

CENTRAL ADMINISTRATIVE TRIBUNAL**CHENNAI BENCH****OA/310/01535/2018****Dated this the 20 day of June, Two Thousand Nineteen****PRESENT****HON'BLE SHRI T.JACOB, MEMBER(A)**

S.Bhavani,
No.4/219,Vikramsi Medu Village,
Vaduganthangal Post,
Katpadi Tk,
Vellore Dist,PIN-632 204

... Applicant

By Advocate: M/s. R.Pandian, L. Kabilan & Saravana Prakash.S

Vs.

1.Union of India, Rep., by
The General Manager,
Southern Railway,
Park Town,
Chennai 600 003.

2.The Senior Divisional Personnel Officer,
Southern Railway, Chennai Division,
NGO Annexe,
Park Town,
Chennai 600 003.

Respondents

By Advocate: Dr. D. Simon



ORDER

(Pronounced by Hon'ble Mr. T. Jacob, Administrative Member)

The applicant has filed this OA under Section 19 of the Administrative Tribunal's Act, 1985 seeking the following reliefs:-

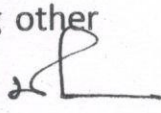
"(i) To call for the records relating to non-consideration of the request of the applicant for appointment of her son on compassionate grounds in the Respondents' Organisation including the impugned order in No.M/P/CS/22/190/2011 dated 10.08.2018 passed by the Senior Divisional Personnel Manager, Southern Railway, Chennai Division (2nd Respondent) and to quash the same; consequently,

(ii) to direct the Repondents to appoint the Applicant's son (S. Dilli Babu) in any suitable post on compassionate grounds; and

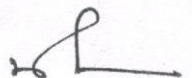
(iii) to pass such other order/orders.

2. The facts of the case as stated by the applicant are as follows:

The marriage of the Applicant's husband with one Mrs.Bakkiavathi was dissolved as per local customs and the marriage of the Applicant with Mr. P. Subramani (deceased Railway Servant) was solemnized in the year 1995. Two children (daughter & son) were born out of the wed-lock. Later, the Applicant's husband who was working under the Respondents died in harness on 29.12.2012. Consequently, the Applicant was sanctioned Family Pension and other settlement dues. Applicant applied for compassionate ground appointment in favour of her son on his attaining majority but was rejected by the Respondent stating that appointment on compassionate grounds to second wife and her children was not admissible. But, as per the decision of this Trbunal in O.A.281/2014, confirmed by the Hon'ble High Court of Madras and affirmed by the Hon'ble Supreme Court, son of second wife also is entitled to compassionate ground appointment. Hence, the applicant has filed this OA seeking the above relief on the following among other grounds:-



- "i) The first marriage of the ex-Railway servant with one Mrs. Bakkiavathi was nulled by the elders of the family in 1996 as per the customs prevailing in their community. After annulment, the said Mrs,. Bakkiavathi got married with another person and settled elsewhere. As such, terming the marriage of the applicant with the ex-Railway employee as second marriage is not correct.
- ii). As per Railway Board letter No.E(NG)II/81/RC-1/251 dated 06.02.1982, 24.05.1982 and 27.12.1983 as reproduced in the Master Circular No.16 issued by the Railway Board, appointment on compassionate ground is made to dependents of Railway servant who lose their lives in the course of duty or die in harness otherwise while in service. As the husband of the applicant had died in harness, the ex-employee's son is entitled for appointment on compassionate ground.
- iii). As per RB letter Nbo.E(MNG)II/84/RC-1/26 dated 18.4.1985 (RBE 112/1985) and E(NG)II/84/RC-1/26 dated 18.4.1990 (RBE 68/1990), appointments on compassionate ground should be made within a period of five years from the date of occurrence of event entitling the eligible person to be appointed on this ground. This period of five years may be relaxed by the General Manager. The applicant made representation for compassionate ground appointment in favour of her son just prior to his attaining majority and hence the claim is well within the normal time frame stipulated by the Railway Board. Hence non-consideration of the request for appointment of the applicant's son on compassionate ground is



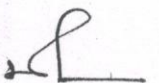
against all cannons of law and hence maintainable.

iv). As the applicant's son fulfils all conditions stipulated in the Railway Board's letter No.E(NG)III/79/RC-1/47 dated 29.11.1979 as reported in Master Circular No.16 with regard to educationl qualification and age limit, he should have been considered for appointment.

v). In a similar case, this Tribunal in OA.281/2014 dated 13.7.2015 (S. Vennila vs. UOI rep., by GM, Southern Railway) quashed the impugned order and directed the respondents to consider the case of the applicant's son for compassionate appointment. The said case was confirmed by the Hon'ble High Court in W.P. No.36158/2015 dated 12.9.2016 which was affirmed by the Hon'ble Supreme Court in SLP (Diary No.,27467/2017). As such, denial to consider the applicant's son for appointment on compassionate ground is nonest and hence unsustainable."

