

OPEN COURT

**CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH
ALLAHABAD**

(THIS THE 7th DAY OF JANUARY, 2011)

PRESENT:

HON'BLE MR. S.N. SHUKLA, MEMBER-A

ORIGINAL APPLICATION NO.147 OF 2008
(U/s, 19 Administrative Tribunal Act, 1985)

1. Smt. Gulab Rani widow of Late Narain aged about 54 years Resident of village Paricha P.O. Paricha, near Police Chauki, Behind Punjab National Bank, District-Jhansi.
2. Rani Devi daughter of Late Narayan residing at village- Paricha, near Police Chauki, Behind Punjab National Bank, District-Jhansi (U.P.).

..... Applicants

By Advocate: Shri S.K. Mishra

Versus

1. The Union of India, through the General Manager, North Central Railway, Allahabad (U.P.).
2. The Divisional Railway Manager, North Central Railway, Divisional Office Complex, Jhansi (U.P.).

..... Respondents

By Advocate: Shri Amresh Singh

ORDER

Shri S.K. Mishra, learned counsel for the applicant and Shri Amresh Singh, learned counsel for the respondents.

2. This OA is filed against the impugned order dated 16.03.2007 which reads as under:

आपको उपरोक्त पत्र के राधम मे राचत किया जाता है कि आपकी दल्लक पत्री का गोदनामा दिनांक 12/7/2006 को निष्पादित हुआ है। और आज के याहे श्री नारायण की मृत्यु दिनांक 28.1.1998 को हुई है।

रेलवे बोर्ड के पत्र सं. ई-एन जी/11/86/आर सी-1/1/पालिसी दिनांक 20.5.88 के अनुसार गोदानामा की वैधानिक कार्यवाही कर्मचारी की मृत्यु से पहले ही पूर्ण हो जाना चाहिये था।

अतः नियमानुसार आपकी दल्तक पत्रों कु रानी को दयाधार पर नौकरी देय नहीं है।

The background of this case as explained by learned counsel for the applicant is that Smt. Gulab Rani the applicant in this case is the wife of the deceased employee of the Railways Late Narain who expired on 21.08.1988. On the death of the employee Smt. Gulab Rani made an application for appointment on compassionate grounds which was turned down on the ground of medical unfitness (Annexure A-3 & A-4). Thereafter an application on similar grounds was made by the applicant no.2 namely Km. Rani Devi stated to be adopted daughter of Late Railway employee and the applicant no.1. Her application for compassionate appointment was turned down for the reason as stated in the impugned order. It is averred by the applicant that the adoption deed was drawn and executed on 06.01.1994 itself when the applicant no.2 was taken and given in adoption in pursuance of wages and by fulfilling other conditions as required under the personal law. However, the question of registration of said adoption deed arose only when the applicant approached the authorities for compassionate appointment and on being so advised to get a legal seal on the adoption of Km. Rani Devi by getting it registered a necessary precondition for consideration of compassionate appointment. Thereafter the adoption deed was got duly registered and produced before the authorities.

42

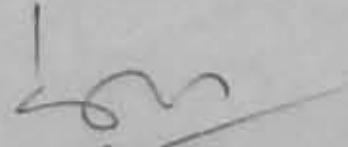
3. The impugned order underscores the point that legal requirements for completion of adoption should have been completed before the death of the Railway employee which has not been done in this case. In this connection learned counsel for the respondents invited the Tribunal's attention (Annexure A-3 to the counter) being a copy of RBE No.106/88 dated 20.05.1988. Para 2 read as under:-

- "(i) There is satisfactory proof of adoption valid legally;
- (ii) The adoption is legally recognized 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 decategorisation/medical incapacitation (as the case may be) of the ex-employee."

It is submitted by the counsel for the respondents that the meaning of the expression "legal adoption process" as appearing in sub para iii implies that the 'adoption deed' should have been 'registered' before the death of the employee for it to become a valid document for this purpose.

4. Learned counsel for the applicant on the other hand vehemently argued that registration of adoption deed is not a necessary requirement for a valid adoption as per Hindu Law as is evident from the relevant provisions of *Hindu Adoptions and Maintenance Act, 1956*. The relevant clauses for this purpose are relied upon and reproduced below:-

- "6. *Requisites of a valid adoption-No adoption shall be valid unless-*
- (i) *the person adopting has the capacity, and also the right, to take in adoption;*
 - (ii) *the persons giving in adoption has the capacity to do so;*
 - (iii) *the person adopted is callable of being taken in adoption; and*



(iv) the adoption is made in compliance with the other conditions mentioned in this Chapter.

NOTES

For a valid adoption, the ceremony of giving and taking is an essential requisite in all adoptions, whatever the caste. This requisite is satisfied in its essence only by the actual delivery and acceptance of the boy, even though there exists an expression of consent or an executed deed of adoption. In some cases, to complete the adoption a 'datta homam' has been considered necessary, but in the case of the twice-born classes no such ceremony is needed if the adopted boy belongs to the same gotra as the adoptive father. *Madhusudan Das V. Narayanibai*, (1983) 1 SCC 35, 45, 46.

