

**CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH
ALLAHABAD**

Original Application No.330/00734 of 2015

Dated: This the 30th day of October 2018.

HON'BLE MR. RAKESH SAGAR JAIN, JUDICIAL MEMBER

Smt. Kamla Devi urf Kamala Devi aged about 35 years widow of late Lalit Ram Pal, Ex-Trackman, N.C. Railway, under SE (PW) I, Kanpur presently resident of C/o Sri Deonath Ram Pal, village Vijay Nagar, behind Khaga Railway Station, P.O. Khaga District Fatehpur.

.....Applicant

Versus.

By Advocate: Shri Sudama Ram

Versus

1. Union of India through the General Manager, North Central Railway, H.Q. Subedarganj, Allahabad.
2. General Manager, North Central Railway, H.Q. Subedarganj, Allahabad.
3. Divisional Railway Manager, North Central Railway, Allahabad.
4. ADEN, North Central Railway, Fatehpur.

.....Respondents

By Advocate: Shri L.M. Singh

ORDER

1. The reliefs sought by applicant Kamala Devi in the present O.A. are that :

1) The Hon'ble Tribunal may graciously be pleased to direct the respondent No.3 i.e. Divisional Railway Manager, North Central Railway, Allahabad to consider the compassionate ground appointment in favour of the widow-applicant early under the instructions of Railway Board contained in circular dated 30.4.1979 amended time to time.

- 2) Any other writ or direction which the Hon'ble Tribunal deem fit and proper in the circumstances of the case may also kindly be issued in the interest of justice.
 - 3) Cost of the application may also be awarded.
2. Applicant's case is that her husband Lalit Ram Pal was a railway employee and died during his service on 22.03.2014. Her husband had filed a divorce case against her and during the pendency of the case her father-in-law by coercion forced her to sign some documents. The divorce suit was withdrawn by her husband and therefore her marriage with deceased Lalit Ram Pal subsisted till his death. She filed an application with the respondents on 24.08.2014 followed with reminders for her appointment on compassionate grounds to which the respondents have not responded till date. Hence the present application for direction to the respondent No. 3 to consider her application for appointment on compassionate ground.
 3. In reply, it was submitted by the respondents that the applicant and deceased Lalit Ram Pal had mutually divorced by way of an affidavit dated 25.11.2008 (attached to the counter affidavit), therefore there is no occasion for consideration of her application. It be noted that the averment in O.A. that the applicant filed the application followed by reminders has not been specifically denied by the respondents.
 4. The question arises whether applicant is entitled to be considered by the respondents for appointment on compassionate grounds. I have heard and considered the arguments of the learned counsels for the parties and gone through the material on record.

5. Learned counsel for the applicant contended that a wife does not cease to be a wife till divorce is granted by a competent Court of law. He further contended that the respondents' reliance upon the divorce affidavit in holding that the applicant was the divorcee of deceased Lalit Ram Pal is not correct. For it is settled law that till the time a divorce is obtained by a decree of court, the applicant would have the status of being the lawful wife of deceased Lalit Ram Pal notwithstanding the affidavit.
6. On the other hand, learned counsel for the respondent submitted that the notarised divorce affidavit between the applicant and her deceased husband Lalit Ram Pal is a legal document which governs the status of the parties as being divorced, as such, the applicant has no right to be appointed on compassionate basis and the application be dismissed.
7. After hearing counsel on both sides, according to me, the following points arise for consideration is as to whether the divorce agreement between the applicant and her deceased husband Lalit Ram Pal gives rise to a lawful divorce keeping in view Section 13 of Hindu Marriage Act that a lawful divorce can only be evidenced by a Decree of the Court.
8. Learned counsel for the respondents submitted that in view of the fact that the divorce affidavit, the applicant should be deemed to have been divorced and that since the plaintiff was not the wife of Lalit Ram Pal at the time of his death, applicant has no locus standi for appointment on compassionate grounds.
9. This argument of respondents cannot be accepted. The wife continues to be the wife till the marital tie is broken by a

decree under the proceedings of the Hindu Marriage Act. Any transaction or any document showing a divorce cannot be accepted in the eye of law unless a decree is granted under the Hindu Marriage Act (here the parties are Hindus). Even if the husband and wife executed a document stating that their marital tie is broken, that will not be a valid document in the eye of law to show that the parties have dissolved the marriage. Divorce has to be obtained in accordance with the procedure under the Hindu Marriage Act which gives opportunities to both husband and wife to get a divorce by joint petition. Further, under Section 13B(2) of the Act, divorce can be granted only with effect from the date of decree. In this case, there is no decree for divorce granted by the Court. Hence, the applicant continues to be the wife of deceased Lalit Ram Pal in spite of the steps taken for divorce by way of an agreement.

10. Keeping in view the facts and circumstances of the case and that the applicant continues to be wife of deceased Lalit Ram Pal, respondent No. 3 is directed to consider the application for appointment on compassionate ground due to the death of her husband Lalit Ram Pal while in service. The exercise shall be completed by respondents within a period of three months with information to the applicant. O.A. is disposed off accordingly. No orders as to costs.

(Rakesh Sagar Jain)
Member (J)

Manish/-