

**IN THE HIGH COURT OF JHARKHAND AT RANCHI**

**W.P.(S) No.197 of 2021**

1. Union of India through the General Manager, South Eastern Railway, Garden Reach, P.O.-Garden Reach, P.S.-West Port, District-Kolkata-43 (West Bengal), represented by Senior Divisional Personnel Officer, South Eastern Railway, Chakradharpur Division, P.O. & P.S.-Chakradharpur, District-West Singhbhum-833102;
2. Senior Divisional Personnel Officer, South Eastern Railway, Chakradharpur Division, P.O. & P.S.-Chakradharpur, District-West Singhbhum-833102.

... .. Respondents/Petitioners

Versus

1. Kumari Dinu Bhengra, daughter of Late Wiliam Bhengra, resident of Jondragoda, P.O. & P.S.-Sundarnagar, Jamshedpur, District-East Singhbhum-831001;

... .. Applicant/Respondent

2. Divisional Railway Manager, South Eastern Railway, Chakradharpur Division, P.O. & P.S.-Chakradharpur, District-West Singhbhum-833102;
3. Senior Section Engineer (P.Way), Bahalda Road, South Eastern Railway, Chakradharpur Division, P.O. & P.S.-Chakradharpur, District-West Singhbhum-833102;
4. Welfare Inspector, South Eastern Railway, Chakradharpur Division, P.O. & P.S.-Chakradharpur, District-West Singhbhum-833102.

... .. Respondents/Proforma Respondents

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**CORAM: HON'BLE THE CHIEF JUSTICE**  
**HON'BLE MR. JUSTICE SUJIT NARAYAN PRASAD**  
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| For the Petitioners | : Mr. Pandey Neeraj Rai, Advocate |
| For the Respondents | : Mrs. M.M. Pal, Senior Advocate  |

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**ORAL JUDGMENT****08/Dated 03<sup>rd</sup> September, 2021**

1. With consent of the parties, hearing of the matter has been done through video conferencing. They have no complaint whatsoever about any audio and video quality.
2. The instant writ petition is preferred under Article 226 of the Constitution of India wherein the order passed by the learned Central Administrative Tribunal, Patna Bench, Patna (Circuit Bench at Ranchi) dated 18.10.2019 in O.A./051/00436/2018 has been assailed whereby and whereunder the issue for claim of the respondent/applicant for appointment on compassionate ground has been allowed by remitting it before the respondents to re-examine afresh in terms of the object and conditions of the scheme/policy for compassionate appointment introduced by the railways authorities and pass appropriate reasoned and speaking order within a period of three months from the date of receipt of a copy of this order without any influence of the order impugned therein dated 10.01.2018.
3. The brief facts of the case as per the pleading which require to be enumerated read as hereunder:

The respondent/applicant is the daughter of late William Bhengra who died in harness on 12.06.2000 while working as Mate under the Section Engineer at Bahalda Road Railway Station under Chakradharpur Division in South Eastern Railway. At the time of death of the father of the respondent/applicant, he was survived with his widow, namely, Smt. Monika Bhengra and three daughters,

namely, Asha Bhengra, Kiran Bhengra and Dinu Bhengra, the respondent/applicant herein.

The father of the applicant had earlier married one Sushari Bhengra and they were blessed with two sons but the first wife and two sons died during the lifetime of her father. After the death of her father, the respondents have paid the death benefits and settlement dues to the mother of the respondent/applicant, Smt. Monika Bhengra on 15.01.2004. The respondent/applicant had submitted representation/application before the competent authority to provide her appointment on compassionate ground but was regretted vide order dated 02.09.2005 by the Senior Divisional Personnel Officer, Chakradharpur stating the reason for denial of the claim to the effect that the employment assistance on compassionate ground is admissible to first wife and their wards of Railway employee as per extant rules. Since, the respondent/applicant is the unmarried daughter of the second wife of her father, late William Bhengra, her case does not come under the purview of consideration.

The respondent/applicant, being aggrieved with the aforesaid order dated 02.09.2005, moved before the Cuttack Bench of the learned Central Administrative Tribunal by filing original application being O.A. No.494 of 2009 but the said original application was dismissed vide order dated 27.10.2009 on the point of jurisdiction. Subsequently, the respondent/applicant moved before the learned Central Administrative Bench, Patna Bench, Patna (Circuit Bench at Ranchi) by way of original application

being O.A. No.170 of 2010 with MA 20/2011 which was dismissed vide order dated 03.04.2012 after holding that the deceased employee had contracted marriage during the lifetime of the first wife and the same was not permissible as per the Circular dated 02.01.1992 and the respondent/applicant had not challenged the validity of the said circular.

