

**Central Administrative Tribunal
Jaipur Bench, Jaipur**

**O.A. No.618/2016
M.A. No.909/2019**

Reserved on :18.12.2020
Pronounced on:24.12.2020

**Hon'ble Mr. Dinesh Sharma, Member (A)
Hon'ble Mrs. Hina P. Shah, Member (J)**

Shri Yashdeep Upadhyay @ Siku S/o Madhusudan Upadhyay, by caste Brahmin, aged 20 years, R/o 6 B 1084 KBHB, Kudi Bhagtasni, Jodhpur. Late Shri Madhusudan Upadhyay working on the post of Senior Peon, IV class employee under CMS, NWR.

...Applicant.

(By Advocate: Shri Harshad Kapoor for Shri Rajesh Kapoor)

Versus

1. Union of India through the General Manager, North-Western Railway, Jawahar Circle, Jaipur.
2. Divisional Railway Manager, (Establishment) North-Western Railway, Ajmer.
3. Senior Divisional Personnel Officer, North-Western Railway, Ajmer.

...Respondents.

(By Advocate: Shri Anupam Agarwal)

ORDER

Per: Dinesh Sharma, Member (A):

In this OA, the applicant has prayed for quashing the order (letter) dated 22.05.2006 of North Eastern Railway (Annexure A/1) and for entering the name of the applicant in the service record of Late Shri Madhusudan, as adopted son, and grant all consequential reliefs, including

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compassionate appointment to the applicant. The applicant has alleged that the respondents have rejected the request by Late Shri Madhusudan (hereinafter referred to as the deceased employee), to enter the applicant's name as his adopted son, on a totally illegal ground, that the only son of a parent cannot be given or taken by way of adoption. The applicant was already nominated by the deceased employee to receive his PF benefits and had also been issued railway passes, etc. The applicant(born on 01.10.1995) was a minor at the time of rejection (2006) and came to know of such wrongful rejection only in the year 2009 through RTI and when he applied for registration of his name for compassionate appointment along with relevant documents and the registered adoption deed. After this, his natural mother filed a suit before the Civil Court to get his rightful dues as an adopted son. However, this suit was rejected by the Civil Court on ground of non-payment of court fees in the year 2015 (Refer Annexures A/6 to A/8). After attaining majority, the applicant sent various letters and served a notice dated 8.12.2015 for grant of compassionate appointment, but no action has been taken and hence this OA.

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2. The respondents denied the claim of the applicant. It is stated that though the adoption deed is said to have been executed in the year 1998, the deceased employee had not, during his lifetime, registered the name of the applicant as his adopted son. The fact of rejection of his request made in the year 2005, was informed to the deceased employee, by the impugned letter. He did not challenge this order of rejection and thus had obviously acquiesced with that decision. Therefore, he (or anyone claiming on his behalf) is barred from raising any plea against that rejection, following principles of estoppel. The respondents have denied having entered the name of the applicant as a nominee for PF or issued any railway passes to him. The fact that the applicant's natural mother approached the Civil Court on his behalf, is also stated to support the respondent's contention that the applicant was not given in adoption. It is also stated that the applicant has no right to get compassionate appointment. The fact that he has survived for 10 years after the death of the deceased employee in the year 2006, also shows that there is no need for showing compassion, as has been held by the Apex Court. The respondents also stated that challenging the order of 2006 in the year 2016, is barred by period of limitation.

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3. The applicant has filed a rejoinder reiterating his earlier claim. He has stated that his petname (Siku)was put as one of the nominees in the PF, and he was referred to as "Bhatija" since it was done before the adoption. The deceased employee could not challenge the impugned decision of 22.05.2006, since he was suffering from cancer and had to undergo treatment in the Railway Hospital and Tata Memorial Hospital and eventually died of that sickness in the year 2006 itself. Besides filing application for condonation of delay, the applicant justified the delay on account of his having been minor, who had applied for registration for compassionate employment(on attaining majority) in the year 2009 itself. The applicant reiterated that the adoption deed (Annexure A/5) is a registered document which has a presumption of validity as per Section 16 of the Hindu Adoption and Maintenance Act and the respondents cannot take advantage of the illegal impugned order and claim estoppel and waiver on the applicant.

4. A reply to rejoinder has been filed in which the respondents, besides reiterating their earlier contentions, have stated that the adoption deed (Annexure A/5) is not an adoption deed. According to them, "Registration of a

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document which is nothing but declaration of a fact did not hold the applicant entitle to be treated as adopted son".

5. The matter was heard, through video conferencing, on 18.12.2020. The counsels of both the parties reiterated the arguments mentioned in their pleadings.

6. After going through the pleadings and hearing the arguments, we find that following issues need to be decided to dispose of this matter:

- i) Whether the applicant's has any locus standi to challenge the impugned order;
- ii) If so, whether he can do so now, i.e., whether the action is barred by period of limitation, and;
- iii) If not, whether he is entitled to the reliefs, including the relief of consideration for compassionate employment, as claimed by him.

