

Reserved

**CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD
BENCH
ALLAHABAD**

ALLAHABAD this the 7th day of July, 2011

Present:

HON'BLE MR. D.C. LAKHA, MEMBER- A

ORIGINAL APPLICATION NO. 513 OF 2007

1. Vidya Devi W/o Late Somat, R/o Deogarh Road, Mohalla Sewani, Lalitpur, District Lalitpur.
2. Brij Mohan Adopted S/o Late Somat, R/o Deogarh Road, Mohalla Sewani, Lalitpur, District Lalitpur.

.....Applicants.

V E R S U S

1. Union of India, through General Manager, North Central Railway, Allahabad.
2. Divisional Rail Manager, North Central Railway, Jhansi.
3. Divisional Rail Manager (P), North Central Railway, Jhansi.

.....Respondents.

Present for the Applicant: Sri B.N. Singh
Sri R.S. Yadav

Present for the Respondents: Sri S.K. Rai



ORDER

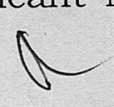
(DELIVERED BY HON'BLE MR. D.C. LAKHA A.M.) :

By means of this OA, the applicant has challenged the order dated 28.7.2006 passed by the competent authority and also for a direction to the respondents to consider the case of the applicant No.II for appointment on compassionate ground. The applicant has also prayed for a direction to the respondents to decide his appeal dated 26.3.2004 within a specified period of time.

2. The brief facts of the case are that the husband of the applicant No.I was working on the post of Gangman in the P.W.I. (South) Lalitpur under the respondents. He died during the service on 18.10.2003. According to the applicant since there was no male or female issue in the family of deceased husband of applicant No.1 as such the applicant No.1 and her late husband decided to adopt a child. On 10.2.1989 on the occasion of Basant Panchami the adoption ceremony took place as per Hindu Dharm Rite and Ritual and customary rites of the Ahirwar Community and in the adoption ceremony Sri Om Prakash and Smt. Kamlesh handed over his son Brij Mohan to the applicant No.I in adoption and since then Brij Mohan has lived with them. The husband of the applicant No.1 during his life time also executed adoption deed on 26.4.2003 which bears




the signature of applicant No.1 and her late husband and signature of Sri Om Prakash Dwivedi and his wife Smt. Kamlesh so that nobody could raise objection of any kind after death of petitioner late husband as the late husband of the applicant No.1 was suffering from T.B. for the last many years. The applicant No.I vide letter dated 25.12.2003 requested the Divisional Rail Manager to grant compassionate appointment to the adopted son i.e. applicant No.II. The request of applicant No.II for appointment on compassionate ground to his son i.e. applicant No.II was rejected by the competent authority vide letter dated 4.2.2004. Having no option left to the applicant No.I she challenged the order dated 30.1.2004/4.2.2004 before the Tribunal by filing the OA No.1334/04. This Tribunal vide order dated 30.3.2006 allowed the OA with the directions that applicant shall inform the respondents about the custom in respect of adoption beyond the age of 15 years by documentary evidence if any or by affidavit of 02 senior persons belonging to the same community/cast and if adoption is bonafide, then ignoring the requirement of registration, the applicant No.II may be considered for compassionate appointment. The applicant accordingly submitted affidavit of two senior persons both belonging to Ahirwal community. The applicant No.I also sent a letter




dated 15.5.2006 and submitted a copy of letter dated 20.3.1991 to Section Engineer for entering the name of applicant No.II as his adopted son in the service record. Both these applications were duly signed by Shri Samath. The respondents did not consider the application of late employee for entering the name of applicant No.II in the service documents and affidavit submitted by Tulsi and Mathu in passing the impugned order dated 28.7.2006. According to the applicant the respondents in the impugned order admitted that as per Railway Board policy dated 11.12.1996 the comparative appointment may be given to adoption son or daughter but in the case of the applicants the benefit of the said circular has not been extended.

3. The respondents filed a detailed reply and stated in Para-7 of the counter that as per direction of the Tribunal dated 30.3.2006 the case of the applicant was considered and a reasoned order was passed on 28.7.2006. It is also submitted that the matter has again been reviewed by the Board and it was decided that adopted son or daughter can be considered for compassionate appointment provided such adoption has been accepted for the issue of privilege pass/PTOs as per provisions under the Pass Rule.



