

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCHTHIS THE 4th DAY OF APRIL, 2007

Original Application No.1587 OF 1992

CORAM:HON.MR.JUSTICE KHEM KARAN,V.C

Akhilesh Kumar Tripathi, adopted son of
Late Sajjan Lal, r/o 14/2 Vishnupuri Colony
Nawabganj, Kanpur.

.. Applicant

(By Adv: S/Shri R.C. Pathak, V.Budhwar)

Versus

1. Union of India through Department of
Telecommunication, Sanchar Bhawan
New Delhi.
2. Director General, Department of Tele-
Communication, Sanchar Bhawan
New Delhi.
3. Chief General Manager,
Telecommunication, U.P. Circle,
Lucknow.
4. Superintendent Incharge,
Central Telegraph Office,
Kanpur

.. Respondents

(By Adv: Shri Amit Sthalekar)

ORDERJUSTICE KHEM KARAN, V.C.

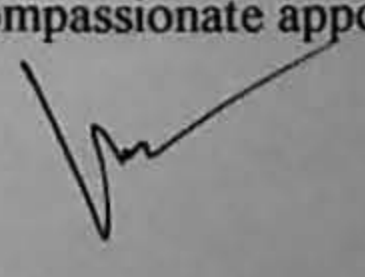
The applicant claims himself adopted son of late Shri Sajjan Lal, who died in 1984, while in employment of the respondents in Central Telegraph office, at Kanpur (UP). He was telegraph man. At that time the applicant was just 11. He (the applicant) alleges monetary benefits on death of applicant, were given to him, vide letter dated 23.5.1995. He says, his mother Premawati devi, was appointed as guardian, vide order dated 23.3.1995 of the District Judge, Kanpur. His legal guardian, sent an application dated 30.10.1985, to the Supdt. Incharge, Central Telegraph Office Kanpur, for employment of the applicant, on attaining 18 years of

age. She again gave representation dated 20.5.1986 (Annexure-3), requesting the respondent no.4, to forward her request to Competent Authorities, whereupon some details were asked for vide letter dated 10.7.1986 (Annexure-4) and the same were furnished vide letter dated 13.4.1988 (Annexure 5). As the applicant was still below 18 years of age, so the request was not considered (Annexure 6). On his attaining the age of 18, Smt. Premawati devi sent application dated 30.1.1991 (Annexure 7) to Supdt. C.T.O. Kanpur and similar representations were also given to respondent Nos 1 & 2. Later on, the applicant received a letter dated 26.3.1992, informing him that claim for compassionate appointment had been rejected by Chief General Manager, Kanpur.(Annexure 1)

2. He received another letter dated 14.7.1992 (Annexure 2), from Chief General Manager, Tele-communication, Lucknow, informing him about such rejection. He then represented on 11.6.1992 (Annexure 8) against order dated 26.3.1992. He challenges the rejection on the grounds interalia that the same is bad for want of reasons and is arbitrary. In this O.A., he seeks a direction to the respondents to appoint him on compassionate grounds.

3. In their written reply, the applicants have tried to justify the rejection by saying that alleged adoption of applicant by Sajjan Lal, is wholly contrary to law (para 3) and Late Shri Sajjan lal never nominated the applicant in service record (para 5©). It was said that applicant being only son of his natural parents, could not have been given or taken in adoption (see para 5 © and moreover he was residing with his natural parents and the evidence available also showed that adoption theory was unacceptable (see para 15 (d). They, however, did not dispute (see para 5 (b) that pensionary benefits were paid to Smt Premawati devi, as legal guardian of applicant.

4. This Tribunal, after hearing the parties concerned, rejected this O.A., vide order dated 2.6.1995. Application for review (Review Application No.83 of 1995) was also rejected vide order dated 5.12.1995. He then filed writ petition No.19383 of 1998, before High Court Allahabad, challenging dismissal of O.A., review and orders dated 26.3.92, 14.2.92/14.7.92 and praying that the respondents No, 1,2 and 3 be commanded to consider his case for compassionate appointment.

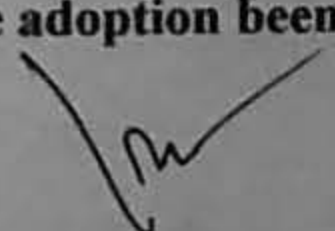


5. The Hon'ble High Court allowed that writ petition in part, vide order dated 22.5.2006 (placed on record), setting aside the two orders of this Tribunal, the Hon'ble court remitted the matter back to this Tribunal for decision afresh in accordance with law, in the light of observations made by their Lordships. This is how the matter is again before me, for decision afresh. The relevant portion of the order of Hon'ble High court is reproduced below:

