

**CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH**

Original Application No. 040/00045 of 2016

Date of Order: This, the 29<sup>th</sup> day of January 2019

**THE HON'BLE SMT. MANJULA DAS, JUDICIAL MEMBER**

**THE HON'BLE MR. N. NEHSIAL, ADMINISTRATIVE MEMBER**

Ms. Rinku Deb Barma  
D/o Late Nagendra Deb Barma  
C/o Kamakhya Das  
P.O. – Rehabari, Bilpar, Guwahati  
District – Kamrup (Metro), Assam  
Pin – 781008.

... Applicant.

By Advocates: Mr. B.C. Das, Sr. Advocate with Mr. C.S. Hazarika

-Versus-

- 1     The Union of India  
      Represented by the General Manager  
      N.F. Railway, Maligaon  
      P.O. – Maligaon, Guwahati  
      Pin - 781011 (Assam).
2.     The General Manager (Construction)  
      N.F. Railway, Maligaon  
      P.O. – Maligaon, Guwahati  
      Pin – 781011 (Assam).
3.     The Senior Personnel Officer (Construction)  
      N.F. Railway, Maligaon  
      P.O. – Maligaon, Guwahati  
      Pin – 781011 (Assam).

4. Smti. Manipriay Deb Barma  
Daughter of Santosh Marak  
Resident of Molohnagar, Ashrampara  
P.O. – Nagicherra, P.S. – Sri Nagar  
Agartala, Tripura (West), Tripura, Pin – 799004.

... Respondents

By Advocates: Mr. A. Sarma, Rly. Advocate for official respondents  
Mr. N. Das, Advocate for private respondent No. 4.

### **ORDER**

**N. NEHSIAL, MEMBER (A):**

This is a remand case from the Hon'ble High Court of Tripura vide letter No. F.40 (09)-HCT/BENCH/WP(C)(CAT)/2017 dated 19<sup>th</sup> August 2017 enclosing WP(C)(CAT) No. 01/2016 wherein the Hon'ble High Court has observed as hereunder:-

“On perusing the record, we find that no notices were served upon or received by the petitioners before disposing of the case by the Central Administrative Tribunal, Guwahati Bench. This amounts to violation of principle of natural justice, which vitiates the decision making process of the Central Administrative Tribunal.

Without going into the merit of the case, we set aside the impugned order dated 03.03.2016. The case is, therefore, remanded to the learned Members, Central Administrative Tribunal, Guwahati Bench for fresh decision after hearing all interested parties in accordance with law.”

2. This case i.e. O.A. No. 041/00045/2016 has been already disposed of vide order dated 03.03.2016. In the said O.A., applicant

Ms. Rinku Deb Barma asked for her appointment in the organization of the respondents i.e. Ministry of Railways on compassionate ground, amongst others the 4<sup>th</sup> respondent was Smti. Manipriya Deb Barma, daughter of Santosh Marak. After having detailed examination of the submissions made by the applicant and also by the respondents, this Tribunal had directed as under:-

“19. In our view the responsibility to be fixed upon the concerned authority so as to ascertain legal entity of the applicant for being considered for compassionate appointment by taking note of declaration form of Service Book of the deceased employee as well as the relevant documents submitted by the claimants on the basis of the appropriate justification. Ordered accordingly.

20. In case, if it is arrived at that the applicant's mother is the legally married first widow and not divorce till the death of deceased father the case of the applicant shall be considered for appointment on compassionate ground as per law. Ordered accordingly. The exercise as directed shall be carried out by the respondents within a period of three months from the date of receipt of the order.”

