

CENTRAL ADMINISTRATIVE TRIBUNAL

LUCKNOW BENCH, LUCKNOW

Original Application No. 441/2009

This, the 26th day of August, 2011

HON'BLE JUSTICE ALOK KUMAR SINGH, MEMBER (J)

Krishan Kumar Chauhan aged about 23 years son of late Ram Lautan, Resident of Village- Majhreti (Patith) Post Office Pargana and Tehsil Mankapur, District-Gonda.

Applicant.

By Advocate: Sri Praveen Kumar

Versus

1. Union of India through Secretary, Ministry of Railway Board, New Delhi.
2. Divisional Railway Manager (Karmic) NER, Lucknow.
3. Regional Manager, NER, Gonda.

Respondents.

By Advocate: Sri Ashok Kumar

ORDER (Dictated in Open Court)

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

This O.A. has been filed for the following reliefs:-

- i) That this Hon'ble Tribunal may kindly be pleased to quash the impugned order dated 11.4.2008 and direct the opposite parties to appoint the applicant under dying in harness rules as son of the deceased Ram Lautan who died during service tenure who was the Gateman, NER, Mankapur, Gonda died on 4.12.1994.
- ii) That this Hon'ble Tribunal may kindly be pleased to issue any other relief, order or direction as this Hon'ble Tribunal may deem just and proper.
- iii) That allow the instant O.A. with cost in favour of the applicant.

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2. The case of the applicant is that he happens to be son of late Ram Lautan who was an employee of the respondents. His father unfortunately died on 4.12.1994. At that time he was minor. He attained the majority in 2004, his date of birth being 12.12.1986 as mentioned in the High School certificate (Annexure 4). Her mother made a representation on 25.7.2007 for compassionate appointment of the applicant. This representation was followed by several other representations. Lastly, his claim was rejected vide impugned order dated 11.4.2008, saying that he being son of second wife, cannot be given compassionate appointment. The main basis of rejection is said to be Railway Board's letter dated 2.1.1992.

3. In para 3 of the Rejoinder Reply, it has been specifically pleaded that this controversy has already been put to rest not only by Hon'ble High Court and by Hon'ble Apex Court but also by this Tribunal and as such the applicant is entitled to get compassionate appointment. The application for compassionate appointment has been given by none other than the first wife of the deceased.

4. The claim of the applicant has been contested by filing a detailed C.A. laying emphasis on the aforesaid Railway Board's letter dated 2.1.1992.

5. Heard the arguments of the learned counsel for the parties and perused the material on record.

6. The point of adjudication in the case in hand hinges mainly on the question as to whether or not a child born out of second wife is entitled for being considered for compassionate appointment.

7. A similar question arose though in a different aspects that is in respect of pensionary benefits in favour of child of second wife in the case of ***Rameshwari Devi Vs. the State of Bihar and others*** , reported in AIR 2000, Supreme Court Cases, 735, wherein the law was settled that under the provisions of Hindu

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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. The Hon'ble Apex Court further observed that the property of a male Hindu dying intestate devolves 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.

8. In the case of ***Puroshottam Kumar @ Puroos Vs. the State of Bihar and others, reported in 2005 (3) PLJR, 458***, 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. He is a legitimate son and he will share the property equally 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."

9. Similarly, in the case of ***Km Priti Vs. State of U.P. and others ATJ 2005 (2) page 303***- 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 of 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, reported in 1988 (1) SCC 537***, wherein 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.

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10. 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'. Therefore, it was 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. Further, it was 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 measure of Social Welfare.

11. Following the ratio and also preposition of law laid down in the aforesaid cases of *Rameshwari Devi (supra)*, *Puroshottam Kumar (supra)* and *Km. Priti (supra)*, this Tribunal has already allowed three OAs i.e. *O.A. No. 279/2009, 512/2004 and 496/2005*. In all these OAs, the applicants were found entitled to be considered on merits. I do not find any valid reason to differ now. It is also a cardinal principle of law that similar cases should be treated similarly because treating similar cases differently, would certainly cause discrimination.

12. 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 in respect of recommendation No.4 of the Study Report as and when cases arise in their respective departments. As

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far as the object and scheme is concerned, it is almost the same as in the U.P. Govt. Servants Dying in Harness Rules, 1974. Therefore, having regard to the object of the Welfare measure, 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.

13. Finally, therefore, in view of the discussions made hereinabove, the applicant is entitled to be considered on merits. It goes without saying that 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 authority to decide afresh in the light of the aforesaid observations. It is also provided that the aforesaid consideration may be made expeditiously preferably within a period of 4 months.

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

Alok Kumar Singh
(Justice Alok Kumar Singh)
Member (J) 26.8.11

HLS/-