

O.A.No.132/2001

ORDER DATED: 15.01.03.

Applicant claims to be the adopted son of T. Gopal Reddy, who expired in harness prematurely, while working as a Khalasi Helper in the Railways on 23-2-1988. After the death of the father of the Applicant, being the adopted son of the Applicant, applied on 11.7.1989 along with all documentation for appointment/employment on compassionate ground. On receipt of the said application for employment on compassionate ground, the Divisional Personnel Officer, Khurda vide its letter dated 5-2-1990 asked the Applicant to produce the original adoption deed alongwith an attested copy for further examination in the matter. On 27.4.1992 the Respondents/Railways released ~~Rs. 42,569/- towards P. F. amount, DCRG etc. of the deceased~~ in favour of the Applicant. It is the further case of the Applicant that after getting decree of his sonship from the Learned Civil Judge (Jr. Division), Puri on 12.3.1996 he brought the same to the notice of the Railways/Respondents on 25.3.1996 (Annexure-5). On receipt of the same the Respondents vide letter dated 7.9.1998 also sought for opinion of the Law Officer, S. E. Railway Garden Reach, Kolkata (Annexure-10) and under Annexure-7 dated 23.4.1999 the Law Officer wrote a letter to the DRM(P), S. E. Railway, Khurda Road to take into cognizance the order of the Learned Civil Judge (Jr. Division) Puri as no appeal is pending against the said order. Thereafter, under Annexure-8

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dated 15-2-2001 the request for compassionate appointment having been rejected, he has filed this Original Application under section 19 of the Administrative Tribunals Act,1985 with the prayer for quashing the said impugned order under Annexure-8 dated 15.2.2001, and for a direction to provide the applicant employment/appointment on compassionate ground.

Respondents have filed their counter interalia stating that since the Railway was not a party in the Title Suit filed before the Learned Civil Judge(Jr.Dn.) Puri, the said decree is not binding on them. As no legal valid adoption deed has been provided by the Applicant to establish that he is the legally adopted son as per Hindu adoption Act, the OA is not maintainable. Since there is no liability in the family and the widowed/divorced daughter is not coming as dependents, no appointment can be provided to the Applicant on compassionate ground. Lastly it was averred by the Respondents that in view of the decisions of the Hon'ble Apex Court of India in the case of Umesh Kumar Nagpal vrs. State of Harayana and Others compassionate appointment cannot be claimed as a matter of right.

Having heard Mr.A.Kanungo, learned counsel for the Applicant and Mr.S.Roy, learned Additional Standing counsel

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for the Railways, appearing for the Respondents, I have perused the pleadings of the parties.

On perusal of the order of rejection of the case of the Applicant, under Annexure-8 dated 15.2.2001 it reveals that no ground/reason has been assigned in the said order of rejection. The said order of rejection is a non-speaking one which speaks as under:-

"Reference above, it is informed that, the instant case has been examined in detail and put up to the competent authority for decision.

It has been decided that, there does not exist any reasonable ground for offering employment assistance in this instant case.

Hence, the compassionate appointment as requested vide reference above is regretted".

But while filing the counter, the Respondents have come out with very many pleas to substantiate their stand of rejection of the grievance of the Applicant. The Hon'ble Apex Court in the case of COMMISSIONER OF POLICE, BOMBAY VRS. GORDHANDAS BHANJI reported in AIR 439) 1952 SC 16 observed as follows:-

"We are clear that public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind; or what he intended to do. Public orders made by the public authorities are meant to have public effect and are intended to affect the actings and conduct of those to whom they are addressed".

and must be construed objectively with reference to the language used in the order itself*.

In the case of MOHINDER SINGH HILL VRS. CHIEF ELECTION COMMISSIONER (reported in AIR 1978 SC 851), Their Lordships of the Hon'ble Supreme Court have been pleased to observe as follows:-

"When a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to court on account of a challenge, get validated by additional grounds".

In view of the above, since no reason has been given in order of rejection under Annexure-8 dated 15.2.2001 the same is hereby quashed.

On perusal of the counter, it is revealed that the indigent/distress condition of the family has not been has not been considered/taken into account by the Respondents while rejecting the case of the Applicant, as the Applicant has filed the Income Certificate issued by the Competent Revenue Authority showing the annual income of the family is Rs.6,500/-. With regard to the Title Suit No.113/94, it is noted that since the same was filed by the Applicant with regard to the sonship, there was no necessity to make the Railways as a party.

This is also corroborated in view of the opinion expressed by the Law Officer of the Railways under Annexure-7 dated 28.4.1999.

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In view of the discussions made above, the matter is remitted back to the Respondent No.1 (General Manager, South Eastern Railway, Garden Reach, Kolkata-43) who has been empowered to condone the delay, if any vide Circular dated 21-11-1994 to reconsider the case of the Applicant for providing employment/appointment, on compassionate ground, within a period of 120 days from the date of receipt of a copy of this order.

In the result, therefore, this Original Application is disposed of as aforesaid leaving the parties to bear their own costs.

Applicant/Counsel for the Applicant is directed to furnish a consolidated brief (containing the Original Application, counter, rejoinder, additional affidavit and all documents filed in this Tribunal) alongwith postal requisites in the Registry within 15 days, which shall be forwarded/sent to the Respondent No.1 by the Registry alongwith copies of this order for the needful. Free copies of this order be also given to learned counsel for both sides.

Manoranjan Mohanty
(MANORANJAN MOHANTY)
MEMBER (JUDICIAL)

15/01/2003

KNM/CM.

Copy of order dt. 15.1.03
a/w original brief issued
to all the despatchs. by Regd./A.D.
posts. The same copy issued to the
counsel for both side.

20/1/03

S.C.

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