

Central Administrative Tribunal Principal Bench, New Delhi

O.A.No.480/2015

Order reserved on 30th January 2018

Order pronounced on 12th March 2018

Hon'ble Mr. K.N. Shrivastava, Member (A)

Pan bai w/o late Sh. Jayo, (Age 43 years)

Ex. Post : Gangman/Trackman

r/o H.No.759, Leelawati House

Railway Road near Eastern India Chemical Pvt. Ltd. Village

Sahibabad, PO Jhandapur

Distt. Ghaziabad, UP

..Applicant

(Ms. Krishma Singh, Advocate for Mr. Umesh Singh, Advocate)

Versus

1. Union of India through the General Manager
Northern Railway,
Baroda House, New Delhi

2. Divisional Personnel Officer
DRM Office, New Delhi

..Respondents

(Mr. S M Arif, Advocate)

ORDER

Through the medium of this O.A. filed under Section 19 of the Administrative Tribunals Act, 1985, the applicant has prayed for the following main reliefs:-

“a. Pass an order thereby declaring the Impugned order the officer order no. APP/CG/16958/CG Cell/P Dated 23.09.2014 whereby the application of the applicant for compassionate Ground appointment for herself has been rejected by the Respondent on the baseless ground is illegal, invalid, arbitrary and violative of the Art. 14 and 16 of the constitution of India and also contrary to the rules and set aside the same.

b. Pass an order thereby directing the respondents to give the employment to the applicant on compassionate ground.”

2. The factual matrix of the case, as noticed from the records, is as under:-

2.1 The applicant claims that she was married to late Mr. Jayo on 20.10.1998 after the death of his first wife, Mrs. Kuntla on 11.04.1998. It is stated that Mr. Jayo, who was working as a Gangman/Trackman in the respondent-Railway Department, died in harness on 13.10.2011 in a rail accident. The applicant and her late husband were not literate and their marriage was solemnized at her village as a simple marriage due to the reason that her husband was a widower and hence no proof of marriage or photographs were prepared.

2.2 At the time of their marriage, her husband Mr. Jayo and the applicant were not having any spouse and as such their marriage was not performed in violation of Hindu Marriage Act, 1955. It is stated that the requirements of Section 5 of said Act were fully met with at the time of solemnization of the marriage of the applicant with her late husband, Mr. Jayo.

2.3 The applicant has stated that her late husband, Mr. Jayo had two daughters, viz. Savitri and Satyawati from his first wife and that she has three daughters and a son from him, who all are minors.

2.4 The applicant applied for compassionate appointment for herself, which was rejected by the respondents vide Annexure AA dated 23.09.2014 stating, *inter alia*, therein as under:-

“Sh. Jayo in his declaration for Pass/P.T.O. for the year 2011 has declared the name of Smt. Kuntla as his wife and not yours despite the fact that his wife has already expired on 1.04.1998 as claimed by you.

Neither you have submitted any proof of your marriage with Sh. Jayo or any other proof for the period 1998 i.e. year of your marriage on 13.10.2011 D.O.D. of Sh. Jayo which prove that you are the wife of Sh. Jayo. Moreover, Adhar Card and Voter ID which has the name of Sh. Jayo as your husband all have been issued in the year 2014 which is after the death of ex-employee. As such it is not established whether you are the legal wife of Late Sh. Jayo. Moreover, CGA to second wife is not permissible as per extent rules.”

Aggrieved by the impugned communication, the applicant has filed the instant O.A. praying for the reliefs as indicated in paragraph (1) above.

3. The applicant has raised the following important grounds in support of her claims:

3.1 The applicant is legally wedded wife of deceased employee, Mr. Jayo and their marriage was solemnized in accordance with Hindu Marriage Act, 1955 and conditions prescribed in Section 5 of the said Act were fully met with.

3.2 The saving bank account No.31912717614 in State Bank of India at Farang, Orissa is a joint account of the applicant and her late husband, Mr. Jayo and was opened for the purpose of receiving retiral benefits. A joint photograph of the applicant and her late husband as also the certificate issued by the Gram Panchayat Farang, their children's photograph, Aadhaar card, succession certificate, death certificate of Mrs. Kuntla, first wife of late Mr. Jayo, etc. were submitted to the bank.

3.3 Her husband may not have informed the Department of his second marriage, for which the applicant cannot be faulted upon. The fact that the applicant has borne four children from her late husband is not in dispute.

4. Pursuant to the notices issued, the respondents entered appearance and filed their counter reply, in which they have made the following important averments:-

4.1 The death certificate of Mrs. Kuntla, first wife of late Mr. Jayo, was issued on 16.05.2012, i.e., after the death of Mr. Jayo on 13.10.2011.

4.2 No proof of applicant's marriage with late Mr. Jayo has been presented nor has the deceased ever informed the Department of his second marriage with the applicant till he breathed last on 13.10.2011.

4.3 Aadhaar card and voter ID of the applicant, which carry the name of late Mr. Jayo as her husband, have all been issued in the year 2014, i.e., after the death of Mr. Jayo.

