

**CENTRAL ADMINISTRATIVE TRIBUNAL,  
MUMBAI BENCH,  
MUMBAI.**

**O.A.210/00525/2017**

**Dated this Tuesday the 9th day of October, 2018**

**Coram: Dr.Bhagwan Sahai, Member (A) .**

Shri Kiran Tukaram Shelke,  
Age 40 years, working as  
Trackman, under Sr.Section  
Engineer (P.Way) Wadi Bunder,  
ADEN (M) Mankhurd,  
Mumbai Division of Central Railway,  
CSMT, Mumbai-400 010 (MS),  
R/o.Room No.004, B-Wing of  
Dhanshri Residency, Zimkhana Road,  
Sagarli, Dombivali (East),  
Thane.

.. Applicant.

**( By Advocate Shri D.N. Karande ) .**

**Versus**

1. Union of India, through  
the General Manager,  
Central Railway,  
2<sup>nd</sup> Floor of General Manager's  
Office, CSMT Mumbai-400 001.
2. Chief Personnel Officer,  
Central Railway,  
1<sup>st</sup> Floor of General Manager's  
Office, CSMT, Mumbai-400 001 (MS).
3. Divisional Railway Manager,  
Central Railway,  
Mumbai Division, CSMT,  
Mumbai - 400 001.
4. Sr. Divisional Personnel Officer,  
Mumbai Division, Central Railway,  
CSMT Mumbai - 400 001.
5. Sr. Divisional Engineer (South),  
Mumbai Division,  
Central Railway, CSMT,  
Mumbai-400 001.

6. Asstt. Divisional Engineer (Mant.)  
Mankhurd, Mumbai Division,  
Central Railway, CSMT,  
Mumbai - 400 001. .. Respondents.

( By Ms.Nisa Rajput proxy counsel for  
Ms.Sangeeta Yadav ).

Order reserved on : 24.09.2018

Order delivered on : 09.10.2018.

O R D E R

1. Shri Kiran Tukaram Shelke, the applicant in this O.A. has sought relief in terms of -

**1(a)**. order for production of documents and files which are in possession of the respondents and which compelled to issue the impugned order dated 02.05.2017;

**1(b)**. direction to respondents to issue correction slip to the Railway Board's Circular RBE No.39/2005 dated 10.03.2005 which excludes children on account of illegitimacy;

**1(c)**. direction to the respondents to re-examine the case of the applicant in light of amendment of Hindu Marriage Laws, 1976 and consider his children eligible for all benefits on par with legitimate children of other employees;

**1(d)**. direction to allow the applicant to execute various nominations in favour of his children for PF/DCRG/NGIS purpose; and

**1(e)**. to make entries of names of the applicant's

children as his family members in the service register, medical card and Pass/PTO.

**2.** Facts stated in brief:-

**2 (a).** The applicant is working as Trackman in Engineering Department under Sr. Section Engineer (Maint.) Wadi Bunder, Mumbai Division Central Railway. He was appointed in 2010 as Gangman and thereafter redesignated as Trackman.

**2 (b).** He married one Ms.Shobha on 12.05.2004 as per Hindu rites and rituals, then obtained divorce by mutual consent through a decree of Family Court No.7, Mumbai granted on 24.09.2014. After the dissolution of his first marriage, he married one Ms.Jyoti Valiba Avhad on 13.06.2016, which was registered on 27.06.2016 under the Maharashtra Regulation of Marriage Bureau and Registration of Marriages Act, 1998.

**2 (c).** Before his second marriage, he had 3 children with Ms.Jyoti through extra-marital relationship. Their names and dates of birth are as under:-

	<u>Names of children</u>	<u>Dates of Birth</u>
1.	Ms.Bharati, daughter	24.10.2009
2.	Om, son	21.04.2012
3.	Sai, son	10.02.2016

He claims that these 3 children are his legitimate

children and in their birth certificates his name has been entered as their father.

**2(d).** On 18.07.2016, the applicant wrote to Assistant Divisional Engineer (M), Mankhurd through Sr. Section Engineer, Wadi Bunder to inform about his divorce with his earlier wife and to include the name of his second wife and 3 children on his service record for availing of Family Pass, PTOs, Family Medical facilities, nomination for different dues after his demise, etc. His application was forwarded for legal opinion to Headquarters, CSMT, Mumbai.

**2(e).** With approval of Competent Authority, Chief Personnel Officer, Personnel Branch, Headquarters Office, Central Railway, CSMT, Mumbai replied to DRM (P) BB on 02.05.2017 advising that the 3 children Ms.Bharati, Master Om and Master Sai were born of Shri Kiran Shelke and Smt.Jyoti before their marriage on 13.06.2016. As such, the children have legitimacy under Section 16 of the Hindu Marriage Act, 1955 for the limited purpose of share in the property of their parents. A copy of the case law in Dilip Singh Vs. Eastern Coalfields decided by Calcutta High Court in 2013 was also enclosed therewith. It was further mentioned that the children would be eligible for family pension in

their turn subject to fulfilment of conditions prescribed for drawal of such pension. In this connection, reference was invited to Railway Board's letter dated 14.02.1997 and stated that they would not be eligible for any kind of Railway passes as clarified by Railway Board RBE No.39/2005. This letter of 02.05.2017 is under challenge through this O.A.

