

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

Original Application No: 859/96

Date of Decision: 25-09-97.

Mrs.Suman Walmik Bansode

Applicant.

Shri S.P.Saxena

Advocate for
Applicant.

Versus

Union of India & Ors.

Respondent(s)

S/Shri S.C.Dhawan and Suresh Kumar.

Advocate for
Respondent(s)

CORAM:

Hon'ble Shri. M.R.Kolhatkar, Member(A).

Hon'ble Shri.

- (1) To be referred to the Reporter or not?
- (2) Whether it needs to be circulated to other Benches of the Tribunal?

M.R.Kolhatkar

(M.R.KOLHATKAR)
MEMBER(A).

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO.859/1996.

Provo, this the 25th day of September 1997.

Coram: Hon'ble Shri M.R.Kolhatkar, Member(A).

Mrs. Suman Walmik Bansode,
Waldhuni Railway Quarter,
No.J Type 329, Ashok Nagar,
Kalyan (West), Dist. Thane. ... Applicant.

(By Advocate Shri S.P.Saxena)

v/s.

1. Union of India (Through Secretary, Ministry of Railways, New Delhi.)
2. The General Manager, Central Railway, Mumbai CST.
3. The Divisional Railway Manager, (Personnel), Central Railway, Divisional Railway Manager's Office, Mumbai CST.
4. Smt. Kamlabai alias Suman Balmik Bansode, At Post Babulgaon Budrak, Tal. Yeola, Dist. Nasik.
5. Sanjay Balmik Bansode, Room No.198, 1st Wing, Building No.4(IVth Floor), Housing Board Colony, Ashokban, Vallabhai Road, Borivali(E), Mumbai - 66.

(By Advocate Shri S.C.Dhawan and Shri Suresh Kumar)

O R D E R

(Per Shri M.R.Kolhatkar, Member(A))

In this O.A. the applicant who claims to be the wife of the deceased Railway employee (Walmik Bansode)

has challenged the letter dt. 9.7.1996 from the official Respondents as below :

"With reference to your application dt. 25.7.1995 this is to advise you that your request for job on compassionate grounds can not be considered as the 2nd widow and her children are not entitled for job on compassionate grounds as per the latest instructions from Rilway Board.

However, your step son Shri Sanjay Walmik is being considered for job on compassionate grounds."

2. The contention of the applicant is that the respondents have indicated their intention to grant compassionate appointment to Sanjay Walmik the son of the so called first widow of the deceased government employee and in fact have granted compassionate appointment ^{this} from 2.9.1996, but that action of the respondents is not based on the record in possession of the respondents and a correct appreciation of the facts. The applicant has filed an affidavit dt. 7.9.1995 stating that she was married to the Late Railway employee on 22.11.1972, she has filed a Birth Certificate in respect of her sons ^{has} Anil and Ganesh, she has filed an Identity Card issued further by the Election Commission of India, she has filed a xerox copy of the Ration Card and above all she has filed a photo copy of application dt. 24.12.1992 from the Railway employee in which he has asked for issue of a duplicate medical card in favour of his wife Suman aged 30 years, one daughter and two sons. There is also a Railway Pass.

3. The applicant states that she had applied for

compassionate appointment on 1.7.1995, but the official respondents ignored her application and instead considered the case for compassionate appointment from the so called Railway first wife of the deceased/employee who applied for appointment for her son only on 25.12.1995. Compassionate According to the applicant she is also occupying the quarters allotted to the Late Government employee. Thus, in the records ~~of the department~~ of the department her name is reflected as wife of the Late Government employee. Still, the respondents because of manipulations by her sister-in-law who is employed in the Railways and who favoured the so called first wife, ~~The respondent~~ first wife's have proceeded to accept the/claim and have granted compassionate appointment to the son of the so called first wife. It is pointed out that the material relied upon by the official Respondents viz. Invitation Card for marriage, certificate of Registration of Marriage and other documents have for the first time surfaced at the time of processing of the case of the compassionate appointment in favour of the son of the so called first wife. The Government employee expired on 31.5.1995 and till that time the so called first wife was never on the scene.

4. At this stage it may be clarified that both wives call themselves as Mrs.Suman. The R-4 (so called first wife) is also known as Smt.Kamlabai alias Suman.

5. The respondents have contended that there is a Railway Board Circular dt. 02.1.1992 at (R-1)

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which states that "While settlement dues may be shared by both the widows due to Court Orders or otherwise on merits of each case, appointments 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."