4.4 Late Mr. Jayo had declared Mrs. Kuntla as his wife in his nomination for death-cum-retirement gratuity and insurance policy in the year 1999. Even in his Pass/PTO in the year 2011, Mr. Jayo has declared Mrs. Kuntla as his wife and not the applicant.

4.5 In terms of Railway Board's letter dated 02.01.1992, in case railway employee dying in harness leaving behind more than one widow/wife along with children from the second wife, then the settlement dues may be shared by both the widows as per Court's orders.

4.6 Mrs. Kuntla was alive as per the declaration submitted by late Mr. Jayo in the years 1999 and 2011, which would go to show that he might have married the applicant in 1998 without divorcing his first wife. Hence the compassionate appointment to deceased's second wife or her wards are not to be considered as per the Railway Board's instructions.

5. The applicant has filed a rejoinder to the reply filed on behalf of the respondents and as also an additional affidavit. In addition to the averments in the O.A., it is stated in these documents that the applicant was given direction by the official respondents to submit succession certificate, which was duly obtained from the competent civil court and submitted to the respondents vide letter dated 25.07.2013.

6. On completion of pleadings, the case was taken up for hearing the arguments of learned counsel for the parties on 30.01.2018. Arguments of Ms. Krishma Singh, learned proxy counsel for applicant and that of Mr. S M Arif, learned counsel for respondents were heard.

7. Learned proxy counsel for applicant drew my attention to Annexure A-6 (colly.) succession certificate issued by the Court of Mr. Sanjeev Kr. Singh, ACJ cum ARC (Central) Delhi, Tis Hazari Courts declaring therein that the applicant is entitled to receive 3/7th share in the debts and securities of late Mr. Jayo. This document would go to indicate that the applicant is second wife of late Mr. Jayo and thus entitled for the compassionate appointment.

8. The learned counsel drew my attention to Annexure A-7 Pension Paper Order (PPO) by virtue of which family pension has been sanctioned

by the respondent - Railway Department to her, which also notes that the applicant is wife of late Mr. Jayo. She further stated that in the Aadhaar card issued to her by the Unique Identification Authority of India (UIAI), her husband's name has been mentioned as Mr. Jayo.

9. *Per contra*, Mr. S M Arif, learned counsel for respondents argued that late Mr. Jayo had never declared the applicant as his wife, nor has he nominated her to receive death-cum-retirement gratuity and other retiral benefits. He vehemently argued that all the documents relied upon by the applicant have been created after the death of late Mr. Jayo on 13.10.2011.

10. I have considered the arguments of both the parties and have also perused the records.

11. The most credible document, which I would like to refer, is Annexure A-7, which is a PPO sanctioning family pension to the applicant. The respondent-Railway Department would not have granted the family pension to the applicant unless it was satisfied that she was indeed the second wife of late Mr. Jayo. The respondents have not produced any document or inquiry report to rebut the contentions of the applicant and the documents produced by her to the effect that she is legally wedded second wife of late Mr. Jayo. Needles to mention that all Hindu couples, particularly those illiterate / semi literate residing in the countryside, do not get the marriages registered. Many of such couples do not have the resources to print marriage invitation cards or to cover their marriage ceremonies through photographs. The applicant has submitted documents like, Aadhaar card, certificate of Gram Panchayat Farang, succession

certificate issued by competent civil court and the death certificate of first wife of late Mr. Jayo, etc.

12. Taking all these documents into consideration as also Annexure A-7 PPO issued by the respondents, I am *prima facie* convinced that the applicant is the second wife of late Mr. Jayo and is entitled for claiming compassionate appointment. Regarding contention of the respondents that as late as in the year 2011 in his declaration submitted to the Department, late Mr. Jayo had not declared that the applicant is his second wife and had continued with the name of his first wife, Mrs. Kuntla, as his wife, suffice to say that late Mr. Jayo, being an illiterate person might have continued to sign the same declaration that he had submitted earlier, and hence not much credence is required to be attached to his declaration of the year 2011.

13. As noticed hereinabove, the succession certificate issued by the civil court and Annexure A-7 PPO issued by the respondents are sufficient documents to *prima facie* establish that the applicant is second wife of late Mr. Jayo. The applicant has also produced a death certificate issued by the Municipal Corporation of Delhi dated 16.05.2012 (Annexure A-3), which would indicate that the first wife of late Mr. Jayo, namely, Mrs. Kuntla died on 11.04.1998. This document has to be relied upon, as its authenticity has not been questioned by anyone.

14. In the conspectus of discussions in the foregoing paragraphs, I am of the view that the documents placed on record clearly establish that the applicant is second wife of late Mr. Jayo and they were married on 20.10.1998 after the death of Mr. Jayo's first wife, Mrs. Kuntla on

11.04.1998. Accordingly, I hold that the applicant is entitled to claim compassionate appointment in the railway department.

15. I, therefore, direct the respondents to consider the claim of the applicant for compassionate appointment in accordance with the extant rules and regulations. The O.A. stands allowed. No order as to costs.

(K.N. Shrivastava)
Member (A)

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