3. Aggrieved by the above decision and direction of this Tribunal, the respondent No. 4 i.e. Smti Manipriya Deb Barma has agitated before the Hon'ble High Court of Tripura at Agartala and the Hon'ble High Court has remanded the matter to this Tribunal for fresh decision after hearing all interested parties in accordance with law. Accordingly, the case was finally heard and concluded on

10.12.2018 with liberty granted to the parties to file their written argument along with decision so cited. Learned counsel for the respondents was also directed to produce relevant Service Book along with Family Declaration Form duly countersigned within a period of 10 (ten) days. Learned counsel for respondent No. 4 in the O.A. i.e. Smti. Manipriya Deb Barma has submitted written argument on 26.12.2018 along with copies of judgments in support of the points of arguments. The respondent authorities i.e. Railways also have submitted the Service Book of deceased employee Nagendra Deb Barma.

4. On going through the written argument submitted by private respondent No. 4, the followings have been highlighted:-

i. That, there are several disputed facts which cannot be adjudicated by this Hon'ble Tribunal without recording evidences of the parties like Applicant claiming herself as daughter of the deceased Nagendra Deb Barma, but her mother Smti. Swapna Deb Barma is not an Indian National, not a legally wedded wife of the deceased and never stayed in Tripura in the residence of the deceased including Applicant etc. and that said Swapna Deb Barma is not a party in the present Application. She is over aged and not eligible for appointment under the Respondent Nos. 1 to 3 and still she did not claim for any appointment.

ii. That, if it is found that said Smti. Swapna Deb Barma is the alleged 1<sup>st</sup> wife of the deceased and Respondent No. 4 is the alleged 2<sup>nd</sup> wife, the fact of alleged 2<sup>nd</sup> marriage was known to the alleged 1<sup>st</sup> wife and Applicant, but they, specifically 1<sup>st</sup> wife never made any

complain to the employer of the deceased during his life time for taking action departmentally as well as no case filed for Bigamy. So, legally it is clear that said 1<sup>st</sup> wife had the consent in the matter of 2<sup>nd</sup> marriage to Respondent No. 4 and there by 1<sup>st</sup> wife and Applicant accepted Respondent No. 4 as a member of the family of the deceased employee and the Railway Authorities also accepted and approved the 2<sup>nd</sup> wife by counter signing in the family declaration, Annexure R/16 & R/17 and settled the case of compassionate appointment to the Respondent No. 4 vide communication dated 19.06.2015, Annexure-R/12 with the written statement of the Respondent No. 4, there cannot be any valid reason to entertain the Application of the Applicant that liable to be dismissed.

3. That, deceased Nagendra Deb Barma was a Schedule Tribe of Tripura vis a vis Respondent No. 4 and as such no provision of the Hindu marriage Act, 1955 is applicable for the deceased and Respondent No. 4 that laid down in Sub-Section 2 of Section 1 of the Hindu Marriage Act, 1955 to deny that Respondent No. 4 has no legal status. Moreover customary law of Tripura Tribes permits to marry 2<sup>nd</sup> one during subsistence of 1<sup>st</sup> wife. (Photo copy of relevant portion is enclosed). So, in view of the above Sec. 1(2) of Hindu Marriage Act, 1955 and customary Law of Tripura Tribes, permission of the employer is not necessary. However employer of the deceased accepted and approved the second marriage in countersigning the Family Declaration meaning thereby implied permission was there. Annexure R/16 & R/17 with the written statements.

4. That, Applicant has not made party to the surviving daughter of the deceased employee Smt. Payel Deb Barma, who is legitimate daughter of the deceased Nagendra Deb Barma, See Annexure-R/2, R/3 & R/4 respectively with the Written Statements in view of Section 16 of the Hindu Marriage Act, 1955 and the decision of the Calcutta High Court in Namita Goldar VS Union of India 2010 legal eagle (CAL) 102, supra, by which Railway Circular prohibiting wards from the second marriage is quashed and still it is un challenged.

So, during hearing, Respondent No. 4 submitted before the Hon'ble Tribunal for allowing time for impleading said daughter as party that not allowed. As per Railway Circular she is entitled to claim for appointment on compassionate ground/ die in harness scheme after attaining her majority who is now 16 years old and said daughter and respondent No. 4 were dependent upon the deceased at the time of death and not the applicant. However said daughter already claimed for appointment.

