

Central Administrative Tribunal
Principal Bench: New Delhi

OA No.1052/2017

New Delhi, this the 6th day of April, 2018

Hon'ble Mr. Uday Kumar Varma, Member (A)

Rohit Chand, Age about 29 years Group "C"
S/o Late Shri Prem Chand,
R/o H.No. 17, P-7, Block,
Mangol Puri,
New Delhi.

...Applicant

(By Advocate: Sh. Gaya Prasad)

Versus

1. Union of India through
General Manager,
Northern Railways, Baroda House,
New Delhi.
2. Divisional Railway Manager,
Delhi Division, Northern Railways,
State Entry Road,
New Delhi.
3. Sr. Divisional Personal Officer,
Delhi Division, Northern Railways,
State Entry Road,
New Delhi.

...Respondents

(By Advocate: Sh. Shailendra Tiwari)

ORDER (Oral)

This Original Application has been filed by the applicant seeking to quash and set aside the impugned order dated 31.08.2016 (Annexure A-1) by virtue of which his case for consideration of appointment on compassionate ground has been rejected in terms of Railway Board Instructions dated 02.01.1992.

2. Brief facts of the case are that the applicant's father Prem Chand s/o Babu Lal, who was working as Parcel Porter in Group 'D' category in Northern Railway at New Delhi Railway Station, died in harness on 08.06.2010 leaving behind him the applicant and his widowed mother Mrs. Prabha Devi in destitute condition. The applicant belongs to SC category and has passed 12th standard, he is, therefore, entitled to be considered for appointment to a suitable Group-C post on compassionate ground. He, therefore, submitted various representations i.e. 05.01.2011, 08.05.2012, 14.09.2012, 21.02.2015 and 16.02.2015 to the respondents for appointment on compassionate ground enclosing therewith all the requisite documents but could not get a favourable response. Aggrieved, the applicant filed OA No.1086/2015, which was disposed of by the Tribunal vide order dated 14.07.2016 with a direction to the respondents to dispose of the representation dated 16.02.2015 made by the applicant for appointment on compassionate ground. The respondents, however, rejected the representation of the application vide order dated 31.08.2016 on the ground that the deceased employee was found to be survived with two wives namely Mrs. Kasturi Devi, 1st wife, and Smt. Prabha Devi, 2nd wife without getting divorce from the 1st wife. Therefore, in

terms of Railway Board letter dated 02.01.1992, appointment on compassionate ground to the 2nd wife or her children is not to be considered unless the administration has permitted the second marriage in special circumstances taking into account the personal law etc. The applicant further submits that the factum of relationship of the applicant and his mother with the deceased employee is established from the Ration Card No.APL24150529 issued on 25.04.2007 by the Civil Supply Officer. The applicant also contends that his mother got legally married with the deceased employee 30 years back whereas so called Kasturi Devi never got married to the deceased employee. It is further submitted that the deceased employee never availed any of the facilities e.g. privilege passes and ethical facilities in favour of any other person other than the applicant and his mother. It is the contention of the applicant that when despite producing a succession certificate from the court of Administrative Civil Judge, Rohini Court, Delhi, the respondents refused to grant pension and other retiral benefits, she filed TA No. 66/2013, which was allowed by the Tribunal vide order dated 28.07.2014 with the following directions:-

“9. In view of the above facts and circumstances of the case, we allow this OA and direct the Respondent No.2 to settle the Applicants claims for pension and all other terminal benefits on the basis

of the Succession Certificate produced by her within a period of 2 months from the date of receipt of a copy of this order. For the avoidable delay caused by Respondent No.2, it is also liable to pay interest at the rate of 10% to the Applicant on all the dues from the date of issuance of the Succession Certificate, i.e., 08.02.2012. In the above facts and circumstances of the case, the Applicant is also entitled for a cost of Rs.10,000/- (Rupees ten thousand only) towards litigation expenses which shall also be paid to her within the aforesaid period. Later, the Respondent No.2 may recover the said amount from the concerned officer(s) who is/are responsible for not making the payments to the Applicant despite the production of Succession Certificate.”

3. The applicant, therefore, submits that he is entitled for a suitable job on compassionate ground being the son of the deceased employee, but the above request of the applicant was turned down by the respondents vide order dated 31.08.2015 reciting therein that as per the Railway Board's letter No.E(NG.ii/91)/RC-1/135 dated 02.01.1992, the appointment on compassionate ground to second widow and her children is not to be considered, which is illegal, arbitrary and against the principles of natural justice.

