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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

Original Application No. 376 of 1989

Date of Decision 15.7.1992.

Rabindra Kumar Tripathy & another

Applicant

Versus

Union of India & Others

Respondents

For the applicant

M/s.J. Patnaik,
H.M.Dhal
Advocates

For the respondents

M/s.D.N.Mishra,
Addl.Standing Counsel
(Rly.Administration)

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C O R A M

HONOURABLE MR. K.P.ACHARYA, VICE-CHAIRMAN

AND

HONOURABLE MISS USHA SAVARA, MEMBER (ADMN)

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1. Whether the reporters of local newspapers may be allowed to see the judgment ? Yes
2. To be referred to reporters or not ? *yes*
3. Whether Their Lordships wish to see the fair copy of the judgment ? Yes

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JUDGMENT

MR.K.P.ACHARYA, VICE-CHAIRMAN, In this application under Section 19 of the Administrative Tribunals Act, 1985, the petitioners (two in number) pray to direct the opposite parties to issue an order of appointment in favour of the petitioner no.1 on the basis of rehabilitation scheme on compassionate ground.

2. Shortly stated this application has been filed by two persons viz. Rabindra Kumar Tripathy, son of Late Kasinath alias Gangadhar Tripathy and Smt. Nisamani Tripathy, widow of late Kasinath alias Gangadhar Tripathy. ~~Hence~~ Hence Smt. Tripathy is said to be the mother of Rabindra Kumar. The case of both the petitioners is that Kasinath alias Gangadhar Tripathy was a Class-IV employee under the South Eastern Railway and while working under OP Nos. 3 and 4, he died on 15.12.1976 in course of employment. Petitioner No.1 claims to be the adopted son of late Kasinath and petitioner no. 2 is the legally married wife of said Kasinath. At the time of death of Kasinath, petitioner no. 1 was a minor and passed the High School Certificate Examination in the year 1980 and attained majority in the year 1981 - his date of birth being 15.10.1963. Immediately after the petitioner attained majority a representation was submitted to OP No.3 to sympathetically consider the appointment of petitioner no.1 on compassionate ground. Since there was no ready response from the opposite parties, the representative of the Employees Association known as South Eastern Railway's Congress moved the authorities for due consideration of the representation of the petitioner and this was in the year 1983. As late as

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in the year 1986, the Chief Personnel Officer vide Annexure-2 requested the Zonal President, South Eastern Railway's Congress to ask the family of the petitioners to substantiate their case by documentary evidence regarding adoption of petitioner no.1 by Kasinath. According to the petitioners the deed of adoption even though filed, the application of the petitioners for appointment of petitioner no.1 on compassionate ground was rejected on a frivolous grounds. Hence this application has been filed with the aforesaid prayer.

3. In their counter the opposite parties maintain that though the Chief Personnel Officer had ordered to **process** the matter for appointment on compassionate ground subject to the condition that the petitioners should **convince** the authorities regarding the validity of adoption, but no adoption deed was filed and therefore being variance in regard to the name of the father of the petitioner no.1 **appointment on compassionate ground was not given to the** petitioner and hence the case being devoid of merit is liable to be dismissed.

4. We have heard Mr.H.M.Dhal, learned counsel for the petitioner and Mr.D.N.Mishra, learned Standing Counsel on the merits of the case.

5. From annexure-1 dated 2.6.1983, we find that since the representation of the petitioner no.1 was not disposed of by the competent authority on 2.6.1983, the General Secretary reminded the Divisional Railway Manager, South

Eastern Railway, Chakradharpur to finalise the matter. Vide Annexure-2 dated 18.6.1986 (which is a letter addressed to Shri P.K.Mishra, Zonal President of the South Eastern Railway Congress) the Chief Personnel Officer stated as follows:

" Since Shri Gangadhar Tripathy appears to sustained injury on duty which resulted in medical decategorisation, his family is normally eligible to seek appointment on compassionate grounds consequent on his voluntary retirement. However, it appears the appointment is being sought for the adopted son for which the officer is to be satisfied of the legal validity. You may, therefore, ask the family to produce the documentary evidence for the legal validity whereafter the case will be processed ".