There is no law that Applicant is to be given appointment on compassionate ground who was not dependant at the time of death of the deceased considering the respective statements in the pleadings as Well as without obtaining consent and no objection of the another daughter Smt. Payel Deb Barma, who is also one of the family members as per declaration of the deceased, Annexure R/17.

So, if any order is passed in favour of the Applicant in the matter of compassionate appointment, the legitimate daughter Smt. Payel Deb Barma, who has not made party in this Application and whose consent also not taken, she would not be bound by any such order as well as her right to claim would not be ceased away in claiming appointment on compassionate ground on attaining her majority with the Respondent No. 1 to 3 that may create future multiplicity of suits and proceedings and hence Application of the Applicant may be dismissed.

5. That, deceased executed an WILL in favour of Respondent No. 4 and Respondent No. 1 to 3 asked for the Probate or Letters of Administration by an enquiry, Annexure-R/8. So, Respondent No. 4 filed Misc. (Probate) 7 of 2017, subsequently renumbered as T S (Probate) 3 of 2016 making party to the Applicant, Her mother, brother and minor daughter said Smti. Payel Deb Barma. Applicant, her mother, brother appeared and contesting the said probate proceeding. But suddenly suppressing the pending probate proceeding on the same subject matter that contesting by them, filed the present Application subsequently. So, the

Application of the Applicant is liable to be dismissed, otherwise there might be conflict of orders and decisions between the two legal Forums as previously instituted Probate proceeding is not stayed by the Probate Court on petition of the Applicant or by any Higher Court.

During argument on 10.12.2018, in reply to a question of the Hon'ble Tribunal, it is submitted that since Probate Proceeding is pending in respect of the last WILL of the deceased in favour of Respondent No. 4 and that Applicant as well as her mother and brother contesting the same on same subject matter, legality of the WILL in question is only to be decided by the Probate Court, i.e. District Judge, where proceeding is pending as per Law of Wills and its proof thereof and not by any other Court, unless decision of the Probate Court is challenged. So, no decision of the Probate Court is under challenge before this Hon'ble Tribunal and at this stage Hon'ble Tribunal cannot give any findings in respect of the legality of the WILL since Probate proceeding is pending and only to be decided by a Probate Court.

5. We have gone through the Service Record/Book of the deceased employee Late Nagendra Deb Barma particularly Family Declaration and details countersigned by the officer on various dates which are as hereunder:-

(I) Family Declaration Form as on 05.01.1989:

- |                                  |          |
|----------------------------------|----------|
| i. Shri Nagendra Deb Barma       | Self     |
| ii. <b>Smt. Swapna Deb Barma</b> | Wife     |
| iii. Miss Sampa Deb Barma        | Daughter |
| iv. Miss Rinku Deb Barma         | Daughter |
| v. Master Rabi Kumar Deb Barma   | Son      |

(II) Family Declaration Form as on 10.08.1994

- |                                  |            |
|----------------------------------|------------|
| i. Shri Nagendra Deb Barma       | (Self)     |
| ii. <b>Smt. Swapna Deb Barma</b> | (Wife)     |
| iii. Miss Sampee Deb Barma       | (Daughter) |

- |                                |            |
|--------------------------------|------------|
| iv. Miss Rinku Deb Barma       | (Daughter) |
| v. Master Rabi Kumar Deb Barma | (Son)      |
| vi. Miss Jameena Deb Barma     | (Niece)    |
| vii. Smt. Subha Kanya          | D/W/Mother |

(III) Family Declaration Form as on 11.11.1998

- |                                  |            |
|----------------------------------|------------|
| i. Shri Nagendra Deb Barma       | (Self)     |
| ii. <b>Smt. Swapna Deb Barma</b> | (Wife)     |
| iii. Miss Rinku Deb Barma        | (Daughter) |
| v. Mr. Rabi Kumar Deb Barma      | (Son)      |
| vi. Smt. Subha Kanya             | W. mother  |
| vii. Miss Shampa Deb Barma       | (Daughter) |
| viii Miss Momith D. Barma        | (Niece)    |

