

**CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK**

ORIGINAL APPLICATION NO.58 OF 1998
Cuttack this the 16th day of March, 2000

Smt. Kamala Moharana & another

Applicants

-Versus-

Union of India & Others

Respondents

FOR INSTRUCTIONS

1. Whether it be referred to reporters or not ? *Yes*.
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not ? *No*.

Somnath Som
SOMNATH SOM
VICE-CHAIRMAN
16/3/2000

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NO. 58 OF 1998
Cuttack this the 16th day of March, 2000

CORAM:

THE HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN

1. Smt. Kamala Moharana aged about 47 years, Wife of Late
Sikhabra (S/o. Sadhu), Ex-Blacksmith Under Bridge
Inspector (South)/S.E.Railway/Khurda Road under the
administrative control of Sr.Divl.
Engineer/(Co-ordination)/S.E.Railway/Khurda Road and
DRM/KUR

Particulars of the deceased Railway employee:

Sikhabra S/o. Sadhu, ExEBS under
BRT (South)/S.E.Railway/Khurda Road

Date of Birth: 10.2.1940, Date of Appointment:
24.2.1966 as CPC(Gr.'D') Date of regularisation:
23.10.1973 in Gr.'D', Confirmation in service:
1.3.1974 in Gr.'D': Date of Death: 4.4.1990

Address of Applicants:

Village: niora; PO: Palaspur, Via: Janla, Distt:
Khurda (Orissa)

2. Sri Bidyadhar Moharana aged about 31 years, Adopted
son of Smt. Kamala Moharana

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Applicants

By the Advocates : Mr. S.C. Samantray

-Versus-

1. Union of India represented through the General
Manager, South Eastern Railway, Garden Reach,
Calcutta-43 (WB)

2. Chief Personnel Officer, S.E.Railway, Garden Reach,
Calcutta-43 (West Bengal)

3. The Divisional Railway Manager, S.E.Railway, Khurda
Road, PO: Jatni, Dist: Khurda (Orissa), PTN 752 050

4. The Senior Divl. Personnel Officer, S.E.Railway,
Khurda Road, PO: Jatni, Dist: Khurda (Orissa) PTN
752050

5. The Senior Personnel Officer (R/P)/S.E.Railway,
Garden Reach, Calcutta-43 (West Bengal)

6. The Bridge Inspector (South)/S.E.Railway, Khurda Road,
PO: Jatni, Dist: Khurda (Orissa) PTN 752050

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Respondents

By the Advocates : Mr. R.C. Rath
Addl. Standing Counsel

MR. SOMNATH SOM, VICE-CHAIRMAN: In this application under Section 19 of the Administrative Tribunals Act, 1985, the two applicants who are widow and adopted son, respectively of Sikhar Moharana have prayed for a direction to respondents to give compassionate appointment to applicant No.2, viz., Bidyadhar Moharana, commensurating with his educational qualifications in a Group C Post of Asstt. Station Master or Ticket Collector or Sr.Clerk. They have also prayed for quashing the order dated 10.6.1993 at Annexure-A/2 rejecting the prayer for giving compassionate appointment to applicant No.2

2. The case of the petitioners is that husband of petitioner No.1 was working as Blacksmith under Bridge Inspector(S)/S.E.Railway, Khurda Road. He was appointed on 24.2.1966 and was regularised in a Group D post on 23.10.1973 and was confirmed on 1.3.1974. He passed away on 4.4.1990. The death certificate is at Annexure-A/1 to the application. After the death of the husband of applicant No.1 was unable to maintain the family and therefore approached the respondents for providing appointment to her son/near relative for rehabilitation of the family. It is stated that as at the time of death of her husband she was 42 years old, she was unable to take up any employment under the railways because of her age. Her natural daughters and son were minors and therefore she nominated her near-relative, applicant No.2, Shri Bidyadhar Moharana for employment assistance. Applicant No.2 was also adopted by the family as a son. It is further stated that without considering the case appropriately, the prayer for compassionate appointment

