

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH: :MUMBAI

ORIGINAL APPLICATION NO. 1085/99

Date of Decision: 12.10.2001

Shri R. Ayyappan.

Applicant

Shri K.B. Talreja

Advocate for Applicant

Versus

Union of India & 2 others

.. Respondents

Shri V.S. Masurkar.

Advocate for Respondents 1 & 2

Shri Dilip Shah

Advocate for Respondent No.3

CORAM: HON'BLE SMT. SHANTA SHASTRY. ... MEMBER (A)

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

Shanta
(SMT. SHANTA SHASTRY)
MEMBER (A)

Gajan

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH: :MUMBAI

ORIGINAL APPLICATION NO. 1085/1999

THIS THE 12TH DAY OF OCTOBER, 2001

CORAM: SMT. SHANTA SHASTRY

. MEMBER (A)

Shri R. Ayyappan,
S/o Deceased Employee Shri
D. Ramaswamy, Carpenter,
T.No.00505833 of Matunga Workshop,
Central Railway,
Matunga, Mumbai-19.

..Applicant

By Advocate Shri K.B. Talreja.

Versus

1. The Union of India,
through the General manager,
Central Railway, Mumbai CST.
2. The Chief Workshop Manager,
Central Railway, Matunga
Workshop, Mumbai-19.
3. Smt. Gomathi, Khalasi,
CWM's Office, Matunga,
Central Railway, Mumbai.

... Respondents

By Advocate Shri V.S. Masurkar for R1 & R2.
Shri Dilip Shah for R3.

ORDER

The applicant in this OA has prayed for appointment on compassionate grounds. The applicant, is the son of deceased railway employee, who was working as Carpenter in the Matunga Workshop under the Chief Workshop Manager, Matunga. His father expired on 2.1.1999 at his native place. According to the applicant he and his mother are the only surviving legal heirs of the deceased railway servant. The applicant relies on the privilege pass being used by the applicant and his mother. He produces copy of one privilege pass

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dated 4.1.93 valid till 1.4.93. The applicant submits that his mother was married to the deceased railway employee Shri D. Ramaswamy at native place on 10.11.1975. The applicant's father had put in 25 years of qualifying service. The applicant had also produced copies of joint photographs of his mother, father and himself and other two photographs taken during the marriage ceremony of his parents. The applicant submits that in terms of Railway Board circular No.E(NG)II/91/RC-III/36 dated 02.1.1992 circulated as supplementary circular No.5 to the Master circular No.16 the applicant is entitled to be appointed on compassionate grounds. After the applicant had made the application, the applicant filed MP to make Smt. Gomathi as private respondent and the MP was allowed. Smt. Gomathi is the second wife of the applicant's deceased father. She was appointed on compassionate grounds by the respondents as she came to be the legally wedded wife of the deceased employee. She was also paid all the retiral benefits. It is the grievance of the applicant that when the first wife is surviving the applicant, who is the son of the first wife, should have been granted appointment. The second wife has no claim for compassionate appointment in terms of Railway Board's circular dated 02.1.1992 referred to above.

2. The respondents submit though it is not denied that the applicant is the son of the deceased employee he was not staying with his father, he was staying with

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his mother. Her marriage with the deceased employee was terminated as per deed of divorce submitted by the late railway employee at the time of furnishing the nomination form. The deceased also furnished Smt. Gomathi's name for the record of privilege pass and PTOs with effect from 18.3.1997. Though earlier a privilege pass dated 4.1.93 as stated by the applicant was issued to the applicant by his mother on the basis of the record furnished by the late railway employee for getting pass and PTOs, but subsequently the deceased furnished another record of privilege and PTOs on 18.3.97. In the said record the name of Smt. Gomathi and Kumari Deepalakshmi have been mentioned consequent on the termination of the marriage of the deceased with the earlier wife i.e. Smt. Leelavathi, the mother of the applicant. The divorce deed is dated 09.6.1991. The deceased employee had also submitted the marriage certificate issued by the Registrar of Marriages, Kallidaikurichi, and had nominated the second wife for Provident Fund, DCRG etc., dated 19.6.1977. It was also established that the divorce was by mutual consent and there was no cohabitation as the marital relationship between Shri D.Ramaswamy, the deceased employee and the applicant's mother for more than eight years. The deceased employee has filed an affidavit to this effect. In view of this position, the first wife has no claim. The respondents have already therefore, given compassionate appointment to the second wife i.e. Smt. Gomathi and all the retiral benefits to her.



3. It is the contention of the applicant that the applicant's mother is the rightful heir of the deceased and the deed of divorce is not authentic as it is only an English translation of the Tamil version and the translation has been made by a local advocate here in Mumbai, therefore, it is not reliable. Also the applicant has taken a technical objection that the deed of divorce is not in proper form and it is not registered. The applicant, however, could not produce any documents other than the photographs taken at the time of marriage of the applicant's parents and the privilege pass which is of an anterior date.

4. I have heard the learned counsel for the applicant as well as the respondents and have perused all the pleadings. There is no denial that the first wife and her children have the first claim on compassionate appointment and the second wife does not have any claim as per the circular of the Railway Board referred to by the applicant. However, in this particular case the respondents have ascertained from the records that the first wife had already divorced the deceased employee in the year 1991. The deceased employee had married again later in 1996, he has clearly filed his nomination form nominating Smt. Gomathi i.e. Respondent No.3 i.e. the second wife as his nominee for receiving provident fund, gratuity etc. Even, if the first wife had not divorced the deceased employee she

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would not have been entitled to the provident fund etc., unless she was nominated by her husband, her husband did not nominate her. He nominated Smt. Gomathi and her daughter. The respondents have clearly stated that Smt. Gomathi has been given privilege pass from 1997 onwards. Apparently the deceased employee had informed the respondents in the combined nomination form for provident fund, Group Insurance Scheme and DCRG that the reason for changing the nomination was remarriage. In view of this clear documentary proof, I have to hold that the respondents are justified in their action in giving the compassionate appointment to the second wife and that the applicant is not entitled to the compassionate appointment because from 1991 onwards he is staying with his mother, i.e. the first wife divorced from the deceased employee. The application being devoid of merit, is dismissed. I do not order any costs.

Shanta

(SMT. SHANTA SHASTRY)
MEMBER (A)

Gajan