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O.A. NO. 973 of 2002

NOTES OF THE REGISTRY

ORDERS OF THE TRIBUNAL

Oral ORDER DATED: 04.08.2004.

Heard Mr. R. K. Samantsinghar, Learned Counsel appearing for the Applicant and Mr. B. K. Bal, Learned Additional Standing Counsel appearing for the Railways/ Respondents and perused the materials placed on record.

2. Since the Railways refused to provide an employment assistance to the Applicant (on the plea that he is not to be the adopted son of the deceased/ retired Railway employee) on compassionate ground, the Applicant has preferred this Original Application under section 19 of the Administrative Tribunals Act, 1985 seeking a direction to the Railways/ Respondents to provide him an employment on compassionate grounds.

3. Shortly stated 'Bhalu' @ 'Balluva Ghadai' , S/o. Jambhuva who was engaged as a Sweeper under the IOW/HQ/KUR of South Eastern Railway/E. Co. Railways since 24-12-1966 was confirmed in his Railway Services on 2-12-1979. After ^a prolonged treatment in the Railway Hospital, he was declared invalid for Railway Services (on medical ground) during July, 1996; for which he was granted premature retirement during said July, 1996. During March, 1999, said Bhalu @ Balluva Ghadai died leaving behind his widow and adopted son Khetrabasi Ghadai (Applicant). It appears, said Bhalu @ Balluva had no issue; for which he adopted the Applicant

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as his son. A dead was registered during 1968 recognising the adoption. Applicant also prosecuted his studies in South Eastern Railways Mixed High School located at Khurda Road and, in the School records, Balu @ Balluva Ghadai was shown to be the father of the Applicant. On his premature retirement, Bhalu @ Balluva Ghadai represented to his Authorities (in Railways) for providing an employment to the Applicant (Khetrabasi Ghadai). Before submitting representation under Annexure-R/1 dated 20-11-1996, the said Bhalu @ Balluva Ghadai sworn an affidavit under Annexure-A/5 dated 08-08-1996 ; wherein he explained the different pronunciation/ spelling of his own name and also disclosed that Neta Dei to be his wife and Khetrabasi Ghadai/Applicant to be his son. Applicant also submitted another representation on 15-12-1996 seeking an employment Assistance. He produced the School Leaving Certificate from South Eastern Railways Mixed High School to show that he has read upto Class-VIII. By a communication under Annexure-A/7 dated 14-02-1997, the Railway Authorities called upon the father of the Applicant (Bhalu/Balluva) to cause production of english ^{version} of the dead acknowledging adoption and to remove certain discrepancies; which was immediately done on 25-02-1997. Under Annexure-11 dated 03-04-1998, the prayer for an employment assistance to the Applicant was turned down on the ground that the dead of adoption was not a valid one. On 15-04-1998, under Annexure-A/12 further

representation was placed before the Authorities and, as it appears from Annexure-R/3 dated 04-06-1998, Annexure-R/4 dated 18-11-1998, Annexure-R/5 dated 24-2-1999 and Annexure-R/6 dated 10-03-1999, the Respondents did not accept the adoption of the Applicant as the son of Bhalu/Balluva; simply because the natural parents of the Applicant did not sign the said registered deed.

It appears further from the materials placed on record ^{when} that the Applicant failed to earn his livelihood to maintain the adoptee parents, there was unusual relationship between the adoptee parents and the adopted son; for which the Applicant had to approach the Civil Court for obtaining a declaration about his title as the adopted son of Bhalu/Balluva ^{and} of Neta Dei and the judgment of the learned Civil Judge, Junior Division, Bhubaneswar as available at Annexure-A/13 dated 4th May, 1999 goes to show that a competent Civil Court declared the Applicant (Khetrabasi Ghadai) to be the adopted son of Bhalu/Balluva and his wife Neta Dei. It is seen that during the pendency of the aforesaid title suit (in the Civil Court at Bhubaneswar) Bhalu/Balluva, the retired Railway employee, died on 22-3-1999. In the said premises, the Applicant and his mother Neta Dei/Ghadai again represented to the Authorities for employment Assistance; which was again rejected under Annexure-A/15 dated 17.4.2000.

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Being aggrieved by the action of the Respondents, as aforesaid, the Applicant has filed this Original Application.

4. By filing a counter the Respondents have not only submitted their case pertaining to non acceptance of adoption but have also raised a point that the Applicant is not eligible to hold any Gr.D post as he has not passed class VIII.

