

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.4667 OF 2018

Navnath S/o Ashok Shirke
Age: 21 years, Occ.Education
R/o Bhambwadi, Post Madhewadgaon,
Tq.Shrigonda, Dist.Ahmednagar

PETITIONER

VERSUS

1. The Union of India
2. The Division Manager,
Central Railway Solapur
District: Solapur
3. The Sectional Engineer
(North) Central Railway Daund,
District: Pune
4. Assistant Divisional Engineer
Central Railway Ahmednagar
District Ahmednagar

RESPONDENTS

Mr D.R.Jayabhar, Advocate for the petitioner;
Mr M.N. Navandar, Advocate for respondents

**CORAM : PRASANNA B. VARALE &
ANIL S. KILOR, JJ.**

DATED : 9th JANUARY, 2020

ORAL ORDER:

Heard learned Counsel for petitioner.

2. A challenge is raised to communication dated 22nd December, 2014, whereby the claim of the petitioner seeking appointment on compassionate ground was turned down. The petitioner is son of deceased employee of respondent-Railway Department. Father of the petitioner expired on 6th May, 2014, while he was in the employment of respondent – Railways. Death certificate is placed on record. It seems that other documents are also placed on record to show that the petitioner possesses the requisite academic qualification for seeking appointment in the respondent- Railway Department.

3. In response to the notice of this Court dated 13th February, 2019, an affidavit-in-reply is filed on behalf of the respondents through Mr. Surendra Singh Brahat, Sr. Divisional Personnel Officer, Central

Railway, Solapur Division. The claim of the petitioner is rejected only taking recourse to the circular dated 21st March, 2018 and on the very basis, it is stated in the communication dated 22nd December, 2014, which is impugned in the petition that the petitioner being son of second wife of the deceased employee, request for providing appointment on compassionate ground through Smt. Latabai w/o Ashok Vithoba Shirke is rejected.

4. Mr. Navandar, learned Counsel for respondents on the basis of affidavit-in-reply opposes the petition.

5. Learned Counsel for the petitioner by inviting our attention to the copy of the order of Division Bench dated 21st February, 2019 in Writ Petition No. 1564 of 2017 submitted that rejection on the basis of the circular dated 21st March, 2018 is wholly untenable and unsustainable. It was the submission of learned Counsel for the petitioner that this very circular is held to be violative of Article 14 of the Constitution of India and

contrary to the law laid down by the Apex Court in the matter of ***Union of India and another vs. V.R. Tripathi***, reported in ***A.I.R. 2019, SC 666***.

6. While setting aside order impugned in Writ Petition No. 1564 of 2017 the Division Bench of this Court directed respondent to consider the case of the petitioner afresh for grant of compassionate appointment in the light of the judgment. The stipulation of period is also specified in the order to take a decision. It may be necessary to refer to the relevant observations of the Division Bench on the aspect of the circular and decision of the Apex Court and same reads thus:

“8. After the said decision in the case of Union of India Vs. V.R.Tripathi (supra) was rendered by the Division Bench of this Court on 1st April 2016, there is a circular dated 21st March 2018 issued by the Railway Board. Paragraphs 4 and 5 of the said circular read

thus :

“4.The matter has been examined and in supersession of this Ministry’s letter dated 02.01.1992 issued under RBE No.01/1992 and No.E(NG)II/2012/RC1/21 dated 03.04.2013, it has been decided that the first right of being considered for compassionate grounds appointment is vested, in cases of death of Railway servants while in service, with the legally wedded surviving widow provided she has not remarried at the time of making request for appointments on compassionate grounds. It is clarified that in cases of those Railway Servants who are governed by the Hindu Marriage Act, 1955, there can only be one legally wedded wife/widow, as second marriage, while spouse is living, is void/voidable in view of the Section 5(1) read with Section 11 of the Act. In this respect, Railway Board’s letter No.E(D&A) 92 GS 11 dated 10.04.1992 connects.

5. If aforementioned legally wedded

surviving widow does not want herself to be considered for compassionate grounds appointment, she can nominate, for CG appointment, a “bread winner” for the family from amongst the following :

(a) In cases of those Railway Servants who are governed by the Hindu Marriage Act, 1955 : Son (including adopted son); or daughter (including widowed/ adopted/ married/ divorced daughter). However, if such Railway Servant has left sons/daughters, who have been treated as legitimate or deemed to be legitimate, under Section 16 of Hindu Marriage Act, 1955, neither widow can nominate them as bread winner for CG appointment nor such sons/daughters can claim CG appointment.

(b) In cases of those Railway Servants who are governed by their respective Personal Laws : Son (including adopted son); or daughter (including widowed/ adopted/ married/ divorced daughter). However, if such Railway Servant has

left sons/daughters through second/subsequent legally valid marriages, i.e. other than through first wife and deceased Railway Servant have failed to obtain requisite permission for such second/subsequent marriage as required under section 21 (relating to restrictions regarding marriage) of the Railway Services (Conduct) Rules, 1966, neither first widow/second/subsequent widow can nominate such sons/daughters as bread winner for CG appointment nor such sons/daughters can claim CG appointment. Moreover, such second/subsequent widow also would not have any right to seek compassionate grounds appointment."

7. Considering these facts, we see no reason to take any other view than the view adopted by the Division Bench in the judgment and order in Writ Petition No. 1564 of 2017.

8. Accordingly, the writ petition is allowed by quashing and setting aside the order dated 22nd December, 2014. Respondents are directed to consider the case of the petitioner afresh for grant of appointment on compassionate ground and appropriate decision shall be taken within a period of eight weeks from the date of the order of this Court.

[ANIL S. KILOR, J.]

[PRASANNA B. VARALE, J.]