Thereafter vide Annexure-4 dated 11.8.1986, the Chief Personnel Officer informed the Zonal President that since the deed of adoption executed by the employee during his life time has not been made available to the division by the party it has not been possible to process the case for employment. Vide Annexure-6, the Zonal Secretary informed the Divisional Railway Manager, Chakradharpur that the deed of adoption being filed on 3.3.1987 before Divisional Personnel Officer, Chakradharpur, the matter should be expedited. This was again repeated in Annexure-7 dated 26.8.1987. Several reminders to the above effect were given, but it did not yield any fruitful result and hence the petitioners filed this application.

6. From the pleadings of the parties it appears to us that the order for compassionate appointment has not been issued mainly on two grounds and they are as follows :

i) Deed of adoption not filed

ii) Discrepancy regarding the name of the alleged adopted father of the petitioner no. 1.

7. So far as non-filing of the deed of adoption is concerned, in several documents forming annexures to the application it is found that positive assertion has been made that deed of adoption has been filed before the Divisional Personnel Officer, Chakradharpur and this fact has been denied in the counter. Since this aspect involves oath against oath, it is difficult on our part to express any positive opinion, but we cannot but observe that deed of adoption not only validates the factum of adoption. Kasinath Tripathy alias Gangadhar Tripathy has sworn an affidavit on 2.7.1976 before the Executive Magistrate, Puri, stating that Rabindra Kumar Mishra is the natural born son of Brundaban Mishra and Rabindra was adopted by him(Kasinath) and his name was changed as Rabindra Kumar Tripathy since the date of adoption. This statement of Kasinath stands corroborated by the affidavit sworn by Brundaban Mishra, the natural father of Rabindra stating that giving and taking ceremony relating to adoption had taken place and he (Brundaban) and his wife gave Rabindra in adoption to Kasinath. The petitioner no.2 has also sworn an affidavit stating that the giving and taking ceremony had been performed. Both Nisamani (Petitioner No.2) and her husband Kasinath had accepted/taken Rabindra as their adopted son. Giving and taking ceremony is an essential feature in an adoption. There are

8. There are several judicial pronouncements in which

adoption has been declared as invalid in the absence of satisfactory proof relating to the giving and taking ceremony even though there is a deed of adoption. ~~But~~ ~~The~~ judgments are prior to the passing of Hindu Adoption Act. Admittedly Kasinath alias Brundaban is dead. In the case of Kidarnath vs. Mathumal reported in I.L.R. 40 Calcutta, 555, the ~~Privy~~ Council observed that a statement in the will of a deceased hindu widow that a certain person was her daughter's son was held to be conclusive evidence of this relationship when corroborated by other relatives and not contradicted by other reliable evidence. In the present case not only the affidavit of deceased Kasinath stands unimpeachably, corroborated by the affidavit sworn by the natural father Brundaban Mishra and the mother of the petitioner no. 1 viz. Smt. Nisamani, but the affidavits sworn by Kasinath alias Gangadhar has been acted upon by the authorities of Jaya Durga High School where petitioner no. 1 Rabindra Kumar was a student in Class-VIII. The Headmaster of the said high school in his certificate bearing no. 47 dated 6.9.1991 contained in Annexure-18 has stated that there is School Leaving Certificate issued by Gopinath M.E. School showed that Rabindra Kumar was the son of Brundaban Mishra. Kasinath alias Gangadhar Tripathy produced an affidavit dated 2.7.1976 wherein it was stated that Rabindrakumar has been taken in adoption by him (meaning Kasinath alias Gangadhar) from his natural father Brundaban Mishra. On the basis of such affidavit the title of Rabindra Kumar was recorded as Tripathy instead of Mishra. This affidavit

