

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, J ABALPUR

Original Application No. 500/2002

Jabalpur, this the 7th day of May, 2004

Hon'ble Shri Madan Mohan, Member (Judicial)

Punit Saddulal Gauhar
aged 27 years
son of Sh. Saddulal Gauhar,
Near Garibi Lane, Bhopal Gate,
Itarsi, Distt. Hoshangabad (MP).

...Applicant

(By Advocate: Shri M.K.verma)

-versus-

1. Union of India through
Chairman,
Railway Board, Rail Bhawan,
New Delhi.
2. General Manager,
Central Railway,
Chhatrapati Shivaji Terminus (CCTM),
Mumbai.
3. Divisional Railway Manager,
Bhopal Division, Bhopal.

...Respondents

(By Advocate: Shri S.P.Sinha)

O R D E R

By filing this original application, the applicant
has sought the following main reliefs:-

"7.1 That the Hon'ble Tribunal may graciously be
pleased to direct the respondent Railway Department
to consider the applicant's case for grant of compen-
sonate appointment in true perspective of law and
further may please be directed them to grant compensonate
appointment to the applicant.

7.2 That the Hon'ble Court may further be pleased to
hold as per Rules of the Railway Department that there
is no bar no grant compensote appointment in favour of
the son from the second wife.

7.3 That the Hon'ble Tribunal may further be pleased
to hold that the impugned action on part of Railway
Department is bad in the eyes of law."


2. The brief facts of the case are that the applicant's
father Saddulal got married to one lady Meera Bai. There was
no issues and because of that with the consent of his first
wife and according to the customs prevalent in the community
Shri Saddulal had married to another lady Smt. Prema Bai in the
year 1970. Both the wives were living together in the same

house having harmonious relations with each other. In the year 1979 Shri Saddulal entered into the service of Railways on the post of Dresser in Railway Hospital, Harda. In the service records he had mentioned the names of his sons as his nominees, who have taken birth from the second wife and also from the first wife. The first wife of Saddulal expired somewhere in the year 1992 on 18.5.1992 and Shri Saddulal also expired on 5.5.2000. After the death of Saddulal, his retiral dues were distributed between all his sons, who have taken birth from both of Saddulal's wives. Saddulal left behind his wife Prema Bai, unmarried daughter Kum. Preetee and one minor son Pradeep and the applicant apart from this two minor sons from first wife Meera Bai.

2.1 The applicant being eldest son having responsibility of the entire family had applied for grant of compassionate appointment to the respondents and alongwith his application he has submitted affidavit of Pramod Kumar and Pawan Kumar (sons of first wife of Saddulal) having no objection for the grant of compassionate appointment in favour of the applicant. Despite this, applicant's application for grant of compassionate appointment was turned down by the respondent no. 3 for the reason of applicant being son from the second wife of Saddulal. As per the rules of Railway Department contained in the I.R.E.M. and Indian Railway Establishment Code, there is nothing to preclude sons of the second wife of the deceased employee for grant of compassionate appointment. Moreover, in such a condition when there is no claim and no objection from the children of the first wife. Copy of rejection letter is at annexure A-5 and the same is dated 19.7.2001.

3. Heard the learned counsel for both the parties and perused the material very carefully.

4. It is argued on behalf of the applicant that late Saddulal had married with Smt. Prema Bai, the mother of the applicant, with the consent of his first wife Meera Bai in the year 1970. He joined the services of the Railways in the year 1979 hence




it is clear that this fact was known to the respondents that Saddulal had married with a second lady and in the definition of family, nowhere distinction is made in between the sons of first wife or second wife and it is also argued that the parents may be illegitimate but not the children. My attention is also drawn towards Annexure A-4, which is an affidavit sworn in by the sons of Saddulal born from the loins of Saddulal and his first wife Smt. Meera Bai in which they have mentioned their no objection for grant of compassionate appointment to the applicant. My attention is also drawn towards Annexure R-1 i.e. Supplementary Circular No. 5 to Master Circular No. 16 on the subject of Appointment on Compassionate grounds - cases of second widow and her wards, relevant portion of which is given as under:

"It is clarified that in case of Railway employees dying in harness etc. leaving more than one widow alongwith children born to the 2nd 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 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."

In the present case Saddulal did not leave to widows but the only widow i.e. the mother of the applicant. Hence, the impugned order is against the law and is liable to be quashed and set aside.


5. In reply, learned counsel for the respondents argued that admitted Saddulal, deceased employee, had married with two ladies i.e. Meera Bai and Prema Bai and there is no version of the applicant that there was any divorce between the deceased employee and his first wife. Hence, if a person gets married with any other lady without getting divorced from first wife, the second married does not become legal. It is further argued that if the sons of the first legally wedded wife of deceased employee gives an affidavit to the effect that compassionate appointment may be given to the son of the second wife of their father is immaterial in the eyes of law as they have no right to say about any persons who have no entitlement for that and so far as



question of leaving two widows is concerned, Saddulal did not leave two widows but it does not mean that he had no two wives rather he had left his two sons from his first wife. He has also drawn my attention towards Annexure R-1, which was also relied upon by the applicant. Learned counsel for the respondents has argued that the applicant has not shown any special circumstances about the second marriage of his father Saddulal.

6. After hearing the learned counsel for the parties and careful perusal of the record, I am of the opinion that the applicant's father Saddulal had married with two ladies i.e. Meera Bai and Smt. Prema Bai. The second marriage cannot be legalised under the Hindu Marriage Act as there is no provision for doing second marriage with another lady even with the consent of the first wife unless and until he gets divorced from his first wife. It is also wrongly mentioned in para no. 5.2 of the O.A. that there was no issues from the first wife of Saddulal as the applicant has himself mentioned that two sons, namely, Pramod and Pawan were born from the loins of his father and his first wife Smt. Meera Bai. I have perused the circular dated 2.1.1992 (Annexure R/2) relied upon on either side in which it is clearly mentioned that the appointment on compassionate ground to the second wife of the deceased employee and her children are not to be given unless the administration has permitted the second marriage in special circumstances taking into account the personal law etc. No such special circumstances are shown to me by the applicant. So far as personal law is concerned, one person can marry with even four women under Mohammeden Law. While the parties of the present O.A. are not Mohammeden but Saddulal being Hindu his marriage with any lady is governed by Hindu Law in which during life time one cannot marry with another lady unless he get divorced from his first legally wedded wife.

7. In view of the facts and circumstances of the cases and in view of the discussion made above, I am of



the view that this O.A. does not have any merit and the same deserves to be dismissed. The O.A. is accordingly dismissed with no order as to the costs.



(Madan Mohan)
Member (Judicial)

/na/

Filed
20.5.04

कृपया कृपया से जो/न्या.....जयलपुर, दि.....

सहित निम्नलिखित कार्य किया:-

(1) जयलपुर जेल के कारागार एडमिनिस्ट्रेशन, जयलपुर

(2) जयलपुर जेल के कारागार एडमिनिस्ट्रेशन, जयलपुर

(3) जयलपुर जेल के कारागार एडमिनिस्ट्रेशन, जयलपुर

(4) जयलपुर जेल के कारागार एडमिनिस्ट्रेशन, जयलपुर

सूचना एवं आवश्यक कार्यवाही हेतु

Bayamda
जुम रजिस्ट्रार 9.5.04

ML Verma
SP Sinha