

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

O.A.NO.516/95

New Delhi, this the 12th day of February, 1996

Hon'ble Smt. Lakshmi Swaminathan, Member (Judicial)

Shri Laxmi Narain Sain,
s/o Shri Bihari Ram,
House No.117/9, Gali No.40 (Gaur Bhavan),
Sadh Nagar-II,
New Delhi.

... Applicant

By Advocate: Shri Yogesh Sharma

Vs.

1. Union of India
through

The General Manager,
Western Railway,
Churchgate,
Bombay.

2. The Divisional Railway Manager,
Western Railway,
Jaipur.

... Respondents

By Advocate: Shri Ashish Kalia, proxy counsel
for Shri Jagjit Singh

O R D E R (ORAL)

Hon'ble Smt. Lakshmi Swaminathan, Member (J)

The applicant is aggrieved by the order
dated 25.11.92 (Annexure A-1, English Translation in para 4.6)
by which his request for compassionate appointment to any
posts on the death of his father was rejected, as it was
stated that this was not justified.

2. The brief facts of the case are that the applicant claims that he is the adopted son of late Biharam, who was working as a Gangman with the respondents and died in harness on 3.7.89. The applicant states that he was adopted by late railway employee, who also had two daughters who were 13 and 10 years, respectively, at the time of death of the father. According to the applicant, he made a representation to the Divisional Railway Manager on 7.2.92 for compassionate appointment and subsequent representations which were finally rejected by the Annexure A-1 letter dated 1.12.92. Shri Yogesh Sharma, learned counsel for the applicant submits that the applicant filed an appeal against this rejection order to the General Manager, Western Railway, Churchgate, Respondent No.1 on 3.4.93 to which no reply has been received so far. The applicant submits that as he is/legally adopted son of the deceased employee, he ought to be considered for compassionate appointment, as he fulfils the conditions for such appointment.

3. The applicant claims that Railway Board Circular No.106/88 (Annexure A-8) dated 20.5.88 is contrary to the provisions of sections 11 and 12 of the Hindu Adoptions and Maintenance Act, 1956. Shri Yogesh Sharma submits that the

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(a)

Railway Board circular relied upon by the respondents cannot support the case of the respondents because it sections 11 and 12 of is contrary to the provisions of the Hindu Adoption and Maintenance Act. He also relies on the judgement of the Patna High Court in Kamal Ranjan V. State of Bihar and others (1995 LAB IC 2562).

4. The respondents have filed the reply taking a preliminary objection on limitation that the case of the petitioner ¹² was rejected by them by order dated 25.11.92. They have relied upon ^{the} R.B. circular dated 20.5.88, according to which the applicant could not be considered for appointment on compassionate ground, as he had admittedly two sisters, minor daughters of the deceased employee. ^{May submit 13} Therefore, the applicant was not eligible to be considered for appointment on compassionate ground.

5: The applicant has filed MA 682/95 for condonation of delay. Having considered the reasons given in the MA, the delay is condoned.

6. The R.B. circular dated 20.5.88 deals with the appointment of adopted sons/daughters on compassionate grounds.

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The relevant portion of the circular reads as follows-

"A question has been raised whether adopted sons/daughters are eligible to be considered for compassionate appointment. The matter has been considered and the Board have decided that an adopted son/adopted daughter will also be eligible to be considered for appointment on compassionate grounds (in circumstances in which such compassionate appointment is permissible) in the case all the following conditions are satisfied:

- (i) There is satisfactory proof of adoption valid legally;
- (ii) The adoption is legally recognised under the personal law governing the railway servant;
- (iii) The legal adoption process has been completed and has become valid before the date of death/medical decategorisation/medical incapacitation (as the case may be) of the ex-employee.

For example, it may be noted that under Section 11 of Hindu Adoption and Maintenance Act, adoption can be made only if the adopted father or mother by whom the adoption is made does not have a Hindu son or daughter, whether by legitimate blood relationship or by adoption living at the time of adoption."

7. No doubt the circular makes reference to section 11 of the Hindu Adoption and Maintenance Act and provides that such compassionate appointment can be made only if the adopted father or mother did not have a Hindu son or daughter, as the case may be. The main grounds on which respondents have rejected the applicant's case for consideration of compassionate appointment is that the deceased railway employee had two daughters, in addition to the adopted son i.e. the applicant.

8. The relevant portion of sections 11 and 12 of the Hindu Adoption and Maintenance Act provides as follows-

*11. In every adoption, the following conditions must be complied with -

(i) if the adoption is of a son, the adoptive father or mother by whom the adoption is made must not have a Hindu son, son's son or son's son (whether by legitimate blood relationship or by adoption) living at the time of adoption.

(ii)(iii)(iv)"

12. An adopted child shall be deemed to be the child of his or her adoptive father or mother for all purposes with effect from the date of the adoption and from such date all the ties of the child in the family of his or her birth shall be deemed to be severed and replaced by those created by the adoption in the adoptive family.*

9. From the above provisions of law it is seen that in the case of adoption of a son the only condition provided by the Act is that the adopted father or mother by whom adoption is made does not have another Hindu son, son's son or son's son living at the time of adoption. Further, section 12 of the Act provides that an adopted child shall be deemed to be the child of his adopted father for all purposes with effect from the date of adoption. Therefore, under the law, the applicant, who is the adopted son of the deceased railway employee is entitled to have

benefits the law provides, as if he is the son of the deceased employee. The respondents have rejected the applicant's request for consideration for appointment on compassionate ground apparently on the ground that the father had daughters and, therefore, the adopted son could not be considered for such appointment. This is erroneous. If the applicant has been legally adopted, in accordance with the provisions of Hindu Adoption and Maintenance Act, he has a right to be considered for compassionate appointment as if he was the son of the deceased employee without any other disabilities namely, that he has minor sisters who are the real children of the deceased employee. In Kamal Ranjan V. State of Bihar and others (supra) the Patna High Court has held that an adopted son or daughter of the deceased govt. employee who died in harness is entitled to appointment on compassionate grounds. Any stipulation to the contrary as contained in the DOP&T circular dated 15.10.91 was held to be illegal and arbitrary,

10. In the above facts and circumstances of the case, the application is allowed. The applicant may within 15 days from today make an application to Respondent No.1 to consider his case for compassionate appointment. Respondent No.2 i.e. the Divisional Railway Manager, Western Railway, Jaipur is directed to consider such application, if so received, within a period

of three months from the receipt of that application and pass a reasoned and speaking order on the same with a copy to the applicant.

11. O.A. is disposed of with the above directions. No order as to costs.

Lakshmi Swaminathan

(SMT. LAKSHMI SWAMINATHAN)
Member (J)

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