

CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH, PATNA
OA/050/00049/18

Reserved on : 23.04.2019
Pronounced on: 26.04.2019

C O R A M
HON'BLE MR. DINESH SHARMA, ADMINISTRATIVE MEMBER

1. Smt. Triveni Devi, Wife of Late Dharmanand Jha, Ex- Gatekeeper under Senior Section Engineer (P. Way), East Central Railway, Raghpur, Resident of Village/Mohallah- Farbisganj, Ward No. 13, PO & PS- Farbisganj, District- Araria (Bihar), Pin Code- 854318.
2. Smt. Ranjan Kumari, second wife of Dharmanand Jha, Ex- Gatekeeper under Senior Section Engineer (P.Way), East Central Railway, Raghpur, Resident of Village/Mohallah- Farbisganj, Ward No. 13, PO & PS- Farbisganj, District- Araria (Bihar), Pin Code- 854318.
3. Babu Jha, Son of Late Dharmanand Jha, Ex- Gatekeeper under Senior Section Engineer (P.Way), East Central Railway, Raghpur, Resident of Village/Mohallah- Farbisganj, District- Araria (Bihar), Pin Code- 854318.

.... Applicants.

By Advocate: - Mr. M.P. Dixit

-Versus-

1. The Union of India, through the General Manager, East Central Railway, Hajipur, PO- Dighi Kalan, PS- Hajipur, District- Vaishali at Hajipur, Pin Code- 844101 (Bihar).
2. The General Manager (Personnel), East Central Railway, Hajipur, PO- Dighi Kalan, PS- Hajipur, District- Vaishali at Hajipur, Pin Code- 844101 (Bihar).
3. The Divisional Railway Manager, East Central Railway, Samastipur, PO- Samastipur, PS- Samastipur, Town & District- Samastipur, Pin Code- 848101 (Bihar).
4. The Senior Divisional Personnel Officer, East Central Railway, Samastipur, PO- Samastipur, PS- Samastipur, Town & District- Samastipur, Pin Code- 848101 (Bihar).
5. The Senior Divisional Engineer (Coordination), East Central Railway, Samastipur, Town & District- Samastipur, Pin Code- 848101 (Bihar).
6. The Senior Divisional Financial Manager, East Central Railway, Samastipur, PO- Samastipur, PO- Samastipur, PS- Samastipur, Town & District- Samastipur, Pin Code- 848101 (Bihar).

.... Respondents.

By Advocate: - Mr. S.K. Raj

ORDER

Dinesh Sharma, A.M:- The applicants here are, respectively, first wife, second wife and son of Late Dharmananad Jha, Ex-Gateman under Senior Section Engineer (P.Way), EC Railway, Raghpur, who died in harness on 28.01.2007. Despite both the widows having submitted representations before the respondents for compassionate appointment in favour of the third applicant, the respondents have shown their inability for giving appointment on ground that he is a son of second wife, and as such not entitled for such appointment under Railway Board order dated 02.01.1992. The applicants have alleged that they have recently come to know about a decision of the Hon'ble Supreme Court, and also the decisions of the Hon'ble Division Bench of Madras High Court in WP No. 36891 of 2015 (**Union of India Vs. Smt. M. Karunabayee**) which has been upheld by Hon'ble Supreme Court whereby the circular of Railway Board dated 02.01.1992 has been set aside. A similar decision has been rendered by Hon'ble Madras High Court on 03.01.2017 in the case of **J. Kaliammal Vs. Union of India**. The applicants have requested for declaring for impugned action of the respondents, by which applicant no. 3 has been deprived appointment on ground of his being son of the second wife. They have also requested for directing the respondents to re-consider the matter and issue offer of appointment in favour of applicant no.3.

2. The respondents have denied the claim of the applicant in their written statement. They have quoted a number of decisions of Hon'ble

Patna High Court, viz. (i) Full Bench in RA No. 375/2012 (**Union of India & Ors. Vs. Deepak Kumar Rai**, (ii) Order dated 29.01.2015 in CWJC No. 9383/2013 (**UOI & Ors. Vs. Uma Devi**), (iii) Order dated 27.01.2011 in CWJC No. 18275/10 (**Pankaj Kumar Singh V/s UOI & Ors.**),(iv) Order dated 22.04.2010 in CWJC No. 2592/2007 (**Union of India & Ors. Vs. Uma Devi & Ors.**) and Hon'ble High Court, Ranchi vide order dated 13.04.2011 in WP(S) No.4461/08, WP(S) No. 4495/08 and WP(S) No. 1083/2010 in which the Hon'ble Court had dismissed the case of child of second wife for compassionate appointment. They have also quoted and enclosed a photocopy of RBE No. 42/2018 dated 21.03.2018 according to which neither widow can nominate sons/daughters who have been treated as legitimate or deemed to be legitimate under Section 16 of Hindu Marriage Act, 1955.

3. After going through the pleadings and hearing the learned counsel for both the parties, I find that the only issue in this matter is whether the child son of a second wife can be given compassionate appointment under the Railways. The respondents Railways have denied it on the ground of their recent circular RBE 42/2018 dated 21.03.2018 and also on ground of decisions of Hon'ble Patna High Court mentioned above. They also cited a decision of this Tribunal dated 16.05.2018 in OA 910/2016 (Rajnikant Ojha Vs. Union of India). The decision of this Tribunal in the aforementioned case is clearly supporting the stand taken by the respondents that the son of second wife of a late employee, who has not taken permission or approval for the second marriage, is not eligible for

compassionate appointment. The relevant portion of the rule quoted by the respondents (RBE 42/2018) is reproduced below:

“ 5. If aforementioned legally wedded surviving widow does not want herself to be considered for compassionate grounds appointment, she can nominate, for CG appointment, a “bread winner” for the family from amongst the following:-

(a) **In cases of those Railway Servants who are governed by the Hindu Marriage Act, 1955** : Son (including adopted son); or daughter (including widowed/adopted/married/divorced daughter). However, if such Railway Servant has left sons/daughters, who have been treated as legitimate or deemed to be legitimate, under Section 16 of Hindu Marriage Act, 1955, neither widow can nominate them as bread winner for CG appointment nor such sons/daughters can claim CG appointment.”

4. I find the above quoted is rule to be *prima facie* against law as it amounts to imposing the Department's perceived sense of morality over what is expressly declared as legal, or legitimate. However, in the light of decision taken by this Tribunal (in OA 050/00910/2016) which was itself based on the judicial pronouncements made by the Hon'ble Patna High Court (cited in then OA, and quoted at para 2 above), the OA cannot be allowed and is hence dismissed. No order as to costs.

[Dinesh Sharma]
Administrative Member

Srk.

