



दक्षिण रेलवे/SOUTHERN RAILWAY

सं./No.P(R)30/P/CGA .

प्रधान कार्यालय/ Headquarters Office
कार्मिक शाखा/ Personnel Branch
चेन्नै/Chennai - 600 003
दि./ Dated:20-08-2015

पी वी सी सं/ PBC No: 116 / 2015

All PHODs / DRMs / CWMs / CEWE / CAO / CPM / Dy.CPOs / Sr.DPOs /
DPOs / SPOs / WPOs / APOs of HQ / Divisions / Workshops / other Units,
etc.,

(As per mailing list -'A')

विषय/Sub: Appointment on compassionate grounds – case of second
widow and her children

A copy of Railway Board's letter No.E(NG)II/2012/RC-1/21 dated
03-04-2013 on the above subject is enclosed for information, guidance and
necessary action.

Railway Board's letter dated 02-01-1992 referred therein is enclosed for
reference.


(V.SRINIVASAN)
वरिष्ठ कार्मिक अधिकारी/नियम
Senior Personnel Officer/Rules
कृते मुख्य कार्मिक अधिकारी
For Chief Personnel Officer

प्रतिलिपि/Copy to :The Genl.Secy. SRMU
The Genl.Secy. AISCSTREA
The Genl.Secy. AIOBCREA

The Genl Secy NFIR

**GOVERNMENT OF INDIA
MINISTRY OF RAILWAYS
(RAILWAY BOARD)

No. E(NG)II/2012/RC-1/21

New Delhi, Dated: 2.04.2013

**The General Manager (P),
All Zonal Railway's/PUs.**

Sub: Appointment on compassionate grounds - case of second widow and her children.

A number of references have been received from Zonal Railways on the above subject. The matter has been examined by the Board and it has been decided that such cases may be dealt strictly in terms of Board's letter No. E(NG)II/91/RC-1/136 dated 02.01.1992. Further, whenever the judgement of the Hon'ble Courts are contradictory to Board's Instructions, Railways may contest/file review petition in light of favorable judgement in such cases (copy enclosed).

Please acknowledge receipt.

(This also disposes of

- (i) East Central Railway's letter No. ECR/HRD/Court Cell/CG Apptt dated 22.08.11.
- (ii) South East Central Railway's letter No. P-HQ/RCT/208/4/1002 dated 28.06.11.
- (iii) Eastern Railway's letter No. CPO/SC/SA/Comp/CI.IV/3037 dated 20.09.11.
- (iv) Northeast Frontier Railway's letter No. E/208/2/QA/44/11 dated 16.12.11.)

43/4/13
(Harsha Dass)
Director Estt.(N)
Railway Board.

**GOVERNMENT OF INDIA (BHARAT SARKAR)
MINISTRY OF RAILWAYS/RAIL MANTRALAYA
(RAILWAY BOARD)**

RBE No. 1/1992

No. E(NG)II/91/RC-1/136 dated 02/01/1992

**Subject :- Appointment on compassionate grounds –
Cases of Second widow and her wards.**

Supplementary Circular No. 5 to Master Circular No. 16.

It is clarified that in the case of Railway employees dying in harness, etc. leaving more than one widow along with children born to the second wife, while settlement dues may be shared by both the widows due to Court orders or otherwise on merits of each case, appointments on compassionate grounds to the Second widow 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.

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

3. This may be kept in view and the cases for compassionate appointment to the second widow or her wards need not be forwarded to Railway Board.

Jharkhand High Court

M V V Prakash vs Railways on 24 July, 2014

IN THE HIGH COURT OF JHARKHAND AT RANCHI

W.P (S) No. 16 of 2014

M.V.V.Prakash Petitioner

Versus

Union of India & Others Respondents

CORAM: HON'BLE THE CHIEF JUSTICE.

HON'BLE MR. JUSTICE AMITAV K. GUPTA

For the Appellant/Petitioner : M/s.M.M.Pal, Senior Advocate,
R.Pandey, S.C.Roy, A.C.Mahata

For the Respondents :Mr. Vijay Kumar Sinha, ASC

C.A.V On 21st July, 2014 Pronounced On 24thJuly, 2014

R.Banumathi,C.J. This writ petition is filed for quashing the order dated 1.11.2013 passed by the Central Administrative Tribunal (CAT), Circuit Bench at Ranchi, in O.A.No.124/2012(R), whereby the CAT dismissed the original application filed by the petitioner holding that the petitioner is not legally entitled to be considered for compassionate appointment in view of the specific bar.

2. The father of the petitioner, Sri M.Narasinga Rao, was a permanent employee of the Railways and when he was posted as Tech. II under SSE(C&W) BNDM, he was missing on and from 11.12.2001 for which FIR dated 7.6.2002 was lodged and a certificate was issued on 15.1.2003

, wherein it was certified by the Railway authorities that his father namely, M.Narasinga Rao, has been absenting himself from duty unauthorizedly from 11.12.2001 till date. M.Narasinga Rao had earlier married one Mylapalli Sokhubhayi and out of the first marriage, he had one daughter named Pukkalla Radha and the said Pukkalla Radha is married to one Suresh. The petitioner's mother, Uma Devi, is the second wife of M.Narasinga Rao. As per the documents submitted by Uma Devi,