Aggrieved by the said order passed by the Tribunal dated 03.04.2012, the respondent/applicant had filed a writ petition before this Court being W.P.(S) No.234 of 2014 and vide order dated 01.08.2017, co-ordinate Division Bench of this Court had allowed the writ petition referring a judgment passed by the Full Bench of this Court dated 16.06.2017 in W.P.(S) No.8078 of 2012 [Union of India through General Manager, E.C. Railway Hajipur vs. Suraj Kumar Prasad & Ors.] wherein the Full Bench has held which reads as under:

*“16. The issue to be decided by this Larger Bench regarding reference made in being answered accordingly, as follows:-*

*Once the Railway Board's circular no.1/1992 dated 02.01.1992 has been quashed by the Hon'ble Calcutta High Court in the case of Namita Goldar [supra] to the extent it prevents the children of second wife from being considered for appointment on compassionate ground and the said decision attained finality, having not been challenged by the Railway Authorities, the circular of the Railway Board to the extant quashed by the Hon'ble Calcutta High Court is no more in existence and no benefit thereof can be taken by the Railway Authorities unless a contrary view is taken by the Apex Court.”*

Thereafter, the respondent/applicant had filed application before the concerned competent authority on 28.08.2017 enclosing the copy of the order passed by this Court on 01.08.2017 and

requested to decide her claim for appointment on compassionate ground and pursuant thereto, the respondents have considered the case of the respondent/applicant and vide order dated 10.01.2018 her application had been rejected on the ground that in course of enquiry it was establishment that Kumari Hiramani Bhengra, daughter of late William Bhengra and late Sushari Bhengra (first wife of deceased) is still alive and she has submitted representation dated 02.11.2017 and raised objection not to extend the benefit of employment assistance on compassionate grounds in her favour and she has also claimed that being the daughter of first wife of late William Bhengra, the benefit of employment assistance on compassionate ground should be extended in her favour.

The aforesaid order was again questioned by the respondent/applicant before the learned Central Administrative Tribunal by filing original application being O.A./051/00436/2018 and vide order dated 18.10.2019, the same was disposed of remitting the matter before the concerned competent authority for taking into consideration the case of the respondent/applicant afresh without being influenced with the order dated 10.01.2018, which was the subject matter of *lis* before the learned Central Administrative Tribunal in O.A. No.51/436. The respondent-Eastern Railway, being aggrieved with the order passed by the learned Central Administrative Tribunal, has filed the instant writ petition invoking the jurisdiction of this Court conferred under Article 226 of the Constitution of India.

4. Mr. Pandey Neeraj Rai, learned counsel for the petitioner-Railway has submitted that the learned Central Administrative Tribunal has not considered the fact while quashing the order dated 10.01.2018 by ignoring the claim of the daughter taken birth from the wedlock of first wife and once there is a serious objection by the daughter of the first wife, there cannot be any appointment on compassionate ground but the aforesaid ground has been negated by the learned Central Administrative Tribunal on the ground that such application has been filed by the daughter of the first wife after lapse of almost 17 years and by that time, she has already crossed the age of 55 years, according to him, the Tribunal instead of going into this issue about the eligibility of the daughter of the first wife, ought to have taken into consideration the serious objection made by her in providing appointment in favour of the daughter of second wife but having not done so, serious illegality has been committed, therefore, the impugned order is not sustainable in the eye of law.
5. *Per contra*, Mrs. M.M. Pal, learned senior counsel appearing for the respondent/applicant has defended the order passed by the learned Tribunal *inter alia* on the ground that there is no infirmity in the order impugned because the learned Tribunal after taking into consideration the fact that by the time the objection was raised by the daughter of the first wife, she had already crossed the age of 55 years and such claim for the first time has been made after lapse of 17 years. According to her, the respondent/applicant is contesting her claim right from the very beginning but on one pretext or the other, the claim for appointment on compassionate ground is being

frustrated and taking into consideration these aspects of the matter, the learned Tribunal is right in interfering with the impugned order by remitting it before the concerned authority for its consideration afresh, as such, the same may not be interfered with.

6. We have heard the learned counsel for the parties, perused the documents available on record and the finding recorded by the learned Tribunal. This Court, before going into the legality and propriety of the order passed by the learned Tribunal, deem it fit and proper to reflect certain admitted facts as per the pleading made by the learned counsel for the parties.

