

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

ORIGINAL APPLICATION No.693/2017

Dated this Friday the 12th July, 2019

CORAM: RAVINDER KAUR, MEMBER (J)

Atish Baban Bunge
Age Adult, Occupation:-Nil
Residing at Survey No.209,
Omkar Niwas, Hrishikesh Park,
Gate No.3, 17 ½ Nali Road,
Hadapsar Pune - 411 028. ... **Applicant**

(By Advocate Shri P.H. Padave)

VERSUS

1. Union of India
Through the General Manager,
Central Railway, CST Head Quarters,
Mumbai - 400 001.
2. The Divisional Railway Manager(P)
Central Railway, Pune Division,
Agarkar Nagar,
Railway Station Road,
Pune, Pin - 411 011.
3. The Senior Deputy Personnel Officer,
Central Railway, Pune Division,
Agarkar Nagar,
Railway Station Road,
Pune, Pin - 411 011. ... **Respondents**

(By Advocate Ms. Sangeeta Yadav)

ORDER

The application has been filed by the applicant under Section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs:-

"8(a) That this Honourable Tribunal will be pleased to declare that applicant is entitled for appointment on compassionate ground as provided under Master circular No.16 of Railway Board,

(b) That this Hon'ble Tribunal will be please to call for the records and proceedings of the case which laid to issuance of the impugned letter cum order dated 10.02.2016 issued by respondent No.2 and after going through it propriety, legality and validity be pleased to quash and set aside the same with further direction to respondents to grant appointment on compassionate ground.

(c) That cost of this application be provided for,

(d) That such other and further order or orders be passed in the facts and circumstances of the case may require."

2. The facts are that late Shri Baban Vithoba Bunge, father of the present applicant (hereinafter referred as deceased employee) was a permanent Railway employee, working under CCOR (Electric), Central Railway, Pune as Motorman with the designation MTRDRVR. While in service he died on 29.05.2014 which is admitted fact by the respondents.

3. The deceased employee is survived by his wife Smt Anjana (mother of the applicant), his three daughters (all married) and his son i.e. the present applicant.

4. It is the case of the applicant that the family particulars were declared by the deceased employee and are available to the respondents in the office record. Further that his widow mother

is not keeping good health and therefore, being the only son of the deceased employee, he approached the respondents vide application dated 19.11.2015 for appointment on compassionate grounds. Vide letter dated 02.12.2015 (Annexure A-4) issued by respondent No.2 the applicant was required to submit certain documents alongwith the application from his mother Smt Anjana requesting for employment for her son on compassionate grounds. He complied with this direction and forwarded all the necessary documents including the application dated 08.12.2015 (Annexure A-5) under the signature of his mother. The applicant himself also wrote a letter dated 08.12.2015 (Anneuxre A-6 colly) and sent the same alongwith the requisite documents.

5. It is the case of the applicant that the amount of provident fund and other dues were released by the respondents in favour of his mother being widow of the deceased employee and she also started getting the family pension. In support of his said contention, he has placed on record the copies of the family identity card, combined nomination form for PF, GIS and DCRG as

well as Pension Payment Order (PPO) as (Annexure A-7 colly). However, the respondent No.2 rejected the request of the applicant for appointment on compassionate grounds vide impugned order dated 10.02.2016. The said order is relevant and reproduced as follows:-

“Central Railway

Divisional Office,
Personnel department,
Pune

PA/P/WE1/CG/1483

Date: 10.02.16

Smt Anjana Baban Bunge
W/o Late Baban Vithoba Bunge,
Sr. No.209, Omkar Nivas,
Hrishikesh Park, Sade Satra Nail Road,
Hadapsar, Pune – 411 028.

Sub: Appointment on compassionate grounds –
Your application dated 8/12/2015.

Shri Baban Vithoba Bunge was working as Motorman under CCOR (Elect) Pune and expired on 29/08/2014. Further, you have requested vide your application dated 08/12/2015 to consider your son, Shri Atish for appointment on compassionate ground in lieu of the deceased employee.

