

**CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH, KOLKATA**

LIBRARY

O.A. 350/1491/2017



**Coram : Hon'ble Ms. Bidisha Banerjee, Judicial Member
Hon'ble Dr. N. Chatterjee, Administrative Member**

Shri Surai Bansfore,
Aged about-39 years,
Son of Late Bhagania Bansfore,
Residing at Indrapuri near Agragani Sangha Club,
P.O. Ichapur, Nawabganj,
Police Station – Nawapara,
District-North 24-Parganas,
Pin – 743144;

..... Applicant.

Versus

1. Union of India,
Ministry of Defence,
Government of India,
New Delhi, Service through its Secretay;
2. Rifle Factory,
Ishapore,
Post Office – Ichapur, Nawabganj,
District – 24-parganas,
Pin – 743144,
Service through its General Manager;
3. The General Manager,
Rifle Factory, Ishapore,
Post Office – Ichapur, Nawabganj,
District – North 24-Parganas,
Pin – 743144;
4. The Joint General Manager,
Rifle Factory, Ishapore,
Post Office – Ichapur, Nawabganj,
District – North 24-Parganas,
Pin – 743144;
5. The Works Manager,

Rifle Factory, Ishapore,
 Post Office – Ichapur, Nawabganj,
 District – North 24-Parganas,
 Pin – 743144;

..... Respondents.



For the applicant : Ms. P. Das, Counsel

For the respondents : Mr. S. Paul, Counsel

Date of Order : 16.3.2020

ORDER

Per : Bidisha Banerjee, Judicial Member

Aggrieved with orders directing him to produce registered deed of adoption to prove that he is the adopted son of deceased, to seek employment assistance on compassionate ground, the applicant who has claimed to be the adopted son of the deceased has preferred this application to seek the following reliefs:

"8.a) Order directing the respondents quash and set aside the impugned memo dated 17.07.2017 and 16.09.2017 both being issued on behalf of the General Manager, Rifle Factory, Ichapore requiring registered Deed of Adoption or an order of declaration from competent Court of Law for declaring the Applicant as adopted son of Late Bhagania Bansfore for the purpose of providing appointment on compassionate ground.

(a)(i) An order directing the respondents to provide appointment to the Applicant on compassionate ground.

b) Call for the records of the case on perusal thereof considerable justice may be done in favour of the Applicant.

c) Any other order or further order/orders as to this Hon'ble Tribunal may deem fit and proper.

d) Cost of the proceeding."

2. The orders impugned are extracted hereinbelow for clarity:

a) "No – CA/RO/DLC/7

Date: 17/07/2017

To : SHRI SURAJ BANSFORE,
 H/O – GOMIYA MUNDA
 INDRAPURI, NEAR AGRAGAMI SANGHA CLUB
 P.O :- ISHAPORE-NAWABGANJ

DIST :- 24 PARGANAS (N),
PIN :- 743144

Sub: - "Deed of Adoption" in r/o Shri Suraj Bansfore.
Ref: - (i) MOL UO No. 538/2017/Adv/Cal/1357 dt. 12.06.2017.
(ii) Your application dt. 08.07.2017.



As Notary Certificate dt. 11.01.2002 (issued by Shri Sitaram Shaw, Notary of Barrackpore Court, Dist – 24 PGS (N), West Bengal), "Duttak Nama" has been produced by you to be considered as a legal document to establish yourself as the legally adopted son of Late Bhagania Bansfore, the same has been forwarded to Ministry of Law for obtaining their valuable comments in the said matter.

In turn, vide letter quoted at reference (i) above, Ministry of Law had opined that "Duttak Nama" requires registration and could not be admitted, since it is not a registered document and as such the department may ask the applicant to submit either the **Registered deed of Adoption or an order of declaration from the competent court of law, for declaring him as an adopted son.**

As such, you are requested to submit any one of the above mentioned documents so that your case will be processed further.

Sd/-
(Saurabh Singh)
Works Manager / Admin
For & on behalf of General Manager"

b) "No – CA/RO/DLC/7

Date: 16/09/2017

To : SHRI SURAJ BANSFORE
H/O – GOMIYA MUNDA
INDRAPURI, NEAR AGRAGAMI SANGHA CLUB
P.O :- ISHAPORE-NAWABGANJ
DIST :- 24 PARGANAS (N),
PIN :- 743144

Sub: - "Deed of Adoption" in r/o Shri Suraj Bansfore.
Ref: - Representation of Advocate dated 16.08.2017.

