

**Central Administrative Tribunal
Madras Bench**

OA/310/00374/2017

Dated 01st day of October Two Thousand Eighteen

P R E S E N T

Hon'ble Mr. T.Jacob, Member(A)

B.S.Reeta,
No. 363, Dr. Ambedkar Nagar,
IInd Cross Street, Chennai 600012. ...Applicant

By Advocate M/s. P. Chandrasekaran

Vs

1.Union of India rep by Secretary,
Ministry for Railway Department,
New Delhi.

2.The Divisional Railway Manager Office,
Personnel Branch,
Chennai Division, Southern Railway,
Chennai 600003. ...Respondents

By Advocate Mr. D. Hariprasad

Order

(Pronounced by Hon'ble Mr. T. Jacob)

Heard. This OA is filed by the applicant seeking the following relief:-

"to declare RBE No.1/1992 dated 2.1.1992 as null and void and to set aside the letter dated 02.01.2014 sent by the second respondent in his letter No. M/PB/CS/22/06/2013 rejecting the claim of the applicant for compassionate appointment and direct the respondents to appoint the applicant on compassionate grounds in the second respondent's southern Railway, Chennai."

2. The facts of the case of the applicant is that her father, B. Sriramulu first married one Smt. B. Sathya Vedhamma and out of their wedlock, two sons were born to them, namely, B. Anthony Babu and B. Ravi. The first wife expired on 20.05.2008, B. Anthony Babu died 31.07.11 and another son B. Ravi died on 06.06.2012. All the Class I legal heirs of the first wife died. It is alleged that her father, B. Sriramulu was living together with one Thiruppammal from 1982 and the applicant was born on 22.11.1985 to them. It is stated by the applicant that the second respondent by letter dated 19.02.2004 informed Sathyavedhamma and Reeta, the applicant herein, that the settlement dues of her father would be paid to them on 27.02.2004 in the VI floor meeting room at 2.00p.m. and, therefore, requested them to bring Identification Certificates etc. and further directed them to submit an application for compassionate ground appointment with documentary proof. Accordingly, mother of the applicant sent a letter to the second

respondent requesting to provide a job to the applicant. As the applicant was minor at the time of death of her father, she submitted another representation in continuation to her mother's letter and when the 2nd respondent informed to produce the Death certificate of legally wedded wife of the deceased, she submitted the same to the office of the second respondent on 3.12.2014. When the applicant is anticipating the appointment on compassionate grounds as her mother also gave no objection letter to the second respondent on 22.3.2013 for giving her a job, the second respondent passed impugned order dated 02.01.2014 stating that the applicant had not submitted the Death Certificate of Smt. B. Sathya Vedhamma and that her request for appointment on compassionate grounds had been considered and the same was not agreed to since deceased employee married her mother Smt. B. Thiruppammal when the first wife was alive and so she is not eligible for the same. Challenging the aforesaid order of the second respondent, she filed the instant OA seeking the aforesaid relief.

3. Applicant subsequently filed M.A. 939 of 2017 seeking to amend the prayer made in the OA which is allowed by order dated 21.12.2017.

4. Respondents filed counter. It is stated that the applicant and her mother are living in their own house. Settlement benefits were received and family pension was sanctioned to late Smt. Sathyavedama. Her request for compassionate appointment was considered and the same was not agreed to on the ground that the deceased employee married Smt. Thirupammal while the first wife B. Sathyaveddamma was alive and,

therefore, in terms of the policy of the Union of India, her case was rejected. Since the applicant got married and is well settled and there is nobody whom the applicants needs to support and therefore her case does not deserve any compassion.

5. Rejoinder has been filed refuting the contention made in the reply and it is stated that as long as the scheme for compassionate appointment is operative and in force in the respondent department, the applicant is legally eligible to be considered for appointment on compassionate ground as she is not employed anywhere for getting income for her livelihood.

6. Further, in reply to rejoinder statement filed by the respondents it is stated at para 4 that her case has already been considered by overlooking the fact that she was the ward of second wife. However, her case was rejected mainly on other grounds namely that she is married and well settled in life and thereafter, there was no financial crisis available at this distant date. Further, no other family member or any other children of late Sriramulu are available to support them financially. Further, it is stated that the Railway Board's letter dated 3.8.1999 is squarely applicable to the applicant's case, which clearly stipulates that if there are no wards to be looked after, then there would be no justification for considering the married daughter for compassionate appointment. Further the employee dies in the year 2002 and after 14 years, the applicant cannot seek an appointment on compassionate grounds as there is no financial crisis evident at this distant date. It is further stated in para 7

that settlement benefits of deceased employee was settled in the year 2004 based upon compromise memo signed by Mrs. Sathyavedamma and another Mrs. Thiruppamma, both widows of late Sriramulu mainly on the terms that Mrs. Sathyavedamma would receive the death benefits including pension and that her son Shri Anthony Babu was entitled for the job by compassionate grounds from the Railways. The applicant has also agreed to this compromise and has signed in the affidavit dated 22.07.2003. Based on this compromise, the settlement benefits were arranged. Further respondents relied upon various judgments in support of their case.