It is clarified that in case Railway employee dying in harness, etc leaving more than one widow along with children born to the second wife, appointment on compassionate ground to the second widow and her children are not be considered unless the administration has permitted the second marriage. No divorce took place before birth of the son, Atish.

It may be noted that, your son is not eligible for appointment on compassionate ground.

This is for information

sd/-

(Dr. Pulkesh Kumar)
For DRM(P) Pune”

6. It is this order which has been challenged vide present OA on the following grounds:-

(i) The marriage between the deceased employee and Smt Rukmini Baban Bunge was dissolved vide judgment dated 23.03.1992 passed by Joint Civil Judge Senior Division, Baramat District, Pune (Annexure A-8)

(ii) The impugned order is bad in law being based upon a policy and a Railway Board circular dated 02.01.1992 which has already been quashed and set aside by the Hon'ble High Court of Calcutta in the case of Namita Goldar & Anr. Vs. Union of India & Ors., W.P.C.T. No.20 of 2009 decided on 10.02.2010.

7. The respondents filed detailed affidavit in reply wherein relying upon the Railway Board's letter No.E(G) II/91/RC-1/136 dated 02.01.1992, it is stated that in case of Railway employee dying in harness, leaving more than one widow alongwith children born to the second wife, while settlement dues may be shared by both the widows due to Court orders or otherwise on merits of each case, however, appointments on compassionate grounds to the second widow and her children are not to be considered unless the

administration has permitted the second marriage in special circumstances, taking into account the personal law prevalent. It is further submitted that Railway Board's letter No.E(NG) II/2012/RC-1/21 dated 03.04.2014 clarifies that cases of compassionate appointment of second widow and her children may be dealt strictly in terms of Railway Board's letter dated 02.01.1992. In support of their contention the respondents are relying upon the judgment of Hon'ble High Court of Jharkhand in W.P.(S) No.1083/2010 Union of India through Senior Divisional Personnel Officer, East Central Railway, Dhanbad Vs. Basanti Devi and Others decided on 13.04.2011 whereby in the similar set of circumstances, the compassionate appointment to the children from second marriage of the deceased employee was not granted. The respondents have further relied upon the judgments to the similar effect passed by Hon'ble Patna High Court in Civil Writ Jurisdiction Case No.2592/2007, Union of India Vs. Uma Devi W/o. Late Bhim Mandal, vide order dated 22.04.2010 and Hon'ble Calcutta High Court in Writ Petition No.1015 of 2012 Eastern Coalfields Ltd. Vs. Dilip Singh & Ors. decided on 07.03.2013.

8. It is stated by the respondents that as per Rule 21 of Railway Establishment Rules, there is restriction on a Government servant to contract a marriage with a person having his spouse living. He is also barred to enter into a marriage with any person during the life time of his/her spouse except in cases where such marriage is permissible under the personal law applicable to such Government servant and the other party to the marriage. It is submitted that in the present case since the applicant was born out of illegal marriage between the deceased employee and his mother, therefore, he is not entitled to appointment on compassionate grounds.

9. I have heard arguments of Shri P.H. Padave, learned counsel for the applicant and Ms. Sangeeta Yadav, learned counsel for the respondents at length and perused the case record, the law points and relevant rules.

10. The short question involved in the present OA is as to whether the applicant being son of the deceased employee from his second marriage which took place during the subsistence of his first marriage, is entitled to claim of

compassionate appointment on account of death of deceased employee.

11. Learned counsel for the respondents argues that since the deceased employee had performed second marriage during life time of his first wife and that too without taking divorce from the Competent Court of law, the second marriage is null and void. Further, that since the applicant has not shown any customs prevailing in their community, which makes second marriage as valid, in view of Railway Board Letter dated 02.01.1992, the applicant is not entitled to appointment on compassionate grounds.

