

RESERVED.

**CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH
ALLAHABAD**

This is the 13th day of December 2018.

ORIGINAL APPLICATION No. 924 of 2012

HON'BLE MR RAKESH SAGAR JAIN, MEMBER (J)

Prakash Saxena S/o Late Anil Kumar Saxena, aged about 26 years,
R/o 106-G Greater Akash Colony, Izatnagar, Bareilly (U.P)

.....Applicant.

By Advocate: Shri R.C. Pathak

VERSUS

1. Union of India, through the General Manager, N.E. Railway, H.Q. Gorakhpur (U.P).
2. Divisional Railway Manager (DRM), N.E. Railway, Izatnagar, Bareilly (U.P).
3. Divisional Railway Manager (Karmik), N.E. Railway Izatnagar, Bareilly (U.P).
4. Chief T.T. Inspector, N.E. Railway Kasganj, (U.P).

.....Respondents

By Advocate : Shri M.K Yadav

O R D E R

BY HON'BLE MR RAKESH SAGAR JAIN, MEMBER (J)

1. The present Original Application has been filed by the applicant under section 19 of Administrative Tribunals Act, 1985 seeking following reliefs:-

"(i) Issue suitable order or direction by way of CERTIORARI quashing the impugned order dated 05.01.2012 issued by the respondent No.3 shown as Annexure A-1 to this O.A.

(ii) Issue suitable order or direction by way of MANDAMUS directing the respondents to order for "Compassionate Appointment" as per Hon'ble S.C., H.C. & C.A.T. judgment to the applicant.

(iii) Issue any other such order or direction which this Hon'ble Tribunal deem fit & proper under the circumstances of this case.

(iv) To award the cost of the application to the applicant".

2. Case of applicant Prakesh Saxena is that his father Anil Kumar Saxena married Smt. Renu Saxena and out of this wedlock Alok Saxena was born. After 1979, said Renu Saxena left his father and thereafter his father in 1981 married Smt. Priti Saxena and out of his wedlock Proorinima and Prakash Saxena was born. Respondent No.1 on this basis also issued Railway pass showing therein Priti Saxena to be the wife and Proorinima and Prakash Saxena to be the children of Anil Kumar Saxena.

3. Said Anil Kumar Saxena expired on 5.5.2009 whereupon the Priti Saxena filed the representation on 29.5.2009 before respondent No. 2 for appointment of her son – applicant on compassionate ground. It is also averred that Dy. District Magistrate, Sadar Bareilly issued heir certificate dated 17.8.2009, which included the applicant also. Agreement was also executed on 5.4.2010 by all the heirs including the first wife Renu Saxena giving their no objection for compassionate appointment to applicant. Thereafter applicant filed an application on 24.9.2010 with respondent No.2 seeking compassionate appointment due to death of his father during course of service. That applicant again gave representation on 28.8.2011 to respondent No.2 for his compassionate appointment. However, respondent No.3 sent a letter on 13.10.2011 to Priti Saxena demanding the document as proof of marriage with Anil Kumar Saxena. It may be mentioned that as per applicant Civil Judge (S.D.) Bareilly vide judgment dated 3.11.2010 in Civil Misc. Case No. 161/10 titled Priti Saxena Vs. Renu Saxena amongst other relief declared Priti Saxena to be the legal wife. (Note : as per the judgment of Civil Court, it comes out that Smt. Priti Saxena claimed herself to be the wife of deceased Anil Kumar Saxena

and the Civil Court on this basis declared that she is entitled to the amount of the F.D.R. of deceased Anil Kumar Saxena).

4. The representation of the applicant and his mother for his compassionate appointment was rejected by respondent No. 3 vide order dated 05.01.2012 and the same is challenged on the following grounds:
 - A. All the family members gave no objection for the compassionate appointment to the applicant,
 - B. The retiral benefit of deceased Anil Kumar Saxena was distributed equally amongst the family members and therefore the amount received by applicant and his mother was very small,
 - C. Applicant's mother was declared by the Civil Court to be the wife of Late Anil Kumar Saxena,
 - D. As per law child of second wife is entitled to compassionate appointment,
 - E. The North Eastern Railway authorities in accordance with Court order distributed the retiral benefits of deceased Anil Kumar.
5. As per the impugned order dated 05.01.2012 respondent has rejected the application for compassionate appointment of the applicant on the ground that there are no documents showing the separation of Anil Kumar Saxena from his first wife Smt. Renu Saxena and therefore without separating his relation with said Renu Saxena, the deceased Anil Kumar married Priti Saxena mother of applicant.
6. In the counter affidavit the respondents are approbating and reprobating in the sense that in paragraph 2 they aver that Anil Kumar Saxena expired on 05.05.2009 leaving behind two wives Smt. Renu Saxena and Smt. Priti Saxena however, in the other

paragraph they take the view the deceased could not have married Smt. Priti Devi without getting legally separated from Smt. Renu Saxena who was his first wife and therefore Priti Saxena is not legal wife of Anil Kumar Saxena. They admit that applicant is the son of Anil Kumar Saxena and his second wife Priti Saxena. It is further case that as per circular of the Railway Board compassionate appointment to the second wife and her children cannot be considered and therefore applicant is not entitled to compassionate appointment.