(IV) Family Declaration Form as on 2002

- |                                  |            |
|----------------------------------|------------|
| i. Shri Nagendra Deb Barma       | (Self)     |
| ii. <b>Smt. Swapna Deb Barma</b> | (Wife)     |
| iii. Miss Sampee Deb Barma       | (Daughter) |
| iv. Miss Rinku Deb Barma         | (Daughter) |
| v. Master Ravi Kumar Deb Barma   | (Son)      |

(V) Family Declaration Form as on "No Date"

- |                                    |                            |
|------------------------------------|----------------------------|
| i. Shri Nagendra Deb Barma         | (Self)                     |
| ii. <b>Smt. Swapna Deb Barma</b>   | (Wife)                     |
|                                    | (Judicially Separated) (X) |
| iii. Miss Rinku Deb Barma          | (Daughter)                 |
| iv. Master Ravi Kumar Deb Barma    | (Son)                      |
| v. <b>Mrs. Manipriya Deb Barma</b> | (Wife)                     |
| vi. Miss Payel Deb Barma           | (Daughter)                 |

(X) No supporting document/authority for this remark found in the Service Book/Docket.

(VI) Declaration of Family Members as on 13.07.2005

- |                                    |                            |
|------------------------------------|----------------------------|
| i. Shri Nagendra Deb Barma         | (Self)                     |
| ii. <b>Smt. Swapna Deb Barma</b>   | (Wife)                     |
|                                    | (Judicially Separated) (X) |
| iii. Miss Rinku Deb Barma          | (Daughter)                 |
| iv. Master Ravi Kumar Deb Barma    | (Son)                      |
| v. <b>Smt. Manipriya Deb Barma</b> | (Wife)                     |
| vi. Miss Payel Deb Barma           | (Daughter)                 |



- |                            |           |
|----------------------------|-----------|
| vii. Miss Mompy Deb Barma  | (D/Niece) |
| viii. Miss Pompy Deb Barma | (D/Niece) |

(X) No supporting document/authority for this remark found in the Service Book/Docket.

(VII) Declaration of Family Members as on 24.05.2011

- |                                     |                     |
|-------------------------------------|---------------------|
| i. Shri Nagendra Deb Barma          | (Self)              |
| ii. <b>Smt. Manipriya Deb Barma</b> | (Wife)              |
| iii. Miss Payel Deb Barma           | (Daughter)          |
| iv. Miss Sonali Deb Barma           | (Independent Niece) |

6. From the above facts, it is observed that Mrs. Swapna Deb Barma was definitely the wife of the deceased Govt. employee Nagendra Deb Barma. It is also clear that applicant in the instant O.A. namely Ms Rinku Deb Barma was one the legitimate daughter of the deceased Govt. employee Late Nagendra Deb Barma. Moreover, as submitted by the respondents in the O.A., the deceased Govt. employee Late Nagendra Deb Barma since September 1999 has been making maintenance payment to his wife Smt. Swapna Deb Barma initially @Rs. 1500/- and subsequently increased to Rs. 2000/- based on the judgment/legal of the Legal Court.

7. It is also evident from the above facts that private respondent No. 4 Smti Manipriya Deb Barma is also subsequently recorded wife of deceased Govt. employee Late Nagendra Deb Barma as reflected in the Family Declaration Form in the Service

Book. However, it is not clear as to why the respondent authorities had not questioned the deceased Govt. employee for having more than one wife under CCS (Conduct) Rules. At the same time, it is also not seen from the records whether the deceased Govt. employee was specifically permitted to have more than one wife under any specific Rule or law applicable to him. Even the remark 'judicially separated' against the name of the first wife Mrs. Swapna Deb Barma is not supported by any quoted authority or document.