7. The applicant is claiming to be the adopted son of the deceased employee. He has produced a registered "godnama" (Annexure A/5). The respondents did not find any defect in this godnama, when they rejected the deceased employee's request for registration of applicant's name on the basis of this godnama, but rejected it on a

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ground, which they have indirectly admitted as, relevant "customary impediments" (sub para c of the para 5. Grounds: Reply). Even the reply to the OA does not find any fault with this document and it is only in the reply to the rejoinder, that the respondents have chosen to challenge this deed of adoption as being not a deed for adoption, but a deed to record or reiterate a "fact". We, therefore, do not agree with the belated plea of the respondents that this document is not an adoption deed. The applicant does have a locus standi as a person who was nominated by the deceased employee for entering in the respondent's records as his adopted son. The first issue, thus, gets decided in favour of the applicant.

8. The second issue is about the period of limitation. The respondents have argued that the deceased employee did not challenge the impugned rejection order in his lifetime. The applicant also became aware of the rejection of the deceased employee's request, in the year 2009. His not taking any action till the filing of this OA makes it hopelessly barred by period of limitation. The applicant has argued that the applicant's father died within 6 months of the rejection of his request by the impugned order. The applicant was a minor at that time. Though he had applied for registration for compassionate appointment, being a minor, he himself

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could not pursue this matter before any court. After the death of his adoptive father, his natural mother was the only person who was interested in his well-being. The learned counsel for the applicant argued that she was wrongly advised to pursue this matter in a Civil Court, when they should have, more appropriately, brought this matter before this Tribunal. The fact that that civil case, too, could not be pursued properly and was dismissed, in the year 2015, for failure to pay the court fees. This itself shows that the applicant's interest were not properly safeguarded. Since the applicant attained majority (in the year 2014), he has made representations. After not getting any proper response, he has come before this Tribunal. We cannot ignore the fact that the applicant was a minor at the time a decision adversely affecting him was taken. We are also pained to see that the case could not be pursued before the Civil Court, and was dismissed because of non-compliance of that Court's order dated 06.09.2013 (Refer Annexure A/7), (showing a shortfall of at least Rs 30/- in the court fees). Taking into account these facts, we are inclined to take a liberal view and are pleased to condone the delay, in filing this OA, which has happened after the applicant attained majority. Needless to say, it would be unfair to punish the applicant for or any delay or default on the part of his guardians, natural or otherwise, before he attained majority.

9. This brings us to the main issue of whether the applicant can be granted the reliefs claimed by him. The impugned order is reproduced below:

“उत्तर पश्चिम रेलवे

मंडल कार्यालय अजमेर
दिनांक 22.05.2006

संख्या: इडी/पी/4/मंडल
मुख्य चिकित्सा अधिकारी अजमेर |

विषय :- सेवा रिकार्ड में दत्तक पुत्र का नो छोड़ने के क्रम से श्री मधुसुदन चपरासी
मु.वि.अ. अजमेर |

सन्दर्भ :- आपका पत्र सं. एम् डी /ई /768/1 नाम दिनांक 05.01.2006 एवं कर्मचारी एवं
प्रार्थना पत्र दिनांक 27.12.2005.

उपरोक्त विषय में लेख है कि श्री मधुसुदन उप चपरासी ने अपने छोटे भाई श्री प्रेमचन्द्र
उपाध्याय से पुत्र को दिया है |

नियमनुसार एकलौते पुत्र को नोट लिया दिया नहीं जा सकता | अतः कर्मचारी के सेवा रिकार्ड
में दत्तक पुत्र का नाम लिखा नहीं लिया जा सकता है |

कृपया कर्मचारी को सूचित कर नोट इ एवं आपत्ति कर की भेजने की वयस्था करे |

एस.डी.
रामानंद मीणा
कृते महे अजमेर”

10. Roughly translated, this order says, according to rules, an only son cannot be given or taken in adoption, and therefore the name of the adopted son cannot be written in the records. The order does not quote any rule. The reply of the respondents, though not in so many words, admits lack of any such rule. The respondents have sought to justify this action by referring to “customary impediments”. In the absence of any law or rule prohibiting giving or taking of an only son in adoption, we find the decision conveyed by the

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impugned order as patently wrong and illegal. The respondents have now, at a very belated stage, challenged the adoption deed itself. This clearly is an afterthought. They have not challenged the "fact" of adoption of the applicant (have repeated called it so, and have, even in the impugned order, referred to the adopted son), and are, therefore, estopped from doing so now.

11. We, have therefore, no hesitation in quashing the impugned order which is patently illegal. The respondents are directed to enter the name of the applicant in the service records as requested by the deceased employee. They may also consider the request for compassionate appointment, if, after taking into consideration all the relevant rules, ignoring the delay in filing application and the period for which the matter has remained pending before the courts/Tribunal, he is still found to be eligible for such compassionate appointment.

12. The OA and MA No.909/2019 for condonation of delay are disposed of accordingly. No costs.

(Hina P. Shah)
Member (J)

(Dinesh Sharma)
Member (A)

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