



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

WRIT PETITION NO. 7319 OF 2025

PETITIONERS:

(Ori. Respondent
Nos. 1 and 2
in O.A.
No.558/2023)

1. The Union of India,
through its Divisional Railway Manager,
Having Office at South East Central
Railway, Divisional Office, Personnel
Department, Kingsway, Nagpur-440001.
2. The Senior Divisional Personnel Officer,
South East Central Railway,
Divisional Office, Personnel Development,
Kingsway, Nagpur-440001.

...VERSUS...

RESPONDENTS

(Ori. Applicant)

(Org. Respondent
No.3 in O.A.
No.558/2023)

1. Shri Madhavi Ramdas Malvi,
Aged 21 years, Occupation: Nil.,
R/o Quarter No. E1/1, Kanhan Railway
Station Road, Near Kanhan Railway
Station, Railway Colony, Kanhan,
VTC: Salva, Kanhan Pimpri, 441 401,
District Nagpur, Maharashtra
Mobile No. 7768995943.
2. Sunita Malvi,
Aged 53 years, Occupation: Household,
R/o House of Sishila Mohbe,
Shriram Colony, Ward No. 37,
Chandgoan, Chhindwara, P.S. Tahsil and
District Chhindwara, Madhya Pradesh.

Mr. Mugdha Chandurkar, counsel for petitioners.

Mr. R.D.Dhande, counsel for respondent No. 1.

CORAM : **ANIL S. KILOR AND RAJNISH R. VYAS, JJ.**
DATE : **05/12/2025**

JUDGMENT : (Per Rajnish R. Vyas J)

1. Heard. **Rule.** Rule made returnable forthwith. Heard finally with the consent of learned counsels appearing for the parties.

2. The petitioner is the original non-applicant Nos. 1 and 2 in original application filed before the Central Administrative Tribunal, Mumbai Bench, Camp at Nagpur, whereas the Respondent No.1 is the original applicant and Respondent No.2 is original Non-applicant No.3. One Ramdas Malvi, was employed in Class-C Category with Central Railway as a Trackman. Respondent No.1 is the daughter of second wife of the said Ramdas Malvi. Ramdas had two wives, namely Sunita (first wife) and Jayawantibai (second wife). The said Ramdas Malvi died on 29/12/2022. After the death of Ramdas, 50% pension was awarded to Sunita and 50% pension was to Jayawantibai. The

first wife, by name – Sunita, has a daughter named Sonam, who is now married.

3. After the death of Ramdas, an application for grant of compassionate appointment was preferred by the original applicant-Madhavi. On 28/06/2023, a communication was issued by Respondent No.2, rejecting the case of original applicant for appointment on compassionate basis on the ground that the first wife (present respondent No.2) has a legal propriety claim for Job on compassionate basis over the claim made by the applicant, who is child of second wife. The said communication was based on Establishment Rule-361/2019.

4. This communications was challenged by respondent no.1 (original applicant) before the Central Administrative Tribunal, Mumbai Bench, Mumbai in Original Application No. 558 of 2023. By judgment dated 24/07/2025, the Tribunal set aside the communication dated 28/06/2023. The petitioner/ original respondents were permitted to consider the claim of Respondent No.1 along with other claimants of the deceased for compassionate appointment within a fixed the period.

5. The petitioners (original respondent Nos. 1 and 2) have challenged the Tribunal's order on the ground that it is arbitrary and contrary to the policy in force.

6. Mrs. Mudgha Chandurkar, learned counsel for the petitioners, contended that the Tribunal failed to consider the fact that the request of Respondent No.2 (first wife) dated 12/04/2023 for compassionate appointment is still pending due to the Court proceedings and the said request has not been withdrawn. It is her contention that the Tribunal failed to appreciate that it was open for the department to frame a policy and incorporate the conditions for grant of compassionate appointment and to prioritize the claim of the children born out of first marriage.