12. On the other hand, learned counsel for the applicant has submitted that the Hon'ble High Court of Calcutta in the case of Namita Goldar (supra) has dealt with this issue extensively and had allowed the petitioner No.2 therein, the son of the second wife of the deceased employee entitled to claim appointment of compassionate ground on account of death of his father i.e. the ex-employee. The Hon'ble High Court made the following observations in para Nos.5 to 10:-

"5. In view of the decision of the Apex Court in the case of Rameshwari Devi Vs. State of Bihar & Ors., reported in (2000) 2 SCC 431, the children of the second wife cannot be treated as illegitimate and referring to Section 16 of the Hindu Marriage Act specifically held that children of a void marriage are legitimate.

6. In view of the law as settled by the Supreme Court, no distinction can be made amongst the children of the first and second wife of a deceased employee. In the present case, however, first wife was issueless and died shortly after the death of the employee concerned.

7. Therefore, the eldest son of the second wife, namely the petitioner No.2 herein is entitled to claim appointment of compassionate ground on account of the sudden death of the employee concerned.

8. The learned Tribunal, in our opinion, has rightly held that the claim of the petitioner No.2 herein for compassionate appointment cannot be turned down on the ground it was done although the learned Tribunal did not issue any mandatory direction on the respondents authorities for granting compassionate appointment to the said son of the second wife, namely, the petitioner No. 2 herein and directed the General Manager, Eastern Railway to refer the matter to the Railway Board for taking decision. We are, however, of the opinion that the circular issued by the Railway Board on 2nd January, 1992 preventing the children of the second wife from being considered for appointments on compassionate ground cannot be sustained in the eye of law in view of the specific provision of the Hindu Marriage Act, 1955 and pursuant to the decision of the Hon'ble Supreme Court in the case of Rameshwari Devi (supra).

9. In the aforesaid circumstances, the aforesaid circular issued by the Railway Board on 2nd January, 1992 stands quashed to the extent it prevents the children of the second wife from being considered for appointments on compassionate ground.

10. For the reasons discussed hereinabove, we direct the respondents railway authorities to allow the claim of the petitioner No.2 for appointment on compassionate ground and issue appropriate order of appointment in favour of the said petitioner No.2 without any further delay but positively within a period of two months from the date of

communication of this order."

13. Learned counsel for the applicant has further brought to our notice the judgment of Hon'ble High Court of Bombay in Writ Petition No.910/2015 decided on 01.04.2016 (Union of India and Anr. Vs. V.R. Tripathi) whereby relying upon the judgment of Namita Goldar (supra) the following observations were made in para 8 of its judgment:-

"8. In Namita Goldar (supra), the Division Bench of the Calcutta High Court has held that the railway board's circular dated 2 January 1992 cannot be sustained in the eyes of law and has therefore, struck down the same to the extent the circular prevented the children of second wife for being considered for appointment on compassionate grounds. The relevant discussion contained in paragraphs 4 to 9, reads thus:-

"4. Admittedly, in the present case, second marriage of the deceased employee was accepted by the first wife since she never challenged the said second marriage and did not even lodge any complaint before the railway authorities for taking appropriate action against the said deceased employee for contracting second marriage and therefore, we have no difficulty to accept that the deceased employee marriage for the second time upon obtaining specific consent from the first wife. There is also no dispute that the said deceased employee used to live with both the wives and the four children of the second wife. Since the first wife died shortly after the death of the deceased employee, family pension and other retiral benefits also disbursed to the second wife and his children. The compassionate appointment was claimed by the eldest son of the second wife, as the first wife was issueless and also dies shortly after the death of the employee concerned.

"5. In view of the decision of the Apex Court in the case of Rameshwari Devi (supra), the children of the second

wife cannot be treated as illegitimate and referring to Section 16 of the Hindu Marriage Act specifically held that children of a void marriage are legitimate.

