

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8307 of 2021

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Pawan Kumar, aged about 23 years, male, son of late Dileshwar Yadav,
Resident of Village - Manjhla Khurd, P.O- Dumari Chatti, P.S.-Fatehpur,
District- Gaya.

... .. Petitioner

Versus

1. The Union of India through the General Manager, East Central Railway, Hajipur.
2. The Chief Personnel Officer, East Central Railway, Hajipur.
3. The Divisional Railway Manager, Dhanbad Division, P.O-Dhanbad, District- Dhanban.
4. The Senior Divisional Personnel Officer, Dhanbad Division, East Central Railway, P.O.- Dhanbad, District- Dhanbad.
5. The Station Superintendent, Gajhandi Railway Station, P.O.- Gajhandi, District- Koderma.

... .. Respondents

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Appearance :

For the Petitioner : Mr. Dinu Kumar, Advocate

Ms. Ritika Rani, Advocate

For the Respondents : Mr. Nishi Nath Ojha, Advocate

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CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

and

HONOURABLE MR. JUSTICE ANJANI KUMAR SHARAN

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE VIKASH JAIN)

Date : 05-08-2021

Heard learned counsel for the petitioner and
learned counsel for the respondents through video conference.

2. Learned counsel for the petitioner hereby
undertakes that all defects pointed out by the stamp reporter
shall be removed, and compliance with the conditions of the
notices of this Court with regard to acceptance of e-filing shall be
made, without delay immediately upon resumption of normal



physical functioning of the Court, and in any event within one month thereof.

3. The following reliefs as formulated by the petitioner have been claimed in the writ petition.

“A. For quashing order dated No.172 dated 1-10-2018 passed by Learned member Judicial Central Administrative Tribunal CAT in Patna O.A. No.50/00399/2017 as contained in Annexure-7 by which appointment on compassionate ground after death of father Late Dileshwar posted as Technician in Grade-III, Gajhandi has been rejected.

(B) And also for quashing order dated 9.11.2015 issued by Senior Divisional EC Railway Dhanbad as contained in Annexure 5 by which petitioner was not appointed on compassionate ground on the ground there is a dispute regarding actual widow of late Dileshwar, EX Technician TRD-GRD.

(C) Also for commanding the respondents to forthwith issue letter of appointment on compassionate ground on appropriate post considering title suit no 44, succession order 5.4.2016 passed by Additional District Judge-VI, Gaya, in session case no.2 of 2015/25/2012.

(D) Also for necessary relief/reliefs, order/orders, direction/directions for which the petitioner is entitled in the eye of law.”

4. The short facts of the case, according to the



petitioner are that his father, Dileshwar, was appointed in the respondent-railway and was working as Technician in Grade-III, Gajhandi, but unfortunately died in harness on 28.07.2010. It is stated that during his lifetime, Dileshwar married Kapurwa Devi @ Sunita Devi and from the wedlock, four sons including the petitioner were born. The petitioner's father also married Sunita Devi, but there was no issue from that marriage. The petitioner applied for appointment on compassionate ground upon death of his father, Dileshwar, but the same has been denied in terms of letter dated 09.11.2015 (Annexure-5) stating that *"there is dispute regarding actual widow of Late Dileshwar Ex Tech/TRD/GJD. Hence, not considerable."* The matter was then taken to the Central Administrative Tribunal in O.A. No.050/00399/2017 which was disposed of by the impugned order dated 01.10.2018. While dismissing the O.A., the following observations have been made in paragraph no.14, which are reproduced hereinbelow-

"14. I have perused the materials on record and considered the submissions made by both the parties. On examination, it is found that the applicant has failed to place any document which can establish the truth that Smt. Sunita Devi and Smt. Kapurwa Devi is the same person. The Succession Certification obtained by the applicant and his mother, namely, Smt. Kapurwa Devi @ Sunita Devi are under challenge and subjudice



before the Court of Munsif 2nd, Gaya in Title Suit No.44/2017 filed by Sunita Devi, i.e. first wife Late Dileshwar. The said fact is not rebutted by the applicant. As per the policy for appointment on compassionate ground vide RBE No.42/2018 dated 21.03.2018 the first right of being considered for compassionate grounds appointment is vested, in cases of death of railway servant while in service, with the legally wedded surviving widow provided she has not married at the time of making requests for appointment on compassionate grounds. It is further clarified in the said RBE 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 Section 5(1) read with Section 11 of the Act. In the present case, admittedly two different women claim to be the widow of deceased railway employee out of which one is the mother of the applicant."

