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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: 13th January, 2020

Decided on: 24th January, 2020

+ **W.P. (C) 9480/2018 & C.M. APPL. 36879/2018 (stay)**

THE UNION OF INDIA THROUGH GENERAL MANAGER
AND ORS.

.....Petitioners

Through: Mr. Manita Verma, Advocate.

versus

ROHIT CHAND

..... Respondent

Through: Mr. Gaya Prasad, Advocate.

CORAM:

JUSTICE S. MURALIDHAR

JUSTICE TALWANT SINGH

J U D G M E N T

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Dr. S. Muralidhar, J.:

1. The Union of India ('UOI'), through the General Manager, Northern Railway; the Divisional Railway Manager, Delhi Division, Northern Railways; and the Senior Divisional Personnel Officer, Delhi Division, Northern Railway have filed this petition against an order dated 6th April, 2018 passed by the Central Administrative Tribunal, Principal Bench, New Delhi ('CAT') in O.A. No. 1052/2017 filed by the Respondent herein. By the said impugned order, the CAT directed the Petitioners herein to consider the case of the Respondent for appointment on compassionate grounds within a period of four months.

2. While directing notice to be issued in the present petition on 2nd

November, 2018, this Court recorded the statement of learned counsel for the Respondent that he would not proceed with contempt proceedings on the grounds of non-compliance with the impugned order dated 6th April, 2018 on the part of the Petitioners. On the next date, i.e. 20th November, 2018, the Court made an interim order to that effect.

3. The background facts are that the Respondent's father Prem Chand was working as a Parcel Porter in Group 'D' category in Northern Railways at the New Delhi Railway Station. He died in harness on 8th June, 2010, leaving behind his wife Prabha Devi and the Respondent in a condition of destitution.

4. The Respondent belongs to the Scheduled Caste ('SC') category. He has passed 12th standard. He is, therefore, entitled to be considered for appointment to a suitable Group 'C' post on compassionate grounds.

5. The Respondent made representations in 2011, 2012 and 2015 to the Northern Railways seeking appointment on compassionate grounds. Not receiving any response, the Respondent filed O.A. No. 1086/2015, which came to be disposed of by the CAT by an order dated 14th July, 2016. By the said order, a direction was issued to the Petitioners to dispose of the Respondent's representation dated 16th February, 2015.

6. By an order dated 31st August 2016, the Petitioners rejected the said representation on the ground that the deceased employee was survived by two wives, the first wife being Mrs. Kasturi Devi and the second Mrs. Prabha Devi. It was stated that the deceased employee had contracted the

second marriage without getting a divorce from his first wife. Accordingly, in terms of the Railway Board's letter dated 2nd January 1992, appointment on compassionate grounds, either to the second wife or her children, is not to be considered, unless the administration permits the second marriage in special circumstances, taking into account personal laws etc.

7. The contention of the Respondent is that his mother Mrs. Prabha Devi was the lawfully wedded wife of his father, whereas Mrs. Kasturi Devi had never been married to him. It is further pointed out that the deceased employee had never availed of privilege passes and other such facilities in favour of any person other than the Respondent and his mother.

8. The Respondent pointed out that despite producing a Succession Certificate from the Court of the Administrative Civil Judge, Rohini Courts, New Delhi, the Northern Railways refused to grant his mother the pension and other retiral benefits due to his father. This led to filing T.A. No. 66/2013, which came to be allowed by the CAT, with directions to the Northern Railways to settle the claims of pension and other terminal benefits on the basis of the Succession Certificate produced by Mrs. Prabha Devi.

9. In their reply to the application before the CAT, the Petitioners denied the above averments. It was admitted that after the death of the Respondent's father, Mrs. Prabha Devi approached the administration for the settlement of dues and the grant of compassionate appointment of the Respondent. During the inquiry, the factum of the Respondent's father having two wives emerged. It was noticed that the name of the first wife existed in the pass

declaration and PF nomination. However, in the medical card and the ration card, Mrs. Prabha Devi's name is mentioned. It was claimed by the Petitioners herein before the CAT that "Prabha Devi is impersonating as wife of ex. Employee", and that the brother and the sister of the Respondent's father had confirmed that Kasturi Devi was in fact Prem Chand's wife.