**3. Contentions of the parties:-**

In the O.A. and written notes of arguments, the applicant and his counsel have submitted that -

**3(a).** case law cited in the letter dated 02.05.2017 and relied upon by the respondents is based on totally different facts and circumstances. The applicant is governed by Railway Services (Pension) Rules, 1993, framed under Article 309 of the Constitution;

**3(b).** the applicant is himself alive and wants to bring his legal heirs on his service record for extending legitimate benefits to them such as passes, PTOs, medical facility, reimbursement of tuition fees and other such Staff Welfare benefits;

**3(c).** pension or pensionary benefits such as PF, DCRG, NGIS, etc are the property of the employee and they can be devolved on any or all of the family members by executing nominations;

**3(d).** in the case law cited by the respondents, the said employee had contracted the second marriage during subsistence of his earlier marriage, whereas the present applicant has obtained divorce from her first wife and thereafter has contracted the second marriage which is in compliance with the Railway Services (Conduct) Rules, 1966;

**3(e).** in view of amendment of Section 16 of the Hindu Marriage Act, 1955 by the Hindu Marriage Laws (Amendment) Act, 1976, it has been added that notwithstanding that a marriage is null and void under Section 11, any child of such marriage who would have been legitimate if the marriage had been valid shall be legitimate, whether such child is born before or after the commencement of Hindu Marriage Laws (Amendment) Act, 1976 and whether or not a decree of nullity is granted in respect of that marriage under this Act. It has been further stipulated that the rights of such children required to be protected and will accrue accordingly;

**3(f).** in light of the above clarification, the illegitimate children born out of such extra-marital relationship have been granted equal status under the Hindu Marriage Act, 1955 on par with the legitimate children. This legal position has been ignored by the respondents while sending the reply

of 02.05.2017;

**3(g).** as per DOPT OM dated 27.12.2012, para 4 of the OM dated 02.12.1996 has been superseded and share of children born from illegally wedded wife in the family pension has been made payable to them in the manner given under sub-rule 7(c) of Rule 54 of CCS (Pension) Rules, 1972, alongwith legally wedded wife, and, therefore, in view of the above legal position, rejection of request of the applicant to take names of his children born out of void marriage on his service record is not correct and it amounts to violation of fundamental rights guaranteed under Articles 14 and 16 of the Constitution;

**3(h).** the respondents have created classes within the class of 'Family' i.e. legitimate and illegitimate children which is not permitted;

**3(i).** the definition of 'Family' given in Section 2(c) under the Railway Services (Conduct) Rules, 1966 includes - 'any other person related whether by blood or marriage to the railway servant or to the railway servant's wife or husband, and wholly dependent on the railway servant. Since birth certificates of the children of the applicant mention his name as their father, they are related to him, are dependent on him and Section 21 of the Railway Services (Conduct) Rules, 1966 pertaining to

'bigamy' does not apply in this case. Therefore, the O.A. be allowed.

The respondents have submitted that -

**3(j).** as per representation of the applicant dated 20.03.2015, he had married with Ms.Jyoti and her name may be brought on service record, but this was examined by the Law Officer and it was opined that his marriage with Ms.Jyoti being void, she cannot be treated as his legally wedded wife and benefits available to wife of a railway employee cannot be extended to her;

**3(k).** as per his subsequent representation of July, 2016 annexing therewith certificate of registration of marriage with Smt.Jyoti mentioning date of marriage as 13.06.2016 is an afterthought and it has been obtained only with a malafide intention to avail of facilities of the Railways;

**3(l).** the 3 children i.e. Ms.Bharati, Master Om and Master Sai were born on 24.10.2009, 24.04.2012 and 10.02.2016, respectively i.e. all of them were born prior to the marriage of the applicant with Smt.Jyoti and, therefore, decision of the respondents not to extend the benefits to those children which are not admissible to illegitimate children is correct in accordance with the relevant rules;

**3 (m)** . the relief sought by the applicant for directing the respondents to issue correction slip in RBE 39/2005, without annexing the copy of the RBE 39/2005 is liable to be dismissed;

**3 (n)** . the request of the applicant is to allow nomination in favour of the children born out of the extra-marital relationship with Smt.Jyoti to receive PF, DCRG, GIS after his demise, but as per Rule 70 of Railway Services (Pension) Rules, 1993, an employee cannot execute nomination in favour of a person who is not a family member as defined under that rule, when he is having a family. In the present case, since the applicant has a family i.e. his wife, he cannot be allowed to execute nomination in favour of his illegitimate children;

