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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

O.A.No.949 of 2012
Cuttack, this the 22nd day of July, 2014


J.Sika & Anr Applicants

-Versus-

Union of India & Others Respondents

FOR INSTRUCTIONS

1. Whether it be referred to the reporters or not?
2. Whether it be referred to PB for circulation?


(A.K.PATNAIK)
Member (Judicial)

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

Original Application No. 949 of 2012
Cuttack this the 22nd day of July, 2014

CORAM
THE HON'BLE MR. A.K. PATNAIK, MEMBER (JUDL.)

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1. Jugaraj Sika, aged about 30 years, S/o. Late Rastu Sika of Village-Sirekela, Po/Ps. Titilagarh, Dist. Bolangir.
2. Smt. Luchuna Sika, aged about 56 years, W/o. Late Rastu Sika of village-Sirokela, Po/Ps. Titilagarh, Dist. Bolangir.

...Applicants
(Advocates: M/s. B.S.Tripathy, M.K.Rath, J.Pati, Mrs. M.Bhagat)

VERSUS

1. Union of India represented through the General Manager, East Coast Railway, Rail Vihar, At/Po. Chandraekharpur, Bhubaneswar, Dist. Khurda.
2. The Senior Divisional Personnel Officer, East Coast Railway, Waltair Railway Divison, Andhra Pradesh.

... Respondents

(Advocate: Ms. S.K.Nayak)

ORDER

A.K. PATNAIK, MEMBER (JUDICIAL):

As I find from the records after the death of Rastu Sika, the case of the applicant No.1 was considered by the Respondents and he was offered with temporary appointment in a Gr. D post in the Railway on compassionate ground. He was also medically screened and found fit for such appointment. Before he could be



appointed to the post, a complaint was received by the Respondents that the applicant No.1 is not the son of late Rastu Sika. On enquiry it was found that the applicant No.1 is the nephew (brother's son) of the deceased. Hence, vide letter dated 22.07.2011 the Railway administration advised the widow of the deceased to produce the adoption deed. The widow also produced the adoption deed. The said adoption deed having been found not a valid one, the Respondents regretted to provide any such appointment to the applicant No.1. Being aggrieved, the applicant filed the instant OA with prayer to quash the letter of rejection dated 07.06.2012 and to direct the Respondents to consider the case of the Applicant No.1 for appointment on compassionate ground. The letter of rejection dated 07.06.2012 reads as under:

- “1. The deed is not a registered one;
2. The non-registered stamp paper is said to be executed on 27.04.1983. Whereas, the date appearing on the reversed side of stamp paper is different;
3. The date of birth of the candidate as per the school certificate is 13.07.1982. Whereas, the stamp paper was issued on 30.03.1982 i.e. prior to the birth of the proposed candidate which raised doubt about the authenticity of the adoption deed and appears to be false and fabricated.
4. As there is no valid adoption deed the case is regretted.”



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2. Respondents have filed their counter in which besides reiterating the stand taken in the letter of rejection, by placing reliance on the decision of the Hon'ble Apex Court in the case of *Abhyuda Sanstha Vrs UOI* reported in 2011 (4) Supreme 148 (paragraph 16) have submitted that as the applicant has not approached in clean hand he is not entitled to the relief claimed in this OA. Accordingly, the Respondents have prayed for dismissal of this OA.

3. Heard Mr. B.S.Tripathy Learned Counsel for the Applicant and Mr.S.K.Nayak, Learned panel counsel of the Railway and perused the records.

4. Mr.Tripathy's contention is that the deed of adoption was executed way back in 1983. Although the same was not registered but it is a fact that the applicant has been brought up by the deceased railway employee. The deceased has also nominated the applicant as one of the dependent family members and in the privilege pass and PTO issued by the Railway the name of the applicant has also been shown as his son. The applicant has also been shown as the son of the deceased in the legal heir certificate



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issued by the Additional Tahasildar which has also been fortified by the certificate issued by the Sarpancha of the Gramapanchayat. As such, alleging that denial of appointment is without due application of mind Learned Counsel for the Applicant has reiterated the prayer made in this OA.

Per contra, Mr.Nayak by reiterating the stand taken in the counter has submitted that compassionate appointment is provided to one of the family members of the deceased to overcome the financial difficulties caused to them after the death of the bread earner of the family. Therefore, one must prove that he is the member of the family. In the instant case since the son ship is in dispute which can be decided by the appropriate Court and this Tribunal being not the competent Court to decide on this issue, this OA is not maintainable. Mr.Nayak also contended that the legal heir certificate issued by the Sarpancha or inclusion of the name in the PTO cannot be a ground to come to the conclusion that the applicant is the son of the deceased. Since on enquiry it was revealed that the applicant is not the legally adopted son of the deceased, the widow was asked to submit the adoption deed. Though adoption deed was submitted as on examination



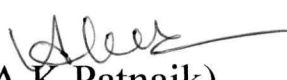
genuineness of which was doubted, the Respondents denied the appointment to the applicant which cannot be faulted with. Hence, Mr.Nayak has prayed for dismissal of this OA.

5. According to the pleadings, the Applicant No.1 has passed Class VIII. His date of birth has been recorded in the School certificate as "13.07.1982". The non-registered stamp paper (deed of son ship) is said to have been executed on 27.04.1983. In other words, at the time of adoption the applicant was about one year old . Therefore, if it is taken that the applicant was adopted by the deceased when he was just one year old, then the deceased must have been shown as the father of the applicant No.1 in the School record. Neither the Applicant nor the Respondents has produced the school certificate though relevant for taking a decision in the matter. Therefore, in my considered view that if the applicant No.1 has been shown as the son of the deceased in the School Leaving Certificate then by taking into consideration the Legal heir certificate vis-à-vis the PTO showing the name of the applicant as the son of the deceased, denial of employment on compassionate ground in favour of the applicant doubting the adoption deed cannot be held to be justified/legal. I am unable to

take any concrete decision due to non-production of the School Leaving Certificate by any of the parties. Therefore, I direct the Respondent No.2 to verify the matter with reference to the discussions made above and on verification if it is found that in the school record the name of the father of applicant No.1 has been shown as Rastu Sika then allow him to join in the post for which he was selected within a period of sixty days from the date of receipt of copy of this order. If not intimate the same to the applicant within the aforesaid period.

6. On the other hand, if in the school record the name of the father of the applicant No.1 has been shown other than the deceased then I do not find any reason to interfere in the order of rejection as the Respondents are within their right to reject when they doubted the son ship due to discrepancies in the adoption deed produced by the applicant No.2 which this Tribunal lacks competency to decide.

7. With the aforesaid observation and direction this OA stands disposed of. There shall be no order as to costs.


(A.K. Patnaik)
Member (Judicial)