

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
PATNA BENCH, PATNA**

**O.A. No. 307 of 2006**

**Date of order : 23.10.2007**

**C O R A M**

**Hon'ble Ms. Sadhna Srivastava, Member ( J )**

Bidya Shankar Pathak, S/o Late Vijay Kumar Pathak, r/o village Gaytri Nagar, Daulatpur, Road No. 4, Jamalpur, District – Munger.

**....Applicant**

**By Advocate : Shri G. Bose.**

**Vs.**

1. The Union of India through the General Manager, Eastern Railway, Kolkata
2. The Chief Works Manager, E. Railway, Jamalpur.
3. The Chief Works Manager [ P ] also known as Chief Works Officer, E. Railway, Jamalpur.
4. The Senior Section Engineer, Eastern Railway, Jamalpur.
5. The Section Engineer, Eastern Railway, Jamalpur.

**....Respondents**

**By Advocate : Shri Mukund Jee.**

**O R D E R [ Oral ]**

**Sadhna Srivastava, M ( J ):-**

The applicant is aggrieved by order dated 5.4.2006 whereby his request for appointment on compassionate ground has been rejected by the respondents.

2. The facts of the case are that the father of the applicant was employed as skill Grade III in Diesel Shop, Eastern Railway, Jamalpur. He died on 5.6.95 leaving behind one son Gauri Shankar Pathak [ expired on 26.7.97] *↳ as well as ↳* from his first wife, Smt. Asha Devi [ expired on 9.8.85], and also second wife *↑*

*B*

Smt. Bishakha Devi and three minor sons from the second wife, including the applicant. After the death of Vijay Kumar Pathak, the deceased employee, his second wife filed two applications i.e., OA 388 of 99 for payment of retiral dues of her late husband for her self and her minor sons. In OA 389 of 99 a prayer had been made to direct the respondents to consider her for appointment on compassionate grounds. Both the aforesaid applications were disposed of by a common judgment with direction to the respondents to pay the retiral dues and to consider the request of Smt. Bishakha Devi for grant of compassionate appointment. Against the order of the Tribunal the Railway respondents filed CWJC No. 11781 of 01 before the Hon'ble Patna High Court which was allowed in part and the order of the Tribunal was quashed to the extent whereby direction had been given to the respondents to consider the case of Smt. Bishakha Devi for compassionate appointment. Aggrieved by order of Hon'ble Patna High Court, Smt. Bishakha Devi filed SLP [ Civil No 24 of 03] which was dismissed on 22.9.2003 [ Annexure A/5]. Thereafter, the applicant, being the son of late Vijay Kumar Pathak, made an application for his appointment on compassionate ground. The respondents have rejected the case of the applicant vide order dated 5.4.2006 [ Annexure A/1] on the ground that since the case has already been decided by the Hon'ble Supreme Court, as such his request for compassionate appointment is not tenable.

3. In course of arguments, Annexure R/A has been pointed out which is a letter issued by the Ministry of Railway dated 24.1.1992 stating that in case



of employees dying in harness, leaving behind more than one widows along with children born to the second wife, the settlement dues may be shared by both the widows due to Courts order or otherwise on merits of each case, but appointment on compassionate grounds to the 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.

4. The law on the subject is settled under the provision of the Hindu Succession Act, in the parents property, 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. A similar question arose, though in different context, that is with regard to entitlement of pensionary benefits of children of a second wife in the case of Rameshwari Devi vs. The State of Bihar & Ors., reported in AIR 2000 Supreme Court 735; [ 2000(2) PLJR (SC) 15] and the Apex Court held in paragraph 14 that the children of the void marriage are legitimate and the property of a male Hindu dying intestate devolve firstly on heirs in class I which include widow and son. A son of the second wife being legitimate son will be entitled to the property of the deceased in equal share along with the first wife and her sons. The High Court Patna in the case of Puroshottam Kumar @ Puroos vs. The State of Bihar & Others, 2005 ( 3 ) PLJR 458, placing reliance on the above said decision of the Apex Court, has laid down as follows:-

*" 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 with the legitimate children in their parents 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.”*

5. The ratio decided in the case of U.O.I. vs. Central Administrative Tribunal, Patna, 2002 [ 2 ] PLJR in CWJC No. 4799 of 02 decided on 15.4.02 is as follows:-

*“ Service Law – Appointment under rule of harness – Railway employee dying in harness, leaving behind two wives – having split the pensionary benefits between the two wives, a job under the rule of harness must be provided to the son of the second wife, when there is no rival and the first wife [ issueless] has given consent that the son of the second wife be employed.”*

6. In the instant case the claim of the applicant for appointment on compassionate ground has been rejected on the ground that since the case has already been decided by the Hon'ble Supreme Court, as such request of the applicant is not tenable. A bare perusal of Annexures 3, 4 and 5 show that the applicant was not a party. The case was filed by his mother for her appointment on compassionate grounds, and there was no occasion for the Hon'ble High Court /Supreme Court to consider the case of the applicant. He filed application for grant of compassionate appointment in the year 2004. His claim for appointment on compassionate ground has not been contested by any other heir of Vijay Kumar Pathak. Smt. Bishakha Devi , the mother of the applicant has also supported his case. Thus, in view of the settled law as quoted above and the facts as mentioned hereinabove, there is no reason as to why the



respondents should have passed the order of rejection on the grounds which are not tenable in law. It is settled law that the second wife is not entitled for compassionate appointment. Admittedly, the first wife of the deceased employee died in 1985 and her son Gauri Shankar Pathak also died in 1997. Therefore, there is no other claimant except the applicant.

7. In view of the above position, this Tribunal is of the considered opinion that in the circumstances as obtaining in the case, the candidature of the applicant for appointment on compassionate grounds could and should have been considered by the respondents if he is otherwise found eligible.

8. In that view of the matter, Annexure A/1 dated 5.4.2006 is hereby set aside and respondents are directed to consider the matter within four months from the date of receipt of this order by passing reasoned order.

9. With the aforesaid directions, this OA stands disposed of, without any order as to the costs.



[Sadhna Srivastava] M [J]

/cbs/