M V V Prakash vs Railways on 24 July, 2014

Indian Kanoon - <http://indiankanoon.org/doc/64924757/> 1

mother of the petitioner, all the payments of the ex-employee was drawn 2 in her favour. However, after receipt of the application from the petitioner for compassionate appointment, during investigation of the case by the Senior Personnel Inspector, it was revealed that Mylapalli Sokhubhayi was the first wife of M.Narasinga Rao and she expired on 20th December, 2005. In response to the Railways letter, mother of the petitioner submitted reply dated 20.1.2011 stating that only after her marriage, she came to know about her husband's earlier marriage with Mylapalli Sokhubhayi and their daughter, Pukkalla Radha. The employment assistance on compassionate ground was refused to the petitioner as per Railway Board's Circular RBE No.01/92, which states that children through the second wife shall be entitled to the settlement dues but not for employment assistance on the ground that such marriage is to be considered null and void. Being aggrieved, the petitioner filed O.A No.124/2012.

3. Following the judgment of the Jharkhand High Court passed in W.P(S) No.4461/2008 (Basanti Devi & Ano.) and batch cases, the CAT dismissed O.A No.124/2012 holding that since the Railway administration issued Circular RBE No.1/92 on 2.1.1992 that the children through the second wife shall not be eligible for compassionate appointment and since there is specific bar, the petitioner is not entitled to be considered for compassionate appointment.

4. Learned Senior Counsel, Ms.M.M.Pal, contended that the petitioner is fully covered by the judgment dated 4.5.2012 passed in O.A No.212/2011(R) but totally ignoring the said judgment, CAT dismissed the O.A No.124/2012 without application of mind. Learned Senior Counsel contended that on the same and identical facts of the case, in the case of Smt. Namita Goldar And Ano. v. Union of India (2010 (1) CLJ (Cal)

464), Calcutta High Court quashed the Railway Circular RBE No.01/92 dated 2.1.1992 and ordered employment to the son of the second wife and 3 similar orders were passed by the various coordinate Benches of the CAT or High Court, which was within knowledge of the Railways but the Railways arbitrarily rejected the claim of the petitioner, which is unsustainable in law.

5. Learned counsel for the respondents submitted that as per the Railway Circular RBE No.01/92 dated 2.1.1992, children through the second wife shall not be eligible for compassionate appointment unless the employee obtained permission for such second marriage from the Railways and the ex-employee, M.Narasinga Rao, had not obtained such permission and as per the said Circular, the petitioner is not eligible for compassionate appointment and the CAT dismissed O.A No.124/2012. Placing reliance upon 2010 (11) SCC 661 (State Bank of India v. Raj Kumar), it was submitted that the claim for compassionate appointment is traceable only to the Scheme framed by the employer and there is no right whatsoever outside the Scheme and therefore, CAT rightly followed the judgment of the Jharkhand High Court in the case of Basanti Devi's case and the order of the CAT does not suffer from any infirmity.

6. We have carefully considered the submissions of the learned counsel for the petitioner and the respondents, the impugned order of the CAT and various decisions relied upon by the parties.

M V V Prakash vs Railways on 24 July, 2014

Indian Kanoon - <http://indiankanoon.org/doc/64924757/> 2

7. There is no dispute that the petitioner's mother, Uma Devi, is the second wife of Narasinga Rao. The said Narasinga Rao had the first wife Mylapalli Sokhubhayi and through her he had a daughter. According to the respondents, when the mother of the petitioner claimed settlement dues of Narasinga Rao, she has suppressed material fact that she was the second wife of Narasinga Rao and as per the documents submitted by her, all the settlement dues of the ex-employee, Narasinga Rao, were drawn in her favour and only on receipt of the application from the petitioner for employment assistance on compassionate ground, on enquiry it was 4 revealed that Narasinga Rao had first wife, Mylapalli Sokhubhayi and they had a daughter named Pukkalla Radha and that the mother of the petitioner was the second wife of Narasinga Rao. The mother of the petitioner was advised to submit a declaration of the actual family position of Narasinga Rao. In reponse to the said letter dated 22.1.2011, the mother of the petitioner submitted a reply stating that only after her marriage, she came to know about her husband's earlier marriage with Mylapalli Sokhubhayi and their daughter. According to the respondents, in none of the family records, the name of the mother of the petitioner has been recorded, nor she had been made nominee.

8. As per the Railway Circular, children through the second wife shall not be eligible for employment assistance on the ground that such marriage is to be considered null and void. The Circular RBE No.01/92 reads as under:-

"R.B.E No.1/92 (Supplementary Circular No. 5 to Master Circular No.16) Subject: Appointment on compassionate grounds - Cases of second widow and her wards. No.E(NG)11/91/RC-1/136, dated 2.1.1992 It is clarified that in the case of Railway employees dying in harness etc. leaving more than one widow along with children born to the 2nd wife, while settlement dues may be shared by both the widows due to Court orders or otherwise on merits of each case, appointments on compassionate grounds to the second widow 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.

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

3. This may be kept in view and the cases for compassionate appointment to the second widow or her wards need not be forwarded to Railway Board."

