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**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI**

O.A. NO.287/2003

This the 1st day of September, 2006

HON'BLE SHRI V. K. MAJOTRA, VICE-CHAIRMAN (A)

HON'BLE SHRI MUKESH KUMAR GUPTA, MEMBER (J)

Subhash Singh S/O late Sugar Singh,
R/O RB-1/D, Okhla Railway Colony,
New Delhi-20.

... Applicant

(By Ms. Madhu Tewatia, Advocate)

versus

1. Northern Railway through
General Manager, Northern Railway,
Baroda House, New Delhi.

2. Divisional Personnel Officer,
Divisional Office, Northern Railway,
Baroda House, New Delhi.

... Respondents

(By Shri S. Mohd. Arif, Advocate)

ORDER

Hon'ble Shri V. K. Majotra, Vice-Chairman (A):

Father of applicant, namely, Sugar Singh, had been in employment of respondents as Key Man since 5.9.1965. He expired on 23.1.1997 due to a tragic accident while he was on duty as Key Man at Okhla Railway Station at about 8.05 a.m.

2. Admittedly, applicant is an issue from the second wedlock of the deceased government employee. He had taken applicant's mother Smt. Parmati Devi as his second wife while his first wife was alive. Two

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applications for employment on compassionate ground had been made - one by son of the first wife and another for the present applicant. There are seven children of the deceased government employee from his first legally wedded wife. Apart from applicant, there are four daughters (married) and one more son of applicant's mother and the deceased government employee. Applicant's mother had made an application to respondents for providing employment on compassionate ground to her son, i.e., applicant, on 2.5.1997. Vide Annexure P/1 dated 24.11.1998 respondents had asked applicant's mother to produce succession certificate issued by court.

3. Earlier on applicant had filed OA No.2461/1998 seeking compassionate appointment being the son of the deceased government employee. That OA was dismissed vide order dated 15.3.2000 on the ground that applicant's father being a Hindu, could not have married second time while his first wife was alive, without obtaining divorce from the first wife. As admittedly applicant was the son of the second wife, Smt. Parmati Devi and his father had not obtained divorce from his first wife before marrying the second wife, compassionate appointment of applicant could not be considered by the railways without production of succession certificate. The matter was carried to the High Court in CWP No.7571/2001 challenging the aforesaid orders of the Tribunal. The CWP was disposed of by the High Court directing respondents to consider the question raised in the writ petition in the light of the decision of the Apex Court in the case of *Rameshwari Devi v State of Bihar & Others* (2000) 2 SCC 431. The following prayer had been made in the writ petition:

"I. A writ or certiorari or a writ in the nature thereof quashing the judgment and order dated 15.03.2000 and order dated 29.05.2000 by the Central



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Administrative Tribunal (Principal Bench) Delhi in OA No.2467/98 and RA No.142/2000 respectively, as being violative of the law laid down by the Hon'ble Apex Court and Article 14 of the Constitution of India and

- II. A writ or mandamus or a writ in the nature thereof directing the Respondent to appoint the Petitioner on compassionate basis on a post as per suitability in accordance with law and
- III. A writ of mandamus or a writ in the nature thereof directing the Respondent to grant compassionate appointment to the Petitioner who was undisputedly the dependant son of the deceased employee who died during the course of his employment and
- IV. A writ or mandamus or a writ in the nature thereof directing the Respondent to appoint the Petitioner on compassionate grounds on urgent and top priority basis and
- V. Any other appropriate writ, order or direction as this Hon'ble Court may deem fit and appropriate in the facts of the present case."

4. Respondents have rejected applicant's request for appointment on compassionate ground vide impugned orders dated 26.8.2002 stating that the case of *Rameshwari Devi* (supra) relates to payment of settlement dues and not for appointment on compassionate grounds. It has further been stated that applications had been made both by sons of the first wife (legally wedded wife) and the second wife (who is not legally wedded wife), however, while the first legally wedded wife and her seven children are entitled for compassionate appointment, the second wife of the deceased and her children are not.