7. Point for consideration in this OA is whether the applicant is entitled for compassionate appointment being the daughter of the second wife as the deceased employee married her mother when the first wife was alive as stated in the impugned order.

8. Learned counsel for the applicant would submit that the circular of the railway board dt 02-01-1992 was quashed by the division bench of the kolkata high court in the case of smt.Namita Goldar &Anr vs union of india and it is specifically held in the said judgement that the children of the second wife cannot be treated as illegitimate. Counsel for the applicant by producing W.A. No. 1764/2015 of Hon'ble High Court of Madras dated 18.07.2016 stated that the compassionate appointment to the children of the second wife could not be denied. He further produced copy of W.P. No. 41091 of 2015 dated 03.01.2017 of Hon'ble High Court

of Madras, which had elaborately dealt with applicability of REB No.2/92 dated 2.1.1992. The operative portion of the judgment reads as under:-

"15. In view of the decisions of this Court, we are not in a position to accept the contention of the learned counsel for the respondents/Railways that the respondents were correct in refusing to consider the request for appointment placing reliance on the said circular. The Circular in question has been quashed to the extent it prevented the children of the second wife from being considered for appointment on compassionate ground. If so, the dictum laid down by the Hon'ble Calcutta High Court will have the legal consequences of enabling the petitioner's son to get the appointment on compassionate ground. The Central Administrative Tribunal, Chennai has not considered this perspective, we hold that the impugned order dated 27.11.2014 passed by the fourth respondent deserves to be quashed and is accordingly quashed. The respondents 1 to 3 are directed to consider the request of the petitioner for compassionate appointment, in the backdrop of the views expressed supra, within a period of eight weeks from the date of receipt of copy of this order.

16. In the result, the writ petition is allowed in the above terms. No costs."

Counsel for the applicant further relied in support of his contention the case of *Shreejith L. v. Deputy Director (Eductaion) Kerala & Ors* (2012) 7 SCC 248. He further submitted that In view of the judgments of the Hon'ble High Court, the O.A. Is to be allowed.

9. Counsel for the respondents on the other hand relied on the judgments of High Court of Jharkhand at Ranchi in W.P. (S) No. 16 of 2014 dated 24.07.2014 wherein the Writ Petition was dismissed upholding the order of the CAT in O.A. 124/2012. Respondents have further filed reply to the MA 266/2017 produced in the court during the arguments on 7.09.2018 wherein it is stated that the 1st respondent after examining the subject issue in the backdrop of partial quashing of compassionate ground related instruction contained in Ministry of Railways letter dated 02.01.1992 regarding such appointment by the Hon'ble High Court of Calcutta in WPCT No. 20/2009 Namitha Goldar & Others Vs. UOI &Ors have issued new guide lines under RBE No 42/2018 dated 21.03.2018. The same is in supersession of letter dated 02.01.1992 issued under RBE No.1/1992 and letter No. E(NG)II/2012/Rc-1/21 dated 03.04.2013. According to this, the applicant was not eligible to be appointed on compassionate appointment as she was born to the second wife Thirupamma and even though deemed to be legitimate under Section 16 of the Hindu Marriage Act 1955.

10. On consideration of the above deliberations, the 1st aspect is to decide the validity of the RBE Circular No. 1/1992 dt. 2.1.1992 in question. I find that the validity of the RBE No.1/1992 dated 2.1.1992 had been decided by the Hon'ble High Court of Madras in W.P. No. 41091 of 2015 dated 03.01.2017 as stated above and the RBE No 42/2018 dated 21.3.2018 is in supersession of RBE No.01/1992 dated 02.01.1992. Further the respondents have also admitted in their counter at para 4 of

the reply to the rejoinder that the applicant's case has already been considered by overlooking the fact that she was the ward of second wife. Therefore, the impugned order does not sustain in the eye of law and the same is liable to be quashed and set aside in view of the aforesaid judgment of the Hon'ble High Court. Accordingly the impugned order is quashed. In so far as the RBE No 42/2018 dated 21.3.2018 is concerned which is in supersession of RBE No.01/1992, the same is not under challenge in this OA.

11. Considering the overall conspectus of the case and the rule position that there is no time limit for considering compassionate appointment cases, the case of the applicant should be considered as per the scheme in vogue on relative merits. The O.A is disposed of with no costs.

(T.Jacob)

Member(A)

01. 10.2018