

**Central Administrative Tribunal  
Jaipur Bench, Jaipur**

**O.A. No. 272/2016**

Reserved on : 09.01.2020  
Pronounced on : 13.03.2020

**Hon'ble Mr. Suresh Kumar Monga, Member (J)  
Hon'ble Mr. A.Mukhopadhaya, Member (A)**

Kumari Shanu adopted daughter of Avinsh Kumar aged about 14 years, through her natural guardian mother Smt.Prabha Devi W/o Late Chetram aged about 42 years, R/o House No.105, Old Jalupura, Near City Centre, Jaipur.

...Applicant.

(By Advocate: Shri R.D.Meena)

Versus

1. Union of India through General Manager, North Western Railway, Jawahar Circle, Jagatpura, Jaipur.
2. Divisional Railway Manager, North Western Railway, Power House Road, Jaipur.
3. Senior Divisional Personnel Officer, North Western Railway, DRM Office, Jaipur.

...Respondents.

(By Advocate: Shri P.K.Sharma)

ORDER

**Per: Suresh Kumar Monga, Member (J):**

The factual matrix of the case is that Shri Avinash Kumar adoptive father of the applicant herein was initially appointed in the Railway as Cleaner on 22.03.1975. He was granted temporary status on 22.07.1976 and thereafter his services were regularized on 05.12.1985. It has been averred that Shri Avinash Kumar had no issue and his wife died a long ago, therefore, he adopted the applicant herein, who is natural

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daughter of his sister, namely Smt. Prabha Devi. An adoption deed in this regard was executed on 10.08.2009. After a period of 19 days of the execution of the said adoption deed, he died while in service. The adoption deed could not be produced by Shri Avinash Kumar in the office of the respondents during his life time as he was suffering from some ailments. It has further been averred that after his death, the applicant herein wrote a letter (Annexure A/5) to the respondents apprising them about his death on 29.08.2009. She further requested them that any office related information with regard to her adoptive father may be given on the address mentioned therein. Thereafter, the applicant's natural mother Smt. Prabha Devi also wrote a letter (Annexure A/7) to the respondents requesting therein to release the terminal benefits in favour of the applicant, who is an adopted daughter of late Shri Avinash Kumar. Pursuant thereto, the respondents issued a letter dated 18.12.2009 addressed to Smt. Prabha Devi and one Shri Sunil Kumar, who also claimed himself to be an adopted son of Shri Avinash Kumar, to produce a succession certificate as the adoption deed produced by the applicant cannot be considered to be a valid adoption deed. Accordingly, Shri Sunil Kumar preferred a petition before the District Judge, Jaipur for obtaining a succession certificate. In the said petition, the applicant was also arrayed as a respondent. The said petition was disposed of by holding that Sunil Kumar shall be entitled to

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get employment on compassionate ground and Kumari Shanu (applicant herein) shall be entitled to get the pension, DCRG, GIS and Provident Fund. Accordingly, the succession certificate was issued on 16.09.2014. After obtaining the said certificate, the applicant submitted a representation dated 23.09.2014 (Annexure A/10) and requested the respondents to make payment of due amount and also sanction the family pension in her favour. Since no action was taken on the said representation, therefore, she got issued a legal notice dated 07.07.2015 (Annexure A/11) through her counsel. Still no action was taken and under the compelling circumstances Original Application No.291/00756/2015 was filed before this Tribunal which was disposed of on 12.01.2016 with a direction to the respondents to decide her pending representation and the legal notice in accordance with law within a period of two months. Pursuant thereto, the respondents have released the amount of DCRG, GIS and Provident Fund in favour of the applicant on the basis of succession certificate dated 10.08.2009. However, her claim for sanction of family pension has been declined vide order dated 03.03.2016 (Annexure A/1) with the observations that the applicant cannot be considered to be an adopted daughter of late Shri Avinash Kumar who failed to produce the adoption deed in the office during his life time and, therefore, no pensionary benefits can be given to her. Aggrieved by the said order, the applicant has invoked the

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jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985 seeking therein a direction to respondents to sanction the family pension in her favour and release the arrears of pension with interest @ 18% per annum.