**3 (o)** . under the Railway Pass Rules, 1986, a ward, son, adopted son, daughter and adopted daughter are only included in the definition of family and these benefits, therefore, cannot be extended to the children born prior to the marriage of the applicant with Smt.Jyoti;

**3 (p)** . under the Railway Pass Rules, son of an employee who is of 21 years or above is entitled for pass and PTO, if he is a student and not otherwise. As regards family pension, settlement dues, etc. they are governed by the provisions of Railway

Services (Pension) Rules, 1993 and not by personal law of the employee. Therefore, the applicant cannot claim for his illegitimate children the benefits of pass and PTO, and settlement dues which are against the provisions of the said rules;

**3 (q).** the illegitimate children of the applicant may have right to share in the property of their father as per the personal law applicable but benefits or privileges extended to the Railway employees are governed by relevant Railway Rules and they can be granted only as per the provisions of those rules and not otherwise;

**3 (r).** the pass/PTO including school passes, medical facilities, reimbursement of tuition fees and various other staff welfare benefits are the provisions made by employer by carving out an exception under Article 14 of the Constitution and such exception has always been extended only as per the applicable rules;

**3 (s).** all the benefits applicable to legally wedded wife would be available to Smt.Jyoti after 13.06.2016 and the applicant may execute nomination in her favour with respect to family pension and pensionary benefits to be paid to her after his death. But the applicant's children cannot be extended the benefits sought by the applicant and,

therefore, this O.A. should be dismissed;

**3(t).** as per Rule 74(1)(i) of the Railway Services (Pension) Rules, 1993, when the Railway servant has family, the nomination shall not be in favour of any person or persons other than the members of his family, and, therefore, the rejection of applicant's request for nomination in favour of his children of void marriage is correct as they cannot be treated as members of his family under the family pension rules; and

**3(u).** provisions of Rule 21 of the Railway Services (Conduct) Rules, 1966 debar the employee from contracting second marriage when the first wife is living. Since the applicant committed misconduct and illegality himself by his extra marital relationship and fathering the three children during it, he is not entitled for any relief but is liable only for punishment under the Railway Services (Conduct) Rules, 1966.

**4.** Analysis and conclusions:-

I have considered the contents of the application memo and annexes A-1 to A-13, written notes of arguments submitted by the applicant's counsel, reply to the O.A. submitted by the respondents on 23.02.2018 and the written arguments submitted by counsel for the respondents alongwith

rules and case laws cited by the counsel on both sides. Based on this, my conclusions emerge as follows:-

**4 (a).** The facts pertaining to divorce of the applicant with his earlier wife Smt.Shobha with effect from 24.09.2014 through a decree granted by the Family Court No.7, Mumbai, marriage of the applicant with Smt.Jyoti Valiba Avhad on 13.06.2016 and its registration on 27.06.2016 are not being contested by the respondents. The applicant himself has categorically admitted in his submissions about his unlawful, extra marital relationship and fathering of the three children with Smt.Jyoti prior to their actual marriage on 13.06.2016.

**4 (b).** The contention of the applicant is that as per provisions of Section 16 of the Hindu Marriage Act, 1955, there is a legitimacy of children of void and voidable marriages. As per Section 16(1)- Notwithstanding that a marriage is null and void under Section 11, any child of such marriage who would have been legitimate if the marriage had been valid, shall be legitimate, whether such child is born before or after the commencement of the Marriage Laws (Amendment) Act, 1976 and whether or not a decree of nullity is granted in respect of that marriage under this Act and whether or not the

marriage is held to be void otherwise than on a petition under this Act.

**4 (c).** In this case it is to be noted that while there is no dispute about illegitimacy of the children of the present applicant, the first issue for consideration here is whether nomination of Smt.Jyoti and such children is allowed as per the applicable Pension Rules for pension and pensionary benefits.

**4 (d).** The respondents have already acceded to the request of the applicant to nominate Smt.Jyoti as his wife on service record with effect from 13.06.2016. They have also conceded that Smt.Jyoti would be eligible for benefit of family pension and other pensionary benefits as wife of the applicant after his death. Once her nomination as wife of the applicant is accepted, she would also be eligible for other applicable benefits, as the family member of the applicant.

