

CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH, MUMBAI

ORIGINAL APPLICATION No.556/2016

Dated this Tuesday the 30<sup>th</sup> July, 2019

CORAM: Dr. BHAGWAN SAHAI, MEMBER (A)  
RAVINDER KAUR, MEMBER (J)

Krishna Lahu Chavan  
S/o. Late Lahoo Kalu Chavan,  
Age:23 years, Occ, Nil,  
At Post Mundegaon,  
Tal.:Igatpuri, Dist.:Nashik. ... *Applicant*

(By Advocate Shri P.D. Patil )

VERSUS

1. Union of India  
Through General Manager,  
G M Building, CST Mumbai  
Central Railway - 400 001.
2. Divisional Railway Manager (P)  
(DRM(P)), CSTM,  
Divisional Office, Personal Branch,  
Central Railway,  
Mumbai CST. ... *Respondents*

(By Advocate Shri V.D. Vadhavkar)

O R D E R

Per: Ravinder Kaur, Member (J)

This application has been filed on  
09.06.2016 under Section 19 of the  
Administrative Tribunals Act, 1985 seeking the  
following reliefs:-

*"8(a) This Hon'ble Tribunal be pleased to declare that  
applicant is entitled for Appointment on compassionate*

*ground as provided under Master Circular No.16 of Railway Board.*

*(b) This Hon'ble Tribunal be pleased to call for the records and proceedings of the case which led to issuance of the impugned communication/Letter dated 02.03.2016 issued by the respondent No.2 and after going through its propriety, legality and validity, be pleased to quash and set aside the same with further direction to the respondents to grant appointment on compassionate grounds to the applicant.*

*(c) Cost of this Original Application be provided for;*

*(d) Any other further orders as this Hon'ble Tribunal may deem-fit, proper and necessary in the facts and circumstances of the case;*

2. The applicant has claimed that his father late Shri Lahoo Kalu Chavan (hereinafter referred as deceased employee) was working as Senior Trackman under SSE(P/Way) Kalyan, Mumbai in Grade IV. While in service, he expired on 25.08.1996. It is stated that his father had two wives namely Smt Lahanoobai and Smt Mangalabai. The applicant is the son of deceased employee, from his second wife, Mangalabai. His father had two daughters from his first wife, who both are now married.

3. At the time of death of the deceased employee, the applicant was aged 3 years only. On attaining majority, he approached the respondents vide letter dated 16.03.2012 for appointment on compassionate grounds. However, his request was rejected by the respondents vide

impugned order dated 02.03.2016 on the grounds mentioned therein. The impugned order is reproduced as under:-

“Central Railway

Divisional Office,  
Personnel Branch,  
Mumbai CST

No.BB/P/Wel/16/RCG/CL/III/4068

Date:02.03.2016

Shri Krishna Lahu Chavan  
At & Post – Mundegaon,  
Tal.- Igatpuri, Dist-Nashik.

Sub: Request for appointment on compassionate ground against the death of your father Late Shri Lahoo Kaloo, Ex- Trackman under-SSE(P/Way) KYN Expired on 25.08.1996.

Ref: Your application dated 16.03.2012.

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With reference to your request application for job on compassionate ground, it is advised that Competent Authority has regretted your request on the ground that ex-employee Shri Lahoo Kaloo, i.e. your father has married second time with Smt Mangalabai although first wife Smt Lahanoobai was alive, which is against the Railway Conduct Rules, and no permission for 2<sup>nd</sup> marriage from the administration was ever obtained by your father for this act of bigamy. As per Railway Board's letter No.E(NG)II/91/RC-1/136 dated 02.01.1992 RBE No.1/92, appointment on compassionate ground to the Second widow and her children are not to be considered unless the administration had permitted the second marriage, in special circumstances, taking into account the Personal Law. You are son from the second wife Smt Mangalabai. Thus the case lacks merit and do not warrant any compassion.

sd/-

(A.K. Mandal)  
For DRM(P) CSTM”

4. The aforesaid impugned order has been challenged by the applicant vide present OA as being arbitrary, illegal and causing grave

injustice to the applicant while relying upon the judgment of Hon'ble Calcutta High Court in the case of Namita Goldar & Anr. Vs. Union of India & Ors.. W.P.C.T. No.20/2009 decided on 10.02.2010. It is prayed that the impugned order be set aside and the respondents be directed to grant him appointment on compassionate grounds.

