

OPEN COURT

CENTRAL ADMINISTRATIVE TRIBUNAL  
ALLAHABAD BENCH : ALLAHABAD

ORIGINAL APPLICATION NO.711 OF 2001  
ALLAHABAD THIS THE 1ST DAY OF JUNE ,2004

HON'BLE MRS. MEERA CHHIBBER, MEMBER-J

Ghunnan, son of Late Bhulai,  
resident of village Jungle Salik Ram,  
Tappa Bhutan, Pergana Haveli, Tehsil Sadar,  
District-Gorakhpur. ....Applicant

( By Advocate Sri R. C. Maurya )

Versus

1. Union of India,  
through Ministry of Railway, N.E. Railway,  
New Delhi.
2. The General Manager, N.E. Railway,  
Gorakhpur.
3. The Deputy Chief Engineer,  
Gorakhpur Area, North Eastern Railway,  
Gorakhpur. ....Respondents

( By Advocate Mrs. S. Siddiqui )

O R D E R

By this O.A. applicant has sought a direction to the respondents to give employment to the applicant as suitable job or to pass a direction as this court may deem fit in these circumstances of the case.

2. The brief facts, as submitted by the applicant, are that he was adopted by Late Bhulai during his life time in accordance with Hindu Religion and Customs, in support and confirmation whereof a certificate dated 17.5.1996 has been issued by the A.D.M. (City) Gorakhpur. Unfortunately his



Father Shri Bhulai died on 21.08.1999. Since his father the family, was the sole bread earner in/ he applied for compassionate appointment on 22.05.1996 followed by another application dated 11.11.1996 (Annexure A-2). The respondents vide their letter dated 11.11.1996 directed the applicant to send the original adoption deed, which was duly sent by him alongwith covering letter dated 20.12.1996, but since no reply was given, applicant gave the legal notice dated 16.8.1999 through his advocate and ultimately filed writ petition no.30620/00 before the Hon'ble High Court of Judicature at Allahabad. The same was however, dismissed on 26.07.2000 on the ground of alternative remedy. He had, therefore, no other option but to file the present O.A.

3. He has thus, submitted that respondents are violating the norms laid down by the Government for the appointment of his son, in the event of adoption of a person during his service period and since they have not given any reply to the applicant, the action of respondents is absolutely wrong, illegal and arbitrary, therefore, he has a right to be appointed on compassionate grounds.

4. Respondents on the other hand, have submitted that applicant does not fulfil the norms of compassionate appointment, therefore, his case was not considered for compassionate appointment. They have submitted that the O.A. is barred by limitation and is liable to be dismissed on this ground alone. They have further submitted that Shri Bhulai died on 21.8.1999, however, the adoption deed is invalid in the eyes of law. <sup>because</sup> ~~since~~ adoption was made by the deceased when applicant was already 23 years of age. According to Section 10 of Hindu Adoption Act 1956 the

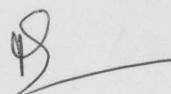


age of adopted child should be not above 15 years. Hence the adoption deed is invalid in the eyes of law, therefore, his case was rightly not considered by the respondents. They have thus, submitted that the O.A. is devoid of merit, The same may, therefore, be dismissed.

5. It is seen that CA was filed by the respondents on 01.10.2002 but, neither applicant filed his RA to rebut the averments made by the respondents, nor he was present in the court today to argue the case. However, since this was a short matter, I heard counsel for the respondents and perused the pleadings. It goes without saying that though the adopted son can be considered for compassionate appointment, but it is only in those cases where adoption is done in valid manner in accordance with law. Section 10 of Hindu Adoption Act 1956, makes it clear that the age of adopted child should not be above 15 years, whereas according to respondents the age of applicant was 23 years, which has not been disputed by the applicant. As he has not even filed the RA, therefore, he <sup>is of</sup> ~~has~~ deemed to have accepted the averments made by the respondents. If applicant was above 15 years of age at the time, when he was said to have been adopted, naturally the said ~~petition~~ <sup>adoption of</sup> cannot be said to be in accordance with law and since applicant's adoption is not a valid adoption in the eyes of law, naturally he cannot claim compassionate appointment as a matter of right on the ground that he is the adopted son.

6. In these circumstances, if respondents did not consider his claim, no illegality can be said to have been done by the respondents.

7. Even otherwise, it is seen that as per applicant's

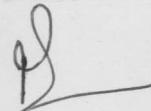


case he was asked by the respondents to give the original copy of the adoption deed wide letter dated 11.11.1996, which was duly submitted by him immediately thereafter with a covering letter dated 20.08.1996. Thereafter if respondents had not given any reply to him, he could have approached the court within one year, which is the period of limitation as per section 21 of the A.T. Act 1985, but admittedly no such effort was made by the applicant and as per his own case, he kept on writing to the department. He filed a writ petition in Hon'ble High Court only in the year 2000 i.e. almost after four years <sup>after</sup> ~~without~~ submitting the original adoption deed. The writ petition was dismissed on 26.07.2000 for availing the alternative remedy, yet he filed the original application on 02.05.2001, meaning thereby he was in no hurry to seek redressal of his grievances. Delay in the matter of seeking compassionate appointment is very important factor as that itself shows whether the person who is claiming compassionate appointment was really in indigent circumstances or was in a position to survive without getting any assistance from the department immediately on the death of the deceased employee. In the instant case, it is seen, as explained above, that even though his father was stated to have died on 21.08.1993 <sup>21.8.1993</sup> <sup>18</sup> but the first case filed by the applicant was only in the year 2000 before the Hon'ble High Court of Judicature At Allahabad, meaning thereby that he was ~~ever~~ <sup>able</sup> to survive for seven years. Apart from it, applicant has not even stated as to how he was financially distressed because he has not even made any averment in regard to the liabilities left by the deceased employee. His only claim is that since he is adopted, he is entitled for compassionate appointment after the death of his father.



Perusal of the documents at page 12 of the O.A. shows that the certificate stated to have been issued on 17.1.1996 when the applicant's age was 28 years, meaning thereby that he was a grown up boy, <sup>In ordinary course he should have been settled</sup> ~~he was~~ ~~adopted~~ in the year 1996. Since he was already 28 years of age in 1996 as per his own document, it cannot be said that applicant was dependent on Shri Bhulai. Applicant has not even annexed an application for condonation of delay. The Hon'ble Supreme Court has already held in the case of Ramesh Chandra Sharma that Tribunal can not look into merits of the case which is barred by limitation and delay cannot even be condoned, unless applicant specifically prays for condoning the delay.

8. In view of the above discussions, I am satisfied that no case has been made out by the applicant for interference by the Tribunal. The O.A. is accordingly dismissed with no order as to costs.



Member-J

/Neelam/