

Open Court

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD

BENCH, ALLAHABAD

Original Application No. 330/00086/2017

This the 7th day of December, 2018

Hon'ble Mr. Justice Bharat Bhushan, Member (J)

Pradeep Kumar aged about 23 years son of late Sri Anokhey Lal (Cabin Master) r/o Village Ballia, Post Dhaneta, Tehsil Meerganj, District- Bareilly.

Applicant

By Advocate: Sri I.M. Kushwaha

Versus

1. Union of India through General Manager, Northern Railway, Baroda House, New Delhi.
2. Divisional Manager, Northern Railway, Moradabad.
3. Senior Personnel Officer, Northern Railway, Moradabad.

Respondents

By Advocate: Sri A.N. Ambasta proxy for Sri Sher Bahadur Singh

ORDER

By Hon'ble Mr. Justice Bharat Bhushan, Member (J)

1. Pradeep Kumar son of late Anokhey Lal, employee of Northern Railway, Moradabad, has moved an application for compassionate appointment subsequent to death of his father late Anokhey Lal.

2. It appears that late Anokhey Lal was Cabin Master at Dhaneta District, Moradabad. He died on 29.10.2014, while still in service. Evidently, late Anokhey Lal had married Sunahari Devi, mother of the applicant, in the life time of his first wife Ram Pyari. According to the

applicant, Ram Pyari, first wife gave birth to a daughter who is now reportedly married. Second wife, Sunahari Devi gave birth to the applicant as well as three other daughters.

3. It is alleged that both Ram Pyari and Sunahari Devi are living happily. No legal prosecution was initiated by first wife either against her husband late Anokhey Lal or against second wife Sunahari Devi. It is further stated that name of Sunahari Devi and her children are recorded in identity card and Railway pass etc. All essential and incidental facilities were provided to the second wife and her children during the life time of late Anokhey Lal.

4. It is also stated that both wife jointly prayed for retiral dues of her husband. A letter dated 26.12.2016 written by Ram Pyari available on record indicates that there is no dispute between two wives of late Anokhey Lal. In fact, she conceded that late Anokhey Lal had executed a will granting movable and immovable properties to his son born out with second wife Sunahari Devi (applicant in present O.A.). Ram Pyari, first wife, in fact requested the Railway authorities to give appointment to the applicant Sri Pradeep Kumar on compassionate ground.

5. This request for compassionate appointment was rejected by the Divisional Railway Manager (DRM) on the

ground that applicant is the son of second wife and that the said appointment is not permissible under Railway Board Circular letter dated E(NG)II91/RC-1/36 dated 2.1.1992, RRB 1/92. Second attempt of applicant was also treated in a similar manner by DRM vide order dated 30.11.2016. Both orders are reproduced as below:-

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6. These rejection is under challenge before this Tribunal.

7. Respondents have filed counter reply primarily relying upon the aforesaid circular letter of Railway Board wherein the children of second wife have been precluded from appointment of compassionate appointment. This fact has been reiterated by one Harsha Dass, Director Estt.(P) Railway Board vide circular letter dated 3.4.2013. Copy of this letter is reproduced as below:-

"Sub: Appointment on compassionate grounds-
case of second widow and her children.

A number of references have been received from Zonal Railways on the above subject. The

matter has been examined by the Board and it has been decided that such cases may be dealt strictly in terms of Board's letter No. E(NG)II91/RC-1/36 dated 2.1.1992. Further, whenever the judgment of the Hon'ble Courts are contradictory to Board's instructions, Railways may contest/file review petition in light of favourable judgment in such cases (copy enclosed).

Please acknowledge receipt.

- (i) East Central Railway's letter No. ECR/HRD/Court Cell/CG Apptt dated 22.8.11.
- (ii) South East Central Railway's letter No. P-HQ/RCT/208/4/1002 dated 28.6.11.
- (iii) Eastern Railway's letter No. CPO/SC/SA/Comp/CI.IV/3037 dated 20.9.11.
- (iv) Northeast Frontier Railway's letter No. E/208/2/QA/44/11 dated 16.12.11.)"

8. In this circular letter Mr. Harsha Dass, Director Estt (N) Railway Board directed the subordinate authorities to rely upon the circular letter dated 2.1.1992 mentioned in earlier part of this judgment.

9. Heard Sri I.M. Kushwaha counsel for applicant and Sri A.N. Ambasta holding brief for Sri Sher Bahadur Singh, counsel for respondents.

10. The issue in this case is very limited. The Railway authorities have denied the consideration of compassionate appointment to the applicant merely on the ground of circular No. E(NG)II91/RC-1/36 dated 2.1.1992 wherein the children of second wife have been precluded from appointment on compassionate ground.

11. On the other hand, learned counsel for applicant has relied upon the judgment of Calcutta High Court in the case of **Namita Goldar Versus Union of India LAWS (CAL) 2010 266**, wherein Hon'ble High Court of Calcutta had set aside the aforesaid circular letter in the year 2010.

12. It is not disputed that deceased employee married for second time during the life time of his first wife. The letter of first wife Ram Pyari discloses that her husband married second time perhaps with her consent. There is no dispute that late Anokhey Lal died in harness, leaving behind two wives, one son and four daughters. Admittedly, the first wife never challenged the second marriage in any court of law. There is nothing on record to demonstrate that any legal challenge has been mounted by first wife against the second marriage.