3. Per contra, the respondents have filed a detailed reply statement in which it is stated that the Government employee died in harness on 29.12.2012. His normal date of superannuation is on 30.6.2013. When he died he had hardly six months of service left. The applicant was paid the settlement benefits based on the family composition declared by the employee in his working place. The applicant did not apply for compassionate appointment in the year 2012. She preferred appointment to her son, S. Dilli Babu who submitted a representation dated 23.8.2016. His representation was considered and during enquiry, the following facts came to the light:-

"1. The deceased employee married one Smt Bakkiam sometime during 1985.



2. No child was born out of the wed lock between the deceased employee and Smt Bakkiam.

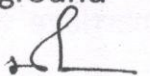
3. Due to family dispute and difference, the marriage was dissolved before Vedaganthangal Village Panchayat on 03.01.1996.

4. The deceased employee submitted the 'Divorce Order' of the Panchayat to Railway Administration and incorporated the name of Bhavani as legally wedded wife. Since then, the deceased employee and Bhavani were living as husband and wife.

5. The 1st wife Bakkiam got re-married and is now living at Bangalore.

6. A sum of Rs.10,000/- (Rupees Ten Thousand only) was given to Smt Bakkiam by the deceased as Jeevanamsam."

Since the marriage of the applicant with 1st wife was not dissolved by the competent court of law, the first right of being considered for compassionate appointment is vested, in cases of death of Railway servants while in service, with the legally wedded surviving widow provided that she has not remarried at the time of making the request for appointment on compassionate grounds. It was clarified by the Ministry of Railways that in cases of those Railway servants who are governed by the Hindu Marriage Act, 1955, there can only be one legally wedded wife, widow, as second marriage, while spouse is living, is void/voidable. If the legally wedded surviving widow does not want herself to be considered for appointment on compassionate ground, she can nominate her son or daughter (including widowed/adopted/married/divorced daughter) as a 'bread winner' for the family. However, if such Railway servant has left sons/daughters who have been treated as legitimate or deemed to be legitimate under Sec.16 of Hindu Marriage Act, 1955, neither widow can nominate them as bread winner for compassionate ground



appointment. Hence the competent authority rejected the claim of the applicant vide letter dated 10.8.2018 as there was no court order/decreed available dissolving the marriage between the deceased employee and Smt Bakkiam and that the second marriage was performed while the first marriage was subsisting. Further, the applicant cannot nominate her children for compassionate ground appointment nor can such sons/daughter claim compassionate ground appointment. Hence the respondent pray for dismissal of the OA. The respondents also relied upon the following decisions:-

"i. The Union of India Vs Umadevi -Patna High Court judgement dated 22.04.2010 in Civil Writ Jurisdiction Case No.2592 of 2007;

ii. Union of India through Senior Divisional Personnel Officer, East Central Railway Vs. Basanti Devi and another – Jharkhand High Court judgement dated 13.4.2011 in W.D.(s) No.4461 of 2008;

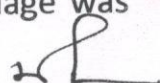
iii. M.V.V.Prakash Vs. Union of India and others – Jharkhand High Court judgement dated 24.7.2014 in W.P.(s)No. 16 of 2014; and

iv. Pratibha Dilip Salve Vs Union of India and another– Bombay High Court judgement, Aurangabad Bench, dated 08.12.2014 in W.P.No. 1156 of 2013."

4. Heard the learned counsel for the respective parties and perused the pleadings and documents on record.

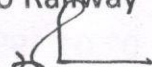
5. The point for consideration in this OA is whether the son of the second wife of the deceased Government employee is entitled to be considered for compassionate ground appointment.

6. There is no dispute with regard to the service of the applicant with the respondents and the fact that the second marriage was performed while the first marriage was subsisting. It is stated by the applicant that the first marriage was



dissolved by the Vedanthangal Village Panchayat on 01.01.1996 whereafter she was married as a second wife. The first wife of the deceased Government employee, Smt Bakkiam got remarried and is now living at Bangalore after accepting Rs.10,000/- as Jeevanamsam. It is stated by the learned counsel for the applicant that the first wife has not made any claim thereafter for settlement of retiral benefits or whatsoever of the deceased Government employee. It is settled law that a marriage cannot be dissolved by a Panchayat or other incompetent authority and an order obtained from the competent Court of Law to that effect alone is valid. The learned counsel for the respondents would contend that the Ministry of Railways has examined the same in supersession of letter dated 02.01.1992 issued under RBE No.01/1992 and No.E(NG)II/2012/RC-1/21 dated 03.04.2001 and decided that the first right of being considered for compassionate appointment is vested, in cases of death of a Railway servant while in service, with the legally wedded surviving widow provided that she has not remarried at the time of making request for appointment on compassionate grounds. Learned counsel for the applicant submits that the first wife of the deceased Government employee has no child and got remarried and is settled at Bangalore after accepting Rs.10,000/- as Jeevanamsam and therefore, she has no right to claim the retiral benefits of the ex-Government employee or appointment on compassionate grounds.