5. Learned counsel for the petitioner submits that the petitioner has wrongly been denied compassionate appointment on the erroneous premise that there was confusion with regard to two widows of late Dileshwar. He invites reference to the letter dated 09.12.2011 of the respondent-railway itself, which recognizes the two widows describing them with reference to their distinct residential addresses. It so happens that the first widow (mother of the petitioner, Kapurwa Devi) is



also known as Sunita Devi, and so also the second widow of late Dileshwar is named Sunita Devi. Similarly, the succession certificate in Succession Case No.02 of 2015/25 of 2012 also supports the fact of Kapurwa Devi having an alias name Sunita Devi, who was the applicant along with her four sons including the petitioner, and in whose favour the succession certificate was granted. It is submitted that the learned Tribunal has erred in relying on the decision of the Full Bench rendered in L.P.A. No.163 of 2006 and analogous cases, which is not applicable in the present facts and circumstances of the case, considering that that was a case relating to claim for compassionate appointment made by the son of the second widow. The claim had been denied in view of Circular of the railway dated 24.01.1992.

6. Learned counsel for the petitioner invites reference to a judgment of this Court rendered on 07.07.2021 in *C.W.J.C. No.7033 of 2020 (Smt. Triveni Devi & Ors. vs. The Union of India and Ors.)*, wherein this Court took note of the subsequent development after the aforesaid Full Bench judgment in L.P.A. No.163 of 2006 (supra). The Hon'ble Supreme Court in the case of *Union of India and Another vs. V.R. Tripathi* reported in *AIR 2019 S.C. 666* upheld the views of the Calcutta High Court and Madras High Court which had quashed the aforesaid Circular of the railway dated 24.01.1992, and held as follows -

"18. The High Court has proceeded on the basis that



the recognition of legitimacy in Section 16 is restricted only to the property of the deceased and for no other purpose. The High Court has missed the principle that Section 16(1) treats a child born from a marriage which is null and void as legitimate. Section 16(3), however, restricts the right of the child in respect of property only to the property of the parents. Section 16(3), however, does not in any manner affect the principle declared in sub-section (1) of Section 16 in regard to the legitimacy of the child. Our attention has also been drawn to a judgment of a learned Single Judge of the Madras High Court in M. Muthuraj v. Deputy General of Police, Tamil Nadu adopting the same position. In the view which we have taken, we have arrived at the conclusion that the exclusion of a child born from a second marriage from seeking compassionate appointment under the terms of the circular of the Railway Board is ultra vires. A Division Bench of the Madras High Court followed the view of the Calcutta High Court in Namita Goldar (2010 Lab IC 1465 (Cal)) in Union of India v. M. Karumbayee. A Special leave petition filed against the judgment of the Division Bench was dismissed by this Court on 18 September 2017.”

7. Learned counsel for the respondents appears and has been heard.

8. Having heard the parties and on a consideration of the materials on record, we find merit in the submission of



learned counsel for the petitioner. Considering that the issue involved is a pure question of law, no counter affidavit is considered necessary. The decision of the Hon'ble Supreme Court in *V.R. Tripathi's case (supra)* is authoritative for the proposition that even the children of the second widow of a deceased are eligible for compassionate appointment. It is not the case of the respondent-railway that the petitioner is not the son of either widow of late Dileshwar and as such, the stated ground for rejection that there is confusion with regard to name of the widow of late Dileshwar loses significance.

9. In the above circumstances, the impugned order dated 01.10.2018 passed by the Central Administrative Tribunal, Patna, in O.A. No.050/00399/2017 (Annexure-7) as well as order dated 09.11.2015 (Annexure-5) issued by the Senior Divisional Personnel Officer, Dhanbad Division, East Central Railway, Dhanbad, are hereby set aside and the matter is remanded to the Senior Divisional Personnel Officer, Dhanbad Division, East Central Railway, Dhanbad (respondent no.4) for considering the petitioner's case for granting compassionate appointment afresh. A final decision shall be taken expeditiously after grant of an opportunity of hearing to the petitioner in accordance with law, and preferably within a period of six months from the date of receipt/production of a copy of this judgment.

10. The writ petition stands allowed.



11. Office shall follow-up to ensure that all defects are removed and compliance with the notices of this Court are made by the petitioner within the stipulated time provided in para-2 hereinabove, failing which the matter shall be brought to the notice of this Court.

(Vikash Jain, J)

(Anjani Kumar Sharan, J)

pawan/-

AFR/NAFR	N.A.F.R.
CAV DATE	N/A
Uploading Date	09.08.2021
Transmission Date	

