

**CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH**

**OA No. 635 of 2017**

**OA No. 211 of 2018**

**Present : Hon'ble Mr. Gokul Chandra Pati, Member (A)**

OA 635/2017      Namita Panda, aged about 46 years, W/o Late Santanu Panda, Ex-Khalasi, under SSE (C&W), East Coast Railway, Puri, resident of Vill./PO-Satyabhamapur, PS-Jagatpur, Dist-Cuttack.

OA 211/2018      Mamata Panda, aged about 21 years, D/o Late Santanu Kumar Panda of Village- Road Sahi Chudialanji, Samantipalli, Dist-Ganjam-761004.

.....Applicants.

VERSUS

**Respondents in OA 635/2017**

1. Union of India represented through the Divisional Railway, East Coast Railway, East Coast Railway Sadan, Chandrasekharpur, Bhubaneswar, Dist-Khurda-751017.
2. The Divisional Manager, East Coast Railway, Khurda Road Division, Jatni, dist-Khurda-752050.
3. The Senior Divisional Personnel Officer, East Coast Railway, Khurda Road Division, Jatni, dist-Khurda-752050.

**Respondents in OA 211/2018**

4. Union of India represented through the Divisional Railway, East Coast Railway, East Coast Railway Sadan, Chandrasekharpur, Bhubaneswar, Dist-Khurda-751017.
5. The Divisional Manager, East Coast Railway, Khurda Road Division, Jatni, dist-Khurda-752050.
6. The Senior Divisional Personnel Officer, East Coast Railway, Khurda Road Division, Jatni, dist-Khurda-752050.
7. Namita Panda, aged about 47 years, W/o Late Santanu panda, resident of Village-PO-Satyabhamapur, PS-Jagatpur, Dist.-Cuttack.

.....Respondents.

For the applicant :      Mr.N.R.Routray, counsel (OA 635/2017)  
                                 Mr.T.K.Patnaik, counsel (on behalf of  
                                 Mr.B.Mohanty) (OA 211/2018)

For the respondents:      Mr.T.Rath, counsel  
                                 Mr.N.R.Routray, counsel (OA 211/2018)

Heard & reserved on : 6.9.2019

Order on : 19.9.2019

## O R D E R

### Per Mr. Gokul Chandra Pati, Member (A)

The applicant in OA No. 635/2017, Namita Panda, Widow of Late Santanu Panda, has filed the OA seeking the following reliefs :

- “(i) To direct the respondents No. 2 & 3 to consider the case of the applicant for appointment in Railway on compassionate ground.  
And pas any other order as this Hon’ble Tribunal deems fit and proper in the interest of justice;  
And for which act of your kindness the applicant as in duty bound shall ever pray.”

2. The applicant in OA No. 211/2018, Mamata Panda, Daughter of Late Santanu Panda, has filed the OA seeking the following reliefs :

- “(i) To direct the respondents No. 1, 2 and 3 to give appointment to the applicant in Railway Department on compassionate ground.
- (ii) Any other reliefs, as this Hon’ble Tribunal may think consider.”

3. Both the OAs are inter-related since the applicants of both the OAs are seeking appointment on compassionate ground after death of Late Santanu Panda (referred hereinafter as ‘deceased employee’), who died in harness while under employment as an employee under the respondent-railways. The applicant in OA No. 635/2017 claims to be the legally wedded wife of the deceased employee, whereas the applicant in OA No. 211/2018 claims to be his daughter. The dispute in both the OAs relates to the issue as to who among the applicants in both the OAs will have higher priority for consideration for appointment on compassionate ground. The applicant of the OA No. 635/17 is the respondent no. 4 in the OA No. 211/18. Hence, both the OAs were adjudicated together and are being disposed of by this common order.

4. The facts as per the OA No. 635/17, in brief, are that the applicant claims to have married the deceased employee in 2003, after his marriage with his first wife was dissolved vide order dated 23.12.2002 of the Family Court in the C.P. No. 186/1996 (Annexure-A/1 of the OA No. 635/17). The first wife of the deceased employee is the mother of the applicant in OA No. 211/18. The applicant of the OA No. 635/17 stated that her husband was an ex-serviceman and after retirement from defence, he had been selected as Junior Trackman under the respondent-Railways on 21.9.2011 and that after his marriage with the applicant of OA No. 635/17, her name was reflected in the service records of her husband, when her late husband was in military service. While in service under the Railways, he expired on 9.7.2015 and after his death, the Railways took steps for release of the service benefits to the applicant and also issued the application form for compassionate appointment. It is stated in OA No. 635/17 that the applicant submitted her application on 6.5.2016 (Annexure-A/6 of the OA No. 635/17). On 27.10.2017 (Annexure-A/8 of the OA No.

