

CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

ORIGINAL APPLICATION NO.: 739/97.

Date of Decision : 08.12.1997.

Kum. Sheetal Ramji Yashwante
& Another
_____ Petitioner

Shri S. S. Karkera
_____ Advocate for the
Petitioner.

VERSUS


Union Of India & Others
_____ Respondents

Shri Suresh Kumar ... Advocate for
Respondent No. 1 & 2
Shri K. B. Bhambid ... Advocate for
Respondent No. 3.

CORAM :

Hon'ble Shri B. S. Hegde, Member (J).

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


(B. S. HEGDE)
MEMBER (J).

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CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

ORIGINAL APPLICATION NO.: 739/97.

Dated this Monday, the 8th day of December, 1997.

CORAM : HON'BLE SHRI B. S. HEGDE, MEMBER (J).

1. Kum. Sheetal Ramji Yashwante,
Minor, through her grand mother
and natural guardian,
Smt. Parvatibhai Vitha Yashwante,
residing at B-12, Marathwada
Society, Lal Dongar,
Sion-Trombat Road,
Chembur, Mumbai - 400 071.

2. Smt. Parvatibhai Vithal Yashwante,
Residing at - B-12, Marathwada
Society, Lal Dongar,
Sion-Trombay Road, Chembur,
Mumbai - 400 071.

... Applicants

(By Advocate Shri S. S. Karkera)

VERSUS

1. Union Of India through
The Divisional Railway Manager,
Central Railway, C.S.T.,
Mumbai - 400 001.

2. The General Manager,
Central Railway, C.S.T.,
Mumbai - 400 001.

(By Advocate Shri Suresh Kumar).

3. Smt. Kalpana Damodar Bodare,
alias Shobha Ramji Yashwante,
Residing at - Ramabai Colony,
B. D. Pawar Chowk,
Siddharth Chawl, Bhim Rakshak
Mandal, Ghatkopar (E),
Mumbai - 400 075.

... Respondents

(By Advocate Shri K. B. Bhambid)

: ORAL ORDER :

{ PER.: SHRI B. S. HEGDE, MEMBER (J) }

Heard Shri S. S. Karkera for the applicants,
Shri Suresh Kumar for the official respondents and Shri K. B.
Bhambid for respondent no. 3.

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2. This O.A. relates to compassionate appointment. The question to be considered is, whether the applicant no. 1 (daughter of the deceased employee) is entitled to compassionate appointment or the respondent no. 3 (second wife of the deceased employee) is entitled to compassionate appointment. Shri Ramji Vithal Yashwante, who was working in the Central Central as Pointsman, died in the year 1996. The respondent No. 3 is alleged to be the wife of the deceased employee. The Tribunal, after hearing the parties, stayed the appointment in favour of Respondent No. 3 vide its order dated 29.08.1997 on the ground that as per the standing instructions, the first wife or child from the first wife has a pre-emptive claim for compassionate appointment and as such, Applicant No. 1 has a prior claim to be appointed on compassionate grounds after she attains majority and since there would be only one compassionate appointment against the death of Government servant, if the Respondent No. 3 is offered compassionate appointment at this stage, Applicant No. 1 would be permanently deprived of her claim for compassionate appointment.

3. In this connection, the Learned Counsel for the respondents draws my attention to the circular of the Department vide dated 02.01.1992 wherein it is stated that the case of railway employees dying in harness, etc. leaving more than one widow along with children born to the second wife, while settlement dues

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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..... This may be kept in view and the cases for compassionate appointment to the second widow or her wards need not be forwarded to Railway Board.

4. During the course of hearing, the Learned Counsel for the applicant has drawn my attention to the Railway Board instructions dated 12.12.1990 wherein the persons eligible to be appointed on compassionate grounds are mentioned, which reads as below :-

"Son/daughter/widow/widower of the employees are eligible to be appointed on compassionate grounds in the circumstances in which such appointments are permissible. Where the widow cannot take up employment and the sons/daughters are minor, the case may be kept pending till the first son/daughter becomes a major i.e. attains the age of 18 years, subject to time limits as provided under para (v) of the circular."

Para 5 of the circular reads as follows :

"Normally all appointment on compassionate grounds should be made within a period of five years from the date of occurrence of the event entitling the eligible person to be appointed on this ground."

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5. The Learned Counsel for the respondents submits that as per the instructions at para (V) of the circular, the respondents have already processed the case of Respondent No. 3, since she is the legally wedded wife of the deceased employee after the death of the first wife, which is not in dispute. Further, the applicant no. 1 is minor, aged about 9 years and till she attains majority, the respondents cannot wait for giving her compassionate appointment. Para (III)(v) of the Railway Board Circular states that - "once a 'near relative' is appointed on compassionate grounds, no further appointment shall be given later to a son or daughter or the widow of the employee on compassionate grounds." In the connection, the Learned Counsel for the respondents has relied on a decision rendered by the Allahabad Bench of the Tribunal in *Malti Devi V/s. Union Of India & Others* [1993 ATC 940 Vol. 23] where a similar issue arose and the respondents had given compassionate appointment to the near relative. The Tribunal directed the said near relative to give bond to the Railway administration undertaking to pay to the widow and her children Rs. 700 per month till her youngest son attained majority and in case of default his appointment made liable to cancellation.

6. In the present case, the applicant no. 1 is a minor and she will have to wait for 10 years to attain majority. In my view, it is not feasible to wait indefinitely and therefore, in case the respondents

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offer compassionate appointment in favour of Respondent No. 3, in that event of the matter, the respondent no. 3 is hereby directed to give a sum of Rs. 1,000/- (Rupees : One Thousand only) every month to the applicant no. 1 till she attains majority and in case of default, the appointment issued in favour of Respondent No. 3 shall be liable to be cancelled.

7. The O.A. is disposed of with the above directions. The interim order passed on 29.08.1997 stands vacated. No order as to costs.


(B. S. HEGDE)
MEMBER (J).

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