9. Section 5 of the Hindu Marriage Act, 1955 provides that a marriage may be solemnized between two Hindus, subject to the conditions indicated thereon. Section 5(i) stipulates that neither party has spouse living at the time of marriage. Rule 21 of the Railway Service Conduct Rules 1966 stipulates a restriction regarding the marriage status that no Railway servant shall enter into or contract a marriage with a 5 person having a spouse living. As per the Rule 21(2), no Railway servant having spouse living shall enter into or contract a marriage with any other person. As per proviso to Rule 21, the Government may permit a Railway servant to enter into second marriage if it is satisfied that such marriage is permissible under the personnel law applicable to such Railway servant and

M V V Prakash vs Railways on 24 July, 2014

Indian Kanoon - <http://indiankanoon.org/doc/64924757/> 3

other party to the marriage and (b) there are other grounds for so doing. Vide the above Circular dated 2.1.1992, it has been clarified that in case of a Railway servant died in harness having more than one widow, children through the second marriage should not be considered for compassionate appointment unless the administration has permitted the second marriage in special circumstances taking into account the personnel law.

10. The compassionate appointment is traceable only to the Scheme framed by the employer for such employment and there is no right to be considered outside such Scheme. In 2010 (11) SCC 661 (State Bank of India v. Raj Kumar), the Hon'ble Supreme Court held as under:-

"8. It is now well settled that appointment on compassionate grounds is not a source of recruitment. On the other hand it is an exception to the general rule that recruitment to public services should be on the basis of merit, by an open invitation providing equal opportunity to all eligible persons to participate in the selection process. The dependants of employees, who die in harness, do not have any special claim or right to employment, except by way of the concession that may be extended by the employer under the rules or by a separate scheme, to enable the family of the deceased to get over the sudden financial crisis. The claim for compassionate appointment is therefore traceable only to the scheme framed by the employer for such employment and there is no right whatsoever outside such scheme. An appointment under the scheme can be made only if the scheme is in force and not after it is abolished/withdrawn. It follows therefore that when a scheme is abolished, any pending application seeking appointment under the scheme will also cease to exist, unless saved. The mere fact that an application was made when the scheme was in force, will not by itself create a right in favour of the applicant."

11. On identical facts, while considering the eligibility of the children through the second wife, following the judgment in the case of Raj Kumar's case the Division Bench of this Court in Basanti Devi's case held that the son of the second wife is not entitled to the benefit of 6 compassionate appointment. We fully agree with the said judgment of the Division Bench of this Court in Basanti Devi's case.

12. Learned Senior Counsel for the petitioner mainly relied upon Smt. Namita Goldar And Ano. (2010 (1) CLJ (Cal) 464), wherein while considering the appointment of the son of the second wife on compassionate appointment, Calcutta High Court quashed the Railway Circular dated 2.1.1992. Learned Senior Counsel contended that the judgment of the Calcutta High Court was followed by the CAT, Circuit Bench at Ranchi, in O.A No.212/12 and the said judgment had been passed by the CAT after considering all the judgments passed by the Principal Bench of CAT, New Delhi and also by the Calcutta High Court and while so, the respondents and the CAT erred in brushing aside the judgment in Smt. Namita Goldar's case (2010 (1) CLJ (Cal) 464). We have perused the judgment of Smt. Namita Goldar. The said case is clearly distinguishable on facts. In the said case, the first wife of the Railway employee was issueless and the second marriage was accepted by the first wife without any protest and the first wife did not challenge the second marriage of her husband, nor the first wife lodged any compliant before the authorities. That apart, the first wife died issueless soon

M V V Prakash vs Railways on 24 July, 2014

Indian Kanoon - <http://indiankanoon.org/doc/64924757/> 4

after the death of the Railway employee and in those facts and circumstances of the case, Calcutta High Court held that the son of the second wife is eligible to be considered for job on compassionate ground. The facts of the present case is clearly distinguishable from that of Smt. Namita Goldar's case.

13. Learned Senior Counsel for the petitioner contended that the petitioner is fully covered by the judgment dated 4th May, 2012 passed in O.A No.212/2012(R) but totally ignoring the judgment passed in O.A No.212/2012(R), the CAT dismissed O.A No.124/2012 without application of mind. Learned Senior Counsel further 7 contended that as per the reported judgments in AIR 2000 SC 735 (Rameshwari Devi v. State of Bihar & Ors.), 2005 (3) PLJR 458 (Purushottam Kumar v. State of Bihar), 2002 (2) PLJR 686 (Union of India v. CAT) and other judgments, children born out of the second marriage are legitimate and are entitled to appointment on compassionate ground. It was submitted that even illegitimate child is entitled to share of the property of his father and there cannot be any distinction between a son of first wife or the second wife though such marriage may be void and hence, the claim of the petitioner cannot be turned down on the grounds recorded by the CAT.

14. We do not propose to go deep into the merits of the above contention. Suffice it to note that the same decisions relied upon by the petitioner and same arguments advanced were considered by the Division Bench of this Court in Basanti Devi's case in W.P(S) No.4461/2008 and W.P(S) No.4495/2008 and W.P(S) No.1083/2010. Rejecting the contention of the petitioners thereon and observing that the compassionate appointment and right to inherit cannot be equated in any manner and in view of the Railway Circular RBE No.1/92, son of the second wife of the employee is not eligible for compassionate appointment, the Division Bench of this Court in Basanti Devi's case in W.P(S) No.4461/2008 and W.P(S) No.4495/2008 and W.P(S) No.1083/2010 held as under:-

"12. The Division Bench in Purushotam Kumar's case, after considering the above provisions of law reached to the conclusion that though the marriage is void but the child born is a legitimate one and they will share the property equally with the legitimate children in their parents property and by a deeming provision illegitimate children of a second marriage have been treated to be legitimate and he will inherit the property in the same manner as a legitimate son of a valid marriage.