13. Learned counsel for respondents has not shown any evidence that any departmental proceedings were initiated by the concerned authorities against the second marriage of late Anokhey Lal, meaning thereby, that Railway authorities did not take any disciplinary action against late Anokhey Lal. In fact, the applicant claims that his mother Sunahari Devi and children of second wife were granted incidental and service benefits like pass etc. during the service time of late Anokhey Lal and two families were living together during the life time of late Anokhey Lal. The argument that son of second wife cannot be treated as family of late Anokhey Lal is not sustainable in the eye of law. It is true that second marriage during the life time of first wife under Hindu Marriage Act is void but children born out by such relationship can not be treated as illegitimate.

14. The Hon'ble Apex Court in the case of **Rameshwari Devi Vs. State of Bihar** reported in 2000(2) SCC 431 specifically held that the second marriage during the subsistence of first marriage may be illegal but the children born out of such second marriage are legitimate and are also entitled to the estate of the father. The relevant portion of the judgment enshrined in para 14 is reproduced as below:-

"It cannot be disputed that the marriage between Narain Lal and Yogmaya Devi was in contravention of clause (i) of Section 5 of the Hindu Marriage Act and was a void marriage.

Under Section 16 of this Act, children of void marriage are legitimate. Under the Hindu Succession Act, 1956, property of a male Hindu dying intestate devolve firstly on heirs in clause (1) which include widow and son. Among the widow and son, they all get shares (see Sections 8, 10 and the Schedule to the Hindu Succession Act, 1956). Yogmaya Devi cannot be described a widow of Narain Lal, her marriage with Narain Lal being void. Sons of the marriage between Narain Lal and Yogmaya Devi being the legitimate sons of Narain Lal would be entitled to the property of Narain Lal in equal shares along with that of Rameshwari Devi and the son born from the marriage of Rameshwari Devi with Narain Lal. That is, however, legal position when Hindu male dies intestate."

15. In view of the decision of Apex Court in **Rameshwari Devi Vs. State of Bihar (supra)**, the children of second wife cannot be treated as illegitimate on account of section 16 of Hindu Marriage Act which specifically hold that children of a void marriage are legitimate.

16. In addition to that, it must be made clear that entire case of Railway authorities depend upon the circular No. E(NG)II91/RC-1/36 dated 2.1.1992. This circular was considered by the Division Bench of Calcutta High Court in the case of **Namita Goldar (sura)** and was set aside to the extent that it prevents the children of the second wife from being considered for appointment on compassionate ground. Relevant portion of judgment of **Namita Goldar (supra)** is reproduced as below:-

"8. The learned Tribunal, in our opinion, has rightly held that the claim of the petitioner No.

2 herein for compassionate appointment cannot be turned down on the ground it was done although the learned Tribunal did not issue any mandatory direction on the respondents authorities for granting compassionate appointment to the said son of the second wife, namely the petitioner No. 2 herein and directed the General Manager, Eastern Railway to refer the matter to the Railway Board for taking decision. We are, however, of the opinion that the circular issued by the Railway Board on 2nd January, 1992 preventing the children of the second wife from being considered for appointments on compassionate ground cannot be sustained in the eye of law in view of the specific provision of the Hindu Marriage Act, 1955 and pursuant to the decision of the Hon'ble Supreme Court in the case of Rameshwari Devi (supra).

9. In the aforesaid circumstances, the aforesaid circular issued by the Railway Board on 2nd January, 1992 stands quashed to the extent it prevents the children of the second wife from being considered for appointments on compassionate ground."

17. This view was subsequently endorsed by Division Bench of Bombay High Court in the case of **Union of India and another Vs. V.R. Tripathi** reported in 2016 **LawSuit (Bom) 456**. The Division Bench of Bombay High Court took cognizance of decision of Division of Calcutta High Court in the case of **Namita Goldar (supra)**. This judgment was also considered by the Allahabad High Court in **Union of India and others Vs. Amit Kashyap and others** reported in 2018 (2) ADJ 603 (DB), wherein same view was taken by the Hon'ble Allahabad High Court. The Hon'ble Allahabad High Court also considered the judgment of Calcutta High Court in the case of **Namita Goldar (supra)**.

18. It is pertinent to point out that there is nothing on record to demonstrate that quashing of circular letter No. No. E(NG)II91/RC-1/36 dated 2.1.1992 of Railway Board was ever challenged by the Railway authorities in any superior court. Said Railway Board circular was set aside in the year 2010 by Calcutta High Court and the judgment of Bombay High Court in **Union of India and another Vs. V.R. Tripathi (supra)** indicates that said judgment was subsequently complied with by the Railway authorities. This was not even challenged before the Apex Court and yet in the year 2013, Railway Board issued another circular letter dated 3.4.2013 mentioned by learned counsel for respondents annexed as CR-I, wherein Railway Board directed the subordinate authorities to take decision in accordance with circular letter No. E(NG)II91/RC-1/36 dated 2.1.1992 which has already been declared ultra-vires by Hon'ble Calcutta High Court. The second circular letter dated 3.4.2013 issued by Harsha Dass has no meaning and cannot be sustained.

19. In view of the aforesaid discussion, the O.A. is allowed and the order dated 20.5.2015 and order dated 30.11.2016 of DRM, Northern Railway, Moradabad are set aside. The DRM, Northern Railway, Moradabad is directed to consider the case of applicant for compassionate appointment on its own merit and in

accordance with existing rules and regulations without
adverting to Railway Board circular No. E(NG)II91/RC-
1/36 dated 2.1.1992 as expeditiously as possible,
preferably within a period of four months from today and
thereafter to communicate such decision to the
applicant. No order as to costs.

(JUSTICE BHARAT BHUSHAN)
MEMBER (J)

HLS/-