A representation referred above on your behalf has been received at this office. In this regard it is being reiterated that "Duttak Nama" requires registration and could not be admitted as it is not a registered document.

Further, you are being requested to submit a **Registered deed of Adoption or an order of declaration from the competent Court of Law**, declaring you as the adopted son of Late Bhagania Bansfore at the earliest so the same can be forwarded to OFB for early action in your case.

This is for your information.

Sd/-
(Saurabh Singh)
Works Manager / Admin
For & on behalf of General Manager"

3. The applicant has pleaded as under:

The Applicant applied for Compassionate Appointment on 21.04.2008 owing to death of the sole bread earner. In 2010 enquiry was conducted. The applicant disclosed status of maintaining poor economic standard, minimum income, which requires assistance by way of providing appointment on compassionate ground to save the family from distressed condition.

In terms of impugned decision dated 01/10.05.2010 the prayer for Compassionate Appointment was rejected considering the case of the Applicant with the candidates 2008-2009.

The said decision was challenged before the Central Administrative Tribunal in O.A. No. 350/00993 of 2014. The matter was disposed of in terms of order dated 29th September, 2014 by the Central Administrative Tribunal. On the basis of submission the Learned Advocate for the respondent that respondents have taken a decision to place the matter before the Board Officers for consideration of the Application of the Applicant to grant Compassionate Appointment by recording such submission the said application was disposed of with a direction to the respondents to pass appropriate order after the Board of offices takes a decision in the matter.

Although the Applicant has been found suitable by the concerned Screening Committee but appointment has been kept withheld on the ground that the applicant is to either get Duttaknama registered or obtained declaration of court regarding Duttak. Such decision has been challenged in this Application with a prayer to provide appointment on Compassionate Ground.

4. Ld. Counsel at hearing would submit that an adoption does not require validation by registration that a declaration before a notary would suffice.

5. Per contra the respondents have referred to the following:

1) Annexure R-1 that reads as under:

“ Government of India
Department of Legal Affairs
Branch Secretariat Kolkata
11 strand Road, Kolkata – 01

This has reference to the department's Letter No. CA/RO/DLC/7 dated 06.06.2017, whereby legal opinion of this Branch Secretariat, has been sought as to whether the Notarized Duttak Nama can be considered as a legal document to establish Shri Suraj Bansfore to be a legally adopted son of Late Bhagania Bansfore, Ex-employee of RFI for processing the case of Shri Suraj Bansfore for Compassionate appointment.

2. *The Duttak Nama in question is an un-registered document. A registered adoption deed raises a presumption of valid adoption. Further, it is stated that where any right in immovable property is either assigned or extinguished by the adoption deed, it will require registration, as per the Section 17(1)(b) of the Registration Act, 1908. Here, it is to mention that on perusal of the Duttak Nama under consideration, is also contained a clause for relinquishment of rights in movable and immovable properties and hence the said Duttak Nama requires registration and could not be admitted, since it is not a registered document.*

3. In view of the above, we are of the view that the department may ask the applicant either the Registered deed of Adoption or an order of declaration from the competent court of law, for declaring him as an adopted son, as suggested by the OFB.

Sd/-

(J Srinivas Rao)

Assistant Legal Adviser"



2) Section 17 of Registration Act 1908, to contend that where any right in immovable property is either assigned or extinguished by the deed of adoption, it will require registration. According to the respondents, Adoption Deed has to be mandatorily registered.

The provision in Section 17 of the Act is extracted hereunder for clarity:

"Section 17 in The Registration Act 1908

17. ***Documents of which registration is compulsory:*** -(1) The following documents shall be registered, if the property to which they relate is situate in a district in which, and if they have been executed on or after the date on which, Act No. XVI of 1864, or the Indian Registration Act, 1866, or the Indian Registration Act, 1871, or the Indian Registration Act, 1877, or this Act came or comes into force, namely:-

- (a) *Instruments of gift of immovable property;*
- (b) *Other non-testamentary instruments which purport or operate to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of the value of one hundred rupees and upwards, to or in immovable property;*
- (c) *Non-testamentary instruments which acknowledge the receipt or payment of any consideration on account of the creation, declaration, assignment, limitation or extinction of any such right, title or interest; and*
- (d) *Leases of immovable property from year to year, or for any term exceeding one year, or reserving a yearly rent;*

24[(e) *non-testamentary instruments transferring or assigning any decree or order of a Court or any award when such decree or order or award purports or operates to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of the value of one hundred rupees and upwards, to or in immovable property:] Provide that the*

25[*State Government*] may, by order published in the 26[*Official Gazette*], exempt from the operation of this sub-section any lease executed in any district, or part of a district, the terms granted by which do not exceed five years and the annual rents reserved by which do not exceed fifty rupees.

