

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A. NO. 501 OF 2007

Friday, this the 7th day of November, 2008.

CORAM:

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

Jayasree T.N.
Thekkekkara House
Kodumthara
Pathanamthitta District
Kerala

Applicant

(By Advocate Mr.M.V.S.Nampoothiry)

vs.

1. Union of India represented by the Secretary to Government, Ministry of Railways
New Delhi
2. The Railway Board represented by the Chairman
Office of the Railway Board
New Delhi
3. The Divisional Railway Manager
Western Railways
Office of the Divisional Manager
Vadodara, Gujarat
4. Vaishnavi S Achari @ Chinchu
represented by guardian and Grandfather
Shri Narayanan Achari, Murali Bhavan
Chathanoor, Kollam P.O.
Kerala

(By Advocate Mr.Sunil Jose, (R1-3))

The application having been heard on 22.10.2008, the Tribunal on 07.11.2008 delivered the following:

ORDER

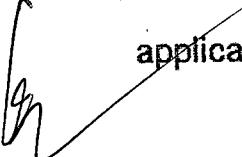
HON'BLE Dr.K.B.S.RAJAN, JUDICIAL MEMBER

The applicant is an aspirant for compassionate appointment in respect of her son. Briefly stated the husband of the applicant who was an employee under the 3rd respondents died on 19.03.2004 leaving behind

the applicant and their two children. In fact the applicant's husband was earlier married to one O.N.Sreedevi and they had a daughter in that wedlock. However, that marriage was dissolved through the family court and towards the claim of the minor child born through that wedlock, the husband of the applicant had paid a substantial amount as could be evidenced from the judgment of the court in O.S.No. 206/94. The grievance of the applicant is that her family members do not have any landed property and they are residing in a rental building and though by court order it has been established that the applicant is the legally wedded wife, and the terminal benefits have been directed to be paid to her, and concession of compassionate appointment should also be available to her/son, the respondents are trying to give compassionate appointment to Respondent No.4, who is the daughter of the husband of the applicant through his divorced 1st wife.

2. Respondents have contested the OA. According to them, compassionate appointment is not a method of appointment in the normal course. It has also been stated that as per Hindu Succession Act, 1956, son, daughter, widow has the first right to property but nowhere under the rules the right of the first child (girl in this case from first wife) has been taken away. This is the peculiar case where stepmother is advocating for reservation of a seat for appointment of her son, who is minor. It has been admitted by the respondents that the name of Respondent No.4 has been registered for grant of compassionate appointment

3. Counsel for applicant has argued that after the divorce application has been allowed and substantial sum for the maintenance of

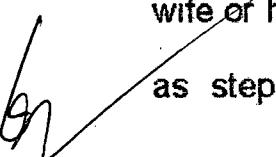


the daughter of the applicant's husband through his divorced wife has been made available, the relationship of the divorced wife and her child with the husband gets thoroughly severed. It is only the relationship of the applicant and her family that subsists. Reference of this Tribunal has been invited to the decision by the Ahmedabad Bench of this Tribunal in OA 397/05 whereby all the settlement dues arising out of the demise of the applicant's husband were ordered to be paid to the applicant. This decision of the Tribunal was upheld by the High Court of Gujarat at Ahmedabad vide judgment dated 27.11.2006.

4. Counsel for respondents submitted that the applicant's son being a minor and the scheme of compassionate appointment being available only to tide over immediate financial crises, there is no scope at all for the applicant's son being considered for compassionate appointment after he attains majority.

5. Arguments were heard and documents perused. The private respondent has chosen not to file any reply nor to represent herself either in person or through counsel at the time of hearing.

6. The legal position is that on the dissolution of marriage by divorce relationship between spouses gets thoroughly severed and no legal relationship of husband and wife exists. It is for this reason that the Ahmedabad Bench had directed that it is the applicant who shall be paid all terminal benefits arising out of the death of her husband and divorced wife or her child was not made eligible for any of the dues. Thus, in so far as steps taken by the respondents in registering the name of the

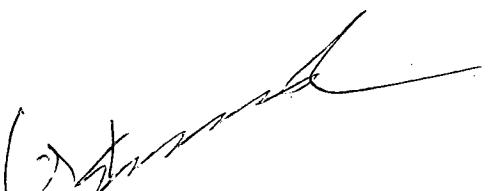


respondent for compassionate appointment, the same cannot be at the cost of right of the applicant or her son to register the name for compassionate appointment. In so far as the other contention of the respondents that compassionate appointment is to tide over the immediate financial crises is concerned, if there is a provision that registration of a minor son for employment is possible in the Railways for such compassionate appointment, the applicant cannot be denied of that benefit. Of course, other factors as per the Rules to ascertain the eligibility and entitlement for compassionate appointment are also to be followed.

7.. In view of the above, OA is allowed to the extent that subject to rules providing registration of minor children of any deceased railway employee for compassionate appointment the name of the son of the applicant be registered for compassionate appointment in the wake of the demise of applicant's husband. It is left to the respondents to offer any compassionate appointment to Respondent No.4, but it is made clear that the same shall not be in the place of the applicant or her son nor can such an appointment be taken to negate applicant's entitlement to registration for compassionate appointment subject to rules providing for the same.

8.. In the above circumstances there shall be no order as to costs.

Dated, the 7th November, 2008.



Dr.K.B.S.RAJAN
JUDICIAL MEMBER