

OPEN COURT

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH : ALLAHABAD

ORIGINAL APPLICATION NO.1008 OF 1999
ALLAHABAD THIS THE 6TH DAY OF JANUARY, 2004

HON'BLE MRS. MEERA CHHIBBER, MEMBER-J

Ashish Kumar Srivastava,
aged about 21 years,
Adopted son of late Shri Badri Vishal
Singh Srivastava, R/o 119/200,
Maswani,
District-Fatehpur.Applicant

(By Advocate Shri R.K. Nigam & Shri R. Verma)

Versus

1. Union of India,
through the General Manager (P),
Diesel Loco Motive Works,
District - Varanasi.
2. The Deputy Chief Personnel Officer,
(Headquarters), Diesel Loco Motive Works,
Varanasi.Respondents

(By Advocate Shri A. Sthalekar)

ORDER

By this O.A. applicant has sought the following
reliefs:-

"(i) To issue a writ, order or direction in the
nature of certiorari quashing impugned orders
dated 29.07.1998 as well as 27.02.1999 passed by
the respondents rejecting the request of the
petitioner to appoint him on compassionate ground.

(ii) To issue a writ, order or direction in the
nature of Mandamus directing the respondent no.1
to consider the case of the petitioner to appoint
him on any suitable post on compassionate ground
and in case he is found fit, to offer him appointment.



(iii) To issue any other suitable writ, order or direction in the facts and circumstances of the case which this Tribunal may deem fit and proper.

(iv) To award cost of the petition."

2. It is submitted by the applicant that he was legally adopted by the deceased employee Late Shri Badri Vishal Singh through adoption deed dated 24.11.1985. It is submitted by the applicant that Late Shri Badri Vishal Singh died on 09.11.1986 when he was still a minor and he attained majority on 29.08.1996 which is evident from his school certificate filed as {Annexure A-5}, Thereafter he applied for grant of compassionate appointment which was rejected by the respondents vide letter dated 29.07.1998 on the ground that after the death of Shri Badri Vishal Singh, applicant's father had presented succession certificate on the basis of which the settlement dues were paid to Shri Vishwamber Nath Srivastava and Shri Rudra Nath only which make it clear that the applicant had no legally accepted relationship with the deceased Late Shri Badri Vishal Singh. Moreover in the ^{will} produced by the applicant it is clear that Late Shri Badri Vishal Singh and his wife Smt Usha Srivastava had no son or daughter. Moreover, applicant had not produced any valid document to substantiate his claim that he was the adopted son of Shri Badri Vishal Singh. Therefore, it is not possible to consider him for grant of compassionate appointment.

3. Today when the matter was called out, counsel for the applicant submitted that after filing of this O.A. applicant has now been able to get a decree from competent court of law where by it has been held as follows:-

"वादी का वाद आज्ञप्ति किया जाता है । घोषणा इस क्रम की की जाती है कि गोदनामा दिनांकी 24-11-1985, जो कि स्व० बट्टी विशाल सिंह श्रीवास्तव पुत्र स्व० बनवानीलाल तत्कालीन कर्मचारी डी०एल० डब्लू० रेलवे वाराणसी जिनकी मृत्यु दिनांक

9-11-86 को डी०एल०डब्ल्यू० अस्पताल वाराणसी में हुई,
के द्वारा वादी का नाम व पक्ष में निष्पादित व सम्पादित किया
गया है आधार पर स्व० श्री बद्री विशाल सिंह श्रीवास्तव का
दत्तक पुत्र वादी है और इसी हैसियत से वादी दत्तक पिता श्री
बद्री विशाल सिंह श्रीवास्तव के समस्त अधिकारों का उपयोग व
उपभोग का अधिकारी है ।

वाद के तथ्यों को दृष्टिगत रखते हुए उभयपक्ष अपना अपना
वाद व्यय स्वयं वहन करेंगे ।

दिनांक 14-3-2002

§ बाबू प्रसाद §
सिविल जज डी०डब्ल्यू० फतेहपुर

4. It is thus, submitted by the applicant's counsel that since applicant has been declared to be the adopted son of Shri Badri Vishal Singh this case needs to be remitted back to the authorities for re-consideration and for passing appropriate orders thereon. In support of their submission counsel for the applicant relied on 2002 VOL III ATJ 71 Cuttack Bench judgment given in the case of Shri Kalesh Chandra Mehra Vs. U.O.I. and Ors.