27[(1A) *The documents containing contracts to transfer for consideration, any immovable property for the purpose of section 53A of the Transfer of Property Act, 1882 (4 of 1882) shall be registered if they have been executed on or after the commencement of the Registration and Other Related laws (Amendment)."*

3) FAQ on compassionate Appointment extracted hereunder for clarity:

On 18

F.No.14014/3/2011-Estt. (D)

Government of India

Ministry of Personnel, Public Grievances and Pensions
(Department of Personnel & Training)North Block, New Delhi
Dated the 26th July, 2012OFFICE MEMORANDUM

Subject:- Review of three years time limit for making compassionate appointment.

The primary objective of scheme for compassionate appointment circulated vide O.M. No. 14014/6/94-Estt(D) dated 09.10.1998 is to provide immediate assistance to relieve the dependent family of the deceased or medically retired Government servant from financial destitution i.e. penurious condition. The Hon'ble Supreme Court in its judgment dated 05.04.2011 in Civil Appeal No. 2206 of 2006 filed by Local Administration Department vs. M. Selvanayagam @ Kumaravelu has observed that "an appointment made many years after the death of the employee or without due consideration of the financial resources available to his/her dependents and the financial deprivation caused to the dependents as a result of his death, simply because the claimant happened to be one of the dependents of the deceased employee would be directly in conflict with Articles 14 86 16 of the Constitution and hence, quite bad and illegal. In dealing with cases of compassionate appointment, it is imperative to keep this vital aspect in mind".

2. This Department's O.M. No. 14014/6/ 1994-Estt. (D) dated 09.10.1998 provided that Ministries/Departments can consider requests for compassionate appointment even where the death or retirement on medical grounds of a Government servant took place long back, say five years or so. While considering such belated requests it was, however, to be kept in view that the concept of compassionate appointment is largely related to the need for immediate assistance to the family of the Government servant in order to relieve it from economic distress. The very fact that the family has been able to manage somehow all these years should normally be taken as adequate proof that the family had some dependable means of subsistence. Therefore, examination of such cases call for a great deal of circumspection. The decision to make appointment on compassionate grounds in such cases was to be taken only at the level of the Secretary of the Department/Ministry concerned.

3. Subsequently vide this Department's O.M. No. 14014/19/2002-Estt. (D) dated 5th May, 2003 a time limit of three years time was prescribed for considering cases of compassionate appointment. Keeping in view the Hon'ble High Court Allahabad judgment dated 07.05.2010 in Civil Misc. Writ Petition No. 13102 of 2010, the issue has been re-examined in consultation with Ministry of Law. It has been decided to withdraw the instructions contained in the O.M. dated 05.05.2003.

4. The cases of compassionate appointment may be regulated in terms of instructions issued vide O.M. dated 09.10.1998 as amended from time to time. The onus of examining the penurious condition of the dependent family will rest with the authority making compassionate appointment.

Sd/-
(Mukta Goel)
Director (E-I)
Tel. No. 2309 2479"

4) MOD order dated 28.11.2014 specifying that –

"04. FAQ of DOP&T dated 30.05.2013 states that:

FAQ point	QUESTION	ANSWER
40	Can the cases which were	Yes, provided that the cases were closed due

	<i>closed on completion of 3 years' time-limit as provided in DoPT OM dated 5.5.2003, be re-opened after the waiver of time-limit in DoPT OM dated 26.07.2012?</i>	<i>to non-availability of vacancies during the 3 year time-period and subject to the criteria mentioned in S.No. 32 and S.No. 39. Such cases should not be opened merely because the time limit has been waived off.</i>
32	<i>What is criteria for determining eligibility of a person for consideration for compassionate appointment</i>	<p><i>Following factors are to be mandatorily taken into consideration for making compassionate appointments:</i></p> <ul style="list-style-type: none"> <i>a) The family is indigent and deserves immediate assistance for relief from financial destitution; and</i> <i>b) Applicant for compassionate appointment should be eligible and suitable for the post in all respects under the provisions of the relevant Recruitment Rules.</i> <p><i>The onus for examining the penurious condition of the dependent family rest with authority making compassionate appointment. Courts have clearly stated in various judgments that offering compassionate appointment as a matter of course, irrespective of the financial condition of the family of the deceased or medically retired Government servant, is untenable.</i></p>

5) A communication dt. 17.02.2016 that reads:

"This has reference to your prayer for employment assistance under compassionate appointment scheme.

