

Reserved

**CENTRAL ADMINISTRATIVE TRIBUNAL**

**ALLAHABAD BENCH**

**ALLAHABAD**

Allahabad This the 01<sup>st</sup> day of January 2019

**HON'BLE MR. RAKESH SAGAR JAIN, MEMBER – J**

**Original Application No.330/01088 of 2016**

Smt. Hemlata @ Gulab Kali wife of Late Dharm Singh, Ex-Trackman under Divisional Engineer, Rail Path, Khaga, resident of Village Kallu Miyan Ka Purwa, Majare & Post Mandava, Tehsil Khaga, District Fatehpur.

..... Applicant

By Adv: Shri Radhey Shyam Yadav/Shri R.K. Yadav

**V E R S U S**

1. Union of India through General Manager, North Central Railway, Allahabad.
2. Divisional Rail Manager, North Central Railway, Allahabad.
3. Divisional Rail Manager (Karmik), North Central Railway, Allahabad.
4. Assistant Work Officer/Manager through Divisional Rail Manager, North Central Railway, Allahabad.

..... Respondents

By Adv: Shri C.K. Rai

**O R D E R**

1. The present Original Application has been filed under Section 19 of the Central Administrative Tribunal Act, 1985 by Smt. Hemlata alias Gylab Kali seeking the following relief:

"(i) This Hon'ble Tribunal be please to issue suitable order and direction to quash the impugned order dated 1.3.2016 (Annexure A-1) passed by respondent NO.4.

- (ii) This Hon'ble Tribunal may graciously be pleased to issue a suitable order and direction to the respondents to give appoint to the son of applicant on compassionate ground.
- (iii) The Hon'ble Tribunal may graciously be pleased to issue any other suitable order or direction in favour of the applicant as deem fit in facts and circumstances of the case.
- (iv) The Hon'ble Tribunal may be pleased to award costs of the case in favour of the applicant".

2. The case of applicant Hemlata is that her husband Dharm Singh died on 16.02.2008 during his service in the respondent-department. Her husband had previously married Laxmi Devi and since no male issue was born out of tht marriage, Dharm Singh married the applicant with the consent of his wife Laxmi Devi and out of this wedlock, two sons and a daughter were born. The retiral benefits were released in her favour by the respondents after she got the orders from Civil Court. And is getting monthly pension. She applied to the respondents for appointment of her son Ashok Kumar on compassionate basis. This application was supported by an application filed by the first wife Laxmi Devi with prayer that Ashok Kumar be provide compassionate appointment. Her claim was rejected by respondents vide impugned order dated 11.10.2015 (Annexure No. 8) on the ground that Dharm Singh had re-married without seeking permission of the department and placed reliance on Railway Board's letter No. E (NG) II/RC-1/136 dated 02.01.1992.

3. In the counter affidavit, the railway authorities as usual have taken the plea that as per Railway Boards letter No. E(NG) II/RC-1/136 dated 2.1.1992, compassionate appointment to the

second wife and her children is not to be considered. Dharm Singh had re-married without seeking permission of the department and therefore the O.A. be dismissed.

4. I have heard and considered the arguments of Learned Counsels for the parties and gone through the material on record.

5. Respondents have relied upon Railway Board's letter No.E(NG.ii/91)/RC-1/135 dated 02.01.1992 that the appointment on compassionate ground to second widow and her children are not to be considered. The contents of the above letter quoted by the respondents their counter affidavit reads thus:-

*"that in case of railway employee dying in harness etc. having more than one widow along with children born to 2nd wife, while settlement dues may be shared by both the widows due to court orders or otherwise on merits of each case, appointments on CG to second widow & 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.*

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

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

6. The main objection raised by the respondents is that in terms of Circular/letter No.E(NG.ii/91)/RC-1/135 dated 02.01.1992, compassionate appointment cannot be considered for the children i.e. applicant-son of second wife Hemlata. It be noted

that the respondents do accept the applicant to be the wife of the deceased Dharm Singh and the retrial-death benefits of deceased Dharm Singh were disbursed to applicant.

7. The Tribunal is unable to accept the contentions raised by the learned counsel for the respondents. So far as appointment of son of second wife is concerned, the controversy has already been settled by the Hon'ble Apex Court.
8. The Hon'ble Calcutta High Court has also decided the similar issue in the case of Smt. Namita Golder & Anr. Vs. Union Of India & Ors decided on 14 July, 2010 following the judgment of Hon'ble Supreme Court in the case of Rameshwari Devi vs. State of Bihar & Ors., reported in 2000(2) SCC 431, by holding that the children of the second wife cannot be treated as illegitimate. Hon'ble High Court of Calcutta in the case of Smt. Namita Golder & Anr. Vs. UOI & Ors in W.P.C.T. 102 of 2010 has held as under:- "The claim of the petitioner no. 3 for appointment on compassionate ground being the son of the second wife cannot be rejected on the basis of the circular issued by the Railway Board on 2nd January, 1992 since this Court while deciding the aforesaid case of Smt. Namita Goldar & Anr. (supra) already quashed the said circular issued by the Railway Board on 2nd January, 1992 to the extent it prevents the children of the second wife from being considered for appointment on compassionate ground.  
For the reasons discussed hereinabove, we are also of the opinion that the respondent authorities herein were not justified in rejecting the prayer of the petitioner no. 3 for compassionate appointment on the ground that the said petitioner No. 3 is the son of the second wife. Therefore, the decision of the respondent authorities as was communicated to the petitioner no. 1 by the written communication dated 20th August, 2007 cannot be sustained and the same is accordingly quashed."

9. The Hon'ble High Court of Allahabad in Writ Petition A No.51707 of 2015 (Union of India and 3 others Vs. Amit Kashyap and 2 others) decided on 14.11.2017 observed that claim of applicant has been rejected in view of circular of Railway Board dated 2.1.1992 which provides that second wife and children born through her would not be permitted to claim compassionate appointment unless the second marriage is after permission from railway authorities. It is further observed that admittedly, in the present case, second marriage of the deceased employee was accepted by the first wife since she never challenged the 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, we have no hesitation in accepting that the second marriage of the deceased employee was upon obtaining specific consent from the first wife. It was further held by the Hon'ble High Court that "In view of the aforesaid the Railway Board circular dated 2.1.1992 became redundant and of no use."
10. Given the nature of facts and circumstances of the case, I am of the considered opinion that rejection of the applicant's request for compassionate appointment solely on the ground that as per Railway Board's letter dated 02.01.1992, children of second widow of the deceased employee cannot be considered for compassionate appointment is misconceived and not justifiable. In this view of the matter, the present OA is allowed and the impugned order dated 11.10.2015 is quashed and set aside. The respondents are directed to consider the case of the applicant for appointment on compassionate ground of her son Ashok Kumar under the rules framed for compassionate appointment within a period of four months from the date a certified copy of this order is received by the

respondents. If any documents are required in connection with the birth of Ashok Kumar borne out of the said wedlock, respondents would be at liberty to inform the applicant to file the said documents, as required for consideration of appointment on compassionate ground. The applicant may be informed about the outcome of this consideration as directed above immediately thereafter. No order as to costs.

**(RAKESH SAGAR JAIN)**

MEMBER-J

Manish/-