

05.02.898/93

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI.

05.986/95

1. ORIGINAL APPLICATION NO. 898/93,
2. ORIGINAL APPLICATION NO. 986/95.

Pronounced, this the 16th day of FEBRUARY 1999.

Coram: Hon'ble Shri Justice R.G.Vaidyanatha, Vice-Chairman,
Hon'ble Shri D.S.Baweja, Member(A).

1. ORIGINAL APPLICATION NO. 898/93.

Rahul Maruti Sadavarte,
P.O. Neral,
410101 Budhajanawada,
Taluka Karjat,
District Raigad.

(By Advocate Shri D.V.Gangal)

V/s.

1. The Union of India through
The General Manager,
Central Railway,
Bombay V.T.

2. Divisional Manager,
Central Railway,
Bombay V.T.

(By Advocate Shri S.C.Dhawan).

2. ORIGINAL APPLICATION NO. 986/95.

Ashok Vithal Sapkal,
Buddha Colony,
C.S.T.Road,
Keru Sukhdev Barve Chawl,
Near Anjuman High School,
Kurla,
Bombay - 400 070.

(By Advocate Shri U.M.Joshi)

V/s.

1. Union of India, through
The General Manager,
Central Railway, Bombay V.T.
2. Divisional Railway Manager (PRB),
Bombay V.T.
3. Station Manager,
Central Railway,
Kalyan.

(By Advocate Shri R.R.Shetty)

... Applicant.

... Respondents.

... Applicant.

: O R D E R :

(Per Shri Justice R.G.Vaidyanatha, Vice-Chairman)

These are two applications filed by the applicants under section 19 of the Administrative Tribunals Act, 1985. The respondents have filed reply opposing both the applications. Since common question of law arises in both these cases, they are heard together and they are being disposed of by this common order. We have heard the learned counsels appearing for the applicants and the learned counsels for the respondents.

2. In O.A. 898/93, the applicant is seeking a direction to the respondents for compassionate appointment and consequential reliefs. His case is that he is the son of Maruti Kamlu who was a Railway employee and he died in harness on 4.10.1975 due to burn injury sustained in a train accident. The applicant's mother Smt.Charabai applied for compassionate appointment, but she was not selected since she failed in the medical examination. this was in 1983. At that time the applicant was a minor and aged about 12 years. After the applicant attained majority, he made a formal application for compassionate appointment by letter dt. 5.7.1989. It is also stated that the applicant's father had two wives viz. Smt.Anusuyabai and Smt.Charabai. The second wife Smt.Charabai had five children including the applicant. The family has no income except ex-gratia pension of Rs.250/-. The family is in distress circumstance, the family therefore, deserves compassionate appointment. The respondents have now rejected the request of the applicant for compassionate appointment by letter dt. 5.7.1989. According to the applicant the rejection of the applicants claim for a compassionate appointment is arbitrary and violative of Articles 14 and 16 of the Constitution of India. He wants that this rejection letter dt. 5.7.1989 be quashed and the respondents

should be directed to consider the case of the applicant for compassionate appointment.

3. In the reply, it is stated that the application is highly belated and the applicant is not entitled for compassionate appointment when his father died as long back as 1975. Since the applicant is the son of the second wife of the deceased employee and since second marriage has not been performed with the permission of the Railway Administration, the applicant cannot get compassionate appointment being a son of such a second marriage. It is also stated that the first wife of the deceased Smt. Anusuyabai had applied for compassionate appointment and she was called for interview, but she did not turn up. Then the second wife applied for compassionate appointment and though she was not legally entitled, but by mistake the administration gave an offer of appointment, but she could not be appointed since she was found medically unfit. Therefore, the question of again offering appointment to the applicant on compassionate ground does not arise. It is denied that the family is in distress circumstance. That the request of the applicant has been rightly rejected by the administration. It is therefore, prayed that the application be dismissed with costs.

4. In O.A. 986/95 the applicant has approached this Tribunal for getting an appointment on compassionate grounds. It is stated that the applicant's father Vithal A. Sapkal who was a Railway employee died in harness on 24.6.94. His father had two wives viz. Smt. Anandibai and Smt. Laxmibai. The applicant is the son of second wife Smt. Laxmibai. The applicant along with his mother gave an application for compassionate appointment, but the Railway Administration has rejected the application on the ground that he being the son of the second wife he is not entitled for compassionate appointment. It is stated that the family's economic condition is not good and the family needs

compassionate appointment to the applicant. The family is living in penury and without any means of livelihood. The Rule of the Railway Administration is that the son of the second wife is not eligible for appointment on compassionate grounds is unreasonable, arbitrary and violative of Article 14 of the Constitution of India. It is further stated that according to Hindu Marriage Act, even the son of a bigamous marriage is a legitimate child for all purposes and therefore when the applicant is the legitimate son of his father under section 16 of the Hindu Marriage Act, he is entitled to be considered for compassionate appointment and rejection of his claim on the ground that he is the son of a second wife is bad in law. There cannot be any discrimination between the children of the two wives of a Railway employee. On these grounds the applicant prays that the Railway Board Circular dt. 2.1.1992 be struck down as ultra vires of the Constitution of India and Hindu Marriage Act and consequently the rejection order dt. 11.1.1995 be quashed and a direction be given to the respondents to appoint the applicant on compassionate grounds.