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was rejected in order dated 10.6.1993 at Annexure-A/2. The applicants have stated that according to Establishment Serial 2/80 and 63/90 of Railways where there is no son or daughter and/or they are minor and the widow cannot take up the employment, she can nominate a near-relative on a clear certificate that person so nominated will act as bread earner of the family and such near relative can be provided with compassionate appointment. These Establishment Serials are at Annexure-A/3 to the application. Respondent No.4 has however rejected the claim stating that in the Legal Heir Certificate issued by Tahasildar, Bhubaneswar there was no mention about the adopted son and therefore, the case of compassionate appointment to applicant no.2 cannot be entertained. Coming to know of the rejection order the applicant No.1 approached the departmental authorities stating that even ignoring Adoption Deed and the Legal Heir Certificate compassionate appointment can be provided to a near-relative provided a clear certificate is given by the widow or dependents of the ex employee. In this case applicant No.1 has give such certificate vide Annexure-A/5 stating that her nephew Shri Bidyadhar Moharana, applicant No.2 will act a bread earner of the family and he may be provided with compassionate appointment. But respondents, without following the instructions have rejected her claim. In the context of the above facts, the applicants have come up in this petition with the prayers referred to earlier.

3. Respondents in their counter have opposed the prayer of the applicants. They have stated that Sikhar, a

Blacksmith working under Bridge Inspector(s), S.F.Railway, Khurda Road expired on 4.4.1990. Applicant No.1, widow sought employment assistance in favour of applicant no.2 claiming him to be her adopted son in her application dated 7.11.1992 at Annexure-R/1. Respondents have stated that another person Shri Bhagaban Moharana claiming to be the first adopted son of late Sekhar had filed an application on 7.11.1992 claiming compassionate appointment. The application filed by Shri Bhagaban Moharana is annexed as Annexure-R/2 to the counter. Respondents have further stated that railway employee at the time of his death left behind his widow, four unmarried daughters and a son. In the Legal Heir Certificate given by Tahasildar, Bhubaneswar, name of applicant No.2 does not find place. Applicant No.1 has also filed an affidavit which shows that at the time of death of the railway employee his daughters were aged 11, 9 and 3 years respectively and the natural born son was aged about 2 years. Respondents have further stated that applicant No.1 filed a Registered Adoption Deed dated 16.10.1992 stating that he has adopted applicant No.2. This Adoption Deed is at Annexure-R/5 and from this it is seen that alleged adoption took place when there was a natural born son of the applicant no.1. Therefore it has been submitted by the respondents that the Adoption Deed was created only for the purpose of claiming compassionate appointment in favour of applicant no.2. The competent authority, after detailed inquiry rejected the prayer. Respondents have further stated that applicant No.1 submitted another declaration claiming applicant no.2, the nephew of the deceased railway

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employee to be the near relative and claimed compassionate appointment in his favour. From this it is seen that the applicants have taken contradictory stand and all those documents have been manufactured jat the instance of applicant No.2 for getting compassionate appointment. Respondents have further stated that provision for giving compassionate appointment to near relative has been deleted by the Ministry of Personnel vide circular dated 9.12.1993(Annexure-R/6 to the counter). Therefore, the claim of compassionate appointment to applicant No.2 on the ground of he being near relative is without any basis. They have also stated that as there are two claimants for compassionate appointment both claimed to be the adopted son of applicant No.1 the matter was enquired into and it was found that Shri Bhagaban Moharana was initially adopted on 28.8.1991 by the applicant No.1 vide Adoption Deed dated 28.8.1991. Later on the said adoption was cancelled on 18.8.1992. Respondents have stated that in view of contradictory claims and the documents furnished by applicant no.1 which cannot be relied on, prayer for compassionate appointment has been rightly rejected. On these grounds respondents have opposed the prayer of the applicant.

4. I have heard Shri S.C.Smanatray, learned counsel for the applicants and Shri R.C.Rath, learned Addl. Standing Counsel appearing for the respondents and also perused the records.