The use of the word 'person' in S.6(iii) and at the commencement of S.10 is not for the purpose of bringing about any difference in law in regard to the giving of the child. If the custom permits a person of the age of 15 years or more to be taken in adoption then even such person would be the child of the father or mother. The scheme of the Act was not to make a child of 15 years of age or above fit to be taken in adoption. Exception was made in favour of a custom to the contrary. *Dhanraj v. Surajbai*, (1975) 2 SCC 251.

11. Other conditions for a valid adoption-In every adoption, the following conditions must be complied with :

(i) if any adoption is of a son, the adoptive father or mother by whom the adoption is made must not have a Hindu son, son's son or son's son's son (whether by legitimate blood relationship or by adoption) living at the time of adoption;

(ii) if the adoption is of a daughter the adoptive father or mother by whom the adoption is made must not have a Hindu daughter or son's daughter (whether by legitimate blood relationship or by adoption) living at the time of adoption;

(iii) if the adoption is by a male and the person to be adopted is a female, the adoptive father is at least twenty-one years older than the person to be adopted;

(iv) if the adoption is by a female and the person to be adopted is a male, the adoptive mother is at least twenty-one years older than the person to be adopted;

(v) the same child may not be adopted simultaneously by two or more persons;

(vi) the child to be adopted must be actually given and taken in adoption by the parents or guardian concerned or under their authority with intent to transfer the child from the family of its birth for in the case of an abandoned child or a child whose parentage is not known, from the place or family where it has been brought up to the family of its adoption;



Provided that the performance of duty human, shall not be essential to the validity of an adoption."

5. Learned counsel for the respondents was asked to specifically point out/quote rule, if any, including ruling if any in support of the claim that registration of adoption deed before death of one of the parents was an essential condition for a valid adoption and also clarify from the extant rules the requirement of completion of 'Registration of Adoption deed before the death of the employee'. Learned counsel for the respondents however relied upon para 9 and 13 of the CA which read as under:-

"9. That the contents of paragraph nos.4.3 and 4.4 of the Original Application are not admitted as stated hence denied. In reply it is stated that the adoption deed dated 12.07.2006 submitted by the applicant on 26.02.2007 before the answering respondent in which it was mentioned that Km. Rani was adopted by Late Sri Narayan on 06.01.1994. The applicant never disclosed this fact of adoption deed in the settlement paper submitted by applicant. True copy of the Adoption Deed dated 12.07.2006 is being filed herewith and marked as Annexure No.1 to this counter reply.

13. That the contents of paragraph no.4.9 of the Original Application it is submitted that as per Para 2(iii) of Board Letter dated 20.05.1988 which clearly provides that in such cases the adoption process must be completed before the death of the employee and further the letter dated 11.12.1996 issued by Board also provide that only those adoption deed will be considered a valid adoption which have been accepted for issue of privilege Pass/PTO. A photo copies of those letter are being filed herewith and marked as Annexure No.3 & 4 to this counter reply."

6. Heard learned counsel for the parties and perused the materials on record. No gain saying that the law is well settled i.e. deficiency in an order cannot be made good by subsequent pleadings. An aggrieved party cannot be dragged to repeated litigation for different reasons raised at different points in time. The only reason held out in the impugned order against the

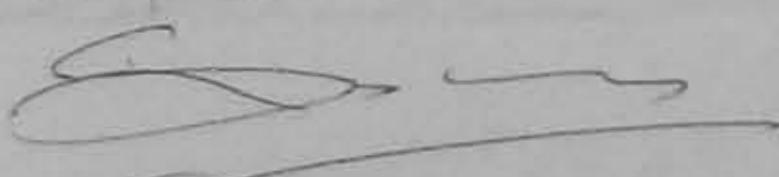
162

applicant has already been discussed above. The respondents have not been able to satisfy this Tribunal that the registration is one of the pre condition as per adoption law for a valid adoption much less a registration before the death of the adopting father. In so far as the reliance on Railway Board circular dated 11.12.1996 (Annexure A-4 to the CA) is concerned, the legal validity of this policy is not the subject matter of challenge before this Tribunal since this was not the reason stated for rejecting the applicant's case in the impugned order.

7. In view of the above discussion, is apparent that the authorities while rejecting the claim of the applicant vide impugned order dated 16.03.2007 did not raised any question regarding the genuineness of the adoption of the applicant no.2 in this case. All subsequent submissions made in the OA also fail to satisfy this Tribunal that the claim of the applicant no.2 for compassionate appointment being the adopted child of the applicant no.1 was rejected for the reasons of the adoption having been found invalid in the eyes of law.

8. In view of the above, the impugned order dated 16.03.2007 stands quashed and set aside with directions to the competent authority to pass a fresh order within a period of three months considering the claim of the applicant as per rules and law by ignoring the reasons given in the impugned order dated 16.03.2007.

9. OA stands disposed of accordingly. No Costs.


Member-A