635/17) was submitted by the applicant requesting for release of the service benefits of her deceased husband and for compassionate appointment. When no action was taken by the respondents, the applicant approached this Tribunal by filing the OA No. 635/17.

5. The Counter filed by the respondent-railways in the OA No. 635/17 states that the order dated 23.12.2002 of the learned Family Court in the C.P. No. 185/1996 dissolved the marriage of the deceased employee with his first wife, but dismissed the prayer of the deceased employee in respect of the applicant of OA No. 211/18 to declare her to be not her daughter, which implied that the applicant of OA No. 211/18 is the daughter of the deceased employee. It is stated that the Tahsiladar had first issued the Legal Heir Certificate (in short LHC) on 14.11.2015 showing the name of the applicant in OA No. 635/17 and her two children, but the name of the applicant of the OA No. 211/18 was not shown in the LHC. It is stated in the Counter that the LHC issued on 14.11.2015 was modified by the Tahsildar and the revised LHC (copy at Annexure-R/3) was issued showing the name of the applicants in both these OAs and the name of the children of the applicant in OA No. 635/17 as legal heirs of the applicant.

6. The Counter filed by the Railways in OA No. 635/17 further stated regarding family pension and application for compassionate appointment as under :-

“Subsequently, as per legal heir certificate No.e-LHC/309 Dt. 9.4.2018 issued by the same Tahasildar/Salipur, the following are the legal heirs of the ex-employee:

Sl.No.	Name	Age	Relationship with the deceased	Marital Status
1	Namita Panda	47	Wife	Widow
2	Mamata Panda	21	Daughter	Unmarried
3	Puspanjali Panda	14	Daughter	Unmarried
4	Sourav Ranjan Panda	13	Son	Unmarried

A copy of legal heir certificate No. e-LHC/309 Dt. 9.4.2018 issued by the same Tahasildar/Salipur is annexed as Annexure R/3.

In this context be it appropriate here to submit that the Rule 75(7)(iii) of Railway Services (Pension) Rule-1993 stipulates that :

“Where the deceased railway servant or pensioner is survived by widow but has left behind child or children from a divorced wife or wives, such child or children if they satisfy other conditions of the eligibility for payment of family pension shall be entitled to the share of family pension which the mother would have received at the time of death of the railway servant or pensioner had she not been so divorced.”

A copy of Rule 75(7)(iii) of Railway Services (Pension) Rule-1993 is annexed as Annexure R/4.

"While the things stood thus the Railway Board vide RBE No. 42/2018 has clarified that in cases of death of Railway servants while in service, with the legally wedded surviving widow, provided she has not remarried at the time of making request for appointments on compassionate grounds. It is clarified 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 in view of the Section 5(1) read with Section 11 of the Act. In this respect, Railway Board's letter No. E(D&A)92 GS 1-1 dated 10.4.1992 connects.

A copy of Railway Board's RBE No.42/2018 is annexed as Annexure R/7."

7. The Rejoinder filed in OA No. 635/17 stated that the averments in the para 3, 4 and 12 of the Counter are misleading and the respondents are not relying on the legal heir certificate on the basis of the report of a junior official. The Rejoinder relied on the legal heir certificate dated 9.4.2018 referred submitted by the applicant in OA No. 211/18 before the authorities while stating that the reference to the applicant in OA No. 635/17 as 'second wife' in the inquiry report is incorrect. It was further stated that her marriage with the deceased employee was solemnized on 8.6.2003 when he was in defence service. Regarding validity of the legal heir certificate, it is averred in the Rejoinder as under:-

"It is respectfully submitted here that the legal heir certificates granted under the Orissa Miscellaneous Certificate Rules and the said rule amended vide resolution dtd. 31.3.2017 and 24.9.2018. From both the resolutions it is clear that the legal heir certificate is permanent in nature unless modify or cancelled by orders of Competent Authority. The second legal heir certificate has issued by the Tahasildar, Salipur on 9.4.2018, after cancelling the earlier legal heir certificate dtd. 14.11.2015."

8. In OA No. 211/18, the fact regarding dissolution of marriage of the deceased employee with his first wife vide order dated 23.12.2002 (Annexure-A/3 of the OA No. 211/18) has been mentioned without disputing the same, while stating that in the same order, it has been held that the applicant in OA 211/18 is the daughter of the deceased employee from his first wife. It is stated that the applicant in OA No. 635/17 has suppressed the fact that the deceased employee has a daughter from his first wife.

9. The Counter filed by the respondent no. 4 in OA 211/18 (applicant in OA 635/17) stated that she had submitted the LHC dated 14.11.2015, which has been cancelled by the competent authority, for which, the allegation of existence of two LHCs in this case is incorrect. It is further stated that the applicant of the OA No. 211/18 has submitted the LHC dated 9.4.2018 before the Railway authorities, which shows the applicant in OA No. 635/17 as the widow of the deceased employee.