8. As regards to the written argument submitted by the learned counsel for the 2<sup>nd</sup> wife (Respondent No. 4), it may be pointed out that the issue under examination is not as to whether 1<sup>st</sup> wife was Indian National or not. In fact no document is produced to prove that Smti. Swapna Deb Barma, 1<sup>st</sup> wife was not an Indian National. Secondly, the contention that the 1<sup>st</sup> wife had never made any complaint to the department regarding the marriage of the deceased Govt. employee that the 2<sup>nd</sup> wife is matter of conjecture. The very fact that she had filed a case in the court of law and obtained a decree in her own favour for maintenance is considered sufficient enough to proof that she had not consented to the 2<sup>nd</sup> marriage of her late husband. Thirdly the argument that the deceased Govt. employee was Scheduled Tribe and that he was not governed by the provisions of Hindu Marriage Act 1995 is also

found not sustainable. The marriage certificate dated 20.03.2014 between the deceased Govt. employee and Smt. Manipriya Deb Barma found in the Service Book prominently indicated as 'Hinduism'. Moreover, the points of argument by the respondent No. 4 at para 3 and 4 are found to be contradictory to each other. Even if the deceased employee was taken as Scheduled Tribes permitted to have more than one wife under Tribal Customs and Traditions, he was required to take a specific permission from the competent authority of the department. As per the records, there is no application for permitting him to get marriage the 2<sup>nd</sup> time and also no record of according such permission.

9. As regards Executed Will of the deceased Govt. employee in favour of the respondent No. 4, it may be appreciated that without going into the sustainability of the Will itself, a Govt. servant cannot decide who should be appointed on compassionate ground in the events of his death while in service. Appointment of compassionate ground is special scheme formulated by Govt. of India with specific Rules and Regulation.

10. From the above fact, it is clear that both Smt. Swapna Deb Barma and Smt. Manipriya Deb Barma have been married to the deceased namely Nagendra Deb Barma at different point of

time. From the record, it is very clear that Smt. Swapna Deb Barma was married much earlier to Smt. Manipriya Deb Barma. As per the decision laid down by the Hon'ble Supreme Court in the case of **Rameshwari Devi Vs. State of Bihar**, reported in **2000 2 SCC 431** as quoted by the Hon'ble Calcutta High Court in W.P.C.T. No. 20 of 2009 dated 10.02.2010, the 2<sup>nd</sup> wife of the deceased Govt. employee cannot claim to be legal widow of the late husband. However, the children of the 2<sup>nd</sup> marriage are definitely legitimate children of the deceased husband and would be entitled for property of the husband in equal shares along with the 1<sup>st</sup> wife and her children.

11. This being the legal position and in the absence of affirmative records to the contrary including specific permission accorded to the deceased Govt. employee for 2<sup>nd</sup> marriage under Tribal Customary laws and traditions, Smt. Manipriya Deb Barma, private respondent No. 4 in the instant case, cannot claim to be the rightful legal widow of the deceased Govt. employee of Late Nagendra Deb Barma. However, children born out of the 2<sup>nd</sup> marriage can be treated as legitimate children of Late Nagendra Deb Barma.

12. Considering the above facts and also the legal position as cited above, it is felt that Ms. Rinku Deb Barma, 2<sup>nd</sup> daughter of the 1<sup>st</sup> marriage (their 1<sup>st</sup> daughter being already married) is entitled to be considered for compassionate appointment by the respondent authorities. Accordingly, we hereby direct the respondent authorities to consider the claim of Ms. Rinku Deb Barma for offer of appointment on compassionate ground. The entire exercise may be completed within a period of three months from the date of receipt of this order.

13. With the above observations and directions, O.A. stands disposed of. No order as to costs.

**(N. NEIHSIAL)**  
**MEMBER (A)**

**(MANJULA DAS)**  
**MEMBER (J)**