The father of the respondent/applicant, namely, late William Bhengra, who died in harness on 12.06.2000, was working as Mate under the Section Engineer at Bahalda Road Railway Station under Chakradharpur Division in South Eastern Railway. He got married to one Sushari Bhengra and they were blessed with two sons and a so called daughter but first wife and two sons died during his lifetime. The respondents have paid the death benefits in favour of the mother of the respondent/applicant, namely, Smt. Monika Bhengra on 15.01.2004. The respondent/applicant made an application for consideration of her case for appointment on compassionate ground sometime in the year 2005 but was rejected vide order dated 02.09.2005 on the ground of operation of Circular issued by the respondents as on 02.01.1992 which prohibits appointment to be given to the children taken birth from the second wife of the deceased employee.

The respondent/applicant preferred an original application before the Cuttack Bench of the learned Central Administrative Tribunal being O.A. No.494 of 2009 but the said application was dismissed on the point of jurisdiction vide order dated 27.10.2009 and thereby a fresh application was filed before the learned Central Administrative Tribunal Patna, Ranchi Bench being O.A. No.170/2010 with M.A. 20/2011 but was dismissed vide order dated 03.04.2012 on the ground of delay after holding that the deceased employee had contracted second marriage during the lifetime of the first wife and the same was not permissible as per the Circular dated 02.01.1992 and the respondent/applicant had not challenged the validity of the said circular. The respondent/applicant, being aggrieved with the order dated 03.04.2012, preferred a writ petition before this Court by invoking the jurisdiction of this Court in W.P.(S) No.234 of 2014 but when the said writ petition was pending for consideration before this Court, a judgment had been rendered by the Full Bench of this Court on 16.06.2017 in W.P.(S) No.8078 of 2012 [Union of India through General Manager, E.C. Railway Hajipur vs. Suraj Kumar Prasad and Ors.] holding therein as has been referred and quoted above.

The Co-ordinate Division Bench of this Court had disposed of the writ petition being W.P.(S) No.234 of 2014 vide order dated 01.08.2017 putting reliance upon the full Bench judgment of this Court passed in W.P.(S) No.8078 of 2012 disposed of vide order dated 16.06.2017 with a direction upon the



respondents/petitioners to consider the case of the respondent/applicant afresh within a reasonable period.

It would be evident from the consideration made by the Full Bench of this Court in W.P.(S) No.8078 of 2012 whereby and whereunder it has been taken into consideration about the order passed by the Calcutta High Court in *Namita Goldar and Anr. vs. Union of India and Ors.*, [(2010 (1) CLJ (Cal.) 465)] whereby the Circular No.1/1992 dated 02.01.1992 has been quashed to the extent which prevents the children of second wife for being considered for appointment on compassionate ground and the said decision has attained its finality by the Hon'ble Apex Court.

The case of the respondent/applicant has been considered but again it was rejected vide order dated 10.01.2018 which was challenged before the learned Tribunal by filing original application being O.A./051/00436/2018 which was allowed by remitting the matter before the concerned respondent for its consideration afresh without being influenced by the order dated 10.01.2018.

7. This Court has found from the admitted facts on record that the father of the respondent/applicant died on 12.06.2000 and an application was filed sometime in the year 2005 for appointment on compassionate ground. The aforesaid application was rejected on 02.09.2005 on the ground of Circular dated 02.01.1992 which prevents the children of second wife for being considered for appointment on compassionate ground. The aforesaid order of rejection has been assailed but her claim was rejected which led the respondent/applicant to approach this Court invoking the

jurisdiction conferred under Article 226 of the Constitution of India in W.P.(S) No.234 of 2014 and when that writ petition was pending, the very circular No.01/1992 dated 02.01.1992, basis upon which her claim was rejected, has been held to be illegal by the Calcutta High Court in *Smt. Namita Goldar* (supra) which has also been upheld by Hon'ble Apex Court, therefore, the very ground basis upon which the claim of the respondent/applicant was rejected, since has been said to be improper and illegal, the writ petition was allowed by quashing and setting aside the decision of the authority dated 02.09.2005 and matter was remitted before the authority concerned to consider the case of the respondent/applicant afresh but again it was rejected on 10.01.2018 but very surprisingly this time the rejection is not based upon the applicability of the Circular No.01/1992 rather on the basis of the claim put forth by the daughter of the first wife of the deceased employee, namely, Kumari Hiramani Bhengra.

