

**CENTRAL ADMINISTRATIVE TRIBUNAL,  
CIRCUIT BENCH SITTING AT NAGPUR.  
MUMBAI BENCH, MUMBAI.**

**ORIGINAL APPLICATION NO.2255/2016**

**Date Of Decision:- 05<sup>th</sup> June, 2018.**

**CORAM:HON'BLE SHRI. R. VIJAYKUMAR, MEMBER (A).**

**Shri. Akash Tukaram Dhabre**

Son of Late Tukaram Motiram Dhabre,  
Age 21 years Occ:- Student,  
R/o. Ghanshyam Rahate, Near Anand Budh  
Vihar  
P.N.-1175 Budha Nagar,  
Unit 2, Nagpur 440017 Maharashtra.

**....Applicant**

**(Applicant by Advocate Shri. S.K. Sable)**

**Versus**

**1. Union of India**

Ministry of Railway  
Through G.M. South East,  
Central Railway, Bilaspur 495001 CG.

**2. D.R.M. SEC Railway**

Nagpur Division,  
Kingsway Road 440001.

**3. D.R.M. (Personnel) SEC Railway**

Nagpur Division,  
Kingsway Road 440001.

**4. Smt. Sugandha**

**W/o. Late Tukaram Motiram Dhabre**

Aged 44 yrs,  
R/o. Railway Quarter No. RE/1/3/Type-D,  
Railway Colony, Tumsar Road,  
Rly Station District Bhandara 449193.

**....Respondents**

**(Respondents by Advocate Smt. Sangeeta Meshram)**

**Reserved On : 19.04.2018.**

**Pronounced on: 05.06.2018.**

**ORDER**

**1.** This OA has been filed on 17.11.2016 under Section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs:

**8.1.** *To call for the relevant record from the respondent and also the record of OA No. 2162/2016 from the Hon'ble Tribunal this was decided on 18.07.2016.*

**8.2.** *To set aside the impugned reply vide letter No. P/NGP/CON/2016/1 dt 28.03.2016.*

**8.3.** *The applicant is legal son and only successor of the deceased Railway employee.*

**8.4.** *Non applicant (Res.4) married to deceased on 12.03.2007 but applicant was born on 13.09.1994 hence Hon'ble Tribunal may pass order to the respondent as a first claimant for job on compassionate ground.*

**8.5.** *To grant any other relief deem fit and proper in the fitness of the fact and circumstances of the applicant's case.*

**8.6.** *Allow the OA with cost."*

**2.** The Applicant is the only son of the deceased Railway employee through his first wife from whom he had been divorced following Petition No. 540/2001 decided by the Family Court, Nagpur in Common judgment dated 03.04.2006. The specific relief sought by the applicant is that of compassionate appointment

against the death of his father while in service on 25.03.2015 and in opposition to the claim that had been filed by his father's second wife, Respondent No. 4 with whom the applicant's father had married in 2007.

**3.** The brief facts of the case are that the applicant's father had married the applicant's mother in 1990 and after two unsuccessful pregnancies, she had given birth to a son on 13.09.1994 who is the current applicant. Following differences between the couple, a divorce petition was filed by the applicant's father in 2001 and orders obtained on 03.04.2006 granting divorce and providing for maintenance to the applicant who was the legitimate son of the deceased Railway employee and also denying any maintenance to the divorced wife. After the increase in pay of Railway Employees following the 6<sup>th</sup> Pay Commission, a request for increase in maintenance was made before the Family Court No. 2, Nagpur by the applicant and his mother, which was decreed in favour of the applicant by increase in his maintenance but the claim for maintenance by his mother who had been divorced from the applicant's father continued to be denied. One of the submissions made by

the applicant's father during the course of these proceedings was that after getting a divorce, he had married again and had to maintain his second wife. The Court order makes no mention of any denials of this fact by the applicant or his mother. The applicant's father had initially filed on 10.10.2005, a Nomination Form for PF, GIS and DCRG granting his first wife 100% entitlement along with the sole heir, the applicant. The applicant's father altered this nomination on 21.05.2007, nominating equal shares of 50% for Respondent No. 4, his second wife and the applicant and, in the event the death of his second wife, the entire amount was to go to the applicant.

**4.** The applicant's claim for priority in compassionate appointment is based on his reference to the fact that he was born in 1994 and had a prior claim whereas, Respondent No. 4 became his father's legal second wife only from 12.03.2007. He also points out that the Nomination Form filed in 2005 mentioned his name which he claims, establishes his prior claim to the benefits of compassionate appointment. He also pleads hardship in continuance in education together with the

survival responsibility of his divorced mother.