4. The applicant filed supplementary rejoinder but nothing new facts added therein. In the supplementary counter reply it is clearly submitted that the contents of para 2 of the supplementary affidavit are not admitted as stated hence wrong and denied. Section Engineer (South) Permanent Way vide his letter No. Court Case dated 21.5.2009 has advised that Somat Jawahar has not submitted application dated 20.3.1991 and 10.5.2003 in his office and no acknowledgment is available on his application. Learned counsel for the respondents further stated that no facility of Pass/PTOs has been availed by Shri Somat Jawahar during his service in respect of Shri Brij Mohan and no information is available regarding his adopted son in his office. It is further submitted that Smt. Vidya Devi wife of late Somat Jawahar has submitted an affidavit dated 12.11.2003 before the Divisional Railway Manager, Jhansi that she is only wedded wife of Shri Somat and she has no alive child. Said affidavit has been received through Senior Sectional Engineer (South), Permanent Way, Lalitpur vide his letter dated 19.7.2006.


5. I have heard Shri B.N. Singh, learned counsel for the applicant and Shri S.K. Rai, learned counsel for the respondents and carefully perused the record of the case.



6. It is noticed that the applicant No.II adoption deed with regard to applicant No.II dated 26.4.2003 was produced before the competent authority but in this adoption deed there is no mention as to when the applicant No.II was taken adoption by the late employee Somat. The factum of adoption is also belied from the fact that according to applicant No.II, the applicant No.I was taken adoption on 10.2.1989 but in all the educational record of the applicant No.II issued in the year 1994 to 2003 the name of the natural father of applicant No.II has been mentioned as Om Prakash Dubey and there is no mention of the name of the husband of the applicant No.I late Somat. It is also seen from the record that during the life time of late Somat he did not give any adoption deed to the department. He also did not inform to the department in this regard. The applicant No.I on 12.11.2003 given an affidavit to the effect that she is sole survivor of late Somat and he has no live son or daughter and on the basis of this application the entire retiral dues were paid to applicant No.I. I have also carefully seen from the record that in terms of Railway Board letter dated 11.12.1996 an appointment on compassionate ground can only be given to an adopted son unless only when Railway PTO Rule the adoption deed has been accepted by the Railway



Administration. I have also carefully noticed that there is no Registered adoption deed in the favour of the applicant No.II. I have also carefully perused the written arguments filed by Shri B.N. Singh. Learned counsel for the applicant also cited case law in support of the arguments. (i) **2010(7) SCC 868 – Atluri Brahmanandam (d) Thr. Lrs. Vs. Anne Sai Bapuji** (ii) **1991 (18) ATC 788 – G. Bhuvaneswari Vs. U.O.I. & ors.** In my considered view both these cases are different. Having given my thoughtful consideration to the pleas advanced by the parties counsel, I am firmly of the view that the applicant has failed to make out any case for warranting interference. Another important view of the case is that Ex. Employee Shri late Somat died on 18.10.2003 and the request for appointment on compassionate ground was made on 25.12.2003. It is settled law that in view of the decision reported in **1989 SCC (L&S) 662 – Sushma Gosain Vs. U.O.I.& Ors.** wherein it is clearly held that in the claims of appointment on compassionate grounds, there should not be any delay in appointment. The purpose of providing appointment on compassionate ground is to mitigate hardship due to the death of breadwinner in the family. In another decision of Hon'ble Supreme Court reported in **2005 (7) SCC 772 -Commissioner of Public Instructions & ors. Vs. K.R. Vishwa Nath,** once it is



proved that inspite of death of sole breadwinner ^{to} family survive_s, no appointment can be on compassionate appointment should be granted. In view of **2006(5) SCC 766 - State of J&K Vs. Sajad Ahmed Mir**, the compassionate appointment is an exception to the general rule. Normally, an employment in the Government or other public sectors should be open to all eligible candidates who can come forward to apply and compete with each other. This general rule should not be departed from except where compelling circumstances demand. Once it is proved that inspite of death of breadwinner, the family survived and substantial period is over, there is no necessity to say goodbye. In view of the above, the OA has no merits and deserves to be dismissed. Accordingly, the OA is dismissed. No costs.


Member-A

RKM/