

Reserved on 19.3.2018

Central Administrative Tribunal, Allahabad Bench,
Allahabad

Original Application No.330/01470/2016

Pronounced on 23rd day of March, 2018

Hon'ble Mr. Justice Dinesh Gupta, Member (J)

1. Smt. Jai Shree aged about 53 years wife of late Mahaveer Urf Mahaveer Singh r/o village- Tundli,P.O. Tundla,District-Firozabad.

2. Dharmveer Urf Dharmveer Singh son of late Mahaveer Urf Mahaveer Singh r/o village- Tundli,P.O. Tundla,District-Firozabad.

Applicants

By Advocate: **Sri S. Ram**

Versus

1. Union of India through the General Manager,N.C. Railway, Headquarter Office, Subedarganj, Allahabad.

2. Divisional Railway Manager, N.C. Railway,DRM's office, Allahabad.

3. Assistant Personnel Officer, NC.Railway, DRM's office, Allahabad.

4. Shri Sanjay Kumar Srivastava, Sr.Welfare Inspector, P.Branch,DRM's office,Allahabad-211001.

5. Smt. Maya Devi wife of Sri Amrit Lal H.No.19, Gari Goptal/ Gari Misri Ahata Anek Singh/ Chulhawali/ Tundla, District- Firozabad

Respondents

By Advocate: **Sri D. Tiwari for Sri R.K. Rai**

By Hon'ble Mr. Justice Dinesh Gupta, Member (J)

The applicant has filed the present O.A. under Section 19 of the AT Act with the following reliefs:-

i) The Hon'ble Tribunal may graciously be pleased to quash and set aside the impugned order dated 25.12.2015 passed by the Assistant Personnel Officer, N.C.Railway, Allahabad (Annexure A-1) and direct the

respondents to consider appointment of applicant No.2 as his mother has been granted family pension and other settlement dues by the same respondents treated as a legally wedded wife of late Mahaveer ex-Railway employee as per rules.

ii) Any other suitable order or direction which this Hon'ble Tribunal may deem fit and proper in the circumstances of the case, be issued.

iii) Award cost in favour of the applicant.

2. The brief facts emerging from the O.A. are that the applicant No. 1 had married with Sri Shambhoo Shanker Ex-Booking Clerk/ Northern Railway , Kanpur who died on 4.7.1983 and applicant was sanctioned family pension.

2.1 Applicant No. 1 was re-married with Sri Mahabir Urf Mahaveer Singh Khalso under Section Engineer (Works) N.C. Railway, Tundla and after re-marriage and husband of the applicant had informed the Railway Administration about re-marriage with the applicant No. 1 and name of applicant No. 1 is legally wedded wife of Sri Mahabir was recorded in Railway records along with her two sons namely Dharmveer and Sunit Kumar and three daughters.

2.2 Husband of the applicant Sri Mahaveer also died on 9.2.2012 and after death of Mahaveer, applicant applied for family pension when no pension was granted,

applicant filed O.A. No.259/2013 and the same was finally decided on 25.4.2014 and in compliance of order of this Tribunal, the applicant is getting pension continuously.

2.3 Applicant No.1 again applied for compassionate appointment of her eldest son namely Dharamveer on 27.10.2015 but the Assistant Personnel Officer, DRM's office, North Central Railway, Allahabad vide order dated 25.12.2015 (Annexure A-1) rejected the claim of applicant for appointment on compassionate ground.

3. Notices were issued to the respondents who in turn filed the counter reply through which it is stated that as per report of Welfare Inspector, Smt. Maya Devi was the first wife of late Mahaveer and she deserted to late Mahaveer without any legal divorce. Smt. Jai Shree was the wife of late Shambhoo Shankar and got re-marriage with late Mahaveer who had neither taken legal divorce from his first wife nor taken permission from Railway Administration for re-marriage with the applicant No.1. So the marriage of late Mahaveer with applicant No. 1 is illegal and not valid. It is further submitted that as per Tribunal's order PPO for family pension was issued in favour of applicant No. 1 and all retiral dues has also been issued in favour of applicant No. 1. It is further submitted that as per law, after divorce from the first wife, second wife would be the legal wife of deceased. It

is further submitted that as per Railway Board's letter dated 2.1.1992, it is clarified that in case of Railway employees dying in harness 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, appointment on compassionate ground to the second wife and her children are not to be considered unless the administration has permitted the second marriage in special circumstances. Since the husband of applicant has not taken permission from Railway Administration for second marriage, marriage was not legal. No doubt applicant No. 1 is the second wife of deceased employee, therefore, her claim for appointment on compassionate ground in favour of her son is not feasible.

