

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHENNAI BENCH**

O.A.No.1793/2016

Dated Tuesday, the 5th day of February, 2019

PRESENT

Hon'ble Mr.R.Ramanujam, Administrative Member

D. Ramaraj

Garden Mate

Office/of SE/W/A/GOC

Ponmalai, Trichy Dt.

Tamil Nadu.

... Applicant

By Advocate M/s Ratio Legis

Vs

1. Union of India represented by

The General Manager

Southern Railway

Park Town, Chennai – 3.

2. The Divisional Railway Manager

Tiruchchirappalli Division

Southern Railway, Trichy.

... Respondents

By Advocate Mr. A. Abdul Ajees

(Order: Pronounced by Hon'ble Mr.R.Ramanujam, Member(A))

Heard. The applicant has filed this OA under Section 19 of the Administrative Tribunals Act, 1985 seeking the following relief:

"To call for the service records related to the deceased railway employee and the pension payment advice 28.10.2013 issued in favour of applicant's mother and the representations dated 21.01.2014 & 12.06.2015 and to direct the respondents to consider the applicant for appointment on compassionate grounds in accordance with the Master Circular No. 16 issued by the Railway Board and other mandatory provisions and to pass such other orders".

2. It is submitted that the applicant is the son of one late R.Durairaj who died in harness on 29.05.2004. The applicant's mother was granted the consequential settlement dues and family pension based on judicial succession certificate in the year 2009. At that time, the applicant was not qualified for appointment in the Central Government service. As soon as the applicant became qualified, he made representations dated 21.01.2014 & 12.06.2015 which were not responded to. Accordingly, the applicant has filed this OA.

3. The respondents have filed a reply contesting the claim of the applicant. It is stated that the applicant is the son of one Smt.D.Selvi with whom the applicant's father had contracted a second marriage on 02.10.1991 during the lifetime of his first wife Smt.Indira Devi who was alive till 27.09.2000. Settlement dues were paid to the applicant's mother based on succession certificate issued by the Principal Subordinate Judge, Tiruchchirappalli dated 19.06.2006. However, no

compassionate appointment could be granted to the applicant as RBE 01 of 1992 dated 02.01.1992(Annexure R-1) prohibits children through the second wife from being considered for compassionate appointment.

4. Learned counsel for the applicant would argue that RBE No.01/1992 dated 02.01.1992 had been set aside by the Hon'ble Calcutta High Court in the year 2010 and the respondents could not rely on the same anymore. He would, further produce a copy of the judgment of the Hon'ble Supreme Court in CA No.12015/2018 arising out of SLP No.32004/2016 dated 11.12.2018 wherein it has been clearly held that once the circular dated 02.01.1992 had been struck down by the Division Bench of the Hon'ble Calcutta High Court in **Namita Goldar & anr. Vs. Union of India & Ors [2010 (1) CLJ (Cal) 464] dated 14.07.2010** and accepted by the respondents, it was not thereafter open to the railway authorities to rely upon the same circular which has an all india force and effect. Hence it was improper on the part of the Railway Board to issue a fresh circular on 03.04.2013 reiterating the terms of the earlier circular dated 02.01.1992 even after the decision in **Namita Goldar (supra)** which had attained finality. The claim of the applicant could not, therefore, be dismissed on the strength of the aforesaid circular, it is contended.

5. Learned counsel for the respondents would submit that in the light of the aforesaid judgment of the Hon'ble Supreme Court the respondents

would be willing to consider any representation made by the applicant for compassionate appointment on merits.

6. Keeping in view the above submission, the respondents are directed to consider representations of the applicant dated 21.01.2014 & 12.06.2015 in accordance with law and on merits and pass a reasoned and speaking order within a period of three months from the date of receipt of a copy of this order. The respondents shall be at liberty to seek any additional information from the applicant to satisfy themselves about the financial condition of the family.

7. OA is disposed of as above. No costs.

**(R.RAMANUJAM)
MEMBER (A)
05.02.2019**

M.T.