

Central Administrative Tribunal, Lucknow Bench, Lucknow

O.A. No. 496/2005

This the 9th day of November, 2010

Hon'ble Shri Justice Alok Kumar Singh, Member (J)

Narendra aged about 18 years son of late Jhagroo resident of Mohallo Dalchand, behind Balmiki Ayurvedik College, Post and District- Pilibhit.

Applicant

By Advocate: Sri R.K. Dwivedi

Versus

1. Union of India through the General Manager, N.E. Railway, Gorakhpur.
2. Divisional Railway Manager (Personnel), NE Railway, Lucknow.
3. Divisional Personnel Officer, NE Railway, Lucknow.
4. Anand Swarup Srivastava, Personnel inspector I, in the office of Divisional Railway Manager (Personnel), N.E. Railway, Lucknow.

Respondents

By Advocate: Sri K.K. Shukla.

ORDER

By Hon'ble Sri Justice Alok Kumar Singh, Member (J)

This O.A. has been filed for declaring the order/ letter dated 8.8.2005 contained in Annexure No.1 as illegal, arbitrary and erroneous and for quashing this order with consequential benefits. By means of the aforesaid order, the applicant's claim for appointment for the post of Safaiwala on compassionate grounds in place of deceased father has been rejected on the ground that he being son of second wife of deceased Jhagroo, is not entitled to such appointment because no prior permission of the Railway Administration was sought. The applicant has therefore, also sought a direction for making compassionate appointment.

2. Heard Sri R.K. Dwivedi, learned counsel for the applicant and Sri K.K. Shukla , learned counsel for the respondents and perused the material on record.

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3. Briefly stated the facts are that the applicant's father died on 28.2.2002 while in service. The deceased employee, Jhagroo had two wives namely, Smt. Sita and Smt. Saroj. The amount of gratuity and family pension etc. have been granted to both of them being widows of late Jhagroo. Out of first marriage, the deceased employee had three daughters, namely Sunita, Anita and Poonam, who were married during his life time and they are living at their matrimonial homes. At the time of the death of the deceased employee Jhagroo, the applicant who happens to be the only son of second wife Smt. Saroj, was studying in class VIII. Due to sad demise of his father Jhagroo, he could not continue with his studies further. A representation for compassionate appointment in favour of the applicant was made on 25.4.2004. When the applicant could not get any relief, he filed O.A. No. 308/2005 before this Tribunal which was allowed on 15.7.2005, directing him to move a representation along with necessary details to the competent authority and the competent authority was directed to dispose of the representation by passing a reasoned and speaking order. In furtherance of that order, the applicant submitted a detailed representation along with necessary documents on 28.7.2005. The respondent No.3 i.e. the Divisional Personnel Officer, N.E. Railway, Lucknow, however rejected the prayer of the applicant vide order dated 8.8.2005 mainly on the ground that the deceased railway employee (sweeper) did not take prior permission to perform second marriage during the life time of first wife.

4. It has been pleaded on behalf of the applicant that the second marriage of his father, Jhagroo, was solemnized with prior permission of Railway Administration and the same has been duly recognized. In favour of second wife, retiral benefits have also been granted along with his first wife Smt. Sita. It has been further stated that during the life time of Jhagroo, a declaration form in the office of Station

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Superintendent , NER was also given on 16.9.2001 (Annexure -21). Similarly, free traveling pass were also issued on 29.1.2002 and 20.10.2004 in favour of the applicant (Annexure 21 and 22).

5. The learned counsel for the applicant also drew the attention of this Tribunal towards two earlier judgments /orders of this Tribunal dated 26.8.2009 passed in O.A. No. 512/2004 (Abhay Kumar Gautam Vs. UOI and others) and order dated 6th November, 2009 passed in O.A. No. 279/2009 (Brijesh Kumar Vs. UOI ^{and} others) envolving similar matters. Both these OAs have been allowed and both the applicants have been held entitled to be considered on merits. For convenience, the record of both these OAs have been tagged with the present O.A. In both these judgments, reference has also been made to the three reported case of **Rameshwari Devi Vs. the State of Bihar and others , reported in AIR, 2000 Supreme Court Cases 735, Puroshottan Kumar @ Puroos Vs. the State of Bihar and others , reported in 2005 (3) PLJR, 458 and Kumari Priti Vs.State of U.P. and others ATJ 2005 (2) page 303.**

6. In the Counter Affidavit filed on behalf of the respondents, it has been said that earlier the applicant had preferred O.A. No. 308/2005 which was decided on 15.7.2005 and in compliance thereof, a reasoned and speaking order has already been passed on 8.8.2005. Therefore, nothing remains in this matter. It has been further said that as per Rule 21 of Railway Services (Conduct) Rules, 1966, no government servant can enter into , or contract, a marriage with a person having spouse living provided that Central Govt. may permit a govt. servant to perform second marriage, if it is satisfied that such marriage is permissible under the personal law applicable to such government servant and there are other grounds for so doing. It has been further said that late Jhagroo never took any permission for his second marriage. The declaration form given by Jhagroo mentioning name of one child i.e,

the applicant did not disclose that he has performed second marriage with Saroj during life time of his first wife Sita. In this form, the name of first wife Sita has also been concealed. The fact regarding second marriage came to the knowledge of Railway Administration only after the death of Jhagroo and as per rules, the retiral benefits were paid to both the widows. In respect of privilege pass, it has been said that children born out of void marriage are not eligible for any kind of railway pass. In this case it might have been obtained surreptitiously, it was orally submitted.