10. The Counter filed by the Railway in OA No. 211/18 stated that there are rival claims from the applicants in OA 635/17 and 211/18 in this case, for which, the competent authority of the Railways has advised both the parties to produce the succession certificate vide the letter at Annexure-R/10 to the Counter.

11. Learned counsels for the applicant and the respondents in OA No. 635/17 and 211/18 were heard and the pleadings as well as the documents produced in both the OAs were perused by me. The undisputed facts are that the deceased employee's marriage with the mother of the applicant in OA no. 211/18 was dissolved vide order dated 23.12.2002 of the Family Court and the said order has attained finality. It is claimed by the applicant in OA No. 635/17 that she married to the deceased employee on 8.6.2003 vide her Counter filed in the OA No. 211/18, which has not been contradicted by any of the parties in the said OA. This submission is further confirmed by the Legal Heir Certificate dated 9.4.2018 issued by the Tahsildar (Annexure R/3), which is referred in the Counter filed by the Railways in OA No. 635/17 and the said certificate was issued after cancelling the earlier certificate dated 14.11.2015, as averred by the respondent No.4 in the OA No. 211/18 in her Counter, which has not been contradicted by any of the parties to the OA No. 211/18. It is also noticed that the validity of the Legal Heir Certificate dated 9.4.2018 has not been questioned by any of the parties in these OAs.

12. As per the aforesaid Legal Heir Certificate dated 9.4.2018, the applicant in OA No. 635/17 is the widow of the deceased employee and the applicant in OA No. 211/18 is the daughter of the deceased employee. Hence, it is clear that both the applicants have their respective rights in accordance with the law. In these OAs, the question, therefore, to be decided is who among the applicants of both the OAs will have the first right for compassionate appointment under the extant rules applicable to the Railways.

13. The Railway respondents in their counter filed in OA No. 635/2017 have enclosed the instructions of the Railway Board RBE No. 42/2018 dated 21.3.2018 which is also referred in paragraph 3 of their counter states inter alia as under :

"4. The matter has been examined and in supersession of this Ministry's letter dated 2.1.1992 issued under RBE No. 1/1992 and No. E(NG)II/2012/RC-1/21 dated 3.4.2013, it has been decided that the first right of being considered for compassionate grounds appointment is vested, in cases of death of Railway servants while in service, with the legally wedded surviving widow provided she has not remarried at the time of making request for appointments on compassionate grounds. It is clarified 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 in view of the Section 5(1) read with Section 11 of the Act. In this respect, Railway Board's letter No. E(D&A)92 GS 1-1 dated 10.4.1992 connects.

14. From the above instructions of the Railway Board RBE No. 42/2018, it is clear that the applicant in OA No. 635/2017 being the legally wedded surviving widow of the deceased employee will have the first right of being considered for the appointment on compassionate ground in preference to the applicant in OA No. 211/2018, who is the daughter of the deceased employee from the first wife. As discussed earlier, the marriage of the applicant in OA No. 635/2017 with the deceased employees was solemnized after the marriage of the deceased employee with his first wife was dissolved by the order of the Family Court dated 23.12.2002 (Annexure A/1 of the OA No. 635/2017) and there is nothing on record to contradict such claim of the applicant in OA No. 635/2017. The applicant in OA No. 635/2017 is therefore, considered to be the legally wedded surviving widow of the deceased employee, who has the first right to be considered for compassionate appointment in accordance with the RBE No. 42.2018. The contentions of the respondents that the applicant in OA 635/2017 is the second wife will not make any difference to above decision. Hence, the respondents are required to consider the case of the applicant in OA No. 635/2017 for compassionate appointment in terms of extant rules and pass a speaking order under intimation to the applicant in OA No. 635/2017 within three months from the date of receipt of a copy of this order.

15. As regards sanction of the family pension and other service benefits of the deceased employee, there is no specific prayer made in this regard in both these OAs. Taking into consideration the averments in para 3 of the counter filed by the Railways in OA No. 635/2017, the respondents will be at liberty to take appropriate action in accordance with the provisions of rules and decide to what extent such benefits will be payable to the applicants in OA No. 635/2017 and OA No. 211/2018, and inform the applicants within a period of four months from the date of receipt of a copy of this order.

16. In view of the discussions above, the OA No. 635/2017 is allowed in terms of para 14 of this order. Since the prayer made in OA No. 211/2018 regarding compassionate appointment of the applicant in the said OA cannot be allowed in view of the observations at para 14 of this order, the said OA No. 211/2018 is disposed of in terms of the paragraphs 14 and 15 above of this order. There will be no order as to costs.

(GOKUL CHANDRA PATI)  
MEMBER (A)