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dated 2.7.1976 was sworn at a time where there was no controversy at all regarding the relationship of Kasinath ~~with~~ alias Gangadhar/that the petitioner no.1 as adopted father and adopted son. There is also no evidence far less to speak of reliable evidence contradicting this aspect. The action of Kasinath alias Gangadhar goes a long way to conclusively indicate that he had recognised Rabindra Kumar as the adopted son which cannot at this stage be thrown into the winds. In the circumstances stated above, we have absolutely no ~~jota~~ of doubt in our mind to hold that petitioner no.1 is the adopted son of Kasinath Tripathy alias Gangadhar Tripathy who ~~had~~ sustained an injury during employment under the South Eastern Railway and since dead.

9. So far as the discrepancy in the name of the adopted father of the petitioner no.1 is concerned, the admitted case of the parties is that in the official records ~~the~~ name of Kasinath is mentioned as Gangadhar and the reason for change of such name has been ~~amply~~ and satisfactorily explained in the affidavit sworn by petitioner no.2 ~~that~~ when Gangadhar was aged 10 to 12 years, he was taken to Calcutta for giving him an employment and Gangadhar was left alone and while he was aimlessly walking near the ~~holxy~~ river ~~the~~ Ganga, some kind hearted person took him up and ~~fondly~~ called him as Gangadhar and thereafter to respect the wishes of that Kind hearted man, who had come to the rescue of Gangadhar, he changed his name as Gangadhar Tripathy as a mark of respect for that kind hearted person.

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Be that as it may, there is absolutely no evidence to contradict the position that Kasinath had an alias name as Gangadhar. Therefore we are of opinion that Gangadhar Tripathy is the same person as that of Kasinath Tripathy.

10. Since there is no other objection raised by the opposite parties for the compassionate appointment of the petitioner no.1 and having overruled the two objections raised by the departmental authorities, we feel that this is a fit case where the departmental authorities should give an appointment on compassionate grounds to the petitioner no.1 Shri Rabindra Kumar Tripathy even relaxing the age bar if any, because the age bar if any has occurred due to the delay caused by the departmental authorities in finally disposing of the matter. Needless to say that if one peruses the date of different correspondences made by different officers of the Railway Administration, it would be noticed ~~that~~ this matter has been allowed to move in a snail speed which is completely against the view expressed by the Hon'ble Supreme Court. Repeatedly in several cases and the latest being the case of Smt. Phoolwati vs. Union of India reported in AIR 1991 Supreme Court, 169, it has been held that matters of this nature should expeditiously disposed of. In the case of Susama Gowswamy vs. Union of India reported in AIR 1991 Supreme Court 986 it was observed by Their Lordships as follows :

"It can be stated unequivocally that in all claims for appointment on compassionate grounds, there should not be any delay in appointment. The performance of providing appointment on compassionate grounds is to mitigate the

the hardship due to death of the bread earner in the family. Such appointment, therefore be provided immediately to redeem the family in distress. It is improper to keep such a case pending for years. If there is no suitable post for appointment, supernumerary post should be created to accommodate the applicant.

(Emphasis is ours)

This observation of Their Lordships in the case of Susama Gowswamy was quoted with approval in the case of Smt. Phoolwati. (Supra)

11. We hope and trust that the departmental authorities would duly respect these observations of Their Lordships of the Supreme Court and without least delay (preferably within sixty days from the date of receipt of a copy of this judgment (appointment in favour of the petitioner No. 1 (Shri Rabindra Kumar Tripathy) be issued in respect of any suitable post commensurate with his educational qualification, even by creation of a supernumerary post.

12. Thus the application stands allowed leaving the parties to bear their own costs.

B. S. Sengupta
MEMBER (ADMINISTRATIVE)

15/7/92
VICE-CHAIRMAN

Central Administrative Tribunal
Cuttack Bench, Cuttack
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