Kumar Roy and Ors.). No doubt, in that case the question was whether an illegitimate son of a deceased employee is entitled for compassionate appointment. In that case, it was a case of Private Company where the rule was that "a widow, son, unmarried daughter and adopted son" are entitled for compassionate appointment, but the company did not grant compassionate appointment for an illegitimate son. It had not framed any rule on that point, but we have here the Railway Circular dt.2.1.1992 which prohibits compassionate appointment for the second widow and her children. In fact, the words mentioned is only son, but the Rule did not mention anything to exclude an illegitimate son. We have already seen that though the second marriage is void in Hindu Law, his children of second wife are made legitimate, since the Rule did not exclude an illegitimate so. The High Court observed that the Rule cannot be interpreted as excluding illegitimate children. But, in the present case there is a specific rule which prohibits second widow and children from getting compassionate appointment. The question of vires of a rule did not arise for consideration in the said decision They were only interpreting whether the word "son" includes illegitimate son or not. There was no rule prohibiting an illegitimate son from getting appointment.

But, in the present case the Railway Circular clearly provides that irrespective of the Personal Law, the second wife's children are not entitled for compassionate appointment. We have already pointed out many circumstances to show how service law can be different from not only Personal Law but also Constitutional Law.

Hence, we hold that the impugned circular dt. 2.1.1992 is perfectly valid and justified and it does not suffer from any illegality. No case is made out for quashing the said circular. Point No.1 is answered accordingly.

14. Point No.2:

Admittedly, the two applicants are the children of the second wife of the deceased. In view of the 1992 circular, they cannot be considered for compassionate appointment. Hence we need not go to the merits of the case to find out whether they have made out a case for compassionate appointment when according to law the children of the second wife cannot be considered for compassionate appointment. Point No.2is answered accordingly.

15. In the result, both the applications (O.A.898/93 and O.A.986/95) are hereby dismissed. No order as to costs."

8. The analysis is elaborate and we have no hesitation to follow the same. We may supplement that so far as compassionate appointment is concerned, it is a comprehensive scheme and the term dependent members has been explained in the very scheme itself. It need not have to depend upon either the provisions of the Hindu Marriage Act or any other acts. The citations and authorities relied upon by the applicant's counsel relate to distribution of property of the father. In fact, the reason for distribution of the terminal benefits to the second applicant is that terminal benefits are considered as property. See **(Gorakhpur University vs Shitla Prasad Nagendra (Dr), (2001) 6 SCC 591**, wherein the Apex Court has stated -

> *"This Court has been repeatedly emphasizing the position that pension and gratuity are no longer matters of any bounty to be distributed by the Government but are valuable rights acquired and property in their hands and any delay in settlement and disbursement whereof should be viewed seriously and dealt with severely by imposing penalty in the form of payment of interest."*
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> (Also see Para 49 Central Organization of T.N. Electricity Employees vs T.N. Electricity Board (2005) 8 SCC 729

But, compassionate appointment is neither a right nor a property. It is purely a scheme, an exception to the general rule of appointment and can only be claimed strictly in accordance with the terms of scheme and not by seeking relaxation of the terms of the scheme. (See **V. Sivamurthy vs State of Andhra Pradesh (2008) 13 SCC 730**). Again, *past conduct of deceased employee is a relevant consideration in considering grant of Compassionate appointments (See **SBI v. Anju Jain,(2008) 8 SCC 475**).* This principle has to be given due life. Railway Board vide Annexure A-2 states that 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., Once the second marriage is recognized and permission granted for contracting such second marriage, there is no impediment. If the second marriage is not recognized, obviously, such a non recognition or non grant of permission should be on the ground that the personal law does not permit such plural marriage and if so contracted, the same would mean an illegal act on the part of the government employee, which would imply that his past conduct was not praise worthy.

9. As regards the argument that the constitutional provisions contained in Art. 16(1) have been violated, in that, as per the Hindu Marriage Act, sons born out of a void marriage are also legitimate sons, whereas, the respondents have made a classification in this regard while considering the case of the second applicant for appointment, it is to be stated that by clause (1) of Article 16, equality of opportunity in matters relating to employment or appointment between members of the same class is guaranteed by a positive injunction (See **Triloki Nath Tiku vs State of Jammu and Kashmir, (2969) 1 SCR 103**). According to the Railways for considering the case of son of the second wife, the second marriage should have been permitted by the administration, keeping in view the provisions available in the personal law of the employee contracting the second marriage. (In the instant case, the deceased Railway Employee being a Hindu, there is no question of recognizing the second marriage by giving permission.) Thus, as per Railway Board circular dated 02-01-1992, the applicant No. 2 is not entitled to compassionate appointment. Thus, the classification made by the Railways is according to the legal validity of the second marriage. The question is when the sons born to a couple whose marriage is void or voidable are treated as legitimate sons as per the provisions of Hindu Marriage Act, whether the Railways were right in classifying the sons born to the second wife different from those born to the first

wife. As held by the Apex court in the case of **State of J & K vs Triloki Nath Khosa (1974) 1 SCC 19,** judicial scrutiny can be extended only to the consideration whether the classification rests on a reasonable basis and whether it bears nexus with the object in view. It cannot extend to embark upon a nice or mathematical evaluation of the basis of classification, for, where such an inquiry permissible it would be open to the Courts to substitute their own judgment for that of the legislature or the Rule-making authority on the need to classify or the desirability of achieving a particular object. In the instant case, compassionate appointment is not a right vested with the legal heirs of the deceased railway employee but a benevolent scheme framed with certain fundamental and basic objectives. Such an employment is not granted if certain conditions attached to the scheme are not fulfilled. The classification made by the Rule making Authority is based on the need to so classify. Hence, this Tribunal cannot condemn such a classification made by the Railways.

10. In view of the above, we have no hesitation to follow the decision in OA No. 898 of 1993 and 986 of 1993. Consequently, the OA is dismissed. No costs.

K. GEORGE JOSEPH
ADMINISTRATIVE MEMBER

Dr K.B.S.RAJAN
JUDICIAL MEMBER

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