

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.

Original Application No.873/98

DATE OF DECISION: 20.12.2000

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

Smt. Anjani Ashok Yadav,
(Widow of Late Ashok Meninath Yadav)
R/a: Arya Samaj,
Lower Parel, 9B, N.M. Joshi Marg,
Mumbai 400 013. Applicant

(Applicant by Shri A.G.Toraskar, Advocate)
vs.

1. The General Manager,
Central Railway,
Mumbai, CST.
Mumbai 400 001.
2. The Union of India,
through the General Manager,
Central Railway,
CST, Mumbai.

ORDER (ORAL)

[Per: Smt. Shanta Shastry, Member (A)]

Shri A.G.Toraskar for the Applicant and Shri V.S. Masurkar for the Respondents.

2. In this O.A. the Applicant is seeking Compassionate Appointment. One Shri Ashok Meninath Yadav who was working as Wireman, HS-II in ETL Shop, Matunga expired on 22.12.1992. Prior to that he married the Applicant on 12.3.1987, and ^{she} got two children, through the said Shri Ashok Meninath. It is the contention of the applicant that the Applicant requested the Respondent No.1 to give appointment to her on 25.1.1993, 29.9.1993 and 23.3.1993 and also sent a letter through her Advocate on 10.1.1995 to give her compassionate appointment. She also furnished all the necessary documents, called for by the Respondents. However, the Respondents did not provide her any compassionate appointment. The learned Counsel for the Applicant submits that the Applicant was nominated by her late husband for

receiving his GPF dues and Succession Certificate is not required as the issue is only of compassionate appointment. Also she has applied for the Succession Certificate which is under process. Further the earlier wife bearing the same name stays in Belgaum and she has not claimed any compassionate appointment. The Learned Counsel is relying on the judgement in the case of *A.P.S.R.T.C and Anr. vs. Chellappa Venkatesh and Anr.* reported in 1998 LAB, I.I.C 1109, In this case the applicant's widow of the deceased employee and her step son were claiming compassionate appointment. Since there was no Circular of the A.P.S.R.T.C. ^{govt b} providing for preference to one person against ^A her, it was held that the authorities of the Corporation had to decide ^b who could be the effective breadwinner of the family between these two persons. The matter was remitted back to the authorities. According to the Learned Counsel for the Applicant in this case, since the second widow ^{lives} has to support her children and she is without any means of livelihood she is to be treated as effective breadwinner and, therefore, she should be granted compassionate appointment. The learned Counsel has also placed reliance on another case, *Rameshwari Devi vs. State of Bihar and others* reported in 2000 (2) SC cases 431 wherein it has been held that the children of second wife are also entitled ^b _A pension but not the second widow. And, therefore, it was not necessary for the State Govt. to require the second spouse to prove her marriage in Court of Law in so far as ^{of} entitlement of family pension was considered. // The Respondents in their reply have taken with the preliminary objection on the ground of delay and lacches. Though the Applicant's husband died on 22.12.1992, the O.A. has been filed only in 1998 i.e. almost after six years. Further the applicant has not made the first widow a party to

this O.A. The Respondents have also submitted that the object of compassionate appointment is to relieve unexpected immediate hardship and distress caused to the family of the deceased by the sudden demise. Coming after six years for compassionate appointment, therefore, suffice from laches and delay. On merits, the Respondents submit that the late Railway Employee Shri Ashok Meninath Yadav had not informed the Railway Administration of his marriage on 12.3.1987 with the present Applicant while applying for the medical card for family members. The name of the Applicant was not included in that card nor was the Respondents informed about the two children born out of the wedlock of 1987. The Respondents received one application dated 2.2.1993 from Belgaum wherein the earlier wife had submitted the medical identity card and the marriage card indicating that the marriage has been solemnised on 20.6.1982. Thus there appears to be two ^{widows} ~~occasions~~ and they bear the same name. Therefore, the Respondents advised both the claimants to submit the Succession Certificate.

3. I have heard the Learned Counsel for both the parties and also have perused the documents produced as well as the pleadings. I find that the late Shri Ashok Yadav seems to have been married to two women. ^{There} It does not appear to be any communication that he had informed Respondent authorities about the second marriage. Further the Railways are prepared to settle the dues if the Succession Certificate is produced, they are not in a position to straight way consider the compassionate appointment without the production of the Succession Certificate. The Railways have clarified through their letter dated 23.1.1992 that in case of Railway Employees dying in harness etc. leaving more than one

bedlock along with one to the second wife by settlement 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.

4. Compassionate appointment is not a right. It is to be considered on merits. Further in view of the Circular of the Ministry of Railways, unless Succession Certificate is produced Applicant cannot claim any compassionate appointment.

5. The Learned Counsel for the Applicant has relied on the two judgements, as cited earlier. I find these judgements, do not cover the case for grant of Compassionate appointment, as to the second widow. In the first judgement, the petition was between the widow and the step son and, therefore, the question of effective bread winner ^{had} to be decided. In the present case, both are widows and unless it is proved through the Succession certificate the matter cannot be decided. Secondly, the other judgement only entitles the children of the second widow to pension. And not to compassionate appointment. The issue before us is of compassionate appointment to the second widow. ^{Judgement} Therefore, this issue also cannot be said to be applicable ^{for} to this case.

6. The learned Counsel for the Respondents has raised the plea of limitation. I find that the Applicant has been representing since 1993. However, the Applicant approached this Tribunal only in 1998. Even if this delay was to be overlooked, on merits the applicant has no case. The Applicant has also failed to make the first widow a party to this. On account of this also this Application is liable for dismissal.

7. In the facts and circumstances of the case, the Application being devoid of the merits cannot be maintained. The D.A. is, therefore, disposed of with direction to the Applicant to produce Succession Certificate for consideration of the Respondents.

No costs.

Shanta S
(Smt. Shanta Shastray)

Member (A)

sj*