5. The order ^{was} passed by the respondents. Counsel for the respondents submitted that earlier applicant's original father had produced a succession certificate in his favour wherein it was categorically stated that deceased employee Late Shri Badri Vishal Singh had left behind him only two brothers as such he is entitled to get the settlement dues of the said employee. Moreover in his will which was relied upon by the applicant's father ^{in his will} specifically ~~made~~ mentioned that Late Shri Badri Vishal Singh had no son or daughter but ~~had~~ only brothers and sisters. The very fact that they ^{at} never mentioned about the adoption deed that time, clearly shows that the adoption is not valid in the eyes of law and applicant had no relationship at all with the deceased employee. In their application for claiming succession no mention was made at all about any other successor of Late Shri Badri Vishal Singh, which is evident from their own application dated

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23.03.1988 filed as (Annexure CA-2), These facts clearly show that the adoption had never taken place. The respondents further submitted that as per extant rules the adopted son and daughter may be considered for appointment on compassionate grounds if the following conditions are quoted:-

"(i) There is satisfactory proof of adoption valid legally.

(ii) The adoption is legally recognised under the personal law governing the Railway servant.

(iii) The legal adoption process has been completed and has become valid before the date of death/medical deCategoryise/medical incapacitation "As the case may be" of ex employee."

They have further explained that for valid and legal adoption deed the following ingredients are essential for Hindus:-

(i) The conditions laid down in Hindu Adoption Act 1986, must be complied.

(ii) The stamp duty should be paid as per Indian Stamp Act.

(iii) It should be retisterred as registration of adoption deed is compulsory under Indian registration Act.

The adoption deed produced by the applicant ~~is~~ ^{seen} in context with the above position of law it is clear that applicant was not adopted by Late Shri Badri Vishal Singh during his life time. They have also submitted that there are inherent contradiction in the will deed dated 24.11.1985. Therefore, they have submitted that since the adoption deed ~~is~~ not legal and valid, therefore, applicant's case for compassionate appointment could not have been considered.

6. Learned counsel for the respondents ^{further} submitted that the deceased employee had died on 09.11.1986 whereas decree has been obtained only on 14.03.2003 which itself is a ground for rejection of the claim for compassionate appointment. As

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time is the main factor for considering the applications of compassionate appointment, counsel for the respondents thus, submitted that this O.A. may be dismissed with costs.

7. I have heard both the counsel and perused the pleadings as well as the judgment produced by the applicant's counsel.

8. The judgment relied upon by the applicant's counsel would not be of much assistance to ~~me~~^{him} in as much as that ~~it~~ was a case where applicant had supported his application for compassionate appointment with a decree obtained from the competent court of law ^{therefore it was B} ~~had~~ held that it was incumbent on the part of respondents to have taken that factor into consideration while deciding his case where as in the instant case applicant had not produced any valid document alongwith his application for grant of compassionate appointment, therefore, his request was rejected as back as on 29.07.1998. Today when we have to see the correctness ~~or~~ otherwise of the impugned order we can't take any cognizance ^{of} the subsequent decree produced by the applicant in the year 2003 because that was not available before the respondents at the time ~~when~~^{when B} ~~that~~ they had rejected applicant's claim. In fact applicant ^{at that time B} had not been able to show ~~that there was~~ any valid document ~~available~~ to show that applicant was ~~invalidly~~ adopted by the deceased employee before his death. Therefore, I do not find any illegality in the orders passed by the respondents. To that extent, I find no merit in the O.A. However, subsequently if applicant had got a decree from the competent court of law stating there in that he is the adopted son of Late Shri Badri Vishal Singh, it would be open to the applicant to give a fresh representation to the authorities within a period of four weeks from the date of communication of this order. In case he gives the said representation alongwith a



fair, ^{attached B}elligible copy of the decree given in his favour, the authorities shall consider the same and pass appropriate orders therein in accordance with law after dealing with all the points available to them and pass a speaking order within a period of three months thereafter under intimation to the applicant. The O.A. is accordingly dismissed with above observations. No costs.


Member-J

/Neelam/