5. The respondents have filed detailed affidavit in reply relying upon the Railway Board's letter No.E(G) II/91/RC-1/136 dated 02.01.1992 in which 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 prevailing in the community. In the present case, since the applicant was born to the second wife of the deceased employee, in view of Railway Board's letter referred to above, he

is not entitled to be appointed on compassionate grounds.

6. We have heard arguments of Shri P.D. Patil, learned counsel for the applicant and Shri V.D. Vadhavkar, learned counsel for the respondents at length and perused the case record, the law points and relevant rules.

7. The short question involved in the present OA is as to whether the applicant being son of the deceased employee from his second marriage while in service which took place during the subsistence of his first marriage, is entitled to seek appointment on compassionate grounds on account of death of his father in harness.

8. Learned counsel for the applicant has relied upon the following judgments:-

*(i) Namita Goldar & Anr. Vs. Union of India & Ors., W.P.C.T. No.20/2009 decided on 10.02.2010*

*(ii) Union of India and Anr. Vs. V.R. Tripathi, Writ Petition No.910/2015 decided on 01.04.2016*

*(iii) Union of India and Another Vs. V.R. Tripathi, reported in 2019(1) Scale 302*

9. Learned counsel for the applicant has further submitted that the Hon'ble High Court of Calcutta in the case of Namita Goldar (supra) has dealt with this issue extensively and held that the petitioner No.2 therein, the

son of the second wife of the deceased employee was entitled to claim appointment on compassionate grounds 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 2<sup>nd</sup> 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 2<sup>nd</sup> 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."

10. 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 and 9 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 2<sup>nd</sup> 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 2<sup>nd</sup> January, 1992 stands quashed to the extent it prevents the children of the

second wife from being considered for appointments on compassionate ground."

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 2<sup>nd</sup> 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."

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.

11. Learned counsel for the applicant also submits that the judgment of Hon'ble High Court in Writ Petition No.910/2015 decided on 01.04.2016 in the case of Union of India Vs. V.R. Tripathi has been upheld by the Hon'ble Apex Court in the case of Union of India and Another Vs. V.R. Tripathi, reported in 2019(1) Scale 302. 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<sup>6</sup> 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 Apex Court had made further observations in paras 18 to 20 of the judgment 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.....”

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.

12. 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, since the applicant has not shown any custom prevailing in his community, which makes second marriage as valid, in view of the Railway Board Letter dated 02.01.1992, the applicant is not entitled to appointment on compassionate grounds.

**13.** He has further submitted that the Railway Board has decided to file an SLP to challenge the order of the Hon'ble High Court of Calcutta in the case of Namita Goldar (supra) whereby the Railway Board letter dated 02.01.1992 has been quashed. Further that the Hon'ble Supreme Court in the case of Union of India & Ors. Vs. Binod Kumar Patra & Anr. (SLP No.8219/2017) has already stayed the operation of the order dated 26.08.2016 passed by the Hon'ble High Court of Calcutta in W.P.C.T. No.155/2016 to the similar effect.

**14.** The learned counsel for the respondents has submitted that the judgment of the Hon'ble Apex Court in the case of Union of India and Another Vs. V.R. Tripathi (supra) can only have prospective effect and cannot be given retrospective effect. However we find no merit

in this argument. The Hon'ble Apex Court in the above noted judgment has clearly held 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.

15. 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 merit. The impugned order dated 02.03.2016 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 as well as the above case law (V.R. Tripathi). 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. -

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

(Ravinder Kaur)  
Member (J)

ma.

(Dr. Bhagwan Sahai) / 1  
Member (A)