

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.18338 of 2024

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1. The Union of India through the General Manager, East Central Railway, Hajipur, P.O.-Digghi Kalan, P.S.-Hajipur, District-Vaishali, At Hajipur, Pin Code- 844101 (Bihar)
 2. The General Manager (Personnel), East Central Railway, Hajipur, P.O.- Digghi Kalan, P.S.-Hajipur, District-Vaishali, At Hajipur, Pin Code-844101 (Bihar)
 3. The Divisional Railway Manager, East Central Railway, Danapur, District- Patna, Pin Code-815101 (Bihar).
 4. The Senior Divisional Personnel Officer, East Central Railway, Danapur, District-Patna, Pin Code-815101 (Bihar).
 5. The Senior Divisional Engineer (Co-Ordination), East Central Railway, Danapur, District-Patna, Pin Code- 815101 (Bihar).

... .. Petitioner/s

Versus

Manish Kumar Son of Late Chandra Shekhar Singh Resident of Mohallah- Gurudaspur Tola, Post- Bihar, P.S.- Barauni, District- Begusarai (Bihar)

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. K.N. Singh, ASG
	:	Mr. Amish Kumar, CGC
	:	Mr. Prabhakar Thakur, Advocate
	:	Mr. Aamir Hayat, Advocate
For the Respondent/s	:	Mr.

CORAM: HONOURABLE MR. JUSTICE SUDHIR SINGH
and
HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA)

Date : 13-10-2025



Heard Mr. K.N. Singh, learned Additional Solicitor General assisted by Mr. Amish Kumar, learned CGC appearing on behalf of the petitioners.

2. The present writ petition has been filed for the following relief(s):-

i. For quashing the order dated 28.05.2024 passed in O.A. No. 050/00676 of 2019 (Annexure-P/I) by Sri Ajay Pratap Singh, Judicial Member, Central Administrative Tribunal, Patna Bench, Patna whereby and where under the learned Tribunal has been pleased to allow the O.A. Application with the following directions

(a) The respondent has been held to be entitled for consideration for appointment on compassionate grounds.

(b) Impugned order dated 02.03.2015 is accordingly set-aside and quashed and the matter has been remitted to the petitioners to consider the case of the respondent for appointment on compassionate grounds on merits within period of four months from production / receipt of the certified copy of the order.

ii. For any other relief or reliefs which the petitioners may be found entitled to in the facts and circumstances of the case.



3. Brief facts of the case is that deceased- Chandrashekhar Singh, while he was in service in the Railway, he died on 11.08.2009. He had two wives. First wife died on 09.12.2011. Resultantly, second wife submitted application for compassionate appointment to his younger son-Manish Kumar on 10.07.2012. The same was rejected on 14.08.2012 on the ground that the said Manish Kumar was not eligible to be appointed with reference to the fact that he was a minor at the relevant time. Subsequently, second wife once again submitted application for appointment on behalf of Manish Kumar on 16.05.2014. Simultaneously, she had submitted another application to her elder son on 18.07.2014 Mukund Kumar on 18.07.2014. Manish Kumar application was rejected on 02.03.2015. The same was challenged in O.A. No. 050/00676/2019.

4. Learned counsel for the petitioners submits that Late Chandrashekhar Singh, Ex-Clerk Group-II under SSE/Bridge/GHZ died on 11.08.2009 while he was in service. Welfare Inspector of East Central Railway, Danapur was deputed to enquire into the matter and from the enquiry report it revealed that the candidate is the son born from second wife of the ex-employee. The deceased employee got re-married with on Ranju Devi without taking permission from the Railway Administration. The deceased



employee had three children from his second wife i.e. two sons and one daughter.

5. Learned counsel for the petitioners submits that the Railway Board vide letter no.E(NG)II/91/RC-1/136 dated 24.01.1992 had issued instruction as under:-

“It is clarified that in case of Railway employees dying in harness etc. leaving more than one widow along with children born to 2nd wife, while settlement of dues may be shared due to Court orders or otherwise on the merits of each case, so far as the appointment on compassionate grounds to the 2nd wife and her children are not to be considered, unless the administration has permitted the second marriage in special circumstances, taking into account the personal Law etc.

The fact that the second marriage is not permissible is invariably clarified in the terms and conditions advised in the offer of initial appointment.”

6. Learned counsel for the petitioners submits that in view of the aforesaid instructions the cases for compassionate appointment to the second widow or her wards need not be forwarded to the Railway Board.

7. Learned counsel for the petitioners submits that the Railway board vide letter dated 24.01.1992 had issued instruction



that in case of Railway employees dying in harness etc. leaving more than one widow along with children born to 2nd wife, while settlement dues may be shared due to Court orders or otherwise on the merits of each case, so far as the appointment on compassionate grounds to the 2nd wife and her children are not to be considered, unless the administration has permitted the second marriage in special circumstances, taking into account the personal Law etc.

8. Learned counsel for the petitioners submits that learned Central Administrative Tribunal had not considered the case of the petitioners in true spirit and the learned Tribunal has been pleased to set aside the impugned order dated 02.03.2015 and remitted the matter back to the petitioners to consider the case of the respondent for appointment on compassionate grounds on merits within period of four months from production/receipt of certified copy of the order. It was further held that the respondent was entitled for consideration for appointment on compassionate grounds.

9. In fact the learned Central Administrative Tribunal did not consider the matter in its true perspective and allowed the O.A. application on basis of conjectures and surmises.