2. The respondents while filing their joint reply have joined the defence and opposed the applicant's claim stating therein that as per the procedure of the Railway, such an employee, who adopts a son or daughter during his service, he should produce the adoption deed during the tenure of his service. In the present case, late Shri Avinash Kumar did not produce any adoption deed in the office before his death and therefore, no office order was issued regarding applicant's adoption and thus she cannot be treated as an adopted daughter of late Shri Avinash Kumar for pensionary benefits.

3. Heard learned counsels for the parties.

4. Shri R.D.Meena, learned counsel for the applicant submitted that the applicant was adopted by Shri Avinash Kumar by way of execution of a valid adoption deed dated 10.08.2009. The validity of said adoption deed cannot be adjudged by the respondents. Even otherwise, the applicant has obtained a succession certificate from a competent court of law wherein she has already been held to be entitled to payments of DCRG, GIS, Provident

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Fund and pensionary benefits as well. The respondents have already released the payments of DCRG, GIS and Provident Fund in favour of the applicant. Learned counsel further submitted that the respondents have no authority to ignore the said succession certificate for the purpose of grant of family pension. Learned counsel, while referring to Rule 75 (19) (b) (iii) of the Railway Services (Pension) Rules, 1993 submitted that the applicant being an adopted daughter of late Shri Avinash Kumar is entitled to family pension which cannot be denied by ignoring adoption deed as well as the succession certificate issued by a competent court of law.

5. *Per contra*, learned counsel for the respondents submitted that as per the Scheme prevalent in the Railway, an employee is required to submit the adoption deed during the tenure of his service so that an office order is issued in this regard. Since late Shri Avinash Kumar failed to submit the adoption deed in the office of the respondents during his life time, therefore, no such office order could be issued and the respondents are within their right to not to sanction the family pension in favour of the applicant herein.

6. Considered the rival contentions of learned counsels for the parties and perused the record.

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7. Admittedly, the applicant was adopted by Shri Avinash Kumar during the tenure of his service. However, he could not submit the said adoption deed in the office of the respondents as he was suffering from some ailments and he died after a short span of 19 days after execution of the said adoption deed. Immediately after his death, his real sister, namely Smt. Prabha Devi (natural mother of the applicant herein) wrote a letter to the respondents requesting them to release the terminal benefits in favour of the applicant as she was adopted by her brother Shri Avinash Kumar. Consequent thereto, the respondents issued a letter dated 18.12.2009 addressed to Smt. Prabha Devi and one Shri Sunil Kumar, who was also claiming to be an adopted son of late Shri Avinash Kumar, directing therein to obtain a succession certificate so that further action is taken into the matter. Following the said dictate, a petition was filed before the District Judge, Jaipur which was decided on 16.09.2014 holding therein that Shri Sunil Kumar is entitled to employment on compassionate grounds and Kumari Shanu, the applicant herein, is entitled to payments of DCRG, GIS, Provident Fund and pensionary benefits. Consequent thereto, a succession certificate was issued on 16.09.2014 by the District Judge, Jaipur. Thereafter, the applicant gave a representation along with the said succession certificate and requested the respondents to release the amount of DCRG, GIS, Provident Fund and also sanction the family pension in her favour. The respondents failed

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to take any action on the said representation and, therefore, she got issued a legal notice dated 07.07.2015 through her counsel. Still no action was taken, therefore, under the compelling circumstances, the applicant filed Original Application No.765/2015 which was decided by this Tribunal on 12.01.2016 with a direction to respondents to decide the pending representation and the legal notice within a period of two months. Consequent thereto, the respondents have released the amount of DCRG, GIS and Provident Fund in favour of the applicant. However, the applicant's claim for family pension has been declined by the respondents with the observations that since Shri Avinash Kumar failed to present the adoption deed in the office during his life time, therefore, the applicant cannot be considered to be an adopted daughter for pensionary benefits.