5. Scheme for compassionate appointment comes into force when a Govt. servant dies in harness leaving his

family in indigent condition. In such a case the widow or any of the children can apply for compassionate appointment. Instructions also provide that if the children of the deceased employee are minor then they ~~are~~ can also apply for compassionate appointment immediately on attaining majority. In this case from the affidavit filed by applicant No.1 it appears that at the time of death of the husband of applicant No.1 his eldest daughter was aged about 11 years and the widow was aged about 40 years old. The applicant No.1 has stated that as she was aged 42 years she was unable to take up any employment in the railways because of the age. In any case, age relaxation is given where the person selected for compassionate appointment is overaged. Therefore, the widow could have come up for compassionate appointment. But she has been praying for compassionate appointment to applicant No.2. She had originally claimed compassionate appointment to applicant no.2. I am of the view that railway authorities have been perfectly justified in rejecting the plea of adoption. This is because, another person, viz., Shri Bhagaban Moharana filed a petition dated 7.11.1992 stating that applicant No.1 had adopted him vide Registered Adoption Deed dated 28.8.1991 and after execution of the Adoption Deed, at the instance of some other mischievous persons in the village, she again adopted the present applicant No.2 as her son. She has also stated that applicant No.1 had applied to the railway authorities for providing compassionate appointment to Shri Bhagaban Moharana as her adopted son and later on she has come up to provide compassionate appointment to Shri Bidyadhar Moharana as

her second adopted son. On going through the Deed of Adoption given by applicant no.1 to the railway authorities it is clear that this Adoption Deed is a manufactured document prepared only for the purpose of strengthening the claim of applicant No.2. This is because, in Para-2 of the Adoption it has been mentioned that adoption of Bidyadhar Moharana takes place on 1st January, 1979 in presence of relatives, local gentlemen and well-wishers and giving and taking of the applicant No.2 as in adoption ~~takes~~ ^{took} place. This contention prima facie is unbelievable because it is stated that that the adoption of applicant no.2 took place on 1st day of January, 1979. In the affidavit filed by the applicant No.1 it has been mentioned that her eldest daughter was born on 19.1.1979, that is 18 days after the so called adoption. Obviously, therefore, at the time of adoption, applicant No.1 was in the family-way and she had no means to know whether she would be blessed with a son or daughter. In the Adoption Deed an averment has been made that in spite of even 10 years of the marriage, applicant No.1 had no issue and being hopeless of getting any issue, the couple adopted the nephew as adopted son. This adoption was executed when the eldest daughter of applicant No.1 was born on 19.1.1979 and obviously the couple could have not without any hope of getting an issue while adopting applicant No.2 on 16.10.1992. Railway authorities are therefore perfectly justified in rejecting the claim of adoption. It has also to be noted that the applicant No.1 herself had earlier represented the case of Bhagaban Moharana as her adopted son and Bhagaban Moharana has also stated in his petition that

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another Adoption Deed in his favour was executed in August, 1991.

It has been submitted by the learned counsel for the petitioner that even ignoring the plea of Adoption applicant No.2 is entitled to be considered for compassionate appointment being a near relative of the applicant No.1, being the nephew of the deceased employee. Learned counsel for the petitioners had referred to relevant Establishment Serial, according to which when the deceased employee has left behind no children or the children are minor and the widow cannot take up the employment, a near relative can be given compassionate appointment by a certificate from the widow which is at Annexure-5 and it is argued by the learned counsel that railway authorities should have honoured this certificate and provided compassionate appointment in favour of applicant No.2. It has been submitted by the learned Addl. Standing Counsel that provision for getting compassionate appointment to near relative was deleted vide circular dated 9.12.1993 of the Ministry of Personnel and therefore, this plea is not tenable. It has been submitted by the learned counsel for the petitioners that this circular deleting the provision for giving compassionate appointment to near relative was circulated by the Railway Ministry only on 13.12.1995 and therefore, the case of the applicant being an earlier date should be considered for compassionate appointment. In this case death has no doubt taken place in April, 1990 and deletion of the provision for compassionate appointment to near relative came in December, 1993. But even then I do not find that this is a case where the applicant no.2

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is entitled to get compassionate appointment. This is because, applicant No.2 for the purpose of compassionate appointment, as earlier noted is to rehabilitate the family. In this case widow applicant No.1 has taken contradictory stand from time to time and from the pleadings of the parties it is clear that this is being done only for providing a job to applicant No.2. It has also to be noted that the prayer for compassionate appointment to applicant No.2 was rejected in order dated 10.6.1993 and the applicants have come up in this petition in the year 1998 praying for quashing this order of rejection passed in the year 1993. This prayer is therefore completely barred by limitation.

In view of the above discussion I hold that the applicants have not been able to make out a case for any of the relief prayed for and the application is therefore, held to be without any merit and the same is rejected, but without any order as to costs.

(SOMNATH SOM)
VICE-CHAIRMAN

B.K.SAHOO