10. In fact the O.A. Application filed by the respondent barred by the law of limitation as the father of the Respondent died on 11.08.2009 and thereafter the claim of compassionate appointment of the son of the deceased namely Mukund Kumar, was rejected on 02.03.2015 and the O.A. Application was filed by one Manish Kumar before the learned Tribunal in the year 2019.

11. We have perused the material available on record and the order dated 28.05.2024 passed by the learned Central Administrative Tribunal, Patna Bench, Patna in O.A. No. 050/00676/2019. It transpires that the learned Court has been pleased to set aside the order on the basis of judgment of full Bench of this Court reported in **2019(2) PLJR 500** in the case of **Bihar State Electricity Board & Anr. vs Chandra Shekhar Paswan** and apart from that learned Court has come to the conclusion that the Railway Board Circular dated 02.01.1992 as mentioned aforesaid, the same was set aside in the case of **Smt. Namita Goldar vs Union of India & Ors** reported in **2010(1) Cal.L.J.464** and apart from that the order of full Bench of Patna High Court in case of **Bihar State Electricity Board & Anr. vs Chandra Shekhar Paswan** (supra) which is produced herein after:-

“53. The Supreme Court also noticed the Division Bench judgment of Calcutta High



Court in Namita Goldar (supra) whereby circular of the Railway Board dated 2.1.1992 to the extent that it prevented the children of second wife from being considered for appointment on compassionate ground was quashed. Its attention was also drawn to the judgment of the Division Bench of the Madras High Court in Union of India vs. M. Karumbayee (supra), which had followed Namita Goldar (supra) The Supreme Court noticed that Special Leave Petition filed against the judgment of the Division Bench was dismissed by the Supreme Court on 18.9.2017.

54. Having noticed the aforesaid judgments, the Supreme Court observed:-

"Finally, it would be necessary to dwell on the submission which was urged on behalf of the respondent that once the circular dated 2 January, 1992 was struck down by the Division Bench of the Calcutta High Court in Namita Goldar (supra) and which was accepted and has been implemented, it was not thereafter open to the railway authorities to rely upon the same circular which has all India force and effect There is merit in the submission. Hence, we find it improper on the part of the Railway Board to issue a fresh circular on 3 April, 2013. reiterating the terms of the earlier circular dated 2 January, 1992 even after the



decision in Namita Goldar (supra), which attained finality.

55. Apparently, the judgment passed in Union of India vs. V.R. Tripathi (supra) by the Supreme Court is contrary to the Full Bench of this Court in Union of India vs. Sanjay Kumar (supra) as it has acknowledged the right to the child of the second marriage and has also held that while designing a policy of compassionate appointment, the State can prescribe the terms on which it can be granted. However, it is not open to the State while making the scheme or rules to lay down a condition, which is inconsistent with Article 14 of the Constitution. It has acknowledged the right to compassionate appointment to the child of second marriage under Section 16(1) and 16(3) of the Hindu Marriage Act. The principle laid down by the Supreme Court supersedes those taken by the Full Bench of this Court in Union of India vs Sanjay Kumar (supra). The said principle having enunciated by the highest Court of the land has a binding force. The authoritative pronouncement of Apex Court on the point of compassionate appointment in V.R. Tripathi (supra) eclipses the decision of the Full Bench of this Court in Union of India vs Sanjay Kumar (supra), which was even based on misconstruction of Railway Board's circular



dated 2.1. 1992 as the said circular was not in existence after Namita Goldar's case

56. In the light of the authoritative pronouncement of the Supreme Court in Union of India vs. V.R. Tripathi (supra), we find that the condition imposed by the circular no. 937 dated 23.6.2003 issued under the signature of Joint Secretary, Personnel and Administrative Reforms Department, Government of Bihar Patna which inter alia bars compassionate appointment to the children born from second marriage of the deceased employee cannot be held to be legal and justified. 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, the State cannot exclude such a child by issuing circular or letter from seeking the benefit of compassionate appointment. Such a condition of exclusion is arbitrary and ultra vires.

57. We are also of the opinion that in view of the ratio laid down by the Supreme Court in Union of India vs. V.R. Tripathi (supra), an employer, who is amenable to Part III of the Constitution cannot deny the benefit of compassionate appointment, which is available to the other legitimate children. The State cannot lay down a condition while making the scheme or rules inconsistent with Article 14 of



the Constitution. In view of Section 16 of the Hindu Marriage Act, 1955, which regards a child born from a marriage entered into while the earlier marriage is subsisting to be legitimate, the condition of prior approval of the employer before the second marriage of the deceased employee cannot be sine qua non to the children born out of second marriage. Such a condition of exclusion would be arbitrary and ultra vires as it would bring out unconstitutional discrimination between legitimate children, who form one class."

12. Having heard the learned counsel for the parties, perused the materials available on the record and in view of the decision above, this Court has no hesitation to hold that the CAT has rightly passed the order in accordance with law, and the matter is remitted back to the petitioners to consider the case of the respondent for appointment on compassionate ground on merits within a period of four months from the date of receipt/production of a copy of this order.

13. While considering the case of the respondent for appointment on compassionate ground, the petitioners are directed to consider the aforesaid judgment as mentioned in CAT order dated 28.05.2024, and take a decision within a period of three months.



14. In view of the aforesaid, there is no merit in the writ petition. Accordingly, it is dismissed.

(Sudhir Singh, J)

(Rajesh Kumar Verma, J)

Suruchi/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	17.10.2025
Transmission Date	NA