13. Then the Division Bench proceeded to consider the effect of Hindu Succession Act and observed that in the parents property the son of the second wife also have the same right as the legitimate son of the first wife and there is no distinction and differentiation can be made with regard to share in the property of the parents. The Division Bench also considered the Apex Court decision given in the case of Rameshwari Devi Vrs. The State of Bihar & Ors., as reported in AIR 2000 SC 735, wherein the Apex Court held that children of the void marriage are legitimate and the property of a male Hindu dying intestate devolve first on heirs in Class 1 which include widow and son. A son of the second wife being legitimate son will be entitled to the property of the deceased in equal share along with the first wife and her sons.

M V V Prakash vs Railways on 24 July, 2014

Indian Kanoon - <http://indiankanoon.org/doc/64924757/> 5

Then the Division Bench of the Patna High Court considered a policy decision of the State Government for compassionate appointment which speaks about "son" only and in the opinion of the Division Bench since son of the second marriage is also legitimate son, and therefore, the employee's second wife's son cannot be denied benefit of compassionate appointment.

14. With respect, we are unable to subscribe the view expressed in Purushottam Kumar's case. Firstly, the compassionate appointment and right to inherit property have no co-relation, nor can be equated in any manner. The compassionate appointment is not a property which can be subject matter of alienation and can be bequeathed whereas the devolving of property of a person is governed by the law, may it be customary or may it be statutory law, whereas the service and benefit arising out of services are governed by the frame of the contract of service or the rules governing the service of the employees and by the scheme, if framed by the employer. The compassionate appointment depends solely upon the frame of contract between the employer and employee and cannot be made subject matter to be governed by the personal law, when the employer has not provided so. The Hon'ble Supreme Court in the case of State Bank of India Vrs. Raj Kumar (supra) clearly held that compassionate appointment is traceable only to the scheme framed by the employer for such appointment and there is no right whatsoever outside such scheme. Therefore, in our humble opinion, merely because illegitimate child has been put at par in the matter of inheritance, by specific and statutory provision, its benefit cannot be extended, so as to put a burden upon the employer when the employer specifically has disallowed such benefit to such successor of the employee.

15. We may again observe here that the said decision of Railway Board, not providing compassionate appointment to the child of second wife of the employee who contracted second marriage in the life time of the first wife, is neither under challenge, nor has been shown to be unreasonable, rather it appears to be in consonance with the public policy of the monogamy. Therefore, on this count also, in our humble opinion, the view expressed by the Tribunal does not appeal to us.

16. In addition to above, in Purushottam Kumar's case also the fact and situation was entirely different. In Purushottam Kumar's case, there was a specific provision for providing employment to the dependent of the Government servant, who died while in service and it provided appointment to the employees' "son" without any restriction against appointment to the son of second wife. Therefore, on facts also Purushottam Kumar's case has no application as in the present case there is specific restriction against the appointment to the son of second wife of the employee who contracted marriage in the life time of first wife."

We fully agree with the above view taken by the Division Bench.

M V V Prakash vs Railways on 24 July, 2014

Indian Kanoon - <http://indiankanoon.org/doc/64924757/> 6

15. Compassionate appointment is a matter of policy of the employer and the employer cannot be compelled to provide compassionate appointment contrary to its policy/scheme. When there is specific circular which clearly provides that the children of second marriage of the employee shall not be eligible for compassionate appointment, no direction can be issued to the respondents to consider the case of the petitioner. Following the judgment of the Division Bench of this Court in Basanti Devi (W.P(S) No.4461/2008 and W.P(S) No.4495/2008 and W.P(S) 9 No.1083/2010), the CAT has rightly dismissed O.A No.124/2012 and we do not find any reason to interfere with the same.

16. In the result, this writ petition is dismissed.

(R.Banumathi, CJ) (Amitav K.Gupta,J) Jharkhand High Court, Ranchi Dated, _24th,July, 2014 AFR
Dey/

M V V Prakash vs Railways on 24 July, 2014

Indian Kanoon - <http://indiankanoon.org/doc/64924757/> 7

Central Administrative Tribunal - Ernakulam

Palaniammal vs State Of Bihar (Air 2000 (Sc) 735 = on 19 January, 2012

CENTRAL ADMINISTRATIVE TRIBUNAL

ERNAKULAM BENCH

O.A No. 442/2011

Thursday, this 19th day of January, 2012.

CORAM

HON'BLE Dr K.B.S.RAJAN, JUDICIAL MEMBER

HON'BLE Mr K. GEORGE JOSEPH, ADMINISTRATIVE MEMBER

1. Palaniammal,

W/o (late) C.Sekaran,

(Ex.Sr. Trackman/Tirupur Railway Station,
Southern Railway),

Residing at: Door No.33, Malayampalayam,

Savakkattupalayam, Olalakovil,

Gopichettipalayam, Erode-638 460.

2. S.Palanisamy,

S/o (late) C.Sekaran,

(Ex.Sr. Trackman/Tirupur Railway Station,
Southern Railway),

Residing at: Door No.33, Malayampalayam,

Savakkattupalayam, Olalakovil,

Gopichettipalayam, Erode-638 460.Applicants

(By Advocate Mr TC Govindaswamy)

v.

1. Union of India represented by the

General Manager, Southern Railway,

Headquarters Office, Park Town.P.O.

