

**CENTRAL ADMINISTRATIVE TRIBUNAL**  
**PATNA BENCH, PATNA**

**O.A. No.050/00701/2017**

Reserved on: 01.10.2018  
Date of Order: 01.11.2018

**C O R A M**  
**HON'BLE MR. JAYESH V. BHAIKAVIA, JUDICIAL MEMBER**

1. Kundan Kumar aged about 19 years son of late ChhotelalPaswan, Resident of village-Mohan Gachhi, Post-Mokama. P.S. Mokama, District- Patna (Bihar), Pin-803302.

..... Applicants.

By Advocate : Shri Satya Prakash

-Versus-

1. Union of India through the Secretary, Board Rail Bhawan, New Delhi-110001.
2. The Divisional Railway Manager (Personnel) East Central Railway, Danapur (Bihar) -801105.
3. Section Enginner, (Works), Eastern Railway, Kiul Junction, Bihar-811310.

..... Respondents.

By Advocate(s) :- Shri G.K. Griyaghey

**ORDER**

**Per Mr. Jayesh V. Bhairavia, M (J):-** The applicant is aggrieved by the order dated 20.10.2016, issued by Kiul Divisional Rail Way Manger (Personnel), East Central Railway, Danapur whereby the claim of applicant for appointment to a suitable post on compassionate ground has been rejected. Therefore, the applicant prays for setting aside the impugned order dated 20.10.2016 and for issuance of a direction to the respondents to appoint the applicant to a suitable post on compassionate ground.

2. The brief facts of the case as submitted by the applicant is that the father of the applicant i.e late ChhotelalPaswan was permanently posted at Kiul Junction. Unfortunately, after suffering from some cardiac disease for a long time, he died on 22.10.2009. The father of the applicant was the sole bread earner of his family and after his death, his wife/widow and five children has been facing great hardship in their survival. At the time of his father's death, the applicant was minor and was not eligible for any job

therefore could not submitted any representation for any job on compassionate ground. The applicant further submitted thathe got education upto Intermediate and after attaining the age of majority, he applied for appointment on compassionate ground however his application had been rejected vide order dated 20.10.2016 (Annexure A/1) on the ground that his father married her mother without legal separation from his earlier legally wedded wife. Hence this O.A.

3. The respondents, in their written statement, have submitted that this O.A is hit by the Law of Acquiescence, waiver and Estoppels. He further contended that late ChhoteLalPaswan, Ex-Valveman was firstly married to one Smt. Puspa Devi. Thereafter, the said employee without any permission from the Railway and without producing any divorce paper or decree of divorce, performed second marriage with one Rita Devi during the lifetime of his first wife Puspa Devi. Such second marriage is void under the Hindu law. The applicant is the son of 2<sup>nd</sup>wife of deceased employee and as per Railway Board Circular dated 21.03.2018, the applicant is not entitled for appointment on compassionate ground.This decision has been taken on the ground of report of Welfare Inspector, Danapur Division and the Railway Board decision/circular dated 12.01.1992 has clarified the issue of appointment on compassionate ground case of second widow and her ward are as under :-

*"1. it is clarified that in case of Railway employee dying in harness etc. leaving more than one widow alongwith children born to the 2<sup>nd</sup> wife, while settlement dues may be shared by both the widows due to court orders or otherwise on merits of each case, Appointment 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 etc."*

2. *The fact that the second marriage is not permissible invariably clarify in the terms and conditions 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."*

The learned counsel for respondents placed reliance on the order passed by the Hon'ble Patna High Court in CWJC No. 2592 of 2007 (The Union of India & Ors vs Uma Devi &Anr.)and submitted that by considering aforesaid circular, the Hon'ble High Court, Patna held that "*the Eastern Railway has rightly provided in their administrative instruction that the claims set up by children born out of such unholy combination cannot be given the benefit of compassionate appointment.*" It is further submitted that as per the instructions issued under RBE No. 42/2018 dated 21.3.2018 has clarified that in cases of those railway servants who are governed by the Hindu Marriage Act 1955 there can only be legally wedded wife/widow, as second marriage, while spouse is living, is void/voidable in view of the Section-5 (1) read with Section 11 of the Act. (Annexure R/1 series , Annexure R/2 and R/3 refers). Therefore, the applicant is not entitled for any relief as sought for in this OA.

4. Heard the parties and perused the records.

5. In the present case, it is noticed in the present case that undisputedly the father of the applicant i.e late Chhote Lal Paswan, Ex Valveman, got married second time without obtaining any permission from the department or without any divorce approved by competent court of law. His marriage was governed under the Hindu Marriage Act 1955. It is further noticed that, as per the circular dated 24<sup>th</sup> January 1992 and RBENo. 42/2018 dated 21.3.2018 issued by the respondents which contemplate that

in absence of lawful separation from first wife, the second widow and her wards of deceased railway employee are not entitled for compassionate appointment. The said circular/policy dated 24<sup>th</sup> January, 1992 has been considered by the Hon'ble High Court, Patna in CWJC No. 2592 of 2007 decided on 22<sup>nd</sup> April 2007 and the decision of the respondent railway for not considering the claim of second widow for appointment on compassionate ground was rejected. At this juncture, it is appropriate to take notice that the order passed by the Hon'ble High Court of Jharkhand in WP 8087/2012 in a similar issue, whereby the claim of second widow for appointment on compassionate ground was accepted. The appointment on compassionate ground governed under the policy espoused by the employer i.e railway department herein and according to the existing such policy, the second widow or her ward are not entitled for appointment on compassionate ground in absence of any divorce decree issued by the competent court of law.

6. In view of above discussion, this Tribunal is of the view that there is no infirmity in the impugned order dated 20.10.2016 passed by the respondents.

7. Accordingly, the O.A. is dismissed with no order as to costs.

[ Jayesh V. Bhairavia ]  
Member ( J )

/mks/