4. Rejoinder reply is filed by the applicant through which he has reiterated the facts as stated by him in the O.A. and denied the contents of counter reply.

5. Heard learned counsel for applicant Sri S. Ram and learned counsel for respondents Sri D. Tiwari proxy for Sri R.K. Rai.

6. Counsel for applicant stated that applicant No. 1 is the legally wedded second wife of late Mahaveer and during his service, late Mahaveer has given information to the respondents department regarding his second marriage and respondents at that time without any

objection has entered the name of applicant No. 1 along with his two sons and three daughters in the service record of late Mahaveer. It is also not disputed that court has directed for release of pension in favour of the applicant No.1 and all the retiral dues has also been paid to applicant No. 1. As such her son is also entitled for appointment on compassionate ground.

7. Learned counsel for applicant has relied upon the judgment of Hon'ble Supreme Court in the case of **Rameshwari Devi vs. State of Bihar & Ors., reported in 2000(2) SCC 431.**

8. Counsel for respondents submitted that applicant has never taken permission from the Railway Administration for re-marriage as such appointment cannot be given to the applicant No.2 on compassionate ground. Counsel for respondents have referred the Railway Board Circular dated 2.1.1992 and stated that this circular clarified that appointment on compassionate ground cannot be given to the son of second wife.

9. The Court is unable to accept the contentions raised by the learned counsel for the respondents.

10. So far as appointment of son of second wife is concerned, the controversy has already been settled by the Hon'ble Apex Court.

11. The Hon'ble Calcutta High Court has also decided the similar issue in the case of **Smt. Namita Golder & Anr vs Union Of India & Ors decided on 14 July, 2010** following the judgment of Hon'ble Supreme Court in the case of **Rameshwari Devi vs. State of Bihar & Ors., reported in 2000(2) SCC 431**, by holding that the children of the second wife cannot be treated as illegitimate. Hon'ble High Court of Calcutta in the case of **Smt. Namita Golder & Anr. Vs. UOI & Ors in W.P.C.T. 102 of 2010** has held as under:-

"The claim of the petitioner no. 3 for appointment on compassionate ground being the son of the second wife cannot be rejected on the basis of the circular issued by the Railway Board on 2nd January, 1992 since this Court while deciding the aforesaid case of Smt. Namita Golder & Anr. (supra) already quashed the said circular issued by the Railway Board on 2nd January, 1992 to the extent it prevents the children of the second wife from being considered for appointment on compassionate ground.

For the reasons discussed hereinabove, we are also of the opinion that the respondent authorities herein were not justified in rejecting the prayer of the petitioner no. 3 for compassionate appointment on the ground that the said petitioner No. 3 is the son of the second wife. Therefore, the decision of the respondent authorities as was communicated to the petitioner no. 1 by the written communication dated 20th August, 2007 cannot be sustained and the same is accordingly quashed."

12. The Hon'ble High Court of Allahabad in **Writ Petition A No.51707 of 2015 (Union of India and 3**

others Vs. Amit Kashyap and 2 others) decided on **14.11.2017** observed that claim of applicant has been rejected in view of circular of Railway Board dated 2.1.1992 which provides that second wife and children born through her would not be permitted to claim compassionate appointment unless the second marriage is after permission from railway authorities. It is further observed that admittedly, in the present case, second marriage of the deceased employee was accepted by the first wife since she never challenged the second marriage and did not even lodge any complaint before the railway authorities for taking appropriate action against the said deceased employee for contracting second marriage, we have no hesitation in accepting that the second marriage of the deceased employee was upon obtaining specific consent from the first wife.

13. Since the question of giving appointment to the son of second wife has already been settled and respondents vide impugned order have rejected the claim of the applicant only on the sole ground that Railway Board circular dated 2.1.1992 clearly provides that son of second wife is not eligible for compassionate appointment and failed to consider the case of the applicant on the observations made by the Hon'ble Apex Court as well as by the Hon'ble High Court, as such order dated 25.12.2015 is quashed and respondents are

directed to reconsider the case of applicant for appointment on compassionate ground on merit taking into consideration that the applicant is also eligible for compassionate appointment. No order as to costs.

(Justice Dinesh Gupta)
Member (J)

HLS/-

