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CENTRAL ADMINISTRATIVE TRIBUNAL,
JABALPUR BENCH,
JA BALPUR

Original Application No. 872 of 2005

Jabalpur this the 20th day of July, 2006.

Hon'ble Dr.G.C.Srivastava, Vice Chairman
Hon'ble Shri A.K.Gaur, Judicial Member

Smt.Kasturi Bai, W/o late Shri Budhram Sendare
aged about 51 years, unemployed, residing at C/o
Tekchand Somaji Bopehe, Near Durga Mandir,
New Khursipar, Zone-II, Bhilai-490001, District:
Durg (CG)

-Applicant

(By Advocate – Shri B.P.Rao)

VERSUS

1. Union of India through : the General Manager,
South East Central Railway, Bilaspur Zone, G.M.
Office, PO :Bilaspur – 495001 (CG)

2. The Sr. Divisional Personnel Officer, South
East Central Railway, Nagpur Division, DPO
Office, Nagpur-440001(MS)

-Respondents

(By Advocate – Shri H.B.Shrivastava)

ORDER

By A.K.Gaur, JM.-

By filing this Original Application, the applicant, who is
the second wife of late Budhram Mukkha, Ex.Trackman, has

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sought for quashing ^{of} the letter dated 17.12.2003 (annexure A/10) and for issuing direction to the respondents to consider the applicant's request for appointment on compassionate grounds ^{to} her second son Sunil.

2. It is submitted on behalf of the applicant that she married ~~with~~ Budhram according to Hindu customs on 18.12.1974 in village Chirwalbandh of Maharashtra. The husband of the applicant was subsequently appointed in railways on 3.10.1989 as Trackman. Out of the wedlock of the applicant and Shri Budhram, two sons and one daughter were born. The applicant's husband Budhram died in harness on 15.6.2002. It is alleged that the applicant's husband had declared the applicant as his wife and two sons and one daughter as his family members in all railway records. After the death of Budhram, the applicant had submitted an application on 19.8.2002 claiming family pension, service dues and compassionate appointment ^{to} her second son Sunil. By the aforesaid letter dated 17.12.2003 the applicant has been informed that as per the extant rules "appointment on compassionate grounds to the second widow and her children are not to be considered unless the administration has permitted the second marriage. Sri Budhram has not taken any permission from the Railway administration for second marriage. ... competent authority has not considered your request for employment assistance on compassionate grounds to your son Sri Sunil". Hence, this Original Application.

3. The respondents have filed their detailed parawise reply controverting the allegations made in the OA. They have also

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taken a preliminary objection that this OA is barred by limitation. On merits, the respondents have stated that the applicant married with the deceased railway servant while his first wife was alive. The said marriage is void as per the provisions of Hindu Marriage Act. The deceased railway servant Budhram had married with one lady Malan Bai, who expired on 28.12.1995 leaving behind one daughter. The applicant was advised vide impugned letter dated 17.12.2003 that appointment on compassionate grounds to the second widow and her children are not to be considered unless the administration has permitted the second marriage, and that her husband Sri Budhram had not taken any permission from the Railway administration for second marriage.

4. We have heard the learned counsel of both sides and carefully perused the pleadings available on record.

5. As regards limitation, the learned counsel for the applicant has submitted that the applicant is a poor and illiterate lady and she had no knowledge in the legal matters, particularly, limitation period to file the OA. On the other hand, the learned counsel for the respondents has vehemently argued that the applicant has failed to give any cogent reason and plausible explanation for condoning the delay and in view of the decisions of the Hon'ble Supreme Court in the case of **Ramesh Chandra Sharma Vs. Udam Singh Kamal**, 2000(1)ATJ 178 this OA is liable to be dismissed. The learned counsel for the respondents has further argued that the merits of the case may not be looked into without

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condoning the delay and in support of his contention he has relied on JT 1998 (8) SC 525 and JT 2000(10) SC 306.

6. We find, in the instant case, that the impugned letter is dated 17.12.2003 and in terms of Section 21 of the Administrative Tribunals Act, 1985, the applicant could have filed the OA within a year from the date of the impugned order i.e. by 17.12.2004, whereas the present OA has been filed on 27.9.2005. As such there is a delay of about 9 months in filing the present OA. The applicant has filed MA No.841/2001 for condoning the delay. In view of the reasons stated in the said MA, and looking to the poverty and illiteracy of the applicant, we condone the delay in filing this OA.

7. As regards the merits of the case, the learned counsel for the respondents has argued that there is no provision to grant employment assistance to the second wife or her children. In this context he has relied on the provisions of Railway Board Circular (Supplementary Circular No.5 to M.C. No.16 - RBE 1/92) dated 2.1.1992, which read as follows:

“It is clarified that in 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 may be shared by both the widows due to Court orders or otherwise on merits of each case, appointments on compassionate ground 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.”

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On the other hand, the learned counsel for the applicant has relied on the decision of the Hon'ble Supreme Court in the case of **Rameshwari Devi Vs. State of Bihar & others**, 2000(1) SC 385, and the decision of Hon'ble Madras High Court in the case of **Geetha Ramani Vs. The District Educational Officer, Kancheepuram and others**, 2005 Lab.IC 386 in order to buttress his contention that the children born out of void marriage are entitled for appointment on compassionate grounds.

8. We have carefully seen the case law cited on behalf of the applicant and we are of the considered view that since there is a specific provision mentioned in the aforementioned Railway Board's circular dated 2.1.1992 that appointments on compassionate ground 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, the second son of the applicant is not entitled for grant of compassionate appointment. The case law cited by the applicant is wholly distinguishable in the facts and circumstances of the case. The present case is squarely covered by the aforementioned Railway Board's circular dated 2.1.1992. As such we see no irregularity or illegality in the impugned letter dated 17.12.2003 issued by the competent authority. Before we may part, we may also observe that the applicant has also not challenged the validity of the aforesaid Railway Board's circular dated 2.1.1992, which has the statutory force. In this view of the matter, the applicant is not entitled to get ^{the} ~~any~~ relief prayed for in this OA.

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9. In the result, the Original Application is dismissed, however, without any order as to costs.

(Signature)
(A.K. Gaur)
Judicial Member

(Signature)
(Dr. G.C. Srivastava)
Vice Chairman

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पठवन्त सं ओ/न्या.....जबलपुर, दि.....

पत्तिलिपि अयोधित:-

- (1) सचिव, उच्च न्यायालय तार एसेटि.एशन, जबलपुर
- (2) आवेक श्री/श्रीमती/कु.....के काउंसल
- (3) प्ररथी श्री/श्रीमती/कु.....के काउंसल
- (4) वंथपाल, को.प्र.अ., जबलपुर न्यायापीठ
सुवना एवं आवश्यक कार्यवाही हेतु

(Signature)
उप रजिस्ट्रार

(Signature)
B.P. RAO DH
24/7
(Signature)
H.B. Shrivastava
2006

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