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CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD.

Registration (O.A.) No. 741 of 1987.

Laljee	Applicant.
--Versus--		
Union of India & others	Respondents.

Hon'ble K.J. Raman, A.M.
Hon'ble D.K. Agrawal, J.M.

(Delivered by Hon. K.J. Raman, A.M.)

The applicant, Sri Laljee, who is stated to be the son of Sri Sahdeo, has filed this application under Section 19 of the Administrative Tribunals Act, 1985 challenging the order dated 29.4.1986 issued by the Divisional Mechanical Engineer (C & W), Eastern Railway, Moghalsarai, Varanasi compulsorily retiring the applicant from service, and also the appellate order dated 18.12.1986 passed by the Divisional Railway Manager (DRM), Eastern Railway, Moghalsarai, rejecting the appeal of the appellant-applicant against the said order of compulsory retirement. The respondents are the Union of India through the General Manager, Eastern Railway, Calcutta, the Divisional Railway Manager, Eastern Railway, ~~Calcutta~~ Moghalsarai and the Divisional Mechanical Engineer (C & W) (DME (C&W)), Eastern Railway, Moghalsarai.

2. The applicant's case is as follows :-

The applicant's parents died prematurely and he became an orphan. According to the applicant, Sri Sahdeo, son of Sri Bahadur, having no son of his own, adopted him and the said Sri Sahdeo executed a deed of adoption on 20.9.1956 before PANCH witnesses of the village. A true copy of the alleged deed is at Annexure '1' to the application. This document is in Hindi and confirms the statement made ~~xxxxx~~ by the applicant. It is stated that since then the applicant was brought up by the said Sri Sahdeo as an adopted son. Sri Sahdeo was then employed as Fitter under the Carriage Foreman, Moghalsarai (CF/MGS). The applicant avers that the said

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Sri Sahdeo made an application for the appointment of his adopted son, viz. the applicant, Sri Laljee, to the Railway authorities, who employed the applicant as a substitute on 30.5.1962. The applicant states that he was employed neither on compationate ground nor on any other ground related to said Sri Sahdeo. The applicant was given temporary status in due course, and employed on a regular basis from 30.11.1962. He was promoted from time to time and lastly he was promoted and posted as Fitter Grade III, in which post he had been working. According to applicant, he was compelled by the said Sri Sahdeo to marry his daughter, after his adoption (in 1957). Both the applicant and Sri Sahdeo were employed in the same Department at Moghalsarai under the same Carriage Foreman. The wife of the applicant, who was the daughter of Sri Sahdeo, died in the year 1963. Thereafter the relation between the applicant and Sri Sahdeo became bitter, the reason given by the applicant is that Sri Sahdeo wanted the applicant to marry his younger daughter also, which the applicant did not want to do. According to the applicant, on account of such enmity the said Sri Sahdeo, who had retired from Railway service on 30.6.1980, made a false complaint on 25.12.1983 before the DRM and there upon a major penalty charge-sheet dated 19.5.1984 was issued by respondent no.3 with the allegation that the applicant gave a false declaration regarding his father's name at the time of appointment in 1962. The applicant duly replied to the charge-sheet. Respondent no.3, however, ordered an enquiry and an Enquiry Officer was appointed. A enquiry report was submitted. During the enquiry, the statement of the applicant as well as witnesses were recorded, as also that of the said Sri Sahdeo. A copy of the enquiry report is at Annexure '4' to the application. Thereafter the impugned order dated 29.4.1986, compulsorily retiring the applicant, was issued (Annexure '5'). The applicant points out that this order is a non-speaking one and the disciplinary authority had not revealed the rational nexus between

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the facts considered and the conclusion reached. The appeal dated 20.5.1986 was rejected by the DRM by the impugned order dated 18.12.1986 (Annexure '7'), holding the said adoption deed illegal, being unregistered, and further holding that a son-in-law cannot be an adopted son under Hindu Law. The applicant contends that the appellate order dated 18.12.1986 is quite erroneous, illegal and not tenable in the eyes of law, because the Hindu Adoption and Maintenance Act, 1956 came into existence on 22.12.1956 and the question of registering the adoption deed dated 20.9.1956 under that law could not arise. The applicant points out that he was firstly adopted by Sri Sahdeo and only later on he was married to the daughter of Sri Sahdeo and hence the applicant's marriage with the daughter of Sri Sahdeo does not affect the adoption, but the marriage became void. The applicant asserts that he had not made any false declaration at the time of his appointment and that he had furnished Sahdeo's name as his father's name correctly, since he was the adopted son of Sri Sahdeo. It is further emphasised by the applicant that there was no mala fide on the part of the applicant since the appointment was not conditional upon his being the son of any Railway employee.