5. It is not in dispute that the Applicant Khetrabasi Ghadai was prosecuting his studies in South Eastern Railway Mixed High School at Khurda Road, and, in the School records, ex-Railway employee Bhalu/Balluva was shown to be his father. In absence of any dispute, it was not necessary for any body/any authority to search for any further contemporaneous documents like deed of adoption or any deed acknowledging adoption. In absence of any dispute, the Railway Authorities ought to have acted on the BLC that was produced under Annexure-3. Law is well settled that every adoption is not required to be executed under registered deed; nor a deed acknowledging adoption is sine quanon for adoption. Since the Applicant and his adoptive father were members of SC/aboriginal, prescribed procedure of giving and taking as envisaged under the Hindu law were also not required to be followed. Merely because the natural parents of the Applicant did not sign the deed acknowledging the adoption, adoption in question can just not to be thrown to the winds. Thus, on the face of

of the SLC produced under Annexure-3 from S.G. Railways Mixed High School at Khurda Road, the Applicant Khetrabasi Ghadai was/is to be accepted as the adopted son/son of the ex-Railway employee namely Bhalu/Balluva Ghadai.

6. ~~By filing an affidavit,~~ Then comes to the question of discrepancies in the name of Ex-Railway employee in various documents. In the society to which the Applicant and ex-Railway employee belong, the pronunciation of Bhalu is colloquially called as Balluva and while taking him to Railway services way back during 1966, his oriya colloquial name has been recorded in English alphabet as Bhallua and in absence of any objection from any quarters, there was no reason for the Railway authorities not to accept the affidavit; wherein it has been explained that Bhallua and Balluva Ghadai is the same person as named in the railway records; *which should be accepted.*

7. As regards the objection relating to educational qualification of the applicant, it is to be noted that the relevant rules as stated by the Respondents providing class VIII as the minimum educational qualification for Gr.D services came into force in the year 1998, 1999; whereas the cause of action for providing employment assistance to the applicant arose during July, 1996; when his father was allowed to go ^{on} premature retirement; on medical invalidation ground. It is the settled position of law as

Propounded by the Hon'ble Supreme Court of India in the case of Y.V. RANGAIAH AND OTHERS vs. J. SRENIVASA RAO AND OTHERS (AIR 1983 SC 852) and in the case of P. MAHENDRAN AND OTHERS vs. STATE OF KARNATAKA AND OTHERS (AIR 1990 SC 405) that amended rules will have prospective effect (unless it has specifically made retrospective implication) and, therefore, the cause of action ^{having} ~~being~~ arisen in this case prior to ^{Coming into force of} the amended rules, the case of the applicant will have to be considered as per the unamended rules. Viewed from this angle, the new amended rules having come into force w.e.f. 1998-1999 and, in the instant case, the cause of action having arisen in the year 1996, the case of the applicant is bound to be governed by the rules as prevalent during 1996. It is not the case of the Respondents/Railways that during 1996, when the cause of action for providing compassionate appointment in favour of the applicant herein arose, the minimum educational qualification for recruitment to Gr. ~~or~~ 'D' post was class-VIII pass and, therefore, inference is to be drawn to the effect that the applicant on the basis of his educational attainment i.e. reading upto Class VIII was eligible for being considered for ^a compassionate appointment under the recruitment ^{Rules} that was prevalent during the year 1996 and, on that score, the plea of the Respondents that the applicant does not have the educational qualification is held to be without any legs to stand.

8. Having regard to what has been discussed above, there are no alternative but to quash the impugned orders under Annexure-11 and under Annexure-15 of the OA, which ~~is~~ accordingly ordered

9. In the result, this Original Application succeeds. The Respondents are hereby directed to process the application/candidature of the applicant for providing him an employment on compassionate ground, in the railways, commensurate with his educational qualification ^{and by} keeping in view of the observations made above ^{and} by accepting him as the son of the ex-railway employee named ^{ie.} Bhallu/Balluva Ghadai, husband of Neta Dei. The Respondents, in any case, should ^{all} complete ~~the~~ exercises within a period of 120 days (from the date of receipt of a copy of this order) for the purpose of providing compassionate appointment in favour of the Applicant. No costs.

Copy of order dt. 24/8/04
 issued to the Court
 for both side.
 S.O.

By
 29/11/04

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(Signature)
 04.08.04
 (M. R. MOHANTY)
 Member (Judicial)