

4
CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 355 OF 1995
Cuttack, this the 2nd day of May, 1997

Smt. Nalini Patnaik Applicant

Vrs.

Union of India and others Respondents

(FOR INSTRUCTIONS)

- 1) Whether it be referred to the Reporters or not? Yes.
- 2) Whether it be circulated to all the Benches of the Central Administrative Tribunal or not? NO.

Somnath S. Jy.
(S. SOM)
VICE-CHAIRMAN
2.5.97

(3)

CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 355 OF 1995
Cuttack, this the 2nd day of May, 1997

CORAM:

HONOURABLE SRI S.SOM, VICE-CHAIRMAN

Smt. Nalini Patnaik,
aged about 46 years,
s/o late Agadhu Charan Patnaik,
Village-Jaganathpur, PO-Jatni,
District-Khurda

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Applicant

-versus-

1. Union of India, represented through
General Manager, South Eastern Railway,
Garden Reach, Calcutta.

2. Divisional Railway Manager,
South Eastern Railway,
Khurda Road, Dist. Khurda.

3. Divisional Personnel Officer,
South Eastern Railway, Khurda Road,
District-Khurda

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Respondents

Advocate for applicant - Mr. D. P. Dhal Samant

Advocates for respondents - M/s B. Pal, CN Ghose &
S. K. Ojha.

O R D E R

S.SOM, VICE-CHAIRMAN

This is an application under Section 19 of the
Administrative Tribunals Act, 1985, filed by widow of late
Agadhu Charan Patnaik, who was working as a Khalasi in South
Eastern Railway. According to paragraph 4(b) of the application
Agadhu Charan Patnaik died on 8.9.1989 after working in the

*S.Som, VICE-CHAIRMAN
25.9.97*

Railways for 19 years. It is submitted by the applicant that she and her husband had adopted one Saroj Kumar Patnaik as their son on 26.3.1971. In Title Suit No.55 of 1991 filed by Saroj Kumar Patnaik against the present applicant, a finding was given that Saroj Kumar Patnaik is the adopted son of late Agadhu Charan Patnaik and the present applicant. It is further asserted in paragraph 4(c) of the application that immediately after death of her husband, the applicant represented to the departmental authorities to give compassionate appointment to her only son Saroj Kumar Patnik, but no step was taken. Accordingly, she has filed this application praying for a direction to the respondents to appoint Saroj Kumar Patnaik, the son of the applicant, to any suitable post on compassionate ground.

2. The respondents in their counter have contested the claim on the ground that it has not been proved that Saroj Kumar Patnaik has been validly adopted by the deceased Railways employee and the present applicant. The representation seeking compassionate appointment of Saroj Kumar Patnaik was considered by the respondents and on legal advice given by the Senior Law Officer, S.E.Railway, vide Annexure-R/5, it has been held that for reasons indicated therein the adoption cannot be taken to be legally valid.

*Jawwad Jm
2.5.97*

3. I have heard the learned lawyer for the applicant as also the learned Senior Counsel appearing on behalf of the respondents. It is strenuously urged by the learned lawyer for the applicant that the declaration issued in T.S.No.55 of 1991 (Annexure-A/1) is a judgment in rem and it is binding on the Railways authorities even though they are not parties in the Title Suit. I am

7

unable to accept the above proposition. The respondents were not made parties in the Title Suit and therefore, the decree/ declaration in the Title Suit could not be held to be binding on the respondents. A similar matter relating to date of birth came up for consideration of the Hon'ble Supreme Court in the case of Director of Technical Education and another v. K.Sitadevi(Smt) 1992 SCC (L&S) 78 and it would be profitable to briefly refer to the issue involved in that case. That was a matter for alteration of the date of birth and the respondent filed Original Suit in the Civil Court for alteration of her date of birth impleading the Andhra University as defendant and obtained a decree. Pursuant to the decree, the Andhra University issued a fresh Matriculation certificate to the respondent indicating her date of birth as decided according to the decree in the Original Suit. On the basis of this fresh Matriculation certificate, the respondent applied to the appropriate authority in the State for changing her date of birth in the service record. Such request having been rejected, she approached the Andhra Pradesh Administrative Tribunal which allowed her prayer. On appeal to the Hon'ble Supreme Court by the departmental authorities, it was held that the decree against the University is not binding on the State Government which was not made a party in the Original Suit. The decree can only be treated as a piece of evidence. It will be worthwhile extracting paragraph 3 from the above judgment of the Hon'ble Supreme Court:

