

HIGH COURT OF CHHATTISGARH, BILASPUR**WPS No. 4279 of 2018***(Arising out of order dated 11.04.2018 passed by the Central Administrative Tribunal, Jabalpur Bench, Circuit Sitting at Bilaspur in OA No. 203/00291/2016)*

1. South East Central Railway Through General Manager SECR Bilaspur
2. Divisional Railway Manager, South East Central Railway District Bilaspur
3. Divisional Personnel Officer, South East Central Railway, Divisional Office, Personnel Branch District Bilaspur

---- Petitioners**Versus**

Rakesh Kumar Jangde S/o Late Uttam Kumar Jangde Aged About 26 Years R/o Near Agrawal Rice Milla, Village / P. S. Abhanpur Raipur Chhattisgarh

---- Respondent

For Petitioners/SECR	:	Shri H.S. Ahluwalia, Advocate
For Respondent	:	Shri B.P. Rao, Advocate.

Hon'ble Shri P. R. Ramachandra Menon, Chief Justice
Hon'ble Shri Sanjay K. Agrawal, Judge

Order on Board**Sanjay K. Agrawal, Judge****23.09.2019**

1. Heard learned counsel for the parties finally as this writ petition is listed now after review and recall of earlier order dated 26.6.2019 passed in this writ petition.
2. This writ petition is directed against the order dated 11.04.2018 passed by the Central Administrative Tribunal, Jabalpur Bench, Circuit Sitting at Bilaspur (hereinafter to referred as "the Tribunal") in OA No. 203/00291/2016, by which the application filed by the Respondent herein has been granted directing the Petitioners herein to consider his case for

compassionate appointment.

3. In order to decide the /s brought before this Court, following essential facts are required to be noticed.
4. Shri Uttam Kumar Jangde, while working as a Co-Driver in the South East Central Railway, died in harness on 10.11.1996. Thereafter, the Railways, on 28.08.2000 directed the three wives of the deceased Railway servant namely, Smt. Ganga Bai, Smt. Premlata Jangde and Smt. Savita Bai to produce the Succession Certificate for payment and settlement of retiral dues including Provident Fund, CGDGIS, Saving Fund, DCRG, Family Pension etc. At that very time, the Respondent was minor as his date of birth is 14.04.1989. The Respondent herein became major only on 13.04.2007. On receiving the memo dated 28.08.2000, the private Respondent along with his brother and sister namely Tarun Kumar and Ku. Sangeeta filed an application for grant of Succession Certificate on 18.10.2000, which was granted to them on 12.11.2009 and retiral dues were thereafter appear to have been settled by the Railways to the private Respondent and his brother and sister. Thereafter, only on 05.07.2011, the Respondent herein made an application for grant of compassionate appointment to him, which was rejected by order dated 22.11.2011 stating *inter alia* on ground of delay as the Railway servant died on 10.11.1996 and after a period of 11 years, the application for grant of compassionate appointment cannot be considered and further the Respondent, being the son of the 2nd wife of the deceased Railway servant, was not eligible for compassionate appointment.
5. The Respondent herein questioned the said order dated 22.11.2011 before the Tribunal. The Tribunal, after considering the pleadings of the parties

and after taking into account of the submissions of the parties, by the impugned order set aside the order / communication dated 22.11.2011 passed by the Petitioners / Railways and directed them to consider the case of the Respondent herein for compassionate appointment within a period of 60 days. Feeling aggrieved and dissatisfied with the order of the Tribunal, this writ petition under Article 227 of the Constitution of India has been preferred by the Railways stating *inter alia* that the application for grant of compassionate appointment could not have been directed to be considered by the Tribunal in view of delay of more than 14 years in claiming the appointment and further that the Respondent being the child of the 2nd wife of the deceased Railway servant, who had performed second marriage without prior permission of the Railways and relied upon circular dated 01.12.1992, which bars such compassionate appointment and as such, the respondent is not entitled to be considered for compassionate appointment.

6. No return has been filed by the Respondent.
7. Mr. H.S. Ahluwalia, learned counsel for the Petitioners, would submit that the order passed by the Tribunal directing consideration of the case of the Respondent herein for compassionate appointment is not sustainable in law as the Respondent being child of deceased Railway employee out of second marriage, therefore, he is not entitled for compassionate appointment. He would further submit that there is inordinate delay in claiming the compassionate appointment, therefore, the Tribunal ought not to have directed consideration of the case of the Respondent.
8. We have heard learned counsel for the parties, considered the rival contentions and went through the record with utmost circumspection.

9. The first submission of learned counsel for the petitioners/SECR is that the respondent herein, who made an application for grant of compassionate appointment, was a child of deceased Railway employee born from his second wife, therefore, he is entitled to be considered for compassionate appointment deserves to be noticed for rejection in view of decision rendered by the Supreme Court in the matter of Union of India vs. V.R. Tripathi¹, in which Their Lordships have held that child born from second marriage is legitimate child and is entitled for compassionate appointment by holding as under:-

“14.....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.”

10. Coming to the plea of delay in filing the application for compassionate appointment, it would be appropriate to mention here that earlier writ petition was heard by this Court on 26.6.2019 and it was entertained and eventually allowed and order directing consideration of compassionate appointment passed by the Central Administrative Tribunal was set aside on the ground of delay in filing the application for compassionate appointment, but thereafter the review petition was entertained and was allowed by order passed today separately and the writ petition was restored for its original number for hearing in which it has been held that application filed by the writ petitioner/respondent herein does not suffer

¹ AIR 2019 SC 666

from any delay and laches and therefore, in view of the matter, this point having already been concluded cannot be permitted to be reopened again in this writ petition.

11. In view of above analysis, we do not find any merit in the writ petition preferred by the Railways. The writ petition is dismissed accordingly and the Petitioners are directed to consider the case of the Respondent within a period of 45 days from today.

Sd/-

(P.R. Ramachandra Menon)
Chief Justice

Sd/-

(Sanjay K. Agrawal)
Judge

Anu