5. The learned counsel of applicant stated that respondents have wrongly interpreted the case of *Rameshwari Devi* (supra) and rejected applicant's request for compassionate appointment in terms of Railway Board's circular RBE No.1 of 1992 (supplementary circular No.5 to master

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circular No.16) dated 2.1.1992 (Annexure R-1) which is to the effect that in case of railway employees dying in harness leaving more than one widow along with 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, appointments on compassionate grounds unless the administration has permitted the second marriage, in special circumstances, taking into account the personal law etc., need not be considered.

6. On the other hand, respondents have maintained that applicant cannot claim appointment on compassionate ground as a matter of right. The learned counsel stated that not only that in the case of *Rameshwari Devi* (supra) the issue of appointment on compassionate ground to the second widow and her children was not at all considered by the Apex Court, respondents' circular dated 2.1.1992 specifically prohibits consideration of cases of appointment on compassionate ground of the second widow and her children. He further submitted that the father of applicant died in 1997 and almost a decade has elapsed; as such, the circumstances of the family have also changed and the claim for consideration for compassionate appointment cannot be considered.

7. We have considered the respective contentions of the parties, material on record as also the case law cited before us.

8. In *Rameshwari Devi* (supra) the deceased employee, a Hindu, had contracted second marriage during subsistence of his first marriage. Children born out of the second marriage, according to the Hindu Marriage Act, 1956, were considered as legitimate, though the marriage itself was held void. It was further held that as no disciplinary action was taken



held void. It was further held that as no disciplinary action was taken against the deceased government employee during his life time, the plea that second marriage was in violation of the conduct rules was not held valid for denying family pension and DCRG etc. The children of the second wife, despite the second being a void marriage, were held as legitimate and entitled to pensionary benefits. Insistence upon succession certificate was dispensed with in view of an enquiry conducted by the State Government for determining entitlement of rival claimants to family pension. True that in that case the issue of compassionate appointment was not raised but the logic and rationale of the case is certainly applicable to the benefit of consideration of the request for appointment on compassionate ground. If pensionary benefits could be given to the progeny of the second wife, why not an employment on compassionate ground. Respondents have been in the wrong to rely upon the circular dated 2.1.1992 of the Railway Board for denying consideration for appointment on compassionate ground though settlement dues were directed to be paid to both the widows. Judgment of the Hon'ble Supreme Court in *Rameshwari Devi* (supra) is the law of the land; it has to be interpreted liberally instead of taking a constricted view which would invalidate the direction contained in circular dated 2.1.1992 for non-consideration of entitlement of the second widow or her wards for compassionate employment.

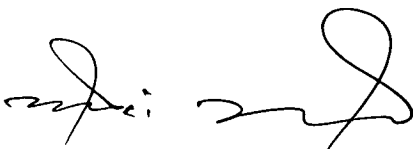
9. It has been stated on behalf of applicant that the children from the first wife of the deceased government employee are married and overaged. This statement has been made in paragraph 5.VII of the OA, which has not been specifically denied by respondents.

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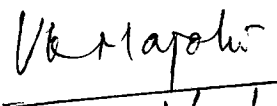
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10. In the light of the facts and circumstances of the case as discussed above, Annexure P-8 dated 26.8.2002 is quashed and set aside directing respondents to consider applicant for appointment on compassionate ground on a suitable post in accordance with law and instructions on the subject. As respondents have not been able to consider applicant's claim despite the fact that application in this behalf had been made on 2.5.1997 and matter has been hanging fire in different cases in different courts, applicant's application should be considered on merit by granting relaxation in age, if necessary, and by taking into consideration the present financial condition of the family, i.e., the brothers and sisters of applicant.

11. The OA is allowed in the above terms directing respondents to consider applicant's request for appointment on compassionate grounds by passing speaking orders within a period of two months from the date of communication of these orders.


(Mukesh Kumar Gupta)
Member (J)

/as/


1/9/06
(V. K. Majotra)
Vice-Chairman (A)