

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

O.A. No. 790 of 2005

Date of order : 27. 7. 2007 ⁵

C O R A M

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

1. Smt. Prem Lata Devi, Widow of Late Ram Nandan Mahto.
2. Shashi Bhushan Kumar, S/o Late Ram Nandan Mahto, both at present residents of village & P.O. Mathrurapur, P.S. Warishnagar, District – Samastipur and permanent residents of village Jagdishpur, District – Samastipur.

....Applicants

By Advocate : Shri G. Bose.

Vs.

1. The Union of India through the General Manager, E.C. Railway, Hajipur.
2. The Chief Personnel Officer, E.C. Railway, Hajipur.
3. The Divisional Railway Manager, E.C. Railway, Samastipur.
4. The DRM [P], E.C. Railway, Samastipur.
5. The Assistant Personnel Officer, E.C. Railway, Samastipur.

....Respondents

By Advocate : Shri N.K. Sinha

ORDER

Sadhna Srivastava, M (J):-

The simple fact of this case is that the applicant No. 1 is the second wife of the deceased employee and the applicant No. 2 is



her eldest son whose claim for compassionate appointment has been rejected by the Railway Administration vide order dated 23.6.2005 as contained in Annexure A/1 on the sole ground that the compassionate appointment cannot be provided to the son of the second wife, being illegitimate child.

2. It is not disputed that Late Ram Nandan Mahto died in harness on 25.7.2000 while posted as Divisional Ticket Inspector in Railway Division, Samastipur; that there was a dispute with regard to distribution of retiral benefits between the two wives of the deceased employee; that vide order dated 14/15.6.2004 [Annexure A/5] the Railway administration demanded the succession certificate; that Prem Lata Devi [applicant No. 1] [second wife of deceased employee] lodged succession case No. 36 of 04 before the District Judge, Samastipur impleading her three sons, including her eldest son, Shashi Bhushan Kumar [applicant No. 2]. Sumitra Devi [1st wife of deceased] was also impleaded as party. The said succession case was decided on the basis of compromise [Annexure A/3]. The compromise duly signed by all the parties is contained in Annexure A/4. Para 4 of the said compromise clearly mentions the consent of



all the parties, including the 1st wife i.e Sumitra Devi supporting the case of Shashi Bhushan Kumar [applicant No. 2] for appointment on compassionate ground.

3. 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."

4. The ratio ^{decendi} 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."

5. In the instant case, the claim of the applicant No. 2 for appointment on compassionate ground is supported by his mother [applicant No. 1] as well as by his step mother , Sumitra Devi vide para 4 of the compromise as referred to above. He is the eldest son of the deceased employee. Thus, in view of the settled law as quoted above and the facts as mentioned, there is no reason as to why the

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employer should have passed an order of rejection on flimsy ground. It is also unfortunate that the plea has been raised in the written statement that the respondents have no knowledge about the compromise or the succession case. As mentioned above, the succession case was filed at the behest of the Railway Administration of the Samastipur Division. The retiral benefits have also been distributed on the basis of succession certificate.

6. Thus, there was no opposition in the family for appointment of applicant No. 2 on compassionate ground. It is unfortunate that the respondents have now raised a plea in the reply that the 1st wife of the deceased, namely, Sumitra Devi has applied for appointment on compassionate ground. The application of Sumitra Devi dated 2.9.2003 has been annexed as Annexure R/1 with the written statement. As mentioned above, the compromise in the succession case took place on 28.5.2005 wherein Sumitra Devi had accorded consent in favour of applicant No. 2. Thus, her application dated 2.9.2003 stands wiped out. It is also relevant to mention here that the age of Sumitra Devi, as reflected in an application for issuance of Railway Pass [Annexure A/10] in the year



1988 was 37 years. Thus, she is about 56 years old now. Therefore, it can be at once said that the respondents have raised unsustainable grounds. I am of the considered opinion that the applicant No. 2 deserves to be considered for appointment on compassionate ground in a positive manner.

7. Resultantly, the impugned order dated 23.6.2005 [Annexure A/1] is hereby quashed. The respondents are directed to consider the applicant No. 2 for appointment on compassionate ground as early as possible. No order as to the costs.


[Sadhna Srivastava] M [J]

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