02. In this connection it is intimated that in accordance with the Govt. of India's Orders/ Instructions, your case has been considered and screened by the Board of Officers along with other cases against the vacancy for the year 2014-15 and your case secured berth within the zone of selection.

03. As you are under qualified, the case is being forwarded to MoD through OFB for obtaining necessary approval. On receipt of approval from MoD, further action will be taken.

04. It is to be noted that in the event the information furnished by you in connection with compassionate appointment is found to be false during selection process and even after your appointment, if considered, your candidature is liable for cancellation.

This is your information.

*Sd/-
(Arun Kumar)
Jt. General Manager/ Admn
For Officer-In-Charge"*

6. We heard the Ld. Counsels and perused the records.

7. We note that the FAQ denotes that following are Dependant Family Members of the deceased which includes an adopted son:

Definition of a Dependent Family Members



S.No.	Question	Answer
11	Who are considered dependent Family Members for the purpose consideration of appointment on compassionate grounds?	<p>Dependent Family Member means:</p> <ul style="list-style-type: none"> a) Spouse; or b) Son (including adopted son); or c) Daughter (including adopted daughter); or d) Brother or sister in the case of unmarried Government servant; or e) Member of the Armed Forces, as defined in S.No. 3, who was wholly dependent on the Government servant/ member of the Armed Forces at the time of his death in harness or retirement on medical grounds, as the case may be.

8. The succession certificate, at R-1 of rejoinder, that has been granted to the applicant, as adopted son of Biswanath Bansfore, as under:

SUCCESSION CERTIFICATE
(SECTION 377 OF INDIAN SUCCESSION ACT, 1925)

IN THE COURT OF LEARNED DISTRICT DELEGATE, AT BARRACKPORE, NORTH 24-PARGANAS.

Present : Sri Hindol Roy, District Delegate, Barrackpore,
 North 24-Parganas

TO

Misc Case No. 169/2008(SUCC)
Court fees Rs. 5,650/-

Sri Suraj Bansfore,
 Son of Sri Biswanath Bansfore,
Adopted son of deceased
'Bhagania Bansfore', Indrapuri,
 P.O. Ichapore-Nawabganj, Ward No. 5,
 Under North 24 Barrackpore Municipality,
 P.S. Noopara, District 24-Parganas(North).

... Petitioner

Whereas you applied on the 18th day of November 2008, for a Certificate under Part X of the Indian Succession Act, 1925 in the matter of the Estate Late Bhagania Bansfore, W/o Late Koili Bansfore, Ex. TE 346, Sweeper Yard Per No. 268357 deceased in respect of the following debts and securities, namely:

Serial	Name of the debtor	Amount of debt including interest on the date of application for certificate	Description and date of instrument if any by which the debt is secured



1.	<i>The General Manager, Rifle Factory, Ichapore-Nawabgan 24-Parganas(N), E. Rly. (Not any Officer by name)</i>	Rs. 73,608/-	<i>Death Gratuity</i>
2.	-do-	Rs. 12,945/-	<i>G.P.F. Amount</i>
3.	-do-	Rs. 12,430/-	<i>CGEGIS (Serving) Amount</i>
4.	-do-	Rs. 15,000/-	<i>CGEGIS (Insurance) Amount</i>
5.	-do-	Rs. 5,738/-	<i>Last Pay Amount</i>
6.	-do-	Rs. 817/-	<i>Leave Salary</i>
<i>Total :</i>		<i>Rs. 1,20,438/- Plus interest thereon. (Rupees One Lakh Twenty Thousand Four Hundred Thirty Eight) only plus interest thereon.</i>	

Sd/-

(Hindol Roy)

District Delegate Barrackpore,

North 24-Parganas.

DISTRICT DELEGATE

AT BARRACKPORE

NORTH 24 PARGANAS"

9. There is nothing on record to show that the rules of the respondents require that it is mandatory for an adopted son to produce registered deed of adoption of his adoption, to claim compassionate appointment and despite grant of succession certificate to the applicant Suraj Bansfore as son of deceased Biswanath Bansfore and adopted son of Bhagania Bansfore, the applicant herein still needs to prove his identity as adopted son by way of a registered deed.

10. Hence, in the aforesaid backdrop we dispose of the O.A. with a direction upon the respondents to consider the applicant's prayer in the light of the succession certificate extracted supra and grant him appropriate benefits in accordance with law. No costs.

(Dr. N. Chatterjee)
Administrative Member

(Bidisha Banerjee)
Judicial Member

drh