6. In view of the law as settled by the Supreme Court, no distinction can be made amongst the children of the first and second wife of a deceased employee. In the present case, however, first wife was issueless and died shortly after the death of the employee concerned.

7. Therefore, the eldest son of the second wife, namely the petitioner No.2 herein is entitled to claim appointment of compassionate ground on account of the sudden death of the employee concerned.

8. The learned Tribunal, in our opinion, has rightly held that the claim of the petitioner No.2 herein for compassionate appointment cannot be turned down on the ground it was done although the learned Tribunal did not issue any mandatory direction on the respondents authorities for granting compassionate appointment to the said son of the second wife, namely, the petitioner No. 2 herein and directed the General Manager, Eastern Railway to refer the matter to the Railway Board for taking decision. We are, however, of the opinion that the circular issued by the Railway Board on 2nd January, 1992 preventing the children of the second wife from being considered for appointments on compassionate ground cannot be sustained in the eye of law in view of the specific provision of the Hindu Marriage Act, 1955 and pursuant to the decision of the Hon'ble Supreme Court in the case of Rameshwari Devi (supra).

9. In the aforesaid circumstances, the aforesaid circular issued by the Railway Board on 2nd January, 1992 stands quashed to the extent it prevents the children of the second wife from being considered for appointments on compassionate ground."

14. The Hon'ble High Court of Bombay has made further observation in para 9:-

"9. Admittedly, the Union of India (Railway) has not challenged the decision in Namita Goldar (supra). Subsequently, the said decision appears to have been consistently followed by the Calcutta High Court. The

CAT, in its order dated 6 March 2014 has made reference to yet another decision of Calcutta High Court in *Union of India and Ors. Vs. Smt Meena Oraon and anr.*, in which it is held as under:

"7. These submissions of Mr. Chakraborty are untenable. The Division Bench of this Court while deciding the case of Smt. Namita Goldar and Anr. Vs. Union of India & Ors (supra) has already held that the circular of the Railway Board issued on 2nd January 1992 is ultra vires and has quashed it to the extent that it prevents the children of the second wife from being considered for appointment on compassionate grounds. Thus that provision on the basis of which the Railways refused appointment to the respondent No.2 is not in existence. It is a dead letter after February 10, 2010, when the Division Bench delivered its judgment in Smt. Namita Goldar & Anr. Vs. Union of India & Ors.(supra). We cannot, therefore, infuse life into a dead letter. If the Railways were aggrieved by the decision of the Division Bench they ought to have challenged the same before the Supreme Court. Not having done so, the Railways cannot reopen the issue before us by submitting that the judgment is per incuriam and sub silentio. Apart from this, the Railways have though it fit to grant employment in the case of Smt. Namita Goldar & Anr. Vs. Union of India & Ors.(supra) on compassionate grounds. However, in the case of respondent No.2 they have decided to challenge the decision of the Tribunal which has merely followed the decision in Smt Namita Goldar & Anr. Vs. Union of India & Ors. (supra)

8. We, therefore, do not think it necessary to consider the submission of Mr. Chakraborty for the petitioners as the Railway Board's circular has already been set aside by the Division Bench of this Court and the Railways have taken no steps to challenge that decision, for reasons best known to them."

15. The Hon'ble High Court has further made observation in para 18 that in the case of **Basanti Devi (supra)**, Union of India (Railways) failed to bring to the notice of Jharkhand High

Court, the decision of the Calcutta High Court in *Namita Goldar (supra)*, wherein the Railway Board Circular dated 02.01.1992, was specifically struck down, to the extent it related to children from second marriage.