8. Thus, the admitted position is that the respondent/applicant is contesting her case for consideration of her appointment on compassionate ground right from the date of death of her father, that too, the application had been made for its consideration for appointment on compassionate ground when the respondent/appellant has settled the post death benefits in favour of the mother of the respondent/applicant on 15.01.2004.
9. The said Kumari Hiramani Bhengra, who claims to be the daughter taken birth from the wedlock of the first wife, has never approached to the Court of Law even not contested the post death benefits paid

on the basis of the settlement in favour of the second wife of the deceased employee on 15.01.2004 but all of a sudden, i.e., after lapse of more than 17 years, she has made an application for consideration of her case for appointment on compassionate ground as would appear from the application filed by her dated 02.11.2017 appended as Annexure-4 to the writ petition.

It is evident from the contents of the application dated 02.11.2017 wherein it has been stated that she may be provided appointment on compassionate ground by disputing the claim of the respondent/applicant, who, according to her, happens to be the daughter of second wife but the fact which has been considered by the learned Tribunal as would be evident from the order impugned is that, the day when the application had been filed by Kumari Hiramani Bhengra, who claims to be the daughter of the first wife, was already at the age of 55 years, therefore, the learned Tribunal has not considered the reason of rejection of the claim of the respondent/applicant to be just and proper and has rightly done so for two reasons that:

- (i) Kumari Hiramni Bhengra had never approached to any Court of Law while the respondent/applicant is contesting for appointment on compassionate ground right from the beginning by approaching before the Tribunal first at Cuttack Bench of the learned Central Administrative Tribunal by filing OA No.494 of 2009, thereafter, Circuit Bench at Ranchi by way of OA No.170/2010 with MA 20/2011 and thereafter before this Court by filing writ petition being W.P.(S) No.234 of 2014 and

thereafter again before the learned Central Administrative Tribunal, Patna Bench, Patna by way of OA/051/00436/2018 assailing the order dated 10.01.2018 but even before the learned Tribunal, Circuit Bench Ranchi, Kumari Hiramni Bhengra has not contested the case while she claims to have made an application on 02.11.2017 appended as Annexure-4;

- (ii) The contention has been raised at this juncture by Mr. Pandey Neeraj Rai, learned counsel for the respondents/petitioners that the original application being OA/051/00436/2018 could not have been entertained by the learned Tribunal due to non-joinder of necessary party, i.e., Kumari Hiramani Bhengra, who, according to him, was a necessary party to the proceeding but the question of necessary party is required to be considered if there is any valid claim of the party concerned. It is the case of Kumari Hiramani Bhengra as also the respondents/petitioners that the day when Kumari Hiramani Bhengra had made an application, she was of about 55 years of age and therefore, she cannot be held eligible for consideration for appointment on compassionate ground since she has already crossed the maximum age of public service.

Kumari Hiramani Bhengra has never approached before the learned Tribunal in O.A. No.494 of 2009 or in O.A. No.170/2010 with MA 20/2011 or before this Court in W.P.(S) No.234 of 2014, therefore, Kumari Hiramani Bhengra cannot be considered to be a necessary party for the *lis* on the basis of the factual fact involved herein.

10. It is the admitted case of the respondents/petitioners that there is a claim for appointment on compassionate ground and by way of clarification the Circular No.01/1992 dated 02.01.1992 has been notified. We, after going through the clarificatory notification has found therefrom that it is in continuation to the earlier Circular necessitating a clarification to the effect that the children of the second wife will not be entitled for consideration for appointment on compassionate ground, meaning thereby, the said Circular dated 02.01.1992 is by way of clarification and that has already been quashed and set aside by Calcutta High Court which has been affirmed by the Hon'ble Apex Court, thus, the original circular was in vogue at the time of death of the deceased employee, therefore, the case of the respondents/petitioners ought to have been considered on the basis of the aforesaid circular but having not done so, even the co-ordinate Bench of this Court has remitted the matter before the concerned authority for its consideration after the said circular has been held to be illegal but second time, new ground has been taken for rejecting the claim of the respondent/applicant but the question is that when Kumari Hiramani Bhengra itself was not eligible to be considered for appointment whether the right of the respondent/applicant will be said to have gone, the answer of this Court would be in negative because the Circular has been notified by the respondents/petitioners for providing appointment on compassionate ground and the debarring clause pertaining to restriction of appointment on compassionate ground in faovur of children of second wife has already been declared to be illegal, in that circumstances, it was incumbent upon the employer to be fair

for implementation of the beneficiary claim for providing appointment on compassionate ground on the basis of the Circular in vogue as has been referred hereinabove that the circular dated 02.01.1992 is by way of clarification which itself suggest that there is a circular till it is superseded. It is equally settled that appointment on compassionate ground is to be considered on the basis of the circular in vogue at the time of death of the employee and not on the basis of the subsequent circular as has been held by Hon'ble Apex Court in *Canara Bank and Anr. vs. M. Mahesh Kumar*, (2015) 7 SCC 412, wherein the question fell for consideration is whether the scheme passed in 2005 providing for ex gratia payment or the scheme then in vogue in 1993 providing for compassionate appointment is applicable to the respondent (para-12).