*Jammalam Jm
2.S.91*

"3. It is not in dispute that in the suit the State of Andhra Pradesh was not impleaded and the only defendant was the Andhra University

which had granted the certificate. The claim of the respondent for the alteration of date of birth was based upon a municipal certificate regarding date of birth. Though, the suit was contested, the State of Andhra Pradesh not being a defendant, the decree was not accepted by the State. The matter would have been certainly very different if the decree was obtained in the presence of the State of Andhra Pradesh. Mr. Madhava Reddy is, therefore, justified in his submissions that the decree and the municipal certificate on which reliance was placed in the suit were only pieces of evidence having no binding effect on the dispute..."

In the present case, the respondents were not parties to the Original Suit No.55/91. Therefore, the declaration that Saroj Kumar Patnaik was the adopted son of the deceased Railways employee Agadhu Charan Patnaik and the present applicant is not binding on the respondents. It can only be taken as a piece of evidence to be considered along with other facts.

4. It seems that Saroj Kumar Patnaik is the natural born son of Khirod Chandra Das, the brother of the present applicant. In the order passed in T.S.No.55/91 it has been noted that the adoption took place on 26.3.1971. In an affidavit sworn on 22.8.1989 by Agadhu Charan Patnaik, the deceased Railways employee and the husband of the applicant, which is at Annexure-R/4 to the counter, it has been mentioned by Agadhu Charan Patnaik that the actual date of birth of Saroj Kumar Patnaik is 7.3.1971. The adoption, according to the mother, having taken place on 26.3.1971, it appears that Saroj Kumar Patnaik was allegedly adopted when he was 19 days old. It has been further asserted by the mother, the present applicant, that after adoption he was being treated as the son by her husband and herself, and Saroj Kumar Patnaik used to reside with her husband and herself.

*Original Date
25.7.71*

If the above is true, there is no earthly reason as to why the name of the boy was shown as Saroj Kumar Das and his father's name as Khirod Chandra Das when he came of school going age and was admitted in the school. In the School Admission Register, according to the affidavit referred to earlier, the name of the boy was shown as Saroj Kumar Das and his father's name as Khirod Chandra Das. This casts a doubt on the story of adoption. The whole story is unbelievable also because of the fact that this affidavit has been sworn by Agadhu Charan Patnaik on 22.8.1989 which was only eighteen days before his death on 8.9.1989 and ~~XXXX~~ in the affidavit, both in the averment portion as also in the certificate given by the Magistrate before whom the affidavit was sworn, the age of Agadhu Charan Patnaik has been mentioned as about seventy years. Obviously at the age of 70 years he could not have been in the employment of the Railways. It is further noted that the Title Suit has been filed only after the death of the deceased Railways employee and it has been mentioned in the order that because of some quarrel between Saroj Kumar Patnaik and the present applicant, the latter threatened to take another boy in adoption and that is why, the Title Suit was filed by Saroj Kumar Patnaik against his allegedly adoptive mother. From all the above, it appears to me that the story of adoption has been put forward as a plea by the present applicant and Saroj Kumar Patnaik in order to get the benefit of compassionate appointment.

5. In the result, therefore, the application is held to be without any merit and is rejected. No costs.

Somnath Som.
(S. SOM) 25.97
VICE-CHAIRMAN