4. The respondents have filed their written statement denying the averments of the applicant made in the OA. The respondents have submitted that after the death of ex-employee Smt. Prabha Devi approached the administration for settlement of dues and compassionate appointment for her son Rohit (applicant herein). It is further submitted that during the enquiry it was found that ex-employee

survived with two wives namely Smt. Kasturi Devi, 1st wife and Smt. Prabha Devi 2nd wife. Sh. Prem Chand started living with 2nd wife Smt. Prabha Devi without getting divorce from the 1st wife. The respondents submit that the deceased employee never informed about the second marriage with Smt. Prabha Devi to the administration whereas the name of his first wife exists in pass declaration and PF nomination. However, the respondents admitted that in the medical card and ration card, name of second wife Smt. Prabha Devi exists. The respondents also submit that brother and sister of deceased employee informed the administration that Smt. Kasturi Devi is the wife of their brother Prem Chand and Smt. Prabha Devi is impersonating as his wife. The respondents have also admitted that on production of succession certificate payment of settlement of dues have been made in favour of Smt. Prabha Devi, mother of the applicant, but the claim of the applicant, respondents contend, for appointment on compassionate ground was rightly rejected in accordance with Railway Board instructions dated 02.01.1992 which provides that appointment on compassionate ground to the 2nd wife or her children is not to be considered unless the administration has permitted the second marriage in special circumstances taking into account the personal law

etc. The contents of Railway Board's letter dated 02.01.1992, relied upon by the respondents, reads thus:-

“that in case of railway employee dying in harness etc. having more than one widow along with children born to 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 CG to second widow & 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.

The fact that the second marriage is not permissible is invariable clarified in the terms and conditions advised in the offer of initial appointment.

This may be kept in view and the cases for compassionate appointment to the second widow or her wards need not be forwarded to the Railway Board.”

5. The main objection raised by the respondents is that in terms of Railway Board Instructions dated 02.01.1992, compassionate appointment cannot be considered for the applicant. In this regard, the applicant has relied upon the decision of coordinate Bench of this Tribunal in a similar case titled as **Subhash Singh vs. Northern Railways through General Manager** [OA No.287/2003 decided on 01.09.2006]. In that case also, the applicant, who was an issue from the second wedlock of the ex-employee, was denied appointment on compassionate ground vide order dated 26.08.2002 in view of Railway Board's letter dated 02.01.1992. The Tribunal having discussed the matter in detail declared the aforesaid letter as not sustainable in law and allowed the OA by quashing the impugned order of

rejection of applicant's request for compassionate appointment. The order further directed the respondents to consider applicant's request for appointment on compassionate grounds by passing speaking orders within a period of two months from the date of receipt of the order.

6. In yet another decision of coordinate Bench of this Tribunal at Ahmedabad in the case of **Mr. Imran Ali Saiyed vs. Union of India & Anr.** [OA No.473/2014 decided on 18.03.2015], wherein the applicant was a son born to the deceased employee out of the second marriage and he was denied appointment on compassionate appointment on the basis of Railway Board Circular dated 02.01.1992. The Tribunal framed the following question to determine the controversy involved in the OA:-

“Whether the instructions of the Railway Board in its letter dated 02.01.1992 directing the General Managers of the Railways that appointment on compassionate ground to the second widow and her children are not to be considered in absence of the permission of the railways for the second marriage is sustainable?”

In the above OA also, the Tribunal held that Circular dated 02.01.1992 insofar as it directs 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 in special circumstances, taking into account of personal law etc. is

not at all sustainable in law. We deem it appropriate to extract the relevant portion of the decision, which reads as under:-

“9. Shri M.J.Patel argued that the applicant is the son of the deceased railway employee through his second marriage and as such in terms of the instructions contained in the said letter of the Railways dated 02-1-1992, unless it is proved by the applicant that the marriage between his father and mother was with the prior permission of the Railway Administration, he is not entitled to claim appointment on compassionate grounds. In view of this contention the moot point is whether the failure on the part of the deceased Railway servant to obtain permission for second marriage disentitles a dependant of a Railway employee who died in harness to claim appointment on compassionate grounds. While proceeding to answer to this point, one cannot afford to lose sight of the fact that the respondents do not deny the fact that the applicant’s mother was married to the deceased employee. On the other hand, the specific contention of the respondents is that the marriage of the mother of the applicant and his father is not with the prior permission of the Railway Administration. In my opinion, whether the marriage between his father and mother was with the prior permission of the Railways or without the permission of the Railways cannot have any relevance to consider the claim of the applicant for appointment on compassionate grounds. I may observe that a railway servant marrying for the second time without the permission of the Railway Administration may be a violation of the Conduct Rules. The deceased Railway Servant was a person who professed his faith in Islam. His personal law does not prohibit second marriage even during the life time of a living spouse. The failure to obtain the permission does not invalidate the marriage. Therefore, the conduct of a railway servant marrying for the second time without the permission of the Railway Administration may be ground to initiate disciplinary action against such a railway servant, but the same cannot be the ground to refuse the claim of a dependant of a railway servant born out of his second marriage. It is not shown that any disciplinary action is initiated against the deceased for violation of the Conduct Rules i.e. failure to obtain permission for the second marriage. Since the deceased was a Mohammedan and as per his personal law all his children are legitimate children irrespective of the marriage through which they are begotten unlike the children born to a person who is governed under the provisions of Hindu Marriage Act, 1955 as it stood before the year 1976. It is not only