10. The CAT in the impugned order referred to an earlier decision dated 18th March, 2015 of the CAT in O.A. No. 473/2014 (***Mr. Imran Ali Saiyed v. Union of India***), where it was held that the Railway Board Circular dated 2nd January, 1992 was not sustainable in law. In that process, the CAT relied on the decisions of the Supreme Court in ***Umesh Kumar v. State of Haryana (1994) 4 SCC 138***, ***Haryana State Electricity Board v. Hakim Singh (1997) 8 SCC 85***; ***Director of Education (Secondary) v Pushpendra Kumar (1998) 5 SCC 192*** and ***State of Haryana v. Ankur Gupta (2003) 7 SCC 704***. It was held that the instructions contained in the letter dated 2nd January, 1992 of the Railway Board had no nexus with the object of giving succour to the family of an employee who dies in harness. The said letter was accordingly quashed.

11. The Petitioners were unable to show to the CAT if the above decision in ***Mr. Imran Ali Saiyed v. Union of India (supra)***, and a similar decision of the CAT dated 1st September, 2006 in O.A. No. 287/2003 (***Subhash Singh v. Northern Railways through General Manager***) had been reversed by a superior court.

12. In the circumstances, the CAT held as under:

“9. Given the nature of facts and circumstances of the case, I am of the considered opinion that rejection of the applicant's request for compassionate appointment on the ground that as per Railway Board's letter dated 02.01.1992 second widow of the deceased employee cannot be considered for compassionate appointment is misconceived and not justifiable. In this view of the matter, the present OA is allowed and the impugned order dated 31.08.2016 is quashed and set aside. The respondents are directed to consider the case of the applicant for appointment on compassionate ground under the rules framed for compassionate appointment within a period of four months from the date a certified copy of this order is received by the respondents. The applicant may be informed about the outcome of this consideration as directed above immediately thereafter. No costs.”

13. This Court has heard the submissions of learned counsel for the parties.

14. The fact that the father of the Respondent died in harness, is not in dispute. The only issue that has been raised concerns the Respondent being the child of the second wife of the deceased Prem Chand. It is important to note that there is no competing claim by Kasturi Devi to the effect that she is the lawfully wedded wife of the Respondent's father, and consequently the prayer of the Respondent should not be considered. Strangely, the Petitioners refer to the brother and sister of the Respondent's father, who are claimed to have stated that Kasturi Devi was the first wife of the Respondent's father.

15. The CAT appears to have consistently held that children born out of second marriages are legitimate and entitled to appointment on

compassionate grounds upon the death of an employee in harness who happens to be their father. Reference may also be made to a Full Bench judgment of the High Court of Jharkhand at Ranchi, dated 16th June, 2017, upholding the decision of the CAT in quashing the letter dated 2nd January, 1992 of the Railway Board (*Union of India v. Suraj Kumar Prasad*). The said decision of the High Court of Jharkhand, in turn, made further reference to a judgment of a Division Bench of the Calcutta High Court in *Namita Goldar v. Union of India (2010) 1 CLJ (Cal) 464*, wherein it was held, following the judgment of the Supreme Court in *Rameshwari Devi v. State of Bihar (2000) 2 SCC 431*, that “no distinction can be made amongst the children of the first and second wife of a deceased employee.” It was further specifically observed by the Calcutta High Court as under:

“8 ... We are, however, of the opinion that the circular issued by the Railway Board on 2nd 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 2nd January, 1992 stands quashed to the extent it prevents the children of the second wife from being considered for appointment on compassionate ground.”

16. In view of the above pronouncement, this Court is of the view that the CAT, in the impugned order, was perfectly justified in directing the Petitioners to consider the case of the Respondent for appointment on compassionate grounds. There is absolute no legal infirmity in the impugned order of the CAT.

17. The petition is accordingly dismissed. The pending application is also disposed of. The interim order passed by this Court stands vacated.

S. MURALIDHAR, J.

TALWANT SINGH, J.

JANUARY 24, 2020

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