

**CENTRAL ADMINISTRATIVE TRIBUNAL,
LUCKNOW BENCH,
LUCKNOW.**

Original Application No. 286 of 2017

This the 19th day of April, 2018

Hon'ble Dr. Murtaza Ali, Member-J

1. Mohd. Vaish, aged about 31 years, S/o Lte Sri Mohd Haneef.
2. Kabirunissa, aged about adult, W/o late Sri Mohd Haneef.
(Both residents of Village Baghbansi, Alwalpur, Tikri, Post Kada, Kaushambi, U.P.)

.....Applicants

By Advocate : Sri Praveen Kumar

Versus.

1. Union of India through the General Manager, Northern Railway, Baroda House, New Delhi.
2. The Deputy Chief Material Manager, Northern Railway, Alambagh, Lucknow.
3. Smt. Mohammudunnisa, widow of late Sri Mohd. Haneef, R/o Village Baghbansi, Alwalpur, Tikri, Post Kada, Kaushambi, U.P

.....Respondents.

By Advocate : Sri Mithilesh Kumar

O R D E R (Oral)

Heard the learned counsel for the applicant as well as learned counsel for the respondents and perused the records.

2. The applicant has filed this O.A for quashing the impugned order dated 24.5.2017 (Annexure-1) by which the claim of the applicant No. 1 for appointment on compassionate ground has been rejected.

3. Learned counsel for the applicant would contend that although no ground for rejection has been given by the respondents in the impugned order but from the perusal of Para 8 of CA, it is evident that the claim of applicant No. 1 has been rejected while relying upon Railway Board's letter dated 02.01.1992 (Annexure CR-3). It is further contended that as the said letter has already been quashed by Hon'ble Calcutta High Court, the applicant No. 1 is liable to be considered for compassionate appointment.

3. Learned counsel for the respondents submitted that late Mohd. Haneef died on 12.8.1991 leaving behind his two wives namely Smt. Kabirunissa and Smt. Mohammudunnisa. After the death of Mohd. Haneef, Mohd. Vaish son of second wife (Kabirunissa) had applied for compassionate appointment which has rightly been rejected as per Railway Board's letter dated 02.01.1992.

4. I have gone through the letter dated 02.01.1992 (Annexure CR-3) which reads as under:

"It is clarified that in the case of Railway employees dying in harness, etc. leaving more than one widow alongwith children born to the second wife, while settlement dues may be shared by both the widows due to Court orders or otherwise on merits of each case, appointments 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 the personal law, etc.

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

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

5. The validity of said letter dated 02.01.1992 was considered by Hon'ble Calcutta High Court in **W.P (C) No. 102 of 2010, Mr. Biswarup Mukherjee Vs. Mr. Prasum Kumar Dutta** and relying on the decision of Hon'ble Supreme Court in **Rameshwari Devi Vs State of Bihar & Ors reported in 2000(2) SCC 431**, the respondents were directed to allow the claim of son of second wife for appointment on compassionate ground.

6. In the case of Rameshwari Devi (Supra) Hon'ble Supreme Court has specifically held that the second marriage during the subsistence of first marriage may be illegal but the children born out of such marriage are legitimate and are also entitled to the estate of the father. Para 14 of the aforesaid judgment is set out hereunder:

"It cannot be disputed that the marriage between Narain Lal and Yogmaya Devi was in contravention of clause (i) of [Section 5](#) of the Hindu Marriage Act and was a void marriage. Under [Section 16](#) of this Act, children of void marriage are legitimate. [Under the Hindu Succession Act](#),

1956, property of a male Hindu dying intestate devolve firstly on heirs in clause (1) which include widow and son. Among the widow and son, they all get shares (see [Sections 8, 10](#) and the Schedule to the [Hindu Succession Act, 1956](#)). Yogmaya Devi cannot be described a widow of Narain Lal, her marriage with Narain Lal being void. Sons of the marriage between Narain Lal and Yogmaya Devi being the legitimate sons of Narain Lal would be entitled to the property of Narain Lal in equal shares along with that of Rameshwari Devi and the son born from the marriage of Rameshwari Devi with Narain Lal. That is, however, legal position when Hindu male dies intestate.”

7. In view of decision of Hon’ble Apex Court in Rameshwari Devi (Supra) and decision of Hon’ble Calcutta High Court in Biswarup Mukherjee (supra), the applicant no.1, who is the son of second wife, cannot be treated as illegitimate and therefore, the claim of applicant No. 1 (Mohd. Vaish) for appointment on compassionate ground being the son of second wife cannot be rejected on the basis of letter issued by Railway Board on 02.01.1992. The said letter has already been quashed by the Division Bench of Hon’ble Calcutta High Court in the case of Smt. Namita Golder & Anr Vs. UoI & Ors reported in 2010(1) CLJ (Cal) 464.

8. In view of the above, the O.A is allowed and the impugned order dated 24.5.2017 passed on the basis of Railway Board letter dated 02.01.1992 is quashed and the respondents are directed to reconsider the claim of applicant No. 1 in accordance with the existing provisions and pass a reasoned and speaking order within a period of three months from the date of receipt of certified copy of this order. No costs.

(Dr. Murtaza Ali)
Member (J)

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