3. In the reply filed, the respondents have stated that the so-called adoption deed was neither registered nor valid since the adopted son cannot marry his sister, as per Hindu Law. In para 4 of the reply it is significantly admitted by the respondents that Sri Sahdeo himself submitted an application declaring Sri Laljee as his son, but Sri Laljee was already married to his daughter and became his son-in-law in the year 1957. According to the respondents, Sri Laljee suppressed the fact that he was married and declared himself as the adopted son of Sri Sahdeo. In the same reply the respondents ^{again} aver that Sri Sahdeo himself submitted an application for appointment of the applicant, declaring the applicant, Sri Laljee, to be his son.

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4. The case was heard when Sri S.K. Dey, learned counsel for the applicant and Sri G.P. Agarwal, learned counsel for the respondents, conducted their arguments. The record relating to the disciplinary enquiry in this case was also submitted for perusal.

5. The only charge against the applicant is that he obtained appointment declaring the name of his father as Sri Sahdeo, whereas the applicant's father's name was Sri Shanker. It is alleged that consequently the applicant was guilty of gross misconduct and had violated Rule 3 of the Railway Services (Conduct) Rules, 1966. The statement of imputation of misconduct is also identical. From the list of documents it is seen that a copy of the alleged application for appointment is not one of the documents exhibited with the charge-sheet. The documents include the complaints made by Sri Sahdeo himself against the applicant. In reply to the charge-sheet it is seen (Annexure '3') that the applicant has stated that he had been adopted by Sri Sahdeo in 1956 and a declaration was executed in respect of such adoption before the PANCHAYAT. The applicant has denied that he had sought employment in the railways showing Sri Sahdeo as the applicant's father. It is stated that Sri Sahdeo himself had sought employment of the applicant in the railways declaring the applicant as his adopted son. The applicant has specifically requested to check all the records, particularly the application form for employment. The Enquiry Officer has submitted a detailed report of enquiry (Annexure '4') giving the history of the case and the various verifications done by the Enquiry Officer in respect of the allegations, and the statements of various persons recorded. In the findings, the Enquiry Officer states that the applicant, Sri Laljee, was not/actual son of Sri Sahdeo. It is further recorded that witnesses have testified that Sri Sahdeo took Sri Laljee to adoption in the presence of five witnesses. It is further stated that subsequently after the adoption, the applicant got married to the daughter of Sri Sahdeo. It is stated that the wife of the applicant died shortly thereafter and the conflict between the applicant and the complainant, Sri Sahdeo, started. From the report of the Enquiry

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Officer, the declaration of adoption before PANCH witnesses in 1956 is clearly established. It is also recorded that Sri Sahdeo on whose complaint these disciplinary proceedings were started against the applicant, had refused to give a fresh impression of his thumb ^{the} for verification purposes in respect of /adoption deed. The enquiry officer observed that it is also surprising that Sri Laljee was appointed in the Railways in the year 1962 and Sri Sahdeo has submitted his complaint on 28.11.1983, i.e. after a lapse of more than 21 years. The enquiry report simply submits the foregoing facts to the disciplinary authority without recording a clear finding in respect of the charge or allegations. It is not stated by the Enquiry Officer in his report that the charge has been established. On the other hand, the tenor of the report, as indicated above, is that there was an adoption in the year 1956, followed by the marriage of the applicant in 1957.

6. The impugned order of punishment dated 29.4.1986 (Annexure '5') is in a cyclostyled form. It merely refers to the major penalty charge-sheet and states that the disciplinary authority has decided that the applicant was guilty of some charge which is not specified. There are number of irrelevant words which have not /been scored off. It is stated that "you shall be compulsorily retired from service as a disciplinary measure and the same will take effect from 30.4.1986". The applicant has rightly and justifiably contended that this is a non-speaking order. It is seen that the order of the disciplinary authority is not merely a non-speaking order, but in the context of the enquiry report, which does not give a clear finding as to the establishment of guilt or otherwise alleged in the charge-sheet, does not itself clearly say that the charge had been established. The order of the disciplinary authority does not even refer to the enquiry report, ~~xxxx~~ ^{not} /to mention giving its reasons for either agreeing or disagreeing with that report. Thus the impugned order dated 29.4.1986 shows non-application of mind by the disciplinary authority in passing the order for compulsory retirement. It is well

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established by a catena of decisions that judicial and quasi-judicial orders should be reasoned orders and should not be unspeaking but give reasons for the conclusions (Tara Chand Khatri v. Municipal Corporation (1977 (1) SCC 472), Siemens Engg. & Mfg. Co. v. Union of India (1976 (2) SCC 981), Mahindra & Mahindra Ltd. v. Union of India (AIR 1979 SC 798)). On this ground alone the impugned order dated 29.4.1986, compulsorily retiring the applicant, is liable to be set aside.