**4 (e).** The second main issue of contention here is about allowing nomination (on his service record) as his family members of the 3 illegitimate children of the applicant who were born prior to his second marriage i.e. when his marriage to Smt.Jyoti was void and to extend to them the benefits of Railway passes, PTO, medical facilities and other

concessions made available by the Railway authorities to the employees and their dependent children. As per Rule 21 of the Railway Services (Conduct) Rules, 1966, there are restrictions regarding marriage. As per Rule 21(1), no Government servant shall enter into or contract a marriage with a person having a spouse living;

As per Rule 21(2) no Government servant having a spouse living, shall enter into, or contract a marriage with any person, provided that the Central Government may permit a Government servant to enter into, or contract any such marriage as is referred to in clause (1) or clause (2), if it is satisfied that (a)-

such marriage is permissible under the personal law applicable to such Government servant and the other party to the marriage; and (b) there are other grounds for doing so.

**4 (f).** In view of this explicit provision under the Railway Services (Conduct) Rules, 1966 applicable to the present applicant as a Railway employee, he was prohibited from entering into or contracting a marriage when his first wife was living. In the present case, while the applicant seems to have formally married Smt.Jyoti after the divorce with the first wife, but there is clear

admission of the applicant in this O.A. (synopsis page A and memo p.3-4) that the 3 children were born out of his extra-marital relationship with Smt.Jyoti during the period when the marriage with her was void and that he married her subsequently on 13.06.2016. These facts clearly establish that the 3 children are born out of a void marriage as per the Hindu Marriage Act, 1955. This was obviously a serious misconduct on his part under Rule 21 of the Railway Services (Conduct) Rules, 1966 warranting penal action by the concerned disciplinary authority but it is not known whether after coming of this fact of his second marriage to the notice of the respondents any disciplinary action has been taken against the present applicant for this misconduct.

**4 (g).** As regards the question as to whether the children of the present applicant can be nominated by him on service record for pension and pensionary benefits, the relevant Rules are the Railway Services (Pension) Rules, 1993, as amended from time to time. As contended by the respondents, Rule 74(1)(i) of these Rules provides that when the Railway servant has a family, the nomination shall not be in a favour of any person or persons other than the members of his family.

**4 (h).** As discussed above, the applicant fathered

the three children through extra-marital relationship with Smt.Jyoti but it was against the conduct rules and he also concealed this fact from the authorities apprehending disciplinary action. Now he claims to have solemnized his second marriage with her on 13.06.2016 after obtaining divorce from her first wife. Since he could have but did not bring on service record name of Smt.Jyoti prior to 13.06.2016, it follows that names of children born out of the void marriage also cannot be brought on the service record as members of his family. Hence his request in this regard deserves to be rejected.

**4(i).** As per Rule 3 of the Railway Servants (Pass) Rules, 1986, except where specifically provided to the contrary, they shall apply to all railway servants under the administrative control of the Ministry of Railways but shall not apply to -

(iii) any person under the administrative control of the Ministry of Railways who by a general or special order is excluded from the facilities of Pass or a Privilege Ticket Order under these rules. Under Rule 2(d) 'family' has been defined and the persons included in the 'family' do not cover the children of an employee born out of void marriage which is prohibited under the Conduct Rules.

**4(j).** While pension and pensionary benefits of an

employee have been treated as part of his property, as per the settled law, the benefits like Pass, PTOs, etc, are neither a part of the employee's property nor they can be claimed as of right. Such facilities are extended to the employees and their dependents only as per specific rules or scheme framed in this regard by the relevant authorities. The contention of the respondents in this regard is, therefore, correct.

**4 (k).** For extending these benefits the concerned authorities provide for eligibility criteria which may make certain distinctions based on intelligent differentia. As provided under Railway Servants (Pass) Rules, 1986, the facilities like Pass and PTO, can be extended only to those persons who have been made eligible under these rules. Since the list of eligible persons included in the definition of family here does not include illegitimate children born out of a void marriage (as is the case of the children of the present applicant), they are not entitled for the facilities such as Pass and PTO. This exclusion is a reasonable distinction made by the respondents in the rules based on intelligent differentia. Hence this claim of the applicant is not justified.

**4 (l).** In such a context, it is also important to

consider the likely resultant effect if such benefits are ever extended as an exception to the children born out of extra-marital relationships during subsistence of the legal and lawful marriage. If it is done in such cases, it will incentivise void and illegal marriages, thus misconduct and indiscipline among the employees and also send very undesirable signals of immoral behaviour to the society, besides unjustifiably exploiting the public resources for private or personal gain. When the present applicant consciously maintained his secret unlawful long extra-marital relationship with Smt.Jyoti leading to birth of the three childrens before their marriage, which he now openly advances as his case, it was his private affair. Hence to take care of these illegitimate children has to necessarily remain his own private concern liability. He cannot be permitted to exploit the public resources for benefit of railway pass and PTO for these children of his. In view of this position, denial of these facilities by the respondents is fully justified.

**5. Decision:**

In view of the conclusions reached above, the O.A. being devoid of merit is dismissed with costs. The applicant has to pay as cost Rs.1000/-

to the CAT Bar Association, Mumbai for library purposes.

**(Dr. Bhagwan Sahai)**  
**Member (A) .**

H.