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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR

O.A. No. 220/1996
T.A. No.

198

DATE OF DECISION 12.3.1997

Suresh

Petitioner

Mr. M.L. Kala,

Advocate for the Petitioner(s)

Versus

Union of India and Others

Respondent

Mr. S.S. Vyas,

Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. RATAN PRAKASH, MEMBER (JUDL.)

The Hon'ble Mr. _____

- ✓ 1. Whether Reporters of local papers may be allowed to see the Judgement ? *Y*
- ✓ 2. To be referred to the Reporter or not ? *Y*
- ✓ 3. Whether their Lordships wish to see the fair copy of the Judgement ? *Y*
- 4. Whether it needs to be circulated to other Benches of the Tribunal ? *Y*

Ratan Prakash
(RATAN PRAKASH)
MEMBER (JUDL.)

CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR.

O.A. No. : 220/1996

Date of Order : 12.3.1997.

Suresh adopted son of late Shri Mangilal by caste Joshi, aged 21 years R/O Bagar Chowk, Opposite - Police Chowki ; Jodhpur (Raj.)

Applicant.

Versus

1. The Union of India through General Manager, Northern Railway, H.Qrs. Office, Baroda House, New Delhi.
2. The Divisional Railway manager, N. Railway, Jodhpur Division, Jodhpur.
3. The Divisional Personnel Officer, N. Railway, D.R.M. Office, Jodhpur Division ; Jodhpur.

Respondents.

Mr. M.L. Kala, Counsel for the applicant.

Mr. S.S. Vyas, Counsel for respondents No. 1 to 3.

* * *

CORAM :

Hon'ble Mr. Ratan Prakash, Judicial Member.

BY THE COURT :

The applicant herein, Shri Suresh has approached this Tribunal under Section 19 of the Administrative Tribunals Act, 1985 to direct the respondents to give him appointment on compassionate grounds on the post of Class IV servant from the date of his application with a further prayer to quash and set aside the letter dated 7.9.1995 (Annexure A/1) denying him the aforesaid appointment.

2. The facts relevant for disposal of this application as stated by the applicant in brief are that he is the adopted son of the deceased Railway servant Shri Mangilal who died on 16.8.1994 while in service. It is the case of the applicant that late Shri Mangilal adopted the applicant during his life time through a written Adoption Deed dated 12.7.1994. He made the application on 17.10.1994 to seek employment on compassionate ground in place of his late adoptive father Shri Mangilal.

Consequent upon his application made for seeking compassionate appointment, he also made available to the respondents all information including a Succession Certificate as at Annexure A/3 issued by the District and Sessions Judge, Jodhpur. This request made by the applicant, having been refused by the respondents vide their letter dated 7.9.1995 (Annexure A/1), he has approached this Tribunal to claim the aforesaid relief.

3. The respondents have opposed this application by filing a detailed reply to which no rejoinder has been filed. The stand of the respondents has been that the applicant is not the adopted son of the deceased Railway employee Shri Mangilal and that the Deed of Adoption (Annexure A/10) submitted by the applicant does not confer upon him the status of an adopted son. It has also been averred that there is a discrepancy in the date of birth disclosed by the applicant in the School leaving certificate and affidavit filed by him and the age which has been shown in the Adoption Deed. It has further been averred on behalf of the respondents that consequent upon the Succession Certificate obtained by the applicant, he has been paid an amount of Rs. 49,579/- as retiral benefits of deceased employee Shri Mangilal. In these circumstances, it cannot be said that the applicant claiming to be the adopted son of the deceased employee is in indigent circumstance and financial distress. Another stand of the respondents has been that claiming assets of the deceased Railway employee on the basis of the Succession Certificate is one thing but it does not automatically entitle the applicant to obtain compassionate appointment in Government service after the death of his adoptive father. It has further been urged that the respondents having found that the requisite conditions for claiming compassionate appointment even in the case of an adopted son having not been complied with, the application deserves rejection.

4. I have heard the learned counsel for the applicant, Shri M.L. Kala and Shri S.S. Vyas for the respondents at great length and have examined the record in detail besides the authorities

relied upon by both the sides.

5. It is undisputed between the parties that appointment on compassionate ground is available to adopted sons and daughters of the deceased Railway employees. The detailed consolidated instructions in this respect are incorporated in Master Circular No. 16 of 1990 dated 12.12.1990. It is necessary to reproduce at this stage the relevant portion of Clause III (b) which deals with adopted sons and daughters. It reads as under :-

(b) ADOPTED SONS AND ADOPTED DAUGHTERS :

- (i) There is satisfactory proof of adoption valid legally;
- (ii) The adoption is legally recognised under the personal law governing the Railway servant;
- (iii) the legal adoption process has been completed and has become valid before the date of death/medical decategorisation/medical incapacitation (as the case may be) of the ex-employee.

(NO. E(NG)II/86/RC-I/1 policy dated 20.5.1988).

On the basis of this provision, it has been vehemently argued by the learned counsel for the respondents that the applicant has not satisfactorily proved his adoption by the deceased Railway employee Shri Mangilal and it is not legally valid. This argument is based on the plea that since in the Adoption Deed the age of the applicant has been shown as 17 years and 9 months whereas as per Section 10 of the Hindu Adoption and Maintenance Act, 1956, one of the mandatory conditions is this that the person to be adopted should not have completed the age of 15 years unless there is a custom or usage applicable to the party which permits persons who have completed age of 15 years ; being taken in adoption. To this, the argument of the learned counsel for the applicant is that even though there has been a mistake by oversight in the age disclosed in the adoption deed yet there being a custom in the family of the applicant to adopt even a person above the age of 15 years, the argument of respondents is not tenable. At this stage, it is suffice to mention that there having been in existence the Succession Certificate issued by a

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Competent Court which has been issued on the basis of the Adoption Deed (Annexure A/10) ; this Tribunal would not go into the veracity or validity of the Adoption Deed. This being a matter of civil right to be agitated before Competent Courts of civil jurisdiction.

