

OPEN COURT

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH : ALLAHABAD

ORIGINAL APPLICATION NO.655 of 2007

Allahabad, this the 1st day of April, 2008

Hon'ble Mr. Justice Khem Karan, Vice-Chairman

Tej Bahadur, Son of Late Jagai aged about 44 years,
 R/o village Gaipura, P.O. Kalna, District Mirzapur.

...Applicant.

(By Advocate : Shri S. Ram)

Versus

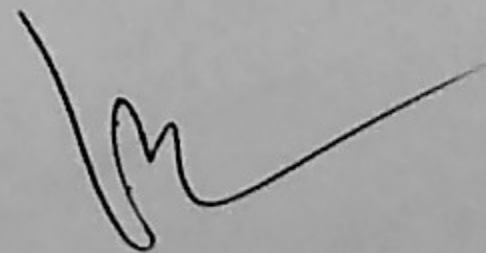
1. Union of India through General Manager,
 North Central Railway, Headquarter Office,
 N.Y. Marg, Allahabad.
2. Divisional Railway Manager. North Central
 Railway, Allahabad.
3. Sr. DPO, North Central Railway, DRM's
 Office, Allahabad.
4. General Manager, North Central Railway,
 Headquarter Office, N.Y. Marg, Allahabad.
5. Shri B.D. Pandey, Sr. Welfare Inspector,
 N.C. Railway, through Sr. DPO, North Central
 Railway, DRM's Office, Allahabad.

...Respondents.

(By Advocate : Shri D.S. Shukla)

ORDER

Applicant's date of birth as per High School Certificate is 7.8.1963 and by that reckoning, he was more than 17 years of age on 15.12.1980, when according to registered adoption deed, he was taken in adoption, by late Shri Jagai. When he put the claim for compassionate appointment, the respondents turned down the same that in view of the provisions contained in Section 10 of Hindu Adoption and Maintenance Act 1956, applicant being above is, as on 15.12.1980, could not have been validly given or taken in adoption. The applicant is challenging this refusal dated 19.7.2006, on grounds inter alia that an agreement in the shape of Panchnama

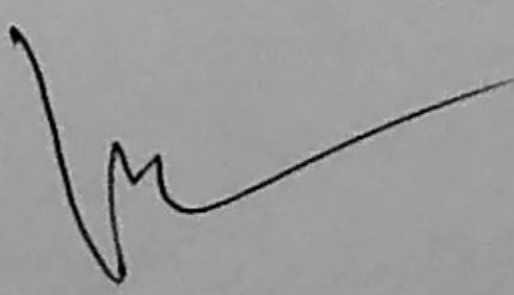


(Annexure-A-2), was executed on 10.7.1978, to the effect that applicant was being taken in adoption by Late Shri Jagai and so the adoption took place at a time when the applicant was below 15 years of age, that according to the custom prevalent in the community, person above the age of 15, could be given and taken in adoption; that after the respondents have paid other dues to the applicant, on the basis of succession certificate, they are not justified in raising objections against the validity of adoption and that factum of adoption can not be questioned as the deceased had given the name of applicant, as his adopted son and passes etc. were issued in that capacity.

2. The respondents have filed reply contesting the claim of the applicant. They say, applicant being ~~about~~^{above} 15 years of age in December 1980, could not have been validly given or ~~taking~~^{taken} in adoption in view of Section 10 of Hindu Adoption and Maintenance Act 1956. They deny there is any usage or custom, permitting the adoption of a child above 15 years of age.

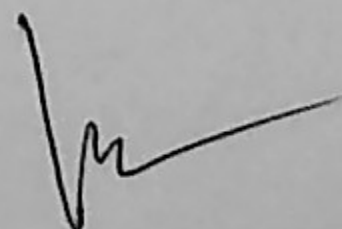
3. I have heard Shri S.Ram, learned counsel for the applicant and Shri D.S. Shukla, learned counsel for the respondents and have perused the entire material on record.

4. There appears no much dispute between the parties that as per the date of birth as given in High School Certificate of the applicant, he was about 17 years 04 months and 08 days as on 15.12.1980, when according to the adoption deed (Annexure-A-3) ceremony of giving or taking of the applicant in adoption took place. Section 10 of the Acts of 1956, provides that persons above the age of 15 years, cannot be given or taken in adoption,



unless there is a custom or usage applicable to the parties permitting such adoption even after completion of the age of 15 years. The applicant has come with a case that actual giving and taking in adoption took place on 10.7.1978, as evidenced by Panchnama (Annexure-A-2) and that time he had not completed the age of 15 years, so his adoption by Late Shri Jagai was not hit by clause (iv) of Section 10 of the Act of 1956. The second plank is that even if adoption took place on 15.12.1980 as recited in the adoption deed, such an adoption was perfectly valid in view of the prevalent custom, permitting the adoption above the age of 15. Learned counsel for the applicant has submitted that once the respondents have accepted the factual position that Late Shri Jagai had intimated the department in writing that he had adopted the applicant and once they have paid other benefits being the adopted son of Late Shri Jagai, it is now not open to question the adoption in the context of compassionate appointment. He wants to say that respondents have virtually accepted, by releasing the terminal dues, that the applicant is adopted son of Late Shri Jagai. He has tried to support his contention by citing order dated 6.2.2007 passed by this Bench in OA No.880/04 - *Shiv Kumar Vs. Union of India & ors.* and also *Balkrishna Raghunath Gharat Vs. Sadashiv Hiru Gharat*- AIR 1977 Bombay 412. He says that once the adoption ~~has been~~^{is} evidenced by a Registered deed of adoption, it has to be presumed under Section 16 of the said Act of 1956 that adoption was made in accordance with the provisions contained in the said Act. Learned counsel says that the respondents should not be permitted to raise technical objection as to the validity of adoption.

5. On the other hand the learned counsel for the respondents has argued that such a complicated



question as to whether the applicant was validly given or taken in adoption, cannot be gone into by the Tribunal but should be decided by Civil Court. He argues whether or not there is a custom or usage in the Community concerned, permitting the adoption even after 15 years of age is a question, which has to be decided by the Civil Court. He argues in proceedings relating to succession certificate, the Railways were not party, so that will not stop the railway from disputing the validity of adoption in question. Attempt has also been made to say, Panchnama (Annexure-A-2) of 1978 has been fabricated.

6. Whether the adoption took place on 10.7.1978 as shown in Panchnama (Annexure-A-2) or on 15.12.1980 as recited in adoption deed dated 29.3.1994 (Annexure-A-3) or whether there is a custom in the community, permitting adoption even after 15, are the questions that do not fall within the expression "service matters" and so I doubt whether this Tribunal can go into those questions. Proper course seems to leave such question to be decided by competent Civil Court.

7. So, the OA is finally disposed of with liberty to the applicant to seek declaration of his being the adopted son of Late Shri Jagai, from competent Civil Court and if the applicant goes to the respondents with that declaration, they will honour the same and reconsider his request for compassionate appointment in accordance with relevant guidelines. No order as to costs.

[Signature]
Vice-Chairman

RKM/