

Central Administrative Tribunal
Principal Bench: New Delhi

OA No.1931/2016

Reserved on: 08.03.2018
Pronounced on:20.03.2018

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

Smt. Nanda Devi, 36 years
Wd/o late Sh. Shankar Singh,
(Ex. Jr. Clerk, Claims, NDCR)
M-548, Shakurpur, J.J. Colony,
Near Mother Dairy,
New Delhi – 110 034.

...Applicant

(By Advocate: Sh. S.R. Jolly)

Versus

1. Union of India through
General Manager,
Northern Railways, Hqrs. Office,
Baroda House, New Delhi.
2. The Chief Claims Officer,
Northern Railways, Claims Office,
NDCR Building, State Entry Road,
New Delhi.
3. The Chief Personnel Officer,
Northern Railway, Hqrs. Office,
Baroda House, New Delhi.

...Respondents

(By Advocate: Sh. A.K. Shrivastava)

O R D E R

This Original Application has been filed by the applicant seeking to quash impugned orders dated 06.11.2015 (Annexure A-1) and order dated 02.01.1992 (Annexure A-2) by virtue of which she, being the widow of the deceased employee- who was working as Junior Clerk with the respondent department, has been denied consideration for appointment on any suitable post on

compassionate ground. The applicant has also sought a direction to the respondents to consider and provide her a suitable appointment on compassionate ground.

2. Brief facts of the case are that the applicant is legally wedded wife of the deceased employee and she lived with her husband in Railway Qr.No.39, D-4, Punjabi Bagh, Railway Colony allotted to him, till his last breath. It is the contention of the applicant that out of the wedlock, the applicant gave birth to a baby (female) in Northern Railway Hospital, New Delhi, and in the records, the name of the deceased employee was entered as her father and the applicant as mother. She also submits that Election Card issued in her name also depicts the name of the deceased as her husband showing the address i.e. Railway Qtr. No.39, D-4, Railway Colony, Punjabi Bagh, New Delhi where she was residing with him. It is further submitted that acknowledging her the legally wedded wife of the deceased, she was granted certain facilities like privilege passes and in the Medical Card issued to the deceased, her name was also entered as his wife.

3. The applicant further submits that since, after the sudden demise of her husband on 29.03.2002, it became difficult for her and her daughter to meet both ends, she requested the respondents for releasing her pension,

pensionary benefit with a further claim of a suitable appointment on compassionate ground. She was verbally told by the respondents to produce a succession certificate and accordingly she along with her daughter filed a Succession Case No.440/2003 before the court of Sh. Sanjeev Kumar Singh, Administrative Civil Judge-cum-Additional Rent Controller (Central): Delhi impleading the railway authorities as respondent no.2, which was allowed vide order dated 19.02.2013 by the court of Sh. Sanjeev Kumar Singh, Administrative Civil Judge-cum-Additional Rent Controller (Central): Delhi declaring that the petitioners are the only legal heirs of the deceased and petitioner no.1 (applicant herein) is a legally wedded wife and Ms. Rashmi is daughter of late Sh. Shankar Singh. It is the contention of the applicant that the respondents did not raise any objection to the applicant being second widow of the deceased before the Court. It is further submitted that after submission of the Succession Certificate, the respondents released the outstanding dues of the deceased employee including pensionary benefits to her without raising any objection. However, her request for providing a suitable job on compassionate ground was turned down by the respondents vide order dated 06.11.2015 reciting therein that as per the Railway Board's

letter No.E(NG.ii/91)/RC-1/135 dated 02.01.1992 and No.E(NG)ii/2012/RC-1/21 dated 03.04.2013 circulated in this office letter's letter No.E-33/0/ix/Policy/CG dated 11.04.2013 in (PS No.14042/2013), the appointment on compassionate ground to second widow and her children are not to be considered.

4. The applicant submits that after submitting several documents in proof of her being legally wedded wife of the deceased i.e. election card, medical card, parentage of her daughter and the required succession certificate from the competent court of law, she should not have been denied the appointment on compassionate ground only on account of her being second widow. She also submitted that none, except her and her daughter, is claimant of the outstanding dues of the deceased employee, which have also been released to her. The applicant, in this view of the matter, submits that the instant OA deserves to be allowed with a direction to the respondents to consider her case for compassionate appointment.

5. The respondents have filed their written statement denying the averments of the applicant made in the OA. The respondents have submitted that the applicant is the second wife of ex-employee that too without any legal proof of divorce or separation of the ex-employee from his first

wife i.e. Smt. Sangeeta Thapa, thus, the second marriage itself is illegal and invalid. In order to establish that the applicant is the second wife of the ex-employee, the respondents have annexed with the written statement one letter dated 07.05.2014 (Annexure-1) received from the first wife of the ex-employee claiming outstanding dues and appointment to his son on compassionate ground. They have further submitted that as per Railway Board's letter No.E(NG.ii/91)/RC-1/135 dated 02.01.1992 and No.E(NG)ii/2012/RC-1/21 dated 03.04.2013 circulated in this office letter's letter No.E-33/0/ix/Policy/CG dated 03.04.2013 in (PS No.14042/2013), the appointment on compassionate ground to second widow and her children are not to be considered. The contents of the letter quoted by the respondents in para 2 of their reply at page 89 of the paper book are the contents of Railway Board's letter dated 02.01.1992, which 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.”

6. The main objection raised by the respondents is that in terms of Circular RBE No.E.(NG)II/2012/RC-1/21 dated 03.04.2013, compassionate appointment cannot be considered for the second widow i.e. the applicant herein. It is seen that the above letter dated 03.04.2013 relies upon letter dated 02.01.1992 to deny the compassionate appointment to the second widow of the deceased employee. For the sake of convenience, contents of letter dated 03.04.2013 are reproduced below:-

“Sub: Appointment on compassionate grounds – case of second widow and her children.

A number of references have been received from Zonal Railways on the above subject. The matter has been examined by the Board and it has been decided that such cases may be dealt strictly in terms of Board’s letter No. E(NG)II/91/RC-1/136 dated 02.01.1992. Further, whenever the judgments of the Hon’ble Courts are contradictory to Board’s instructions, Railways may contest/file review petition in light of favourable judgment in such cases (Copy enclosed).”

7. Perusal of the contents of letter dated 03.04.2013 reveals that the respondents have denied the compassionate appointment to the applicant, being the second widow of the deceased employee, relying on the Railway Board’s letter dated 02.01.1992. 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.

8. The applicant has also relied upon a 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]. In this case also 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.”

9. 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. Now coming to the respondents' letter dated 03.04.2013, contents of which have already been extracted above, the same speaks about contesting of orders of the Courts contrary to Board's instructions contained in letter dated 02.01.1992 either by filing review applications or appeals, but 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.

10. 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 06.11.2015 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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