Chennai-3.

2. The Senior Divisional Personnel Officer,

Southern Railway, Palghat Division,

Palghat-678 002.

3. The Railway Board (Ministry of Railways),

Rail Bhavan, New Delhi-110 001

through its Secretary.Respondents

Palaniammal vs State Of Bihar (Air 2000 (Sc) 735 = on 19 January, 2012

Indian Kanoon - [http://indiankanoon.org/doc/55346578/ 1](http://indiankanoon.org/doc/55346578/1)

(By Advocate Mr Thomas Mathew Nellimoottil)

This application having been finally heard on 16.01.2012, the Tribunal on 19.01.2012 delivered the following:

O R D E R

HON'BLE Dr K.B.S.RAJAN, JUDICIAL MEMBER The facts in brief:

One Shri C. Sekaran was functioning as Sr. Trackman in Tirupur Railway Station and while in service he expired on 24-05-2001. He had a family consisting of his wife and a daughter. The applicant in this OA is the second wife of the said C. Sekaran and the second applicant is the son born to the said C. Sekaran and the first applicant. It is the case of the applicant No. 2 that his status as a legitimate son of the said C. Sekaran has been recognized by the Railways when it granted certain facilities including the benefit of privilege passes, medical facilities and family pension etc., At the time of the demise of C. Sekaran, the second applicant was only a minor and he could attain the age of a major just recently and thus with the hope that in the same way, the applicant would be granted compassionate appointment as per the extant scheme, he applied for grant of compassionate appointment. However, his case was turned down by Annexure A-1 order dated 02-06-2010 on the ground that as per Annexure A-2 Railway Board circular dated 02-01-1992, the applicant is not eligible for compassionate appointment. Hence this OA, challenging Annexure A-1 order dated 02-06-2010 and Annexure A-2 Railway Board Circular dated 02-01-1992 on various grounds adduced in para 5 thereof.

2. Respondents have contested the O.A. They have stated that the question of legal validity of Railway Board circular dated 02-01-1992 is no longer res-integra as the Bombay Bench of the Tribunal already held the same as legally valid and in yet another case of a single Bench of the said Bench, it was once again held as legally valid. In so far as the case of the applicant is concerned the respondents have contended that the late C. Sekaran being a Hindu, was subject to the provisions of Hindu Marriage Act, which prohibits polygamy and thus, he prohibited from marrying a second time during the life time of his first wife. Even where second marriage is permissible under the personal laws, in so far as Railway Servants are concerned, permission to contract the second marriage has to be obtained. Thus, his second marriage being void, the applicant No. 2 is not entitled to any compassionate appointment, which is based on a scheme framed by the Railways.

3. Counsel for the applicant argued that the law relating to compassionate appointment especially with reference to dependents, should be read in line with the provisions available in the Hindu Marriage Act. Section 16 of the said Hindu Marriage Act legitimizes the children born to a couple whose marriage may not be held legally valid. The children are entitled to inherit the property of the parents. The counsel submitted that in so far as terminal benefits are concerned, the applicant No. 2 had been held to be entitled to certain shares thereof. As such, in matters of compassionate appointments also, when the first wife or her daughter did not apply for such appointment, the applicant being a legitimate son of the deceased C. Sekaran, Sr. Gangman/PO/TUP should be considered for such appointment.

Palaniammal vs State Of Bihar (Air 2000 (Sc) 735 = on 19 January, 2012
Indian Kanoon - <http://indiankanoon.org/doc/55346578/> 2

4. The following decisions have been cited in support of the case of the applicant:-

(a) *Jane Antony v. Siyath* [KLT 2008(4) 1002] wherein in para 32 the High Court has stated as under:-

"No child is born in the world without a father and a mother. As said earlier the child has no role to play in his/her birth. Many such illegitimate children may not know who their progenitors are. The children born to unchaste women belong to that class. The mother of such children also may not know who is the father of the child. But the fact remains that all children both legitimate and illegitimate are born to their father and mother. In the present world by scientific means or tests, identity of the father of any child can be established.

The children born to a mother and father who co-habited for a considerable period of time as husband and wife and being regarded by their neighbours and friends as husband and wife and their parents also acknowledged them as their children and so described in documents like ration are, voters' list and School Register, there is a strong presumption that the children are legitimate children. The Parliament recognised all the children both legitimate and illegitimate to be maintained by their father under the Code of Criminal Procedure. If there is no discrimination between legitimate and illegitimate children for maintenance why should these children be also not allowed under law to succeed to the estate of their parents. Such class of illegitimate children born to the father and mother who lived as husband and wife are to be presumed to be legitimate and we hold that such children shall be entitled to inherit the properties of their parents along with the children born in valid marriage."