5. In the reply it is stated that applicant is not entitled to get a job on compassionate grounds, since he is the son of the second wife of the deceased. It is stated that unless the second marriage is performed with the permission of the administration, the children of the second wife are not entitled to any compassionate appointment. The respondents are justifying their stand on the basis of the Railway Board Circular which is challenged in the O.A.

After the applicant amended the OA making allegations regarding the Circular and adding a prayer to quash the same, the respondents have filed a sur-rejoinder stating that the Circular dt. 26.1.1992 was framed with the best interest to encourage monogamy and to discourage bigamous marriages. In fact, no compassionate appointment is given to any persons in the Railways if the deceased employee has undergone second marriage during the life time of the

first wife. That the Circular is perfectly legal and valid. The allegation that the Circular is ultra vires of the provisions of Constitution and the provisions of Hindu Marriage Act are denied.

6. In the light of the arguments addressed before us and on the basis of the pleadings, the points that fall for determination in these two cases are as follows :

- (1) Whether the Railway Board Circular dt. 2.1.1992 is illegal and void and liable to be quashed?
- (2) Whether the applicants in these two cases have made out a case for compassionate appointment?
- (3) What Order?

7. Point No.1 :

In the original scheme of compassionate appointment the word used were that the widow, son or daughter is entitled for compassionate appointment. The impugned Circular dt. 2.1.1992 by way of clarification says that in case the Railway employee while dying in harness leaves more than one widow, then second widow and her children are not entitled to be considered for compassionate appointment unless, the administration has permitted the second marriage in special circumstances, taking into account the personal law.

The applicants before us are Hindus. After the Hindu Marriage Act, 1955 bigamy is prohibited and made punishable under the Act. Bigamy is punishable under section 494 of the IPC. The second marriage is declared as void under the Hindu Marriage Act.

The learned counsels for the applicants submitted that though second marriage is void and illegal, the children born to the second wife are not illegitimate. It is true that by legal fiction the children of the second

marriage are deemed to be legitimate children as ^{provided} ~~provided~~ in section 16 of the Hindu Marriage Act and they can even succeed to the properties of the parents but not others. We are familiar that under Hindu Law in the case of ancestral properties or joint family properties the son of a member of joint family is entitled to get right by birth. But Sec.16 of the Hindu Marriage Act does not give property rights to the children of second wife in the joint family properties or ancestral properties, but however, they ^{can} claim share in the parents estate.

8. It was argued by the learned counsel for the applicants that when under the Personal Law the second wife's children are made legitimate, how can the Service Law make a Rule in violation of Personal Law and therefore the particular circular which offends the Personal Law of the applicants is bad in law. In our view, this argument has no merit since Service Law has nothing to do with the Personal Law. We will presently point out that Service Law has made certain provisions not only contrary to Personal Law, but also contrary to fundamental rights guaranteed under the Constitution of India.

9. One of the Conduct Rules in Government Rules is that no person having a second wife can be appointed in Government Service. If a person in service marries a second wife then disciplinary action can be taken against him and he can be removed from service. Therefore, this provision in Service Law that no person can be appointed having two wives living at the time of joining government service and no government servant can marry a second wife after joining service. It may be that a person professing the Religion of Islam may marry four wives at a time under Personal Law, but when he comes to Government Service if he has two wives living, he is not entitled to be appointed in

government service or if having one wife at the time of entering into government service, he marries again, then he will lose his job. Therefore, the service rules can certainly make provisions which are ^{not} in conformity with ~~the~~ Personal Law.

10. Similarly, under the Personal Law of Hindus, in particular Hindu Succession Act, when a Hindu dies, his son, daughter, widow, mother and some others are made as Class-I heirs and entitled to get the Estate of the deceased in equal shares. But, if ^{we} you go to the Service Law, when an official dies, only his widow is entitled to Pension and other heirs like mother of the deceased or children of the deceased are not entitled to any share in the Pension during the life-time of the widow. Similarly, the widow alone will be exclusively entitled to the gratuity amount. Therefore, the Service Rules can be different from the Personal Law of the Government Officials.

11. In the Conduct Rules in the Central Civil Services (Conduct) Rules, 1964 there are many Rules which are contrary not only to Personal Law, but also to Fundamental ^{rights} Rules.

For instance, every Citizen of India has a Fundamental Right to have any view and join any Political Party he wants. But, once the Citizen joins government service, as per the Conduct Rules, in particular, Rule 5(1) no Government servant has a right to join a Political Party.