7. The applicant's appeal dated 20.5.1986 refers to the applicant's adoption on 20.9.1956 and states that the execution of the deed had been confirmed by the witnesses during the enquiry. The appellate authority in its order dated 18.12.1986 (Annexure '7') states :-

"You can not claim to have the status of an adopted son of Sri Sahdeo since under Hindu Law a son-in-law cannot be considered to be in the "Zone" of consideration for adoption. Prima facie therefore the proof of Panchayat cannot be accepted. Adoption has to be legally registered also."

On the above basis the appellate order holds that the charge of mis-declaration is definitely proved. The answer of the applicant to the above is that he was first adopted in 1956 and it was only later that he married the daughter of Sahdeo. The adoption deed is dated 20.9.1956. The applicant points out that his marriage with the daughter of Sahdeo does not affect the adoption but the said marriage became void. The appellate order does seem to put the cart before the horse. The applicant seems to be right in his above contention. Since the adoption was earlier, the subsequent act of marriage cannot affect its validity retrospectively. At any rate, the appellate authority or the respondents have not quoted any legal provision in support of their contention. It is also not stated on what authority it has been held that the adoption deed in this case had to be registered. The applicant has pointed out correctly that the Hindu Adoption and Maintenance Act, 1956 came into opera-

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tion with effect from 21.12.1956 and the provisions of this Act could not apply to the adoption made on 20.9.1956. This argument of the applicant has not also been controverted by the respondents. In these circumstances it cannot but be held that the reasoning contained in the appellate order is logically defective and legally unsupported and has to be held as perverse.

8. One significant fact is that neither in the charge-sheet nor in the pleadings has it been hinted that the applicant obtained the employment under any scheme of compationate appointment. of the application this In para 6(iii)/~~ix~~ is clearly stated and it is further stated that the applicant was also not employed on any other ground related to the said Sri Sahdeo. In the reply to this para this contention has not been denied. It is not stated that any undue advantage was gained by the applicant by the declaration of Sri Sahdeo as his father. It is also significant that a copy of the application said to have been filed is not amongst the records of the disciplinary proceedings and no copy of the application has been submitted during the hearing. On the other hand, as pointed out above, it is clearly admitted by the respondents that it was Sri Sahdeo, the complainant, who had submitted the application declaring the applicant as his son, for obtaining the employment. The only allegation is that the applicant, Sri Laljee, suppressed the fact that he was married to the daughter of Sri Sahdeo. In these circumstances, it has to be said that it is most unreasonable to have held that the declaration by the applicant of Sri Sahdeo as his father in the application, is such a grave misconduct as to justify the issue of a major penalty charge-sheet under Rule 3 of the Railway Services (Conduct) Rules, 1966. Obviously, every technical mistake or want of judgment cannot be treated as an item of grave misconduct and sought to be visited with so grave a penalty, as in this case. In this connection we may refer to the observations of Kerala High Court in M.K. Santhamma v. Kerala Public Service Commission (1984 SLJ 688). We have to hold that in this case the disciplinary authority has acted

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mechanically and arbitrarily far out of proportion to the gravity of the mistake in declaring the name of the father, even assuming that there was no adoption. As we have seen above, the fact of adoption has not been controverted by the respondents in this case.

9. In the result, the application is allowed. The impugned order dated 29.4.1986, compulsorily retiring the applicant and the impugned appellate order dated 18.12.1986, are hereby quashed. The applicant shall be reinstated in service within one month from the date of receipt of this order. The period between the date of compulsory retirement and the date of reinstatement shall be treated to be 'on duty' for all purposes except that arrears of pay and allowances shall not be paid for the above period. The above period shall, however, be treated as 'leave of any kind' admissible to the applicant and if necessary as 'extra-ordinary leave' without pay. Consequential action shall be taken in this respect within three months from the date of receipt of this order. There will be no order as to costs.

Dr. G. S. Rao

MEMBER (J). 19.1.90

K. R. Rao

MEMBER (A). 19.1.90

Dated: January 19, 1990.

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