

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (S) No. 2649 of 2015**

1. Union of India Ministry of Railway Through Secretary, Raisen Road, New Delhi.
2. Divisional Personnel Officer South East Central Railway Divisional Office, Personnel Branch, Civil/Revenue District Bilaspur.

---- Petitioners**Versus**

Imnuwel Barla S/o Late Masih Das, Aged about 28 years, Village/P.O. Patna Tehsil Baikunthpur, District Korea.

---- Respondent

For Petitioners	:	Shri H.S.Ahluwalia, Advocate.
For Respondent	:	Shri Sanjeev Verma, Advocate.

Hon'ble Shri Navin Sinha, Chief Justice
Hon'ble Shri P. Sam Koshy, J.

Order on Board**Per Navin Sinha, Chief Justice****27/07/2015**

1. The present writ petition arises from Original Application No. 203/00907/14 allowed on 13.5.2015 by the Central Administrative Tribunal, Jabalpur Bench, Circuit Sitting, Bilaspur (hereinafter called 'the Tribunal'). The Tribunal has directed consideration for compassionate appointment of the Respondent.

2. Learned Counsel for the Respondent who has appeared *suo motu* and filed caveat prays for adjournment submitting that he desires to file counter-affidavit.

3. We are not inclined to adjourn the matter for that reason as the order of the Tribunal is sufficiently speaking in nature and we do not propose to travel outside the discussions contained in it. The filing of a counter-affidavit cannot improve upon what is discussed in the order of the Tribunal itself.

4. Learned Counsel for the Petitioners submits that the deceased died in harness on 3.10.1999. The application for compassionate appointment was made on 16.9.2012. The Original Application was preferred in the year 2014. The deceased had solemnized a second marriage from which the Respondent was born. Solemnisation of the second marriage was in contravention of Rule 21 of the Railway Service (Conduct) Rules, 1996 having been done without permission. The fact that a succession case may have been pending in a dispute between the family from the two wives is hardly a relevant consideration and explanation for delay in claim for compassionate appointment.

5. Learned Counsel for the Respondent acknowledged that the time limit to apply for compassionate appointment from the date of death under the guidelines was three years. The Respondent could not apply as he did not attain majority within that period. It was next submitted that the first wife had given a No Objection Certificate for the Respondent to be considered for compassionate appointment. The claim for compassionate appointment got delayed awaiting final orders in the succession case which was made on 28.3.2005.

6. We have considered the submissions on behalf of the parties and are satisfied that the order under challenge is not sustainable. We shall steer clear of any controversial facts and confine the present order to the discussion contained in the impugned order only.

7. Compassionate appointment has been considered as an exception to Article 14 of the Constitution which requires that every appointment in Government service must be made by open advertisement and competitive merit selection. The Courts have also countenanced this exception because of the destitution and penury that suddenly falls upon the family of the deceased due to sudden untimely death of the bread winner. Being an exception to

Article 14 it has consistently been held by repeated judicial pronouncements that there is always an urgency in a claim for compassionate appointment for substituted sources of income. There can be no belated claims for compassionate appointment which itself is evidence that compassionate appointment was not a compelling necessity for the family of the deceased and that it had other means of survival.

8. Likewise, appointment on compassionate ground is not akin to the estate of deceased and the position held by the deceased is not supposed to be kept protected as a legacy or a vested inheritable right to devolve upon the legal heirs. Any interse dispute between the legal heirs leading to succession case etc. are wholly irrelevant considerations. The fact that an interse quarrel was going on and the parties were battling out their rights in the Court is ample evidence of their means for survival from other sources.

9. Any application for compassionate appointment was required to be made within three years from the death of the deceased as provided for in the guidelines. If the Respondent remained a minor during that period, the law stands well settled that the right to apply for compassionate appointment got extinguished. Surely, if the Respondent was a minor and the first wife of the deceased was alive, there had to be some reason why she or her own son did not apply and gave no objection certificate to the Respondent after he attained majority. Conversely, if the deceased had married after death of the first wife, there is no reason put forth why the mother of the Respondent did not apply for compassionate appointment if the Respondent was a minor and appointment on compassionate ground was a compelling necessity to prevent destitution and penury. If all that were not enough, the deceased expired on 3.10.1999, the succession was decided on 23.8.20-015, the Respondent attained majority in 2006 and the Original Application was filed in the year 2014. The claim was hopelessly barred. Compassionate appointment is not an alternate mode of appointment. Any consideration for the same has to be

strictly in accordance with the guidelines governing the same. There can be no urgency or compelling necessity for compassionate appointment fifteen years after death.

10. The Tribunal has completely erred in applying the principles of a progeny born from an illegitimate marriage as having legitimacy for compassionate appointment. The principle was not at all relevant in the present case. The order of the Tribunal is not sustainable. It is set aside.

11. The writ application is allowed.

Sd/-
(Navin Sinha)
Chief Justice

Sd/-
(P. Sam Koshy)
Judge