

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

No.O.A.738 of 1996

Present : Hon'ble Mr.D.Purkayastha, Judicial Member.

GOPAL CHANDRA CHOWDHURY

... Applicant

Vs.

1. Union of India through the General Manager,
Eastern Railway, 17, N.S.Road, Calcutta-1.
2. The General Manager, Eastern Railway,
17, N.S.Road, Calcutta-1.
3. The Chief Personnel Officer,
Eastern Railway,
17, N.S.Road,
Calcutta-1.
4. The Divisional Railway Manager,
Eastern Railway, Howrah.
5. The Sr.Divisional Personnel Officer,
Eastern Railway, Howrah.
6. The Chief Inspector of Works,
Eastern Railway,
Azimgunj,
District - Murshidabad.

... Respondents

For the applicant : Mr.S.K.Dutta, counsel.
Mr.T.K.Biswas, counsel.

For the respondents: Mr.C.Samadder, counsel.

Heard on : 8.5.1997

Judgment on : 8.5.1997

J U D G M E N T

Being aggrieved by the ^{order} denial of appointment on compassionate ground of the applicant issued by the Railway Board vide order dated 3rd April, 1996 (annexure 'A/5' to the application), the applicant has approached this Tribunal for having direction upon the respondents to cancel or set aside the impugned order dated 3.4.1996 and for a direction upon the respondents to consider the case of the applicant afresh, as per rules, treating him as an adopted son of late Raju Methar from October, 1969 and to pass further order or orders as this Tribunal thinks fit and proper.

2. The case of the applicant is that he was the adopted son of the deceased Raju Methar who died in harness in the month of January, 1980. According to the applicant, he was adopted by Raju Methar as his son in the year 1969 and after the death of Raju Methar in January, 1980, he applied for appointment on compassionate ground. Thereafter, he filed one case before the civil court for a declaration that he is the legally adopted son of Raju Methar and he obtained a decree from the civil court accepting the applicant, Gopal Chandra Choudhury, as the adopted son of Raju Methar w.e.f. 1969 and the judgment of the civil court is annexed as annexure 'A' to the application. The applicant also submitted all relevant records to the authority, but ultimately the authority turned down the prayer of the applicant stating that appointment on compassionate ground is admissible only when the legal adoption process has been completed and had become valid well before the death of the ex-employee. In the instant case, the ex-employee had died on 9.1.1980 and the order of the court in the declaratory suit filed by the applicant was obtained only on 25.11.1987. Therefore, his case was not covered by the extant instructions. Feeling aggrieved by this order, he has filed this case.

3. The case has been resisted by the respondents by filing a reply denying the claim of the applicant. It is stated that Raju Methar, ex-Safaiwala/CIOU/Azinganj, expired on 9.1.1980 at the age of about 53 years 11 months. In the settlement form for payment of provident fund money, one Smt. Rasmi, wife of Raju Methar, aged 60 years and 1 month in January, 1980, had declared that she and one Shri Gopal Chowdhury, adopted son, are the dependents and family members of the deceased railway employee. In support of such declaration, no adoption deed from the court of law was submitted. Both of them were advised to submit valid documents i.e. registered deed as proof of adoption, but they failed to submit the same. It has further been stated in the reply that one Shri Nanda Kumar Chowdhury, real father of

Shri Gopal Chowdhury, had made an affidavit on 5.6.1980 stating that Gopal Chandra Chowdhury was adopted by Raju Methar as his son in October, 1969. But since there is no legal force in the said affidavit, the said document could not be accepted as a legal document of adoption. It is also stated that the applicant was also asked to submit application alongwith the required documents for scrutiny through the prescribed form for thorough enquiry in respect of his claim for compassionate appointment. He was also asked to submit the adoption deed which could not be produced by him. As in terms of extant order, appointment on compassionate ground is admissible when the legal adoption process has been completed and has become valid well before the death of the ex-employee, but in the instant case, the ex-employee died on 9.1.1980 and the order of the court in the declaratory suit filed by Gopal Chandra Chowdhury was obtained only on 25.11.1987. Thereby, the respondents contend, that the applicant is not entitled to get any relief, as claimed in the application.

