

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO: 112 OF 1990

Date of decision: 27. 2. 92

Kamdev Behera Applicant

Versus

Union of India and others Respondents

For the applicant: M/s. U. N. Mishra,
H. K. Baliarsingh,
K. C. Pradhan,
Advocates.

For the Respondents: Mr. R. C. Rath, Addl. Standing Counsel
(Central).

C O R A M

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

J U D G M E N T

K. P. ACHARYA, V. C. In this application under section 19 of the Administrative Tribunals Act, 1985, the Petitioner prays for a direction to the Opposite Parties to give an appointment to the Petitioner on compassionate ground.

2. Shortly stated, the case of the Petitioner is that his adoptive father late Kumar Behera was working as Gangman under P.W.1, South Eastern Railway, Barang and while in service Kumar Behera expired on 17th February, 1980. The Petitioner prays for an appointment on

compassionate ground.

3. The prayer of the Petitioner forming subject matter of this application is resisted on the ground that the Petitioner is not the adopted son of the said Kumar Behera as no deed of adoption has ever been executed by the late Kumar Behera. Further case of the Opposite Parties is that the natural father of the Petitioner is also named as Kumar Behera belonging to the same village and taking advantage of the fact that the natural father of the Petitioner is also named as Kumar Behera, he is trying to boostup a false case being the adopted son of late Kumar Behera. Hence the application is liable to be dismissed.

4. I have heard Mr. U.N.Misra learned Counsæl for the Petitioner and Mr. R.C.Rath learned Additional Standing Counsel for the Railway Administration at length.

5. The initial objection raised by the Opposite Parties is that the present Petitioner Shri Kamdev Behera is not the adopted son of late Kumar Behera and no deed of adoption has been filed by the Petitioner to substantiate the case of adoption. Law is well settled that in order to prove a legal and valid adoption 'giving and taking' has to be proved and in absence of such proof deed of adoption could be of no avail. Instances are not rare to find that giving and taking ceremony superceeds a deed of adoption .In the present case, certificate has been

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obtained by the Petitioner from the Court of Sub-ordinate Judge, Bhubaneswar vide Misc. Case No.15/1984 forming subject matter of Annexure-7. This Succession Certificate was **obtained** by the present Petitioner for drawal of the Provident Fund amount, Death-cum-retirement Gratuity, Railway Employees Insurance Scheme and Leave Salary amounting to Rs. 19,500/-. In paragraph 5 of the Petition it has been mentioned that all accounts in this regard have been settled in favour of the Petitioner after filing of the necessary documents. In their counter at paragraph 8, the **Opposite Parties** admit the case of the Petitioner that the succession certificate in question was obtained by the Petitioner for the purpose of receiving the debts and securities to the extent of Rs. 19,500/- which has no bearing on the question of appointment of the Petitioner on compassionate ground. **Undoubtedly**, the succession certificate relates to the fact that the Petitioner has been made entitled to drawal of this amount being the adopted son of late Kumar Behera by virtue of the order passed by the **Competent Civil Court**. The case of the Petitioner is that on the basis of the Succession Certificate all dues have been received by him and this fact has not been denied in the counter-rather it appears to be admitted. Even though the succession certificate has no direct bearing on the question of appointment of the Petitioner on compassionate ground, ~~but~~ it could be

safely used as a corollary evidence for the purpose of coming to the conclusion that the Railway Authorities have recognized the present Petitioner as a legal heir of late Kumar Behera . Once having accepted this position the Railway Administration is estopped from pleading the fact that the Petitioner is now trying to take advantage of the fact that his natural father is also named as Kumar Behera. To add to all this one would find that in this Court, certified copy of a decree passed by the learned Munsif, Bhubaneswar in title Suit No. 74 of 1990(1) has been filed to indicate that the present Petitioner has been recognised as the son of late Kumar Behera and has been made entitled to some properties of late Kumar Behera by virtue of his sonship. Law is equally well settled that a decree passed by a Civil Court, has to be respected even by a criminal court. In view of the facts and circumstances stated above, I have no hesitation in my mind ^{to hold} that the Petitioner Kamdev Behera is the adopted son of late Kumara Behera. Law is also settled that an adopted son takes the same position as that of a natural born son.

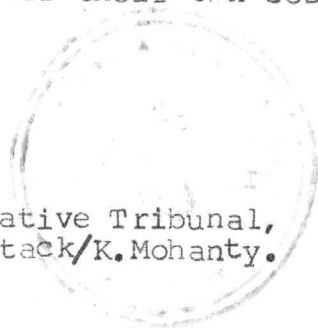
6. In the premises of the fact that the present petitioner Kamdev Behera is the son of late Kumara Behera for all purposes, the Administrative instructions for compassionate appointment apply in full force to the present Petitioner. In this connection a judgment of the Hon'ble Supreme Court reported in 1992

Vs. Union of India and others relying on the case of Sushma Gosain Vs. Union of India reported in AIR 1989 SC 1976 needs to be referred to. While quoting with approval the observations of Their Lordships in the case of Sushma Gosain Their Lordships were pleased to observe as follows:

"...It must be stated unequivocally that in all claims for appointment on compassionate grounds, there should not be any delay in appointment. The purpose of providing appointment on compassionate ground is to mitigate the hardship due to death of the bread earner in the family. Such appointment should, therefore, be provided immediately to redeem the family indistress. It is improper to keep such case pending for years. If there is no suitable post for appointment supernumerary post should be created to accommodate the applicant."

7. Relying on the observations of Their Lordships of the Hon'ble Supreme Court in both the cases, and having come to the finding that the Petitioner Kamdev Behera is the adopted son of late Kumara Behera I would direct that ~~the~~ appointment be given to the Petitioner on compassionate ground to a post for which he is found suitable within sixty days from the date of receipt of a copy of the judgment .

8. Thus, the applicant stands allowed leaving the parties to bear their own costs.



[Handwritten Signature]
27-2-92
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VICE-CHAIRMAN