(b) *Rameshwari Devi vs State of Bihar* (AIR 2000 (SC) 735 = (2000) 2 SCC 431 "13. But then it is not necessary for us to consider if Narain Lal could have been charged of misconduct having contracted a second marriage when his first wife was living as no disciplinary proceedings were held against him during his lifetime. In the present case, we are concerned only with the question as to who is entitled to the family pension and death-cum-retirement gratuity on the death of Narain Lal. When there are two claimants to the pensionary benefits of a deceased employee and there is no nomination wherever required the State Government has to hold an inquiry as to the rightful claimant. Disbursement of pension cannot wait till a civil court pronounces upon the respective rights of the parties. That would certainly be a long-drawn affair. The doors of civil courts are always open to any party after and even before a decision is reached by the State Government as to who is entitled to pensionary benefits. Of course, inquiry conducted by the State Government cannot be a sham affair and it could also not be arbitrary. The decision has to be taken in a bona fide, reasonable and rational manner. In the present case an inquiry was held which cannot be termed as a sham. The result of the inquiry was that Yogmaya Devi and Narain Lal lived as husband and wife since 1963. A presumption does arise, therefore, that the marriage of Yogmaya Devi with Narain Lal was in accordance with Hindu rites and all ceremonies connected with a valid Hindu marriage were performed. This presumption Rameshwari Devi has been unable to rebut. Nevertheless, that, however, does not make the marriage between Yogmaya Devi and Narain Lal as legal. Of course, when there is a charge of bigamy under Section 494 IPC strict proof of solemnisation of the second

Palaniammal vs State Of Bihar (Air 2000 (Sc) 735 = on 19 January, 2012

Indian Kanoon - <http://indiankanoon.org/doc/55346578/> 3

marriage with due observance of rituals and ceremonies has been insisted upon.

14. It cannot be disputed that the marriage between Narain Lal and Yogmaya Devi was in contravention of clause (i) of Section 5 of the Hindu Marriage Act and was a void marriage. Under Section 16 of this Act, children of a void marriage are legitimate. Under the Hindu Succession Act, 1956, property of a male Hindu dying intestate devolves firstly on heirs in clause (1) which include the widow and son. Among the widow and son, they all get shares (see Sections 8, 10 and the Schedule to the Hindu Succession Act, 1956). Yogmaya Devi cannot be described as a widow of Narain Lal, her marriage with Narain Lal being void. The sons of the marriage between Narain Lal and Yogmaya Devi being the legitimate sons of Narain Lal would be entitled to the property of Narain Lal in equal shares along with that of Rameshwari Devi and the son born from the marriage of Rameshwari Devi with Narain Lal. That is, however, the legal position when a Hindu male dies intestate. Here, however, we are concerned with the family pension and death-cum-retirement gratuity payments which are governed by the relevant rules. It is not disputed before us that if the legal position as aforesaid is correct, there is no error with the directions issued by the learned Single Judge in the judgment which is upheld by the Division Bench in LPA by the impugned judgment."

(c) *Jinia Keotin & Ors v. Kumar Sitaram Manjhi & Ors.* [JT 2002 (10) SC 571], wherein, in para 4 the Apex Court has stated as under:-

"4. We have carefully considered the submissions of the learned counsel on either side. The Hindu Marriage Act underwent important changes by virtue of the Marriage Laws (Amendment) Act, 1976, which came into force with effect from 27.5.1976. Under the ordinary law, a child for being treated as legitimate must be born in lawful wedlock. If the marriage itself is void on account of contravention of the statutory prescriptions, any child born of such marriage would have the effect, per se, or on being so declared or annulled, as the case may be, of bastardizing the children born of the parties of such marriage. Polygamy, which was permissible and widely prevalent among the Hindus in the past and considered to have evil effects on society, came to be put an end to by the mandate of the parliament in enacting the Hindu Marriage Act, 1955. The legitimate status of the children which depended very much upon the marriage between their parents being valid or void, thus turned on the act of parents over which the innocent child had no hold or control. But, for no fault of it, the innocent baby had to suffer a permanent set back in life and in the eyes of society by being treated as illegitimate. A laudable and noble Act of the legislature indeed in enacting section 16 to put an end to a great social evil. At the same time, section 16 of the Act, while engrafting a rule of fiction in ordaining the children, though illegitimate, to be treated as legitimate, notwithstanding that the marriage was void or voidable chose also to confine its application, so far as succession or inheritance by such children are concerned to the properties of the parents only."

5. Counsel for the applicant also argued that the rejection of the case of the applicant No. 2 by the Railways is against the provisions of Art. 16(1) of the Constitution of India.

Palaniammal vs State Of Bihar (Air 2000 (Sc) 735 = on 19 January, 2012
Indian Kanoon - <http://indiankanoon.org/doc/55346578/> 4

6. Counsel for the respondents argued that vide Annexure R-1 order of the Mumbai Bench, (Rahul Maruti Sadavarte vs Union of India and others and Ashok Vithal Sapkal vs Union of India and others) the legal issue in question has been analyzed in full and the contention rejected. This has been followed in another order of the Mumbai Bench in the case of Monali P. Seal vs Union of India and others, where, all the contentions as raised by the applicant in this OA have been discussed. The order of the coordinate bench of the Tribunal is normally followed, unless a different view is held by the other coordinate bench, in which the case may have to be referred to a larger bench. The counsel prayed that the order of the Mumbai Bench being applicable to the facts of this case be followed and the OA be dismissed.

7. Arguments were heard and documents perused. The Mumbai Bench has considered exactly the same issue as in this case in OA No. 898 of 1993 and 986 of 1993 vide Annexure R-1 dated 16-02-1999. Para 9 onwards of the order reads as under:-

"9. One of the Conduct Rules in Government Rules is that no person having a second wife can be appointed in Government service. If a person in service marries a second wife then disciplinary action can be taken against him and he can be removed from service.

