

Central Administrative Tribunal
Principal Bench: New Delhi

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OA No. 2182...of 1996....decided on 5.11.97.....

Name of Applicant: Shri. Teja and Ors.

By advocate: Shri. D.N. Sharma..

Versus

Name of Respondents: The Chairman, Railway Board Secretariat & Anr.

By advocate : Shri. B.S. Jain..

Corum

Hon'ble Mr. N. Sahu, Member (A)

1. To be referred to the Reporter or not? Yes
2. Whether to be circulated to other Benches of the Tribunal? No.

N. Sahu
(N. Sahu)
Member (A)

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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

Original Application No.2182 of 1996

New Delhi, this the 5th day of November, 1997

Hon'ble Mr. N. Sahu, Member (Admnv)

1. Teja (Ex-Gangman) S/o Shri Bhikhi,
formerly of Unit No.6, Office of
Chief Permanent Way Inspector,
Mathura Jn. Resident of -Village
& Post Office-Chauma, District
Distt. Mathura (U.P.)

2. Prem Chandra, S/o Shri Teja, Village &
Post Office-Chauma, Distt. Mathura (U.P.) -APPLICANTS
(By Advocate - Shri D.N. Sharma)

Versus

1. The Chairman, Railway Board Secretariat
Rail Bhawan, New Delhi.

2. The Chief Personnel Officer, Central
Railway Headquarters, Bombay.

3. The Divisional Rail Manager, Central
Railway, Jhansi Division, Jhansi (U.P.) -RESPONDENTS
(By Advocate - Shri B.S. Jain)

JUDGMENT

By Mr. N. Sahu, Member (Admnv) -

Applicant no.2 seeks compassionate appointment in this Original Application. This is resisted by the respondents on the ground that there is no satisfactory proof of a legal adoption for applicant no.2. There is no proof either that this adoption was formalised in an acceptable manner before the date of death/medical decategorisation of the ex-employee.

2. The brief facts are that applicant no.1 was working as a Gangman under Permanent Way Inspector, Mathura Junction. After rendering 30 years and 8 months of service he was medically decategorised on 8.7.1992 or

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account of an injury in his left eye on 6.5.1992. The Railway doctor's opinion was that of permanent partial disablement. He had less than three years of service left for his superannuation. The adoption deed was got registered on 1.8.1992 before the Sub Registrar, Mathura when applicant no.2 was more than 17 years old. Applicant no.2 was married at the time of alleged adoption. In the absence of specific usage and custom a married person cannot be taken in adoption if he has completed 15 years of age. It is not proved by the applicants that usages of the community to which they belong entitled them to avail of this course of adoption not permitted by law. As it is, according to the respondents, the adoption deed dated 1.8.1992 after medical decategorisation cannot be accepted as genuinely made. There is a lurking suspicion that this adoption deed was made for the purpose of compassionate appointment.

3. Applicant no.1 was paid Rs.97,123/- as retirement benefits. He gets a pension of Rs.1233/- per month. He has a house to live in. He has 1 Bigha of agricultural land. If the adoption is considered doubtful, there are no dependents on him. The Railway administration is strict about cases of compassionate appointment on account of medical decategorisation three years before superannuation. Thus, under instructions dated 28.2.1986 it is directed that appointment of wards of employees over 55 years of age should be done only in circumstances of hardship, penury and lack of succour to the surviving dependents. Such appointments can be made only with the previous approval of the General Manager.



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4. The learned counsel for the applicants further submitted that as a welfare measure this appointment should have been given to applicant no.2 as he was taken as nephew for adoption. He had taken me through the school record from 1983-84 onwards wherein applicant no.2 was mentioned as son of applicant no.1. There was, therefore, a practice of treating applicant no.2 as the adopted son and the execution of the document was only to formalise such an intention. Since applicant no.1 was held to be incapable of doing any job by the screening committee there was no other avenue of making both ends meet except by way of an appointment to the adopted son. Certain decisions have been cited in the rejoinder to prove that mere execution of the adoption deed does not conclude or prove adoption. Such a step was only as a measure to safeguard the right of inheritance of the adopted son in the event of parent's death. Even otherwise, it is stated that applicant no.2 being the nephew he is also eligible as a nephew for appointment on compassionate grounds by virtue of Railway Board's circular no. E(G)II-98/RCI/1 dated 3.2.81 serial no. SE102/81. This circular says that under the personal orders of the General Manager a nephew can be appointed and prior income of the person or the property left behind by the deceased will not be a matter for consideration. These instructions are no longer valid in view of the decision of the Hon'ble Supreme Court in the case of **Umesh Kumar Nagpal Vs. State of Haryana**, (1994)27 ATC 537 wherein their Lordships have held that Government or the public authority concerned has to examine the financial condition of the family of the deceased and only if it is satisfied that but for the provision of employment, the family will

not be able to meet the crisis on account of the death of the bread winner that a job is to be offered to the eligible member of the family; and offering compassionate employment sometimes as a matter of course irrespective of the financial condition of the family of the deceased is legally impermissible. The resources available to applicant no.1 would not qualify him as one in abject penury needing succour. Compassionate appointment to a public office is given outside the constitutional provisions. The Hon'ble Supreme Court directed that there should be sufficient justification for such a case. Strictly speaking, there are no dependents of applicant no.1. The adoption was made, it is claimed, for inheritance. If applicant no.1 had enough property to inherit to an adopted son, there is no justification for a compassionate appointment. As the strict standards laid down by their Lordships in the case of Umesh Kumar Nagpal (supra) have not been fulfilled, I do not see any merit in this O.A. The O.A. is dismissed. No costs.

Narasimha
(N. Sahu)
Member (Admnv)

rkv.