The issue about applicability of the scheme has been considered by the Hon'ble Apex Court in another judgment rendered in *State Bank of India & Ors. vs. Jaspal Kaur*, (2007) 9 SCC 571, wherein it has been laid down that the claim of compassionate appointment under a scheme of a particular year cannot be decided in the light of the subsequent scheme that came into force much after the claim.

The Hon'ble Apex Court applying the principle laid down in the case of *State Bank of India & Ors. vs. Jaspal Kaur* (supra) has considered the factual aspect in the case of *Canara Bank and Anr. vs. M. Mahesh Kumar* (supra), wherein the fact leading to the said case was that the father of the dependent died on

10.10.1998 while he was serving as a clerk in the bank and the dependent has applied timely for compassionate appointment as per the scheme "Dying in Harness Scheme" dated 08.05.1993 which was in force at that time. The bank has rejected the dependent's claim on 30.06.1999 recording that there are no indigent circumstances for providing employment to the dependent. Again on 07.11.2001, the bank sought for particulars in connection with the issue of the dependent's employment. In the light of the principles laid down in the case of *State Bank of India & Ors. Vrs. Jaspal Kaur* (supra) the cause of action to be considered for compassionate appointment arose when circular no.154 of 1993 dated 08.05.1993 was in force. Thus, as per the judgment referred in *State Bank of India & Ors. Vrs. Jaspal Kaur* (supra), the claim cannot be decided as per 2005 scheme providing for ex gratia payment. The circular dated 14.02.2005 being an administrative or executive order cannot have retrospective effect so as to take away the right accrued to the respondent as per circular of 1993.

11. This Court, therefore, is of the view on the basis of the aforesaid settled position of law that the case of the respondent/applicant is required to be considered on the basis of the circular in vogue on the date of the death of the deceased employee.
12. This Court, in the entirety of facts and circumstances of the case and taking into consideration the principle for issuance of writ of certiorari, is of the view that no such ground has been made out by the respondents/petitioners for this Court to interfere with the impugned decision but before parting with the order this Court

requires to refer herein that the principle of delay in providing appointment on compassionate ground will also not come in the way for consideration of the case of the respondent/applicant because the respondent/applicant is claiming appointment on compassionate ground right after the death of her father and due to prolong litigation as yet the case of the respondent/applicant is pending and it is also settled that the litigant cannot be allowed to suffer due to pendency of litigation before the Court of Law, however, if the claimant would not have approached before the Court of Law within the reasonable time, certainly the claim for appointment on compassionate ground will be said to have frustrated but as per the facts available herein, the respondent/applicant is contesting the case right from the very beginning and it is respondents, who, even after the Circular No.01/1992 having been held to be illegal, have not provided appointment on compassionate ground, this shows the intention of the respondents that in one way or the other they want to deprive the claim of the respondent/applicant for appointment on compassionate ground by taking the plea this time about the claim of the daughter of the first wife even though she has not contested the case from the beginning rather the claim has been made after lapse of about 17 years that too after attaining the age of 55 years and these facts have led us to come to the view that the respondents, who is coming within the meaning of State, even though has formulated a scheme to provide appointment on compassionate ground but has not acted bona-fidely rather contrary to the object and intent and in such circumstances the issue of delay and latches



will not be said to be attributable on the part of the claimant rather attributable to the respondent-Railways and in that view of the matter, the question of delay and laches will not come into play in the instant case.

13. In view of the facts in entirety as reflected above, this Court is of the view that the order passed by the learned Tribunal requires no interference because proper consideration of the fact in entirety has been given therein, i.e., the learned Tribunal has considered the fact that the application was filed for appointment on compassionate ground immediately after the death of her father as also the death-cum-retiral benefits has been paid in favour of the mother of the respondent/applicant and further no pleas has ever been made by the children of the first wife. Further, we have considered that the Tribunal, while disposing of the original application, has remitted the matter to the respondents to re-examine the claim of the respondent/applicant afresh in terms of the object and conditions of the scheme/policy for compassionate appointment introduced by the Railway Authorities and pass appropriate reasoned and speaking within stipulated period, therefore, the same requires no interference.

14. In the result, the instant Writ Petition fails and stands dismissed.

**(Dr. Ravi Ranjan, C.J.)**

**(Sujit Narayan Prasad, J.)**

Saurabh/ **A.F.R.**