Similarly, under the Fundamental Rights every Citizen can own or conduct or participate in the editing or managing of any Newspaper or other Periodical publication. But, Conduct Rule says under Rule 8.1 that no such activity can be done by a government servant official except with previous sanction of the Government.

Every Citizen of India have a right to criticize the Government and its policies. But, such a freedom is not given to a government servant under

Rule 9.

Every Citizen of India has a fundamental right to do any trade or business. But, a government servant under Rule 15 has been prohibited from engaging in any trade or business.

There are restrictions on a government servant in purchasing or acquiring movable and immovable properties and disposing of the same except in certain circumstances with prior permission or prior intimation to official superiors.

Then, we come to Rule 21 which clearly says that no government servant shall enter into second marriage when the first spouse is living. Then there is a proviso which says that even if second marriage is permissible under the Personal Law (like Muslims) he shall not undergo a second marriage without the permission of the government.

We have only mentioned few of the restrictions on government servants under the Conduct Rules. There are many more restrictions in the Rules which may be contrary to the Personal Law or Fundamental Rights.

11. In order to maintain discipline in the government and in order to see the government servant do their work with all honesty and efficiency certain restrictions on the conduct of government servant is inevitable.

It is a policy of the Government that monogamy should be ^{the} Rule. We have seen how Hindu Marriage Act has introduced monogamy among Hindus in 1955. Even in case of persons belonging to religions where plurality of wives are permitted, a government servant cannot take a second wife, except with the prior permission of the government. Therefore, in order to encourage monogamy the Government has introduced these conditions which has stood the test of

time and not challenged so far by anybody. Therefore, certain restrictions on Fundamental Rights and Personal Law are made in Service Rules in the larger public interest and to promote efficiency etc. in government servants.

12. If once the second marriage itself is prohibited irrespective of the question whether it is permitted in Personal Law or not, there is no bar for the Government to make it as a policy that even if there is a second wife and children they are ^{not} allowed to get compassionate appointment under the Service Rules. We do not find any illegality if such a rule is made in order to promote and encourage monogamy and to maintain certain discipline among the government servants. The Circular says that this prohibition of second widow and childre not entitled to compassionate appointment applies even in cases where Personal Law allows second marriage, unless the second marriage is performed with the permission of the Government. But, so far as Hindus are concerned second marriage is prohibited by Law and is an offence under section 494 of the IPC and in such a case if the Rule makers provide that second widow and her children are not entitled to compassionate appointment, we cannot find any illegality in the said rule. We are not for a moment concerned whether the children of the second wife is legitimate or illegitimate because even when second marriage is permissible in Personal Law this rule applies.

13. The learned counsel for the applicants strongly placed reliance on a decision of the Patna High Court reported in 1998 (2) (Administrative Total Judgments) 464 (M/s. Bharat Cooking Coal Ltd. and Ors. Vs. Ujjawal Kumar Roy and Ors.). No doubt, in that case the question was whether an illegitimate son of a deceased employee is entitled for compassionate appointment. In that

case, it was a case of Private Company where the rule was that "a widow, son, unmarried daughter and adopted son" are entitled for compassionate appointment, but the company did not grant compassionate appointment for an illegitimate son. It had not framed any rule on that point, but we have here the Railway Circular dt. 2.1.1992 which prohibits compassionate appointment for the second widow and her children. In fact, the words mentioned is only son, but the Rule did not mention anything to exclude an illegitimate son. We have already seen that though the second marriage is void in Hindu Law, his children of second wife are made legitimate, since the Rule did not exclude an illegitimate son. The High Court observed that the Rule cannot be interpreted as excluding illegitimate children. But, in the present case there is a specific rule which prohibits second widow and children from getting compassionate appointment. The question of vires of a rule did not arise for consideration in the said decision. They were only interpreting whether the word "son" includes an ^{illegitimate} illegitimate son or not. There was no rule prohibiting an illegitimate son from getting appointment.

But, in the present case the Railway Circular clearly provides that irrespective of the Personal Law, the second wife's children are not entitled for compassionate appointment. We have already pointed out many circumstances to show how Service Law can be different from not only Personal Law, but also Constitutional Law.

Hence, we hold that the impugned circular dt. 2.1.1992 is perfectly valid and justified and it does not suffer from any illegality. No case is made out for quashing the said circular. Point No.1 is answered accordingly.

14. Point No.2 :

Admittedly, the two applicants are the children of the second wife of the deceased. In view of the 1992 circular, they cannot be considered for compassionate appointment. Hence we need not go to the merits of the case to find out whether they have made out a case for compassionate appointment when according to law the children of the second wife cannot be considered for compassionate appointment. Point No.2 is answered accordingly.

15. In the result, both the applications (O.A.898/93 and O.A.986/95) are hereby dismissed. No orders as to costs.

(D.S. BAWEJA)
MEMBER(A)

(R.G. VAIDYANATHA)
VICE-CHAIRMAN

8.