16. The Hon'ble Apex Court in the case of *Union of India and Another Vs. V.R. Tripathi*, reported in *2019(1) Scale 302* has dealt with the identical issue and has set at rest the entire controversy on the subject. The relevant paragraphs of this judgment are reproduced as under:

"14. The issue essentially is whether it is open to an employer, who is amenable to Part III of the Constitution to deny the benefit of compassionate appointment which is available to other legitimate children. Undoubtedly, while designing a policy of compassionate appointment, the State can prescribe the terms on which it can be granted. However, it is not open to the State, while making the scheme or rules, to lay down a condition which is inconsistent with Article 14 of the Constitution. The purpose of compassionate appointment is to prevent destitution and penury in the family of a deceased employee. The effect of the circular is that irrespective of the destitution which a child born from a second marriage of a deceased employee may face, compassionate appointment is to be refused unless the second marriage was contracted with the permission of the administration. Once Section 16 of the Hindu Marriage Act, 1955 regards a child born from a marriage entered into while the earlier marriage is subsisting to be legitimate, it would not be open to the State, consistent with Article 14 to exclude such a child from seeking the benefit of compassionate appointment. Such a condition of exclusion is arbitrary and ultra vires.

15. Even if the narrow classification test is adopted, the circular of the Railway Board creates two categories between one class of legitimate children. Though the law

has regarded a child born from a second marriage as legitimate, a child born from the first marriage of a deceased employee is alone made entitled to the benefit of compassionate appointment. The salutary purpose underlying the grant of compassionate appointment, which is to prevent destitution and penury in the family of a deceased employee requires that any stipulation or condition which is imposed must have or bear a reasonable nexus to the object which is sought to be achieved. The learned Additional Solicitor General has urged that it is open to the State, as part of its policy of discouraging bigamy to restrict the benefit of compassionate appointment, only to the spouse and children of the first marriage and to deny it to the spouse of a subsequent marriage and the children. We are here concerned with the exclusion of children born from a second marriage. By excluding a class of beneficiaries who have been deemed legitimate by the operation of law, the condition imposed is disproportionate to the object sought to be achieved. Having regard to the purpose and object of a scheme of compassionate appointment, once the law has treated such children as legitimate, it would be impermissible to exclude them from being considered for compassionate appointment. Children do not choose their parents. To deny compassionate appointment though the law treats a child of a void marriage as legitimate is deeply offensive to their dignity and is offensive to the constitutional guarantee against discrimination.

16.....

17. We may note at this stage, that a Division Bench of the Calcutta High Court in *Namita Goldar* (supra) quashed the circular of the Railway Board dated 2 January 1992 to the extent that it prevented the children of the second wife from being considered for appointment on compassionate grounds. Subsequently, another Division Bench of the High Court in its decision in *Eastern Coalfields Ltd. v Dilip Singh*⁶ took a contrary view, 6 (2013) 3 Cal.LT 379 without noticing the earlier decision. We may advert to the subsequent decision in *Eastern Coalfields Ltd.* (supra) for the reason that it proceeds on a construction of Section 16 which, in our view, is inconsistent with the language of that provision.

The Hon'ble Supreme Court had made further observation in its para 18 of the judgment and

the relevant portion thereof is reproduced as under:-

18. In the view which we have taken, we have arrived at the conclusion that the exclusion of a child born from a second marriage from seeking compassionate appointment under the terms of the circular of the Railway Board is ultra vires.....”

The Hon'ble Apex Court made the following observation in para 19 and 20:

19. We may, however, clarify that the issue as to whether in a particular case, the applicant meets all the stipulations of the scheme including financial need and other requirements are matters which will be decided on the facts of each individual case.

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 Calcutta 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 force 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.

17. In view of the judgment of Hon'ble Apex Court in the case of V.R. Tripathi (supra), all the contentions raised by respondents are without any merits. The impugned order dated 10.02.2016 is hereby set aside and the respondents are directed to consider the case of the applicant for compassionate appointment on

its own merits and in accordance with existing Rules and Regulations. This exercise be completed within a period of three months from the date of receipt of a copy of this order and thereafter to communicate the order to the applicant within a period of one week.

18. The Original Application is allowed. There shall be no order as to costs.

(Ravinder Kaur)
Member (J)

ma.

JD
15/7/19