- (i) The purpose to provide appointment on compassionate ground is to mitigate the hardship due to death of the bread earner in the family.
- (ii) The employee has died in harness leaving his family in penury and without any means of livelihood.
- (iii) The whole object of granting compassionate employment is to enable the family to tide over the sudden crisis
- (iv) It is not to give a member of such family a post much less a post for post held by the deceased.
- (v) Mere death of employee in harness does not entitle his family to such source of livelihood.
- (vi) The Government or the Public Authority concerned has to examine the financial condition of the family of the deceased and it is only if it is satisfied, that but for the provisions of employment, the family will not be able to meet the crisis that a job is to be offered to the eligible member of the family.
- (vii) Where the Scheme for Employment of the Dependents of the employees who die while in service the financial condition of the family has to be taken into consideration while considering the case of compassionate appointment, the retrial benefits are to be taken into consideration.
- (viii) Where, however, the scheme do not envisage taking into consideration the retrial benefits for judging the financial condition of the family, it is wholly irrelevant for the authorities to take into consideration the family pension paid to the widow of the deceased or other amounts paid on account of terminal benefits under the Rules.

6. I have heard, Shri R.C. Pathak and Shri V.Budhwar appearing for the applicant and Shri Santosh Pandey holding brief of Shri Amit Sthalekar, for the respondents.

7. A perusal of reply filed by the respondents, makes it clear that the main ground for rejecting the claim of applicant, for appointment on compassionate grounds, was that his adoption by late Shri Sajjan lal was doubtful and in any case, was contrary to law, as contained in Hindu Adopted and Maintenance Act, 1956. After considering all the aspects, the Hon'ble High Court concluded "Thus all ingredient of Sections 6,11,and 16 of Hindu Adoption and Maintenance Act, 1956 are complied with a presumption has to be drawn that the adoption been made in



compliance with the provisions of the said Act as the deed of adoption is registered one".

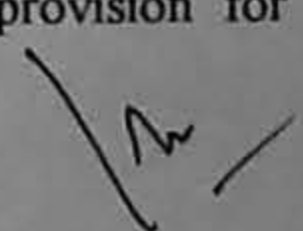
8. Now after the said conclusion of Hon'ble High Court, in its order of May 22nd, 2006 it is not open to Shri Pandey to argue that adoption is contrary to law nor this Tribunal is to go into that question. Finding recorded by High Court, is binding on this Tribunal. Thus the main ground for rejecting the case of the applicant for compassionate appointment, goes away.

9. After referring to Smt. Sushma Gosain and others Vs. Union of India and Others (1989), 4 SCC 468, Umesh Kumar Nagpal Vs. State of Haryana (1994) 4 SCC 138, State of U.P. and Others Vs. Paras Nath (1998) 2 SCC 412, National Hydro Electric Power Corporation and another Vs. NanakChand and another (2004) 12 SCC 487, Punjab National bank and others Vs. Ashwani Kumar Taneja (2004) 7 SCC 265, G.M (D & PB) Vs Kunti Tewari (2004) 7 SCC 271 andf Govind Prakash Verma Vs. Life Insurance Corporation of India and Others (2005) 10 SCC 289, the Hon'ble High Court culled out the following principles, to be considered in cases of compassionate appointment.

10. The learned counsel for the applicant has urged that since the respondents have rejected the claim, mainly on the ground that the applicant was not adopted son of late Shri Sajjan Lal and so rejection orders dated 26.3.92 and 14.2.92/14.7.92 deserve to be quashed and the matter remitted back to the authority concerned, for reconsideration, in the light of the principles so culled out by High Court in its order of 22.5.06 and also in the light of relevant government orders/guide lines on the subject.

11. I think that the above submission has to be accepted and the respondents may be asked to reconsider the applicant's request for compassionate appointment.

12. Surprisingly enough, neither the applicant and nor the respondents has quoted the relevant Govt. orders/guide lines that regulate the subject of compassionate appointment. The respondents do not dispute that there is provision for such appointment..



13. Before parting with the matter, I must, in all fairness, note that after the matter came back from High court, the respondents raised objection as against maintainability of this O.A. by saying matters relating to Bharat Sanchar Nigam Ltd (which is success or of department of Tele-communication) is not cognizable and triable by this Tribunal. This objection was rejected by me vide order dated 30.3.07.

14 So, this OA is finally disposed of with a direction to the respondents, to ensure that the case of the applicant for compassionate appointment, as adopted son of Late Shri Sajjan Lal, is reconsidered, in the light of the principles reproduced in para 5 of this order, and of Govt. Orders/guide lines issued in this behalf, and the result communicated to the applicant, within a period of four months, from the date a certified copy of this order is produced before respondent No. 1 & 2. It is made clear in this reconsideration, orders dated 26.3.1992 and 14.2.92/14.7.92 rejecting the claim of applicant, shall not come in the way of respondents.

No order as to costs.

VICE CHAIRMAN

Dated: April , 2007

Uv/