

Central Administrative Tribunal Jammu Bench, Jammu

TA No.5478/2020
(SWP No. 450/2014)

Wednesday, this the 5th day of May, 2021

(Through Video Conferencing)

**Hon'ble Mr. Justice L. Narasimha Reddy, Chairman
Hon'ble Mr. Mohd. Jamshed, Member (A)**

Mohammad Yousuf Khanday, Age 26 years
S/o Mohammad Akbar Khanday
R/o Mamal, Tehsil Pahalgam
District Anantnag.

...Applicant
(Mr. Jahangir Iqbal Ganai, Senior Advocate)

VERSUS

1. State of Jammu and Kashmir
Through Commercial Secretary to Government
Power Development Department
Civil Secretariat, Jammu/Srinagar.
2. Development Commissioner (Power)
J&K, Srinagar.
3. Chief Engineer
Electric Maintenance and Rural Electrification Wing,
Srinagar.
4. Superintending Engineer
Electric Maintenance and Rural Electrification Wing,
Bijbehara.
5. Executive Engineer
STD, Bijbehara.

...Respondents
(Mr. Rajesh Thapa, Deputy Advocate General)

ORDER (ORAL)

Mr. Justice L. Narasimha Reddy:

The applicant filed a representation before the respondents with a prayer to extend him, the benefit of appointment on compassionate grounds. It is stated that Mr. Mohammad Akbar Khanday was working as Line Man-II in the Power Development Department (PDD) and he died while in service on 10.11.2011. Claiming to be the adopted son of the deceased employee, the applicant prayed for the benefit of compassionate appointment. The Department examined the case in detail and passed a detailed order on 05.08.2013, rejecting the claim of the applicant. It was mentioned that after the Jammu & Kashmir legislature passed the Jammu & Kashmir Muslim Personal Law (Shariat) Application Act, 2007 (for short “Shariat Act, 2007”), the matters pertaining to succession, inheritance etc. of the Muslims are governed by Shariat and that there is no concept of adoption in Shariat.

2. The applicant filed SWP No.450/2014 before the Hon’ble High Court of Jammu & Kashmir, challenging the order dated 05.08.2013. It is pleaded that there is no prohibition in law

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against adoption and the respondents ought to have considered his case.

3. The respondents filed a counter affidavit. It is stated that there the concept of adoption is not known to the Muslim law and the claim of the applicant cannot be considered at all.

4. The SWP has since been transferred to the Tribunal in view of the reorganisation of the State of Jammu & Kashmir and renumbered as TA No. 5478/2020.

5. Today, we heard Mr. Jahangir Iqbal Ganai, learned senior counsel for the applicant and Mr. Rajesh Thapa, learned Deputy Advocate General.

6. The applicant claimed the benefit of appointment on compassionate grounds. According to him, he is the adopted son of Mohammad Akbar Khanday, the deceased employee of the PDD. The case was examined at length and ultimately, the Government in PDD passed an order dated 05.08.2013, which reads as under:

“Subject: Compassionate appointment case of Sh. Mohammad Yousuf Khanday S/o Mohammad Akbar Khanday R/o Mamal Thesil Phaigam in terms of SRO 43 of 1994.

Sir,

I am directed to refer your letter No.DC/PD/Adm.II/ 827 /271-72 dated 225-06-2013 regarding the subject cited above and to return the case in original for informing the applicant after coming into force of J&K Muslim Personal Law (Shariat) Application Act, 2007, the rule of the decision in all question regarding to succession, inheritance etc. shall be the Muslim Personal Law (Shariat) in cases were parties are Muslims. Since the Muslim Personal Law does not recognize adoption, no Muslim can claim any benefit by way of adoption. Therefore the applicant cannot claim compassionate appointment on the basis of being the adopted son of the deceased employee.”

7. From a perusal of this, it is evident that the respondents have taken a categorical stand about the legal status of the applicant. Even in the absence of any legislation, the concept of adoption falls under the Islam. In addition to that, the Jammu & Kashmir Government enacted the Shariat Act, 2007, making it abundantly clear that the matters pertaining to succession, inheritance etc. of the Muslims shall be strictly governed in accordance with Shariat. The acceptance of the claim of the applicant would run contrary to that Act. In other words, if any benefit is extended to the applicant, that would be only by violating the specific provisions of law.

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5. We do not find any merit in the T.A. It is accordingly dismissed. There shall be no order as to costs.

(Mohd. Jamshed)
Member (A)

(Justice L. Narasimha Reddy)
Chairman

May 5, 2021
/sunil/jyoti/sd/