

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

PATNA BENCH: PATNA

Registration No. OA353 of 1996

(Date of order 22.4.1998)

Bishnu Narayan Upadhyay,  
S/o Late Ram Rijhan Upadhyay,  
resident of Mohalla and Post Office-  
Sahpur Undi (Tiwary Tola), P.O. Sahpur Patori,  
District Samastipur . . . . . Applicant  
By Advocate: Mr. R.B. Upadhyay

Versus

1. Union of India, through the  
General Manager, North Eastern Railway,  
Gorakhpur (U.P.)
2. The Divisional Railway Manager,  
North Eastern Railways, Samastipur.
3. The Chief Personnel Manager,  
North Eastern Railway, Samastipur.
4. The Senior Personnel Officer,  
North Eastern Railway, Samastipur.
5. Smt. Krishna Devi, at and P.O. Laxamisagar,  
District Darbhanga . . . . . Respondents  
By Advocate: Mr. P.K. Verma

Mr. M.P. Dixit for Respondent No. 5.

Coram: Hon'ble Mr. Justice V.N. Mehrotra, Vice-Chairman

O R D E R

Hon'ble Mr. Justice V.N.Mehrotra, V.C.

This OA has been filed under Section 19 of the Administrative Tribunals Act, 1985 praying that the respondents be directed to appoint the applicant in Railway service on any class III post on compassionate ground as early as possible.

2. Deceased Ram Rijhan Upadhayay, who was the father of the applicant was in Railway employment working as Driver Grade 'A'. He died in harness on 16.7.1993 leaving behind the applicant as his son. He also left Smt. Krishna Devi, respondent no.5 as 2nd wife and one other son and three minor daughters from Smt. Krishna Devi. The applicant claims that respondent no.5, Krishna Devi was never legally married to Ram Rijhan Upadhayay, but had illicit relation with him, as a result of which four children were born to her. It is also asserted that the respondent no.5 was actually working as a domestic help in the life time of Janki Devi who was the mother of the applicant. It is claimed that in order to avoid dispute which arose between the parties after the death of the father of the applicant, there was a Panchayat and the Panchs decided that retiral benefits be given to respondent no.5 while the right to get compassionate appointment be given to the applicant. The applicant applied for being appointed on compassionate ground and moved a proper application for the same. The respondent no.5 also supported the claim of the applicant and filed an affidavit dated 18.4.1994. However, subsequently she withdrew her consent and started claiming that she be appointed on compassionate ground. The applicant asserts that as the respondent no.5 was not the legally married wi

of the late employee, she could not be appointed by the authorities on compassionate ground but the applicant should appointed to a suitable post. It is also claimed that the authorities have not considered the claim of the applicant even after a lapse of such a long time hence he has filed this OA.

3. On behalf of the official respondents it has been asserted that there is a dispute between the parties as to whether the respondent no.5 was legally married wife of the deceased employee. It is also claimed that due to this dispute it is necessary that this question is first decided by a competent civil court as it involves question of fact and law. It is also claimed that the retiral benefits were paid to the respondent no.5 who has herself claimed that she should be appointed on compassionate grounds. It is also mentioned that in case of dispute between the widow and the son, the first priority for compassionate appointment should be given to the widow. It is further asserted that respondent no.5 had earlier supported the claim of the applicant but had withdrawn the same on the ground that she was being ill-treated by the applicant and that she will not be supported and maintained by the applicant if he is appointed on compassionate ground

4. The respondent no.5 has in her written statement claimed that after the death of the first wife of the deceased employee she was legally married to him and that the employee left the applicant and one other son as well as three minor daughters and also the respondent no.5 as his widow. It is claimed that she had earlier consented to the appointment of the applicant on compassionate ground but as the applicant was not properly treating her and would not maintain her and her children had he been appointed on

Wif

compassionate grounds, she withdrew her consent and herself applied for being appointed on compassionate ground. It is also asserted that the respondent no.5 had a better claim for being appointed on compassionate ground hence this OA should be dismissed.

5. In the rejoinder the applicant has asserted that the respondent no.5 was never legally married to his father and there was no evidence in support of her claim that she was <sup>the</sup> widow of the deceased employee. It is asserted that considering the facts and circumstances as detailed by the applicant, he was entitled to be appointed on compassionate grounds.

6. I have heard the learned counsel for the parties and have perused the record of the case. From the allegations made by the parties in their pleadings and also the arguments advanced by the learned counsel representing them, it is obvious that there is a serious dispute between the parties regarding the question as to whether respondent no.5 was the legally married wife of the deceased employee. While the applicant asserts that the respondent no.5 was never married to his father but his father had only illicit relations with her, the respondent no.5 claims that she was married to the late employee after the death of his first wife. The question as to whether the applicant or respondent no.5 is entitled to be appointed on compassionate grounds will turn on the reply to the question as to whether the respondent no.5 was legally married wife of the late employee. In case she so married, then, as asserted on behalf of the respondents, the claim of respondent no.5 may stand on a better footing. However, without this question being decided, the authorities concerned cannot be in a position to offer employment either to the applicant or to respondent no.5 on compassionate grounds.

W.M.

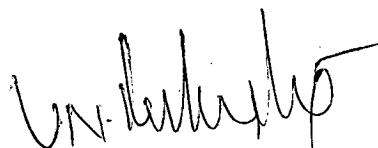
7. The parties in the present case have referred to some documents in support of their claims. However, these documents do not clearly establish this question either way. As an example, Annexure-P filed by respondent no.5 may be considered. This annexure purports to be a certificate by one Yogendra S. Mishra, Mukhia, dated 21.7.1993 in which he has certified that the respondent no.5 was married to deceased Ram Rijhan Upadhayay. The applicant has in reply to the same filed Annexure-I to the rejoinder which is also a certified granted by the same Mukhia on 19.7.1993 in which he has specifically certified that deceased Janki Devi was the wife of Ram Rijhan Upadhayay and that Krishna Devi was doing domestic work at his house since the life time of Janki Devi. Obviously this disputed question can only be decided by a competent civil court after <sup>W</sup> the parties lead to oral and documentary evidences on this question.

8. The learned counsel for the respondent no.5 has referred to a decision in the case Most. Usha Kiran Vs. State of Bihar 1998 (1) PLJR 508 in support of his contention that even if the respondent no.5 was the second wife of the deceased employee, and she was married to him in the life time of the first wife, even then her claim for appointment on compassionate grounds can be considered. This case was decided by the Patna High Court on 22.10.1997. The facts of that case were, however, quite different from the facts of the present case. In that case there was no dispute between the two widows of the deceased employee and there was no other claimant for appointment on compassionate grounds. The pensionary benefits were paid to the second wife. It was on the facts of the case directed that the claim of the second wife for being appointed on compassionate grounds be considered. However, in the present

*ML*

case there is a serious dispute between the parties and there are two claimants for being appointed on compassionate grounds. Further the applicant also disputes that the respondent no.5 was ever married to his father. He asserts that there was only illicit relationship between the two. In such circumstances/decision cannot be of any help to respondent no.5.

9. In view of the above discussion it will be proper to direct the parties i.e. the applicant and respondent no.5 to get their claims decided by a competent civil court and seek a declaration from that court on the question in dispute between them i.e. the question as to whether respondent no.5 was the legally married wife of the deceased employee. The parties are directed accordingly. The OA is disposed of with the above observations. No order as to costs.

  
(V.N.MEHROTRA)  
VICE-CHAIRMAN

22-4-78

MA