Therefore, this provision in Service Law that no person can be appointed having two wives living at the time of joining government service and no government servant can marry a second wife after joining service. It may be that a person professing the Religion of Islam may marry four wives at a time under Personal Law, but when he comes to Government Service if he has two wives living, he is not entitled to be appointed in government service or if having one wife at the time of entering into government service, he marries again, then he will lose his job. Therefore, the service rules can certainly make provisions which are not in conformity with Personal Law.

10. Similarly, under the Personal Law of Hindus, in particular Hindu Succession Act, when a Hindu dies, his son, daughter, widow, mother and some others are made as Class-I heirs and entitled to get the Estate of the deceased in equal shares. But if we go to the Service Law, when an official dies, only his widow is entitled to pension and other heirs like mother of the deceased or children of the deceased are not entitled to any share in the pension during the life time of the widow. Similarly, the widow alone will be exclusively entitled to the gratuity amount. Therefore, the service rules can be different from the Personal Law of the Government Officials.

11. In the Conduct Rules in the Central Civil Services(Conduct) Rules, 1964 there are many Rules which are contrary not only to Personal Law but also to Fundamental Rights.

12. For instance, every Citizen of India has a Fundamental Right to have any view and join any political party he wants. But, once the citizen joins government service, as per the Conduct Rules, in particular, Rule 5(1) no Government servant has a right to join a Political Party.

Similarly, under the Fundamental Rights every citizen can own or conduct or participate in the editing or managing of any Newspaper or other Periodical publication. But, conduct rule says under

Palaniammal vs State Of Bihar (Air 2000 (Sc) 735 = on 19 January, 2012
Indian Kanoon - <http://indiankanoon.org/doc/55346578/> 5

Rule 8.1 that no such activity can be done by a government servant official except with previous sanction of the Government.

Every Citizen of India have a right to criticise the Government and its policies. But, such a freedom is not given to a government servant under Rule 9.

Every citizen of India has a fundamental right to do any trade or business. But, a government servant under Rule 15 has been prohibited from engaging in any trade or business.

There are restrictions on a government servant in purchasing or acquiring movable and immovable properties and disposing of the same except in certain circumstances with prior permission or prior intimation to official superiors.

Then, we come to Rule 21 which clearly says that no government servant shall enter into second marriage when the first spouse is living. Then there is a proviso which says that even if second marriage is permissible under the Personal Law (like Muslims) he shall not undergo a second marriage without the permission of the government.

11. In order to maintain discipline in the government and in order to see the government servant do their work with all honesty and efficiency certain restrictions on the conduct of government servant is inevitable.

It is a policy of the Government that monogamy should be the Rule. We have seen how Hindu Marriage Act has introduced monogamy among Hindus in 1955. Even in case of persons belonging to religions where plurality of wives are permitted, a government servant cannot take a second wife, except with the prior permission of the government. Therefore, in order to encourage monogamy the Government has introduced these conditions which has stood the test of time and not challenged so far by anybody. Therefore, certain restrictions on Fundamental Rights and Personal Law are made in Service rules in the larger public interest and to promote efficiency etc in government servants.

12. If once the second marriage itself is prohibited irrespective of the question whether it is permitted in Personal Law or not, there is no bar for the Government to make it as a policy that even if there is a second wife and children they are not allowed to get compassionate appointment under the service rules. We do not find any illegality if such a rule is made in order to promote and encourage monogamy and to maintain certain discipline among the government servants. The circular says that this prohibition of second widow and children not entitled to compassionate appointment applies even in cases where personal law allows second marriage, unless the second marriage is performed with the permission of the Government. But, so far as Hindus are concerned second marriage is prohibited by Law and is an offence under section 494 of the IPC and in such a case if the Rule makers provide that second widow and her children are not entitled to compassionate appointment, we cannot find any illegality in the said rule. We are not for a moment concerned whether the children of the second wife is legitimate or illegitimate because even when second marriage is permissible in Personal Law this rule applies.

Palaniammal vs State Of Bihar (Air 2000 (Sc) 735 = on 19 January, 2012

Indian Kanoon - <http://indiankanoon.org/doc/55346578/> 6

13. The learned counsel for the applicants strongly placed reliance on a decision of the Patna High Court reported in 1998(2) (Administrative Total Judgements) 464 (M/s Bharat Cooking Coal Ltd. And ors. vs. Ujjawal Kumar Roy and Ors.). No doubt, in that case the question was whether an illegitimate son of a deceased employee is entitled for compassionate appointment. In that case, it was a case of Private Company where the rule was that "a widow, son, unmarried daughter and adopted son" are entitled for compassionate appointment, but the company did not grant compassionate appointment for an illegitimate son. It had not framed any rule on that point, but we have here the Railway Circular dt.2.1.1992 which prohibits compassionate appointment for the second widow and her children. In fact, the words mentioned is only son, but the Rule did not mention anything to exclude an illegitimate son. We have already seen that though the second marriage is void in Hindu Law, his children of second wife are made legitimate, since the Rule did not exclude an illegitimate so. The High Court observed that the Rule cannot be interpreted as excluding illegitimate children. But, in the present case there is a specific rule which prohibits second widow and children from getting compassionate appointment. The question of vires of a rule did not arise for consideration in the said decision.

They were only interpreting whether the word "son" includes illegitimate son or not. There was no rule prohibiting an illegitimate son from getting appointment.

But, in the present case the Railway Circular clearly provides that irrespective of the Personal Law, the second wife's children are not entitled for compassionate appointment. We have already pointed out many circumstances to show how service law can be different from not only Personal Law but also Constitutional Law.