clear but also admitted that the marriage between the deceased and the mother of the applicant is valid. The concept of legitimate child and illegitimate child is alien to Mohammedan law. Then why should he be made to suffer for the mistake/ misconduct committed by the deceased? Is there any logic behind the instruction contained in the letter dated 02-1-1992? Does it stand to any legal reasoning? In my opinion, no man of ordinary prudence will be in agreement with the letter. Even if for any reason it were to be argued that children have some pious obligation, such obligation is only towards the civil liability and no law recognizes discharging the liability of undergoing punishment. Therefore, the letter dated 02-1-1992 in so far as it directs 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 in special circumstances, taking into account of personal law etc. is not at all sustainable in law. Consequently, the applicant cannot be denied compassionate appointment on the ground that the marriage between his parents was without permission and such a denial will defeat the very purpose and object of providing compassionate appointment to the dependant of a deceased employee.

10. What is the purpose and object behind a Scheme which provides for appointment on compassionate ground? Article 16 of the Constitution bars discrimination in employment on the ground of descent. Employment should not be hereditary or by succession. But, when the policy provides for compassionate appointment in the case of an employee dies in harness, such a provision is based on a classification which is based on the condition i.e. death of an employee in harness in addition to the ground of descent. The Hon'ble Supreme Court had number of occasions to consider the purpose and object of the recognized exceptions to the rule that appointment in public service should be made strictly on the basis of open invitation of application and merit and that no other mode of appointments nor any other consideration is permissible."

The Tribunal further considered various decisions of the Hon'ble Apex Court in **Umesh Kumar vs. State of Haryana** [1994 (4) SCC 138]; **Haryana State Electricity Board vs. Hakim Singh** [1997 (8) SCC 85]; **Director of Education (Secondary) vs. Pushpendra Kumar** [1998 (5)

SCC 192] and **State of Haryana vs. Ankur Gupta** [2003 (7) SCC 704] in paragraph nos. 11, 12, 13 & 14 of the order and held that the instructions contained in the letter dated 01.01.1992 has no nexus with that of the object sought to be achieved, the object being to give succor to the family of an employee who died in harness. The operative part of the order reads as under:-

“15. The object and purpose of compassionate appointment are not only well recognized by the Hon’ble Supreme Court. But, it is being reiterated by the Honble Supreme Court time and again. The cases referred to at paragraph nos. 11, 12, 13 and 14 above demonstrate that the instruction contained in the letter dated 02-1-1992 has no nexus with that of the object sought to be achieved, the object being to give succour to the family of an employee who died in harness. The reason for rejection of the request of the applicant is one of the misconduct on the part of the deceased railway servant, if it is established. But, that cannot be a ground to reject the request of his dependants and as such if the contention of the respondents were to be accepted, the same will defeat the well recognized purpose and object of the Scheme which provides for compassionate appointment. Therefore, I hold that the reasons assigned by the respondents in the impugned communication bearing no.E/Con/890/60/07/94 dated 11-7-2012 vide Annexure A/1 is not sustainable in the eyes of law and consequently, I have no hesitation to quash it. Accordingly, the same is quashed. The respondents are directed to consider the claim of the applicant on compassionate grounds in accordance with the Scheme which provides for compassionate appointment and in the process if it is found that the applicant is, thus eligible in all other aspects, then to appoint him on compassionate grounds in a suitable available post. In case, if it is found that there are some other impediments, the same may be communicated to the applicant by passing a reasoned order. The whole exercise shall be completed within three months from the date of receipt of a copy of this order.

16. With the above observations and directions, the O.A. is allowed. There shall be no order as to costs.”

7. Perusal of the decision of the Coordinate Bench in ***Subhash Singh vs. Northern Railways through General Manager*** (supra) and in ***Mr. Imran Ali Saiyed vs. Union of India & Anr.*** (supra) clearly reveals that the Railway Board's letter dated 02.01.1992 insofar as it directs 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 in special circumstances, taking into account personal law etc. is not at all sustainable in law. The respondents have not been able to produce any document to show that decisions of the Tribunal holding the Railway Board's letter dated 02.01.1992 not sustainable in law have been reversed by any superior court.

8. Taking the ratio of the decisions, referred to above, into consideration, this Tribunal has recently allowed the similar and identical claim in the case of ***Smt. Nanda Devi vs. Union of India & Ors.*** [OA No.1931/2016 decided on 20.03.2018].

9. Given the nature of facts and circumstances of the case, I am of the considered opinion that rejection of the applicant's request for compassionate appointment on the ground that as per Railway Board's letter dated 02.01.1992

second widow of the deceased employee cannot be considered for compassionate appointment is misconceived and not justifiable. In this view of the matter, the present OA is allowed and the impugned order dated 31.08.2016 is quashed and set aside. The respondents are directed to consider the case of the applicant for appointment on compassionate ground under the rules framed for compassionate appointment within a period of four months from the date a certified copy of this order is received by the respondents. The applicant may be informed about the outcome of this consideration as directed above immediately thereafter. No costs.

(Uday Kumar Varma)
Member (A)

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