CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH

Original Application No. 1259 of 1993

Allahabad this the 28th day of Aug 1995

Hon'ble Dr. R.K. Saxena, Member(J)

Suresh Yadava S/o Late Sri Baitali Ram, R/o
Village and Post Bilari, Pargana Kaudiya, Tehsil
Phoolpur, District Azamgarh.

APPLICANT

BY Advocate Shri R.P. Srivastava.

Versus

1.   Union of India.

2.   The General Manager, Central Railway, Bombay.

3.   The Divisional Railway, Manager, Central
      Railway, Jabalpur(M.P.)

RESPONDENTS

By Advocate Shri G.P. Agrawal,

O R D E R

By Hon'ble Dr. R.K. Saxena, Member (J)

        Shri Suresh Yadava-the applicant has
approached the Tribunal to challenge the communic-
ation dated 03.2.1993(Annexure-1) rejecting the
claim for appointment on compassionate ground.

2.   The brief facts of the case are that
Late Shri Baitali Ram was in the service of the
Central Railways since. He had no issue, He had

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adopted the applicant in the year 1976 but,
no deed was written at that time. In order to
avoid any controversy about oral adoption, it
was written on general stamp of Rs.10/- on
06.4.1983 in the presence of the real father
of the applicant and witnesses. An affidavit
which was sworn on 06.4.1984 was also given to
the Divisional Manager, Central Railway, Jabalpur.
Baitali Ram died on 23.6.1991 in village Bilari
of District Azamgarh. At the time of his death,
he was serving as Chowkidar under the Divisional
Railway Manager, Jabalpur. An application was
given on 25.7.1991 seeking appointment on com-
passionate ground but, nothing was done. The
widow of Late Baitali Ram also moved another
application on 31.1.1992. In response to this
letter written by the widow of Shri Baitali Ram,
the respondent no.3 informed through the impugned
order that the appointment was not possible because
there was no legal and registered adoption-deed of
the applicant. Hence, this O.A. has been filed
with the relief that the impugned order dated
03.2.1993 be quashed and the respondents be
directed to appoint the applicant on compass-
ionate ground.

3. The respondents contested the case
on the ground that the applicant was not a legally
adopted son of Late Baitali Ram, that the documents
which were filed in support of the adoption, were
not legal because the so called adoption deed was

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not registered one, and that the process of legal
adoption was not completed. It is also contended
that the widow of the deceased Baitali Ram did not
informed the department about the applicant being
an adopted son in the settlement form which was
filled in after the death of the deceased employee
namely Late Baitali Ram. The only heir was shown
Smt. Shyam Pyari who was a married daughter, Besides,
it is also contended that the name of the father
of the applicant as appears from the certificates
of High School, Intermediate, --- B.A. and other
documents which have been brought on record, was
Shri Ram Milan Yadav. It is, therefore, contended
that if, Baitali Ram had been the adoptive father
then, there was no occasion to mention Ram Milan
Yadav as the father of the applicant in the said
documents. The case of the respondents is also
based on the fact that Smt. Shanti Bai, widow of
Late Baitali Ram is receiving pension and also
received retiral benefits to the tune of
Rs.91,190/- and thus, she is not an indigent
person.

4.   The applicant filed rejoinder, reiterating
the grounds taken in the O.A. It was also pleaded that
the adoption of the applicant as son of Late Baitali Ram
was declared valid and legal by the Civil Court in
Suit No. 513 of 1994 Suresh Vs. Ram Milan and Others
decided on 04.8.1994. The photocopy of the Judgment
of the Munsif has been brought on record.

5.   I have heard the learned counsel for the

parties and have perused the record.

6.   The main question for consideration
in the matter is if, the applicant is the adopted
son of Late Baitali Ram. In support of this con-
tention of the applicant, copy of the Judgment of
Civil Court has been brought on record but, it
may be remembered that this fact was not disclosed
anywhere in the O.A. What has been brought on
record at the time of filing of the O.A., are
the copies of marksheet of High School, Inter-
mediate and B.A.IIIrd year. The marksheets of
High School and Intermediate do not show the name
of the father of the student but, marksheet of
B.A.IIIrd year which relates to the examination
held in the year 1992,gives the father's name
of the applicant as Ram Milan Yadav. Not only
this, the certificate that the applicant belong
to backward class,was issued by Tehsildar on
06.7.1989 in which the applicant was shown as
the son of Shri Ram Milan Yadav. It is not
understandable as to why the father's name
was shown as Ram Milan Yadav in these documents
which were prepared in subsequent orders to the
year 1976 when oral adoption is alleged. Once
a child is adopted, he becomes the son of his
adoptive father. Thus, these documents do not
support the case of the applicant,rather his
contention is denied. The respondents have
brought on record the certificates of High
School in which Shri Suresh Yadav S/o Shri Ram
Milan Yadav was shown to have passed High School
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examination in 1987. Smt. Shanti Bai, the widow
of Late Baitali Ram had filled in the form after
the death of his husband and in this form also
the name of the applicant has not been shown
although there was a column if, the deceased
employee had any son or daughter. The name of
Smt. Shyam Pyari as married daughter of
Late Baitali Ram had been shown. Thus, these
documents, as are discussed above, do not support
the case of the applicant.

7.   The learned counsel for the applicant
has also placed reliance on the so called adoption
deed which was prepared on 06.4.1983 on general
stamp of Rs.10/- and the affidavit which was given
to the D.R.M. & ~~District Magistra~~te on 06.4.1984. The
question arises whether these documents do establish
the fact that the applicant was adopted son of
Late Baitali Ram. The learned counsel for the
respondents strenuously argued that the so-called
adoption deed cannot be relied upon for the simple
reason that in U.P., Section 16 of the Hindu Adoptions
and Maintenance Act, 1956 was amended whereby the
adoption made on or after the first day of January,
1977, it was made mandatory that the adoption deed
must be registered one. There is no denial to this
fact even to the learned counsel for the applicant
but, what has been contended that is even if, a
deed is not registered one, the factum of adoption
cannot be denied. He also relied on the Judgment
of Civil Court by which the applicant was declared

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as an adopted son of Late Baitali Ram. Since, I am
not sitting in appeal against the Judgment of Civil
Court, I would not like to comment upon the Judgment.
It is, however, clear that by U.P. amendment, adoption
deed can be taken in proof of the adoption only
when it is registered one. This amendment in the
Hindu Adoptions and Maintenance Act, 1956 was made
by the U.P. Civil Laws(Reforms and Amendment) Act,
1976. As such if, the respondents did not take
the so called adoption deed into consideration or
they held the view that the adoption was not legal,
the conclusion cannot be said to be illegal or in-
valid. In order to get appointment on compassionate
ground, it must be established that the deceased
employee had left behind widow or any heir and the
dependent or the heir were indigent conditions.
From the facts as are discussed above, I am of the
view that the applicant is not successful in estab-
lishing the fact that he is the adopted son of
deceased Baitali Ram. Therefore, the impugned order
cannot be challenge on this ground.

8.   So far as the financial position of the
widow is concerned, it has been averred on behalf
of the respondents that Smt. Shanti Bai was getting
pension of Rs.477+ relief at the rate of 97% of the
amount of pension and she also got an amount of
Rs.91.190.00 as retiral benefits of her husband.
These facts could not be controverted but, at the
same time it has been argued that the pension and
the amount which was received by Smt. Shanti Bai