Hence, we hold that the impugned circular dt. 2.1.1992 is perfectly valid and justified and it does not suffer from any illegality. No case is made out for quashing the said circular. Point No.1 is answered accordingly.

14. Point No.2:

Admittedly, the two applicants are the children of the second wife of the deceased. In view of the 1992 circular, they cannot be considered for compassionate appointment. Hence we need not go to the merits of the case to find out whether they have made out a case for compassionate appointment when according to law the children of the second wife cannot be considered for compassionate appointment. Point No.2is answered accordingly.

15. In the result, both the applications (O.A.898/93 and O.A.986/95) are hereby dismissed. No order as to costs."

8. The analysis is elaborate and we have no hesitation to follow the same.

We may supplement that so far as compassionate appointment is concerned, it is a comprehensive scheme and the term dependent members has been explained in the very scheme itself. It need not have to depend upon either the provisions of the Hindu Marriage Act or any other acts. The citations

Palaniammal vs State Of Bihar (Air 2000 (Sc) 735 = on 19 January, 2012

Indian Kanoon - <http://indiankanoon.org/doc/55346578/> 7

and authorities relied upon by the applicant's counsel relate to distribution of property of the father. In fact, the reason for distribution of the terminal benefits to the second applicant is that terminal benefits are considered as property. See (*Gorakhpur University vs Shitla Prasad Nagendra (Dr)*, (2001) 6 SCC 591, wherein the Apex Court has stated -

"This Court has been repeatedly emphasizing the position that pension and gratuity are no longer matters of any bounty to be distributed by the Government but are valuable rights acquired and property in their hands and any delay in settlement and disbursement whereof should be viewed seriously and dealt with severely by imposing penalty in the form of payment of interest."

(Also see Para 49 *Central Organization of T.N. Electricity Employees vs T.N. Electricity Board* (2005) 8 SCC 729 But, compassionate appointment is neither a right nor a property. It is purely a scheme, an exception to the general rule of appointment and can only be claimed strictly in accordance with the terms of scheme and not by seeking relaxation of the terms of the scheme. (See *V. Sivamurthy vs State of Andhra Pradesh* (2008) 13 SCC 730). Again, past conduct of deceased employee is a relevant consideration in considering grant of Compassionate appointments (See *SBI v. Anju Jain*, (2008) 8 SCC 475). This principle has to be given due life. Railway Board vide Annexure A-2 states that second widow 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., Once the second marriage is recognized and permission granted for contracting such second marriage, there is no impediment. If the second marriage is not recognized, obviously, such a non recognition or non grant of permission should be on the ground that the personal law does not permit such plural marriage and if so contracted, the same would mean an illegal act on the part of the government employee, which would imply that his past conduct was not praise worthy.

9. As regards the argument that the constitutional provisions contained in Art. 16(1) have been violated, in that, as per the Hindu Marriage Act, sons born out of a void marriage are also legitimate sons, whereas, the respondents have made a classification in this regard while considering the case of the second applicant for appointment, it is to be stated that by clause (1) of Article 16, equality of opportunity in matters relating to employment or appointment between members of the same class is guaranteed by a positive injunction (See *Triloki Nath Tiku vs State of Jammu and Kashmir*, (2969) 1 SCR 103).

According to the Railways for considering the case of son of the second wife, the second marriage should have been permitted by the administration, keeping in view the provisions available in the personal law of the employee contracting the second marriage. (In the instant case, the deceased Railway Employee being a Hindu, there is no question of recognizing the second marriage by giving permission.) Thus, as per Railway Board circular dated 02-01-1992, the applicant No. 2 is not entitled to compassionate appointment. Thus, the classification made by the Railways is according to the legal validity of the second marriage. The question is when the sons born to a couple whose marriage is void or voidable are treated as legitimate sons as per the provisions of Hindu Marriage Act, whether the Railways were right in classifying the sons born to the second wife different from those born to the first wife. As held by the Apex court in the case of *State of J & K vs Triloki Nath*

Palaniammal vs State Of Bihar (Air 2000 (Sc) 735 = on 19 January, 2012
Indian Kanoon - <http://indiankanoon.org/doc/55346578/> 8

Khosa (1974) 1 SCC 19, judicial scrutiny can be extended only to the consideration whether the classification rests on a reasonable basis and whether it bears nexus with the object in view. It cannot extend to embark upon a nice or mathematical evaluation of the basis of classification, for, where such an inquiry permissible it would be open to the Courts to substitute their own judgment for that of the legislature or the Rule-making authority on the need to classify or the desirability of achieving a particular object. In the instant case, compassionate appointment is not a right vested with the legal heirs of the deceased railway employee but a benevolent scheme framed with certain fundamental and basic objectives. Such an employment is not granted if certain conditions attached to the scheme are not fulfilled. The classification made by the Rule making Authority is based on the need to so classify. Hence, this Tribunal cannot condemn such a classification made by the Railways. 10. In view of the above, we have no hesitation to follow the decision in OA No. 898 of 1993 and 986 of 1993. Consequently, the OA is dismissed. No costs.

K. GEORGE JOSEPH Dr K.B.S.RAJAN
ADMINISTRATIVE MEMBER JUDICIAL MEMBER
trs

Palaniammal vs State Of Bihar (Air 2000 (Sc) 735 = on 19 January, 2012
Indian Kanoon - <http://indiankanoon.org/doc/55346578/> 9