7. The main question before this Tribunal is to whether the child born out of second marriage is entitled or not to be considered for compassionate appointment. Similar question arose, though in the different context in respect of pensionary benefits to the children of second wife in the case of **Rameshwari Devi (Supra)**. The law on the subject is settled that under the provision of Hindu Succession Act, the son of the second wife will have the same right as the legitimate son of the first wife and no distinction and differentiation can be made with regard to share in the property of the parent. In the aforesaid case, the Hon'ble Apex Court laid down that the property of a male Hindu dying intestate devolve firstly on heirs in class I, which includes widow and son. A son of second wife being legitimate son will also be entitled to the property of the deceased in equal share along with the first wife and her sons.

9. In the case of **Puroshottan Kumar (supra)**, the relevant observations made by the Hon'ble High Court of Patna are as under:-

"Son of a second wife [married during the life time of the first wife] is entitled for compassionate appointment- his claim cannot be rejected on the ground of his having been offshoot of void marriage is a legitimate one and he will share the property equally

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with the legitimate children in their parent's property- the policy decision for compassionate appointment speaks son only and as the son of the second wife is also legitimate, he is entitled to appointment on compassionate ground although the marriage is void."

10. In the case of **Kumari Priti (supra)**, while dealing with the U.P. Recruitment of dependents of Govt. Servants dying in harness Rules, 1974, it was held by the Hon'ble High Court Judicature at Allahabad that daughter of second widow cannot be denied consideration for compassionate appointment. In this case a reference was also made to the law laid down by the Hon'ble Apex Court in the case of **Bakulabai Vs. Gangaram 1988 (1) SCC 537**, in which the Hon'ble Apex Court has held that even an illegitimate child is entitled to maintenance u/s 125, Cr.P.C. ignoring the fact of illegitimate marriage. After considering the matter at length, Hon'ble the High Court observed that these rules have been made as a welfare measure to provide employment to the dependents of the Govt. servants dying in harness, provided other conditions are fulfilled. According to the definition of word 'family', in Rule 2(2) of the said rules, wife or husband, sons, unmarried and widowed daughters and if the deceased was unmarried Govt. servant, brother, unmarried sister and widowed mother dependent on the deceased govt. servant come within the ambit of word 'family'. The Hon'ble High Court therefore, held that unmarried (in the present case the applicant is son) or widowed daughter in Rule 2(c) (iii) cannot exclude daughters who are declared to be legitimate u/s 16 (1) of the Hindu Marriage Act, 1955. It was further observed that protection given to such children, who are not to be blamed for the illegitimacy of the second marriage, must be given a wide interpretation to the Rules of 1974, by way of a measure of Social Welfare.

11. On the basis of aforesaid case laws of 1) **Rameshwari Devi, 2) Puroshottan Kumar and 3) Km. Priti (Supra)**, this Tribunal has already allowed two OAs mentioned in para 5 of this judgment. In both the OAs, the applicants were found entitled to be considered on merits. I do not find any valid reason to differ. It is also a cardinal principle of law that similar cases should be treated similarly. Because treating similar cases differently would cause discrimination.

12. In the present case, the applicant also claims to have taken prior permission. But considering the pleas of objection raised by the respondents as mentioned here in before, the factum of taking prior permission does not appear to have been conclusively proved. At the most, it can be inferred that due to slackness on the part of the local Railway Administration or on account of connivance of some of its officials with the deceased employee, the said declaration was taken on record and a Railway pass was issued in favour of the second widow and his son (applicant). But, it appears that formal prior permission was neither specifically sought nor given.

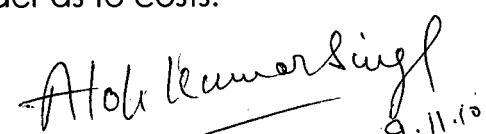
13. Coming back to the legal aspect, it appears that the Scheme for compassionate appointment in Railways is based on the recommendations made in the Study Report of Welfare Measure for Central Govt. employees on employment on compassionate ground and Welfare Officers have been requested to take action of recommendation No. 4 of the Study Report as and when cases arise in their respective ministries/ departments. Nevertheless the object and scheme is the same as in the U.P. Govt. Servants Dying in Harness Rules, 1974. According to this scheme also, dependent family members, spouse or son (adopted son or daughter) or brother or sister in case of unmarried Govt. servant can get compassionate appointment. In view of the law laid down in the case of Km. Priti (supra), the word 'son'

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cannot exclude the son of second widow who is declared to be legitimate u/s 16(1) of the Hindu Marriage Act, 1955. Section 16 was substituted by Act No. 68 of 1976. Having regard to the object of this Welfare Measure, therefore, the protection given to such children who are not to be blamed for illegitimacy of the second marriage, must be given a wide interpretation in view of the above analogy.

14. Finally, therefore, in view of the discussions made hereinabove, the applicant is entitled to be considered on merits. It is needless to say that while considering the case on merit, his date of birth, the delay, if any, in applying for appointment after having attained the age of majority, the family circumstances and number of vacancies available and comparative hardship of applicant vis-à-vis other candidates seeking compassionate appointment etc. may be taken into account in accordance with relevant provisions. With these observations, the impugned order is set aside and the matter is remanded to the competent authority to consider the case of the applicant afresh.

15. The O.A. is accordingly disposed of. No order as to costs.


(Justice Alok Kumar Singh)
Member (J)

HLS/-