6. Be that as it may, the only point for determination in this application is whether the applicant being the adopted son of the deceased Railway employee Shri Mangilal can as of right claim appointment on compassionate grounds in place of his deceased father being an employee of the respondent-Railways? The respondents have refused to give appointment to the applicant on compassionate ground on the basis that the Adoption Deed which has been made a basis to seek such an appointment is not legally valid. There being mistakes with regard to the age disclosed in it ; which does not tally with the date of birth given in the School leaving certificate submitted by the applicant.

7. As reproduced above, before extending appointment on compassionate ground to an adopted son of a deceased Railway employee, 3 conditions have to be satisfied which are incorporated in Clause III (b) of the Consolidated Guidelines issued on the subject of appointment on compassionate ground. The first condition is; there is satisfactory proof of adoption valid legally. The respondents are of the view that there is no satisfactory proof of valid adoption of the applicant. In this regard, the learned counsel for the applicant placed reliance not only on the adoption deed (Annexure A/10) but also on the order of the District and Sessions Judge dated 5 Jan., 1996 (Annexure A/2) granting him also the Succession Certificate issued on its basis on 2.5.1996 (Annexure A/3). As observed above, this is not the forum to go into the question of the validity or legality of this Succession Certificate. However, the fact remains that there has been a discrepancy in the age disclosed in the Adoption Deed (Annexure A/10) and the date of birth of the applicant disclosed as 26.6.1973 in School leaving certificate (Annexure A/11) as

also in the affidavit (Annexure A/6) dated 3.8.1995 filed by the applicant in this OA. It appears that the respondents have made this the basis of rejection of the prayer of the applicant to seek compassionate appointment on the said discrepancy.

8. This is a settled position that compassionate appointment cannot be claimed as of right. Claiming assets of a deceased person on the strength of a Succession Certificate issued by a Competent Court ; does not ipso facto entitle the ward of a deceased Government employee to obtain appointment on compassionate grounds. This is what the applicant is trying to achieve. Even in the Consolidated Guidelines issued by the respondent-Railways i.e. the Railway Board on the above subject, it has been made clear that in the circumstances detailed thereunder; appointments on compassionate ground may be (emphasis supplied) given. Besides this, state of the statutory provision in the Railways, the other aspect which has to be looked into in the matter of giving compassionate appointment is about the financial state of the remaining family members of the deceased employee at the time of his death. The applicant's adoptive father died on 16.8.1994. The respondents on the strength of the Succession Certificate produced by the applicant to the respondent-Railways have made a payment of Rs. 49,579/- as retiral benefits of late Shri Mangilal. Not only this, it is significant to note that in the application made by the applicant to seek compassionate appointment as at Annexure A/5, the main ground on the basis of which the applicant appears to be seeking compassionate appointment is to pay off the debts which late Shri Mangilal has taken during his life time for the treatment of his wife. Moreover, the law on the aspect of extending appointment on compassionate ground has been succinctly laid down by Hon'ble the Supreme Court in the case of Umesh Kumar Nagpal Vs. State of Haryana and Others 1994(4) SCC (L&S) 930. In the aforesaid judgement Hon'ble the Supreme Court has laid down that :-

"The whole object of granting compassionate employment is

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thus to enable the family to tide over the sudden crisis. The object is not to give a member of such family a post much less a post for post held by the deceased. What is further, mere death of an employee in harness does not entitle his family to such source of livelihood. The Government or the public authority concerned has to examine the financial condition of the family of the deceased, and it is only if it is satisfied, that but for the provision of employment, the family will not be able to meet the crisis that a job is to be offered to the eligible member of the family."

It is, thus, abundantly clear that not only a claim for compassionate appointment has to be in accordance with the rules, regulations or administrative instructions applicable but the concerned department has also to take into consideration the financial condition of the family of the deceased. In the instant case, the facts which have come out from the pleadings of the parties are that the applicant has been adopted merely one month before the death of the deceased Railway employee. Except the applicant who is claiming himself as an adopted son, there is no other member in the family of the deceased Railway employee. The applicant has also been paid an amount of Rs. 49,579/- as retiral benefits of late Shri Mangilal, the deceased Railway employee. In view of this, it cannot be said that family of the deceased Railway employee was or has been in indigent state of affairs or was in any financial distress at the time or after the death of the deceased employee.

9. In view of settled position of law ; facts available in this application ; and there being specific guidelines in the Railways on the aspect of extending compassionate appointment to the wards of the deceased Railway employees ; the claim made by the applicant cannot succeed.

10. Consequently, the issue raised in this OA is answered in negative and the OA being without any substance is hereby rejected. No costs.

Ratan Prakash

(RATAN PRAKASH)
MEMBER (JUDL.)

Part II and III destroyed
in my presence on 20/3/83
under the supervision of
section officer () as per
order dated 14/3/83
Section officer (Record)

① 6b
21/3/83

② YB
18/3
per S.S.U-103.

③ 6b.

④ P.S. ②