**5.** The reliefs sought are based on the following grounds as mentioned in Para 5 of the OA. The same are reproduced here for ready reference:-

**"5.1.** *Applicant Akash Tukaram is a legal son of deceased railway employee Tukaram Motiram Dhabre. As per combined nomination for PF GIS & DCRG vide SE Railway form No. 2 to 5 Para 902,906,908 submitted by the deceased Railway employee and father of applicant. Ann.A-7.*

**5.2.** *In all railway record and register maintenance by the railway authority Akash the applicant is only son and child of the deceased.*

**5.3.** *Deceased Tukaram during his service period submitted his nomination showing the applicant as "Son". Ann.A-7.*

**5.4.** *It appears in railway record that name of one lady Smt. Sugandha was sought as wife of Late Tukaram Motiram Dhabre having no child. And as per Railway record Sugandha was declared the legal wife from 12.03.2007 whereas applicant was nominated by the deceased father on 10.10.2005 hence first claimant is the applicant. Ann.A-8.*

**5.5.** *In the declaration given by the deceased father of the applicant in Rly. Administration clearly mentioned the name with share of 50% in favour of the applicant and there is no relation with Respondent No. 2 who case after the divorce of his mother Mayawati Tukaram Dhabre hence applicant is throughout legal claimant for job as well as all monetary benefits payable on behalf of his deceased father Tukaram."*

6. Respondents have reiterated some of the facts briefly summarized above. They refer to the rules for compassionate appointment which require that the person who is to be offered compassionate appointment should be the bread-winner of the family concerned and has to give an undertaking in writing to properly maintain the other family members who have been dependent on the railway servant. They also point out, as admitted by the applicant, that the applicant resides with his biological mother and not with the Respondent No. 4 who is the legally wedded wife of the deceased Railway employee. He further states that the applicant will be entitled for 50% of family pension until he completes 25 years of age, but the principle differs in relation to an employee's request on compassionate grounds. It is on this basis that the detailed orders were issued in the impugned order No.P/NGP/CON/2016/1 dated 28.03.2016.

7. The applicant has also filed a rejoinder in which he now questions the legal wedded status of Respondent No. 4 with the deceased Railway employee and calls for evidence thereof. During the last hearing, neither the applicant nor his Counsel were

present but counsel for respondents were available. In view of the fact, that the issue rests on the legality of the claims of the applicant, it was considered that the matter could be decided based on the available rules and the papers filed on record.

**8.** The applicant in his rejoinder had questioned the facts of the marriage of Respondent No. 4 with his Late Father. This issue was not raised in his initial application and in fact in prayer 8(8.4), it is specifically stated that Respondent No. 4 is married to deceased employee on 12.03.2007. This mention is made to show that her claim can only be subordinate to his claim for compassionate appointment. It is also clear from the proceedings of the Family Court No. 2, Nagpur in Petition No. E189/2010 decided on 20.09.2014 that a specific mention has been made that the applicant's father had remarried and for which no record of denial by the applicant and his mother exists. Clearly, the argument raised in the rejoinder is a mischievous afterthought and it is, accordingly rejected. It is on the basis of this fact that the Nomination Form was also filed and duly accepted by the Railways in

2007.

**9.** The applicant appears to have misconstrued the provisions for grant of compassionate appointment. As mentioned by the respondents, a member of the family of the deceased employee is made entitled to make a claim for appointment on compassionate ground only in order to overcome a sudden family distress because the untimely decease of the bread-winner of the family of the railway employee. It is not a shortcut route for employment. At the point in time when the employee passed away, his family comprised of himself and his second wife and there was only a claim on his assets on account of his legal son. The applicant who is his son and the respondents have not disagreed on this point that the applicant is staying with his mother who is the deceased employee's divorced first wife and they were not staying with the Late employee. Therefore, the priority for the railway administration is to ensure that the employee's family, namely, his surviving legal wife is not left in a position of distress and hunger. They have no responsibility towards the divorced first wife of the deceased employee with whom relations were cut off long

since. Therefore, granting employment to the applicant would not serve the purpose of ensuring the support and continued maintenance for the legal second wife of the deceased employee. The applicant's claim, therefore, falls entirely on this ground. It is another matter that is left to be decided by the Respondent Nos. 1 to 3 as to whether the Respondent No. 4 is entitled to the benefit of a claim for compassionate appointment based on her circumstances and this Tribunal does not intend to go into that issue at this stage.

**10.** In the circumstances, the application is rejected as without basis and both the parties are directed to bear their own costs.

*(R. Vijaykumar)*  
**Member (A)**

*srp*