According to the respondents, their enquiries show that Government the employee had married R-4 on 11.7.1970 and had a son from her born on 11.12.1971. The marriage of the took applicant with the Government employee, on the other hand, made enquiries and place on 22.11.1972 and when the official respondents became aware that the applicant although recorded as the wife of the applicant, ~~had no locus standi~~ R-4 had married the late government employee earlier and had also evidence in this regard and so they decided to consider the case of compassionate appointment for her son and accordingly, advised the applicant by their letter dt. 9.7.1996 which is challenged in this O.A. Sanjay Balmik ~~who is~~ R-5 has since been appointed on compassionate grounds w.e.f. 2.9.1996 as noted earlier.

6. The counsel for the Respondents No.4 and 5 has appeared and has argued that the applicant's marriage with the deceased government employee was obviously an invalid marriage in terms of Hindu Marriage Act and that the applicant has no locus standi. In this connection he cited the Judgment of the Supreme Court in

State of Karnataka & Anr. V/s. T.Venkataramanappa (1997(1) SC SLJ 98) in which the Hon'ble Supreme Court has observed that "There is a string of judgments of this Court whereunder strict proof of solemnisation of the second marriage, with due observance of rituals and ceremonies, has been insisted upon" to prove the offence of bigamy. On the other hand, the applicant relies on the Judgment of this Tribunal in Prajakta Sudhakar Saykhedkar and Anr. V/s. Union of India (1997) 35 ATC 140 decided on 31.7.1996 in which the Tribunal held that "If an applicant is able to show nexus with the deceased employee by means of official documents, this Tribunal may not hesitate to grant relief".

7. In the present case the main relief sought by the applicant is to quash the action of official respondents in granting compassionate appointment to R-5. She has also sought the relief of grant of D.C.R.G., but the same has not been pressed. It is also stated by the counsel for the applicant that she has already applied to the appropriate Court for grant of succession certificate in which the present R-4 and R-5 have also been made a party and at present she is only seeking the relief in regard to wrong action taken by the official respondents matter in the L of compassionate appointment.

8. The jurisdiction of the Tribunal to deal with such matters flows from Service Rules. The Service Rules

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provide for Government employees giving particulars of their family for various purposes like C.G.H.S. Card, Railway Passes for travel, allotment of Government Quarters etc. The Government Rules also provide for giving nomination in favour of the family members for payment of P.F., Family Pension etc. This may be called the nexus of the applicant with the deceased employee. It is clear to me that judgings from this nexus the applicant does have locus standi because her relationship as a wife is recognised in official documents. The respondents have not denied the existence of these documents. The respondents have also not produced any documents showing the nexus of R-4 and R-5 with the deceased Government employee. It appears that the respondents have wisely not paid any pensionary benefits to any of the claimant. In the conspectus of these circumstances, it is surprising that the respondents have proceeded to grant relief of R-4 on compassionate appointment in favour of R-5 being son of L the basis of documents produced by them. In regard to Family Pension and other retiral benefits, the stand of the respondents appears to be to direct the party to produce succession certificate. In regard to grant of compassionate appointment, however, the respondents who have no official documents in their possession to show the relationship of the R-4 and R-5 with the deceased Railway employee, have hastened to accept the documents produced by R-4 and R-5 and have granted compassionate

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appointment relying on the Railway Board's Circular. The Railway Board Circular, however, implies that the claim of the first wife, as much as the claim of the second wife is required to be judicially determined. If the claim is not so determined the action to grant relief becomes suspect. From this point of view, I am of the view, that there is substance in the contention of the applicant that there may have been manipulation with a view to grant compassionate appointment to R-5. I am therefore, of the view that grant of compassionate appointment to R-5 in the face of the dispute was not proper. Since, however, the interim relief of preventing compassionate appointment was not granted and the compassionate ^{appointment a} has become a fait accompli, the Tribunal would not like to interfere with the same. The Tribunal, however, would direct that the compassionate appointment in favour of R-5 would be treated as conditional and would be liable to be terminated in case the claim of R-4 to be the first legally wedded wife of the deceased Railway employee is not upheld by a Court of competent jurisdiction. For example, if the applicant is able to get a succession certificate inspite of the objections of the R-4 and R-5, the claim of R-4 should be deemed to have been negatived and that appointment of R-5 would be liable to be terminated and the case of the applicant No.1 in his place would have to be considered by the respondents. Similarly the claim of applicant's son to family pension as per rules even if marriage ~~be~~ involved here also to be considered as illegal

9. The O.A. is disposed of in these terms with no orders as to costs.

MR Kolhatkar

(M.R.KOLHATKAR)
MEMBER(A).

B.