7. Rejoinder reply is filed by the applicant through which he has reiterated the facts as stated by him in the O.A. and denied the contents of counter reply.
8. As usual the counter affidavit is full of repetition and what could have been said in a couple of pages has been said in 16 pages. I have heard and considered the arguments of the learned counsels for the parties and gone through the material on record.
9. 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."

10. The 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 Smt. Priti Sexena is to be rejected.
11. 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."

12. 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.
13. The case set up by the respondents in their counter affidavit is that Smt. Renu Sexena was the first wife of late Anil Kumar who thereafter contacted 2nd marriage with Mst. Priti Sexena without any legal divorce nor taken permission from Railway Administration for re-marriage with Mst. Priti Sexena. So the marriage of late Anil Kumar with Smt. Priti mother of applicant is illegal and not valid. It is further submitted that as per Railway Board's letter dated 02.1.1992, it is clarified that in case of Railway employees dying in harness leaving more than one widow along with 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, appointment on compassionate ground to the second wife and her children are not to be considered unless the administration has permitted the second marriage in special circumstances. Since the husband of applicant has not taken permission from Railway Administration for second marriage, any marriage was not legal.

14. Learned Counsel for applicant stated that Smt. Priti Sexena, mother of applicant is the legally wedded second wife of deceased Anil Kumar and prima facie this is established by documents relied upon by the applicant viz. Respondent No. 1 issued Railway Pass showing therein Priti Saxena to be the wife and Poorinima and Prakash Saxena to be the children of Anil Kumar Saxena. Respondents cannot escape from this document and it does not lie in their mouth to deny the facts as entered by them in said railway pass. Respondents have to consider the heir certificate 17.8.2009 issued by Dy. District Magistrate, Sadar Bareilly which included the applicant also. Its an document issued by a responsible Government Officer and can excluded only if the respondents say that it is a forged document. Agreement was also executed on 5.4.2010 by all the heirs including the first wife Renu Saxena giving their no objection for compassionate appointment to applicant which shows that the first wife consented to the second marriage. Applicant relies upon the judgment dated 3.11.2010 of Civil Judge (S.D.) Bareilly in Civil Misc. Case No. 161/10 titled Priti Saxena Vs. Renu Saxena which gave the relief on the basis of Mst. Priti Sexena being the wife of Anil Kumar and in the first wife Renu Sexena was arrayed as a respondent.
15. Taking all these documents into consideration as also railway pass issued by the respondents, I am prima facie convinced

that the Mst. Priti Sexena is the second wife of late Mr. Anil Kumar and applicant is entitled for claiming compassionate appointment.

16. 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 in Rameshwari Devi vs. State of Bihar & Ors., reported in 2000(2) SCC 431.
17. Counsel for respondents submitted that applicant has never taken permission from the Railway Administration for re-marriage as such appointment cannot be given to the applicant on compassionate ground. Counsel for respondents have referred the Railway Board Circular dated 2.1.1992 and stated that this circular clarified that appointment on compassionate ground cannot be given to the son of second wife.
18. 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.
19. 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, I have no hesitation in accepting that the second marriage of the

deceased employee was upon obtaining specific consent from the first wife.

20. Even so, respondents would well to look to the observations of the Hon'ble Apex Court in *Badri Prasad vs. Dy. Director of Consolidation & Ors.*, (1978) 3 SCC 527 wherein it was held that a strong presumption arises in favour of wedlock where the partners have lived together for a long spell as husband and wife. Although the presumption is rebuttable, a heavy burden lies on him who seeks to deprive the relationship of legal origin. Law leans in favour of legitimacy and frowns upon bastardy. The Court further observed that if men and women who live as husband and wife in society are compelled to prove, half a century later, by eye-witness evidence that they were validly married, few will succeed. There have been various other judgments of this Court holding where a man and a woman live together for long years as husband and wife then a presumption arose in law of legality of marriage existed between the two, though the presumption is rebuttable.
21. The question of giving appointment to the son of second wife has already been settled and respondents vide impugned order have rejected the claim of the applicant only on the ground that Railway Board circular dated 2.1.1992 clearly provides that son of second wife is not eligible for compassionate appointment or that there is no proof that deceased Anil Kumar Sexena did not divorce his first wife in accordance with law but failed to consider the case of the applicant on the observations made by the Hon'ble Apex Court and Hon'ble High Court, as well as the aforementioned documents relied upon by applicant and facts as discussed above, as such, order dated 05.01.2012 (Annexure A-1) is quashed and set aside. The respondents are directed to consider the case of the applicant for appointment on compassionate ground 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. 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/-