7. She further submitted that the circular dated 30/12/2019 was issued by the respondent after considering all the relevant conditions and the judgment of the Hon'ble Apex Court in the case of *Union of India and another Vs V.R. Tripathi* reported in *(2019) 14 SCC 646*, with a view to grant of compassionate appointments to the children born to a second wife.

8. Per contra, Mr. R.D.Dhande, learned counsel for

respondent No.1, argued that the communication dated 28/06/2023 rejecting the prayer for grant of compassionate appointment is illegal. He further submitted that Respondent No.1 had filed Writ Petition No. 113 of 2024 challenging the condition in the circular dated 30/12/2019 issued by the Railway Board, to the extent of incorporating a condition that child born from second marriage may be considered for compassionate appointment only after ascertaining that there is no objection from first wife or her children. According to him, the said writ petition was disposed of vide order dated 09/01/2024 by this Court, observing that the issue raised by the respondent No.1 therein regarding challenge to the condition can very well be raised in the Original Application No. 558/2023. Accordingly, liberty was granted to respondent No.1 to amend Original Application and incorporate the challenge in the prayer clause. Thus, according to Respondent No.1, her claim ought not to have been rejected.

9. We have considered the arguments advanced by the respective counsels and have gone through the record of the case. The leaned Tribunal, while deciding the issue in question, recorded the following findings:-

“11. In the present case, after the judgment of Hon’ble Supreme Court in the case of V.R. Tripathi (supra), the Railway Board has come up with the Railway Board 218/2019 (Estt. Rule 361/2019) (Annex-A-5) by putting the restriction of no objection from first wife or her children and in case of application is made by first wife or her children priority over the claim of the 2nd wife for her any children has been imposed. The respondents have failed to submit or substantiate that what object is sought to be achieved through putting the said condition. When the under law first wife and her children and children of 2nd wife are at par then creating a class within the class cannot be said to be a valid and reasonable classification and that too without any object sought to be achieved.

12. Thus, in view of the proposition of law laid down by the Hon’ble Supreme Court in the case of V.R. Tripathi and in the case of Mukesh Kumar (supra), the impugned condition i.e. a child born to the second wife can be considered for such appointment only after ascertaining that there is no objection to this from the first wife or her children and where the first wife (legally wedded wife) opts for such compassionate appointment either for herself or one of her own children, such claim will have priority over any competing claim made by the second wife for any of her children, held to be discriminatory, arbitrary, unjust and unreasonable and violative of Article 14 of the Constitution of India and conditions contained in RBE No. 218/2019 (ER No.361/2019) (Annex-A-5) to that extent is quashed.

13. So far as the impugned communication dated 28.06.2023 (Annex-A-1) is concerned, the same is based on the aforesaid condition of RBE No.218/2019 (E.R. No.361/2019) (Annex-A-5) and, therefore, the same is also liable to be set aside.”

10. Thus, a perusal of the aforesaid findings clearly reveals that the Tribunal held the impugned condition, i.e. a child born to

the second wife can be considered for such appointment only after ascertaining that there is no objection from the first wife or her children, and where the first wife for such compassionate appointment either for herself or one of her own children, such claim will have priority over any competing claim made second wife for any of her children, is held to be discriminatory. The Tribunal has rightly held that there is absolutely no object which is sought to be achieved by imposing the said condition.

11. In this background, we could not find any perversity or jurisdictional error committed by the Tribunal while passing the order impugned. The Tribunal has extensively dealt with all relevant aspects and the law laid down by the Hon'ble Apex Court in the case of *Union of India and Vs V.R. Tripathi* referred (supra), and has rightly set aside the impugned order. Since the order is perfectly legal and valid, and considering the fact that first wife was also receiving 50% amount of pension as well as maintenance, and daughter of first wife has given her no objection, we do not find any substance in the present petition and, therefore, the same is **dismissed**, in the peculiar facts and circumstances of the case.

12. Rule is discharged. Pending Application(s), if any,
stand(s) **disposed of**.

(RAJNISH R. VYAS, J.)

(ANIL S. KILOR, J.)