4. Ld.counsel, Mr.S.K.Dutta, appearing on behalf of the applicant, submits that the reasons given in the order dated 3rd April, 1996 (annexure 'A/5' to the application), is not tenable in law for refusal of the prayer of the applicant for appointment on compassionate ground. He submits that in the decree of the civil suit (annexure 'A' to the application), Union of India was represented by the General Manager of Eastern Railway. So the decree is binding upon the respondents, the General Manager of the Eastern Railway on facts and law. Mr.Dutta further submits that in the judgment and decree of the civil court, the adoption of the applicant by Late Raju Methar was accepted treating the adoption w.e.f. October, 1969. That fact cannot be disputed in this Tribunal by the respondents. Thereby the applicant being the adopted son of Late Raju Methar, is entitled to get appointment on compassionate ground. Mr.Dutta thus submits that the authorities should be directed to reconsider the case of the applicant treating him the adopted son of Late Raju Methar.

5. Ld.counsel, Mr.C.Samadder, appearing on behalf of the

Railway-respondents submits that the application itself is not maintainable in view of the fact that the widow of the deceased Raju Methar is legally entitled to get compassionate appointment in case it is proved by her that she has been suffering from loss of earning due to death of the bread-earner of the family, Raju Methar. The second preference, according to Mr. Samadder, will go to the adopted son. He also submits that no application has been made by the widow of Raju Methar requesting the authorities to appoint the applicant on compassionate ground due to the death of her husband and the widow is also not the co-applicant in this case. So Mr. Samadder submits that the application is liable to be dismissed for being devoid of merit and want of necessary party.

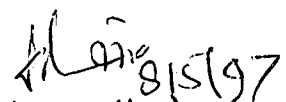
6. I have gone through the record and the submissions made by the ld. counsel for both the parties. In this case, the main dispute arose whether the applicant was entitled to claim appointment as the adopted son of Raju Methar or not. This question was dissolved by the decree of the civil court holding that the applicant was duly adopted by Raju Methar and he was the adopted son of Raju Methar w.s.f. October, 1969. So we cannot go beyond the decree passed by the civil court until it is proved that the decree was obtained by the applicant in collusion or by exercising fraud. The Union of India is represented in that suit by the General Manager of the Eastern Railway. Thereby that decree is binding upon him also and the General Manager cannot evade the legal effect of the decree, if any, as it was decided by the civil court in accordance with the law. So I am of the view that in view of the judgment and decree of the civil court, Raju Methar adopted the applicant as his son in the month of October, 1969. This fact is further revealed from the written statement filed by the respondents in this case, where it is stated that one Smt. Rasmi, age 60 years, who is the wife of Raju Methar, had declared that the applicant, Gopal Chandra Chowdhury, was the adopted son of Raju Methar. In support of such declaration, Gopal Chandra Chowdhury, applied for appointment on

compassionate ground. Mr.Samadder, however, submits that after a lapse of 16 years the ground for appointment on compassionate ground is no longer in existence.

8. I have considered the submission of Mr.C.Samadder on the question of maintainability as well as on the question of existence of grounds for making appointment on compassionate ground, but since it is found that the impugned order dated 3rd April, 1995 (annexure 'A/5' to the application), is not tenable in view of the judgment and decree passed by the civil court and the applicant was duly accepted as the adopted son of Raju Methar. When the decree of civil court is passed, then question of submission of valid documents in support of adoption does not arise at all. Since the applicant has confined his relief regarding fresh consideration of his application for appointment on compassionate ground and since it is found that reasons given in the order dated 3rd April, 1995 (annexure 'A/5' to the application), ^{are} is not tenable, therefore, I direct the respondents to re-consider the application of the applicant afresh in view of the circulars issued by the Railway Board and as per rule, for the purpose of appointment on compassionate ground treating the applicant as adopted son of the applicant.

9. Accordingly, I direct the respondents to reconsider the application of the applicant, as per rules, within three months from the date of communication of this order and to communicate the reasoned decision to the applicant accordingly.

10. Accordingly, the application is allowed, awarding no costs.


(D.Purkayastha)
Judicial Member