7. I have perused the matter carefully. Undisputedly the Railway administration after accepting the order of the Vedanthangal Village Panchayat dissolving the marriage between the deceased employee and Smt Bakkiam on 3.1.1996 and permitting the Government employee to incorporate the name of Smt Bhavani as his legally wedded second wife in the Service Register, cannot now take a stand at this belated stage and argue that as per Sec.5(1) read with Sec.11 of the Hindu Marriage Act, 1955, there can only be one legally wedded wife/widow and the second marriage, while spouse is living, is void. Further as per Rule 21(2), No Railway

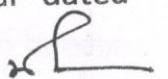


servant having spouse living shall enter into or contract a marriage with any other person. No customary divorce is recognised by any court of law and the law is settled in this regard. Under such circumstances, the Railway Administration should not have permitted the ex-employee to enter the name of his second wife in the service register without obtaining an order of divorce of his first wife before the competent Court of Law and now reject the representation of the applicant referring to various rule position. The respondents having settled all retiral benefits to the applicant treating her as a legitimate second wife of the deceased Railway servant shall not retract from considering the representation of the applicant for appointment of her son on compassionate grounds.

8. The learned counsel for the applicant would submit that the circular of the Railway Board dated 02.01.1992 was quashed by the Division Bench of the Kolkata High Court in the case of Smt Namita Goldar & Anr. vs. UOI and it is specifically held in the said Judgement that the children of the second wife cannot be treated as illegitimate. He also invited attention of the Court to the Judgement of the Hon'ble Supreme Court in the case of UOI & Anr. vs. V.R. Tripathi (Civil Appeal No.12015 of 2018) dated 11.12.2018, the relevant portion (para 20) of which would read thus:-

"20. Finally, it would be necessary to dwell on the submission which was urged on behalf of the respondent that once the circular dated 2 January 1992 was struck down by the Division Bench of the Calcuttra High Court in Namita Goldar (supra), and which was accepted and has been implemented, it was not thereafter open to the railway authorities to rely upon the same circular which has all India forced and effect. There is merit in the submission. Hence, we find it improper on the part of the Railway Board to issue a fresh circular on 3 April 2013, reiterating the terms of the earlier circular dated 2 January 1992 even after the decision in Namita Goldar (supra) which attained finality".

Hence the contention of the respondents that the son of the applicant is not entitled for appointment on compassionate ground in terms of Circular dated 02.01.1992 is no longer good in law.

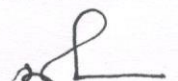


9. The learned counsel for the applicant would further state that the applicant submitted a representation dated 28.07.2017 even before the Railway Board Circular RBE No.2/2018 dated 21.3.2018 came into effect and, therefore, the request of the applicant ought to have been considered for appointment on compassionate grounds. The Circular dated 21.3.2018 is reproduced below for better appreciation of facts:-

"5(a) In cases of those Railway Servant 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 Sec.16 of the Hindu Marriage Act, 1955, neither widow can nominate them as bread winner for compassionate ground appointment nor such sons/daughters can claim CG appointment."

From the above, it is clear that the circular dated 21.3.2018 cannot be applied in this case as it has only prospective application. In this connection, learned counsel for the applicant has relied upon the orders of this Tribunal in O.A.1125 of 2014 dated 12.10.2018 (Shenbagavalli & Mohanraj Vs. UOI rep by General Manager, Southern Railway, Chennai and another) wherein also it was held that rejection of compassionate ground appointment in terms of the circular dated 2.1.1992 in favour of the 2nd applicant therein is no longer good in law and the subsequent circular dated 21.3.2018 cannot be applied to him as it has only prospective application. Hence, the respondents were directed to consider compassionate appointment to the 2nd applicant therein.

10. In view of the above facts and circumstances of the case and the discussions hereinabove, the OA is allowed. The impugned order dated 10.8.2018 is hereby set aside and quashed. The applicant is entitled to the grant of compassionate appointment subject to fulfilment of rules on the subject as per scheme. The Committee dealing with the grant of compassionate appointment shall consider the



case of the applicant immediately on the next convened meeting along with other cases and if the applicant comes in merit shall be afforded the appointment by giving necessary age relaxation if need be. In case, he does not come in merit, his case may be considered in the subsequent meetings, if rules so permit and meanwhile, the applicant be informed of the merit position and the same drill be followed in the subsequent meetings. No order as to costs.