

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH, CALCUTTA

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O.A. 350/0003/2016

Order dated: 20.01.2016

Present : Hon'ble Ms. Bidisha Banerjee, Judicial Member

BINOD KUMAR PATRA

VS.

UNION OF INDIA & ORS. (E. Rly.)

For the Applicant : Mr. S. Basu, Counsel

For the Respondents : Mr. L.K. Chatterjee, Counsel
Ms. S.D. Chandra, CounselORDER

This matter is taken up in the Single Bench in terms of Appendix VIII of Rule 154 of CAT Rules of Practice, as no complicated question of law is involved, and with the consent of both sides.

2. The applicant would make his second journey to this Tribunal challenging a speaking order dated 3.9.2015 passed pursuant to the Directions of this Tribunal in O.A. 1331/13 on 12.8.2015.
3. The order under challenge in this O.A. would be required to be set out hereunder with supplied emphasis for clarity:

"Speaking Order in connection with order dated 12.08.15 in O.A. No.1331 of 2013 passed by Ld. CAT/CAL, Binod Kr. Patra -Vs- U.O.I. & Ors.

Perused order dated 12.08.15 passed by Ld. CAT/CAL in O.A. No. 1331 of 2013.

The Ld. Tribunal has been pleased to direct respondent to consider the case of applicant afresh and pass order in accordance with the law within two months from the date of communication of this order.

In pursuance of order dtd. 12.08.15 in O.A. No.1331 of 2013, following observations have been made.

It appears that applicant Sri Binod Kr. Patra, S/o. Late Dibakar Patra, Ex.HBC/SSP who died on 08.12.08. Lt. Dibakar Patra had two wives namely Smt. Kanak Lata Patra, 1st wife and Smt. Kalyani Patra, 2nd wife. Sri Binod Kr. Patra is the son out of 2nd wife Smt. Kalyani Patra, Sri Binod Kr. Patra is the son out of 2nd wife is not entitled for compassionate ground appointment as per Railway Board's Circular No.1/92 & communicated by CPO/KKK vide

No.CPO/SC/SA/POL/Pt.VI dt. 24.01.2 wherein it is stated that Railway employees died in harness etc. leaving more than one widow along with children born out of the 2nd wife, settlement dues may be shared by both the widows due to courts order or otherwise on merit of each case, appointment on compassionate ground to the 2nd widow and her children are not be considered unless the administration has permitted the 2nd marriage, in special circumstances, taking into account of personal law etc.

In view of the above observation, claim of Sri Binod Kr. Patra for compassionate ground appointment cannot be considered.

Hence, his application has been disposed of accordingly in pursuance of order date 12.08.15 passed by Ld. CAT/Calcutta in O.A. No.1331 of 2013.

Sr. Divl. Personnel Officer/SDAH
&
Respondent No.3"

4. The said Railway Board order whereunder the claim had been sought to be rejected was quashed by the Hon'ble High Court in WPCT 20/2009 rendered on 10.2.2010, the relevant extract whereof would be as under:

"1. In the present case, son of the second wife of the deceased employee claimed appointment on compassionate ground and the respondents railway authorities rejected the said claim on the ground that the appointment on compassionate ground to the second wife or her children can not be considered in view of the specific circular issued by the Railway Board on 2nd January, 1992.

x x x

3. The Supreme Court in the case of Rameshwari Devi v. State of Bihar, reported in 2000 (2) SCC 431 : 2000 WBLR (SO 126, specifically held that the second marriage during the subsistence of first marriage may be illegal but the children born out of such second marriage are legitimate and are also entitled to the estate of the father.

x x x

4. Admittedly, in the present case, second marriage of the deceased employee was accepted by the first wife since she never challenged the said 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 and therefore, we have no difficulty to accept that the deceased employee married for the second time upon obtaining specific consent from the first wife. There is also no dispute that the said deceased employee used to live with both the wives and the four children of the second wife. Since the first wife died shortly after the death of the deceased employee, family pension and other retiral benefits also disbursed to the second wife and his children. The compassionate appointment was claimed by the eldest son of the second wife, as the first wife was issueless and also died shortly after the death of the employee concerned.

5. In view of the decision of the Apex Court in the case of Rameshwari Devi (supra), the children of the second wife cannot be treated as illegitimate and referring to section 16 of the Hindu Marriage Act specifically held that children of a void marriage are legitimate.

x x x

7. Therefore, the eldest son of the second wife, namely the petitioner No. 2 herein is entitled to claim appointment of compassionate ground on account of the sudden death of the employee concerned.

x x x

9. In the aforesaid circumstances, the aforesaid circular issued by the Railway Board on 2nd January, 1992 stands quashed to the extent it prevents the children of the second wife from being considered for appointments on compassionate ground.

10. For the reasons discussed hereinabove, we direct the respondents Railway Authorities to allow the claim of the petitioner No. 2 for appointment on compassionate ground and issue appropriate order of appointment in favour of the said petitioner No. 2 without any further delay but positively within a period of two months from the date of communication of this order."

(emphasis supplied)

5. Such quashing of RB 1/92 well within the knowledge of the respondents would make it imperative for the Railways not to apply the circular again and again to oust the claim of children begotten of 2nd wife of deceased railway employees in similar cases. But the respondents would appear to ignore the mandate of the Hon'ble High Court, in on outrageous attempt to scuttle the power of judiciary. It would be highly unfortunate if the same is repeated.

6. Therefore the speaking order is quashed and consequently the respondents are directed to consider the matter afresh untrammelled by earlier consideration applying 1/92. The respondents are also directed to refer the matter to the Railway Board for issuance of fresh orders withdrawing 1/92 in regard to the judgment of Hon'ble High Court at Calcutta (supra) so that the fallacy is not repeated.

7. Let appropriate orders be issued by 2 months.

8. O.A. is accordingly disposed of. No costs.

(Bidisha Banerjee)
Member, (J)

drh