8. The reasoning given by the respondents for declining the family pension in favour of the applicant, in our considered view, is wholly unjust and arbitrary. The adoption deed dated 10.08.2009 has been held to be a valid adoption deed by a competent court of law and while issuing succession certificate dated 16.09.2014, the applicant herein has been held to be entitled to claim the amounts of DCRG, GIS, Provident Fund and the pensionary benefits as well. The respondents, in any case, have already acted upon the said succession certificate and have released the amounts of DCRG, GIS and Provident Fund in favour

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of the applicant. Now, they cannot be allowed to ignore the adoption deed dated 10.08.2009 for the purposes of sanction of family pension in faovur of the applicant. The order dated 03.03.2016 (Annexure A/1) is totally against the spirit of the judicial order passed by the District Judge, Jaipur.

9. Even otherwise, no executive or administrative authority like the Divisional Railway Manager can exercise the jurisdiction to adjudicate or to give opinion with regard to legality of the document, like an adoption deed. In the matter of **Pankaj vs. State of Rajasthan & Ors.** 2012 (4) CDR 2447 (Raj.), the Hon'ble Rajasthan High Court had an occasion to examine exactly an identical proposition and arrived at a conclusion that no executive or administrative authority can exercise the jurisdiction to adjudicate or to give opinion with regard to legality of a document. The authority can assess the genuineness of the document if it appears to be forged. Paragraphs 6 and 7 of the said judgment read thus:

"6. After hearing learned counsel for the parties, I am of the firm opinion that no executive or administrative authority like the District Education Officer can exercise the jurisdiction to adjudicate or to give opinion with regard to legality of the document. The authority can assess the genuineness of the document if it appears to be forged; but, in this case, the District Education Officer (Secondary), Bikaner exceeded his jurisdiction to assess the validity of adoption-deed which is not permissible in law. For this reason alone, the communication dt. 12.07.2007 deserves to be quashed.

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7. In addition to the above reason, the other reason is also there with regard to assertion made by the said authority to deny appointment. In the impugned communication, it is observed that by the District Education Officer (Secondary), Bikaner that the petitioner is only son of his natural parents but this fact is not correct. As per the reply filed by the respondents itself, in which, they accepted that the natural parents of the petitioner are having two issues-daughter Kavita and petitioner Pankaj. Therefore, on this ground also denial by the respondents cannot be sustained. With regard to registration of the adoption-deed, it is very strange that no such provision is there in the Act of 1956 that adoption-deed must be registered one for its being a valid adoption-deed. Adoption can be made under customs, therefore, the adoption-deed filed by the petitioner cannot be treated to be unregistered document for the purpose of denial of appointment on compassionate ground. Wife of late Shiv Prakash Swami herself deposed in the affidavit that during the life-time of her husband late Shiv Prakash Swami they adopted the petitioner as their son."

10. Here, in the case in hand, the authenticity of the adoption deed has already been adjudged by a competent court of law while issuing the succession certificate in favour of the applicant. Thus, there was no occasion with the respondents to not to act upon the adoption deed dated 10.08.2009. The order dated 03.03.2016 (Annexure A/1) being wholly arbitrary and capricious cannot be sustained and the same is liable to be quashed.

11. Accordingly, the Original Application is allowed. The order dated 03.03.2016 is hereby quashed and set aside. The respondents are directed to process the applicant's case for according sanction to family pension in her favour and release the arrears of pension with interest @ 6% per annum. The whole

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exercise shall be undertaken within a period of three months from the date of receipt of a certified copy of this order.

12. There shall be no order as to costs.

(A.Mukhopadhaya)  
Member (A)

(Suresh Kumar Monga)  
Member (J)

/kdr/