

CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH, PATNA
OA/050/00011/2018

Reserved on : 17.01.2020
Pronounced on : 28.01.2020

C O R A M

HON'BLE MR. DINESH SHARMA, ADMINISTRATIVE MEMBER



1. Fuliya Devi, wife of late Banarsi Mallick, resident of – Fatapur, Railway Colony, Raghunathpur, P.O.- Barsoi Ghat, P.S.- Barsoi, District- Katihar- 8544317.
2. Nand Kishore Mallick, son of Late Banarsi Mallick, resident of – Fatapur Railway Colony Raghunathpur, PO- Barsoi Ghat, P.S.- Barsoi, District- Katihar- 85454317.

.... Applicants.

By Advocate: - Mr. S.K. Bariar

-Versus-

1. The Union of India through the General Manager, North Frontier Railway, Maligaon, Assam- 781011.
2. The Chief Personnel Officer, North Frontier, Railway, Maligaon, Assam- 781011.
3. The Deputy Chief Personnel Officer/IR, North Frontier Railway, Maligaon, Assam- 781011.
4. The Divisional Railway Manager, N.F. Railway, Katihar- 854105.
5. The Divisional Railway Manager, (P), N.F. Railway, Katihar- 854105.
6. The Divisional Engineer-II, N.F. Railway, Katihar- 854105.

.... Respondents.

By Advocate: - Shri S.K. Ravi

ORDER

Dinesh Sharma, A.M:- In the instant OA, the applicants have prayed for directing the respondents to make appointment to applicant no. 2 on compassionate ground. They have also prayed for quashing the letter dated 19.01.2017 by which the applicant has been informed that her request for appointment of applicant no. 2 cannot be granted since he is

an adopted son and no valid adoption deed has been filed. The applicants have claimed that the applicant no. 2 is the son of applicant no. 1 and the deceased employee Late Banarsi Mallick who was the husband of applicant no. 1 and was working as Trackman under DEN -II/, Katihar, NF Railway, Katihar where he died in harness on 21.10.2015. They have alleged that applicant no. 2 is own son of applicant no. 1 and Late Banarsi Mallick. However, since the applicant no. 2 could not fulfil illegal desire of money of one of the lower officials at DERM office therefore this wild allegation of treating applicant no. 2 as the adopted son. The applicants have annexed copies of Birth Certificate, School Leaving Certificate, Election ID Card and Caste and Residence Certificate and Aadhar Card (from Annexures A/4 to A/10) in support of the claim for getting compassionate appointment in favour of applicant no. 2.



2. The respondents have filed a written statement denying the claim of the applicant. It is stated that the applicant no. 1 is not the biological mother of applicant no. 2 and it is supported by the affidavit executed by the husband of applicant no. 1 during his lifetime in the Court of Executive Magistrate and also by a letter signed by applicant no. 1 herself (Annexed at page nos. 26 to 29 as Annexure R/3). This fact was revealed during the enquiry conducted by the Welfare Inspector. As per clause (iv) of Section 10 of the Hindu Adoption and Maintenance Act, 1956 children who have not completed the age of 15 years can be adopted. Under RBE No. 106 of 1988 dated 20.05.1998 read with Section

10 and 11 of the Hindu Adoption and Maintenance Act, 1956., the request of the applicants for grant of compassionate appointment cannot be accepted in the absence of valid adoption deed and this fact was informed to the applicant by their office letter No. E/227/Rectt/BM/10/15/463 dated 26.08.2016 (Annexures R/1 and R/2).

3. No rejoinder has been filed.

4. I have gone through the pleadings and heard the learned counsels for both the parties. In this case while the applicant claims applicant no. 2 to be the biological son of applicant no. 1 and the deceased employee the respondents have not accepted this claim after finding in an inquiry done by them that the applicant no. 2 is an adopted son. The respondents have enclosed with their written statement a copy of the affidavit which was apparently filed before the Executive Magistrate by the deceased employee Banarsi Mallick in the year 1998. Though no rejoinder was filed contesting the veracity of this affidavit, the learned counsel for the applicant, during the course of argument, vehemently questioned the genuineness of this document. The learned counsel also argued that the respondent railway authorities never questioned the claim about the respondent no. 2 being the son of the deceased employee during his lifetime and therefore denying his claim for compassionate appointment after the death of the employee is not correct.



5. After going through the pleadings and hearing the arguments of both the sides, it is clear that the only issue that needs to be decided here is whether the respondent no. 2 is the biological son of the deceased employee or not. A plain reading of the document produced at Annexure R/3 where the deceased employee has declared, by a sworn affidavit before the Executive Magistrate, “that I adopted a son, namely, Nand Kishore Mallick, aged about 20 years, is the son of Shri Narayan Mallick who is living in Railway Colony Barsoi before 15 years and I am maintaining him as my son”. Such a categorical assertion in an affidavit, filed almost 20 years back, has to be given proper evidentiary value and cannot be rejected just because the learned counsel for the applicant challenges it during the course of argument. It is also seen that the birth certificate produced by the applicant (Annexure A/5) is dated 15.06.2009 while the date of birth is 12.11.1980 and hence the names of father and mother written in this certificate could well be those of his adoptive parents. Thus, when there is an affidavit filed by the deceased employee himself before a Magistrate claiming applicant no. 2 to be his adopted son the claim of the applicants to treat him as the biological son of the deceased employee cannot be accepted. Since all the reliefs claimed by the applicants is solely based on the basis of treating applicant no. 2 as the biological son of the deceased employee and since the documents produced by the respondents clearly shows this to be contrary to facts, the claim for compassionate



appointment in favour of applicant no. 2 cannot be granted. The OA is, therefore, dismissed. No order as to costs.

[Dinesh Sharma]
Administrative Member

Srk.

