

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR

Date of order : 21.05.1997

O.A. NO. 247/1996

Arjun Ram S/o Shri Pabu Ram, by caste-Jat, R/o Vill. Deswal, Teh. Merta, Dist. Nagaur, father of the applicant was posted at PWI, Samdari as a Graded Gangman.

..... Applicant
Vs.

1. Union of India through Secretary of Railway Board, New Delhi.
2. Divisional Railway Manager, Northern Railway, Jodhpur.

Mr. K. L. Soni) - Advocate, for the applicant.
Mr. P. S. Bhati)

Mr. S. S. Vyas - Advocate, for the respondents.

COURT

THE HON'BLE MR. A. K. MISRA, JUDICIAL MEMBER

BY THE COURT

The applicant has filed this OA for compassionate appointment, with the prayer that the respondents department may be directed to consider the appointment of the applicant as per his eligibility, claiming himself to be the adopted son of deceased Pabu Ram.

2. The applicant has alleged in his application that he was adopted by the deceased Pabu Ram on 21.7.93, who was a Railway servant and died on 24.7.1993. The applicant moved an application before the District Judge for Succession Certificate for claiming pensionary benefits of the deceased Pabu Ram and was granted Succession Certificate by the competent court on 13.11.94. On the basis of the Succession Certificate

3m

the respondents have made payments of the pensionary benefits of Shri Pabu Ram to the applicant. It is further alleged by the applicant that he had claimed compassionate appointment after the death of his adoptive father but the respondents department dis-
that allowed the same stating his adoption by Shri Pabu Ram was doubtful and not valid. Hence this O.A.

3. The respondents have filed their reply in which they have admitted that Pabu Ram died while in harness but have stated that the applicant cannot be appointed on compassionate ground because the factum of his adoption by the deceased Shri Pabu Ram, is doubtful. The applicant was not dependent on the deceased. The Deed of adoption does not inspire any confidence and is not a legally valid deed. The applicant is not entitled to compassionate appointment. The O.A. deserves to be rejected.

4. I have heard the learned counsel for the parties and gone through the record.

5. The learned counsel for the applicant has argued that applicant having been adopted by Late Shri Pabu Ram and having been granted Succession Certificate in respect of pensionary benefits of the deceased, is entitled to compassionate appointment as per the scheme of the Railways. However, in reply this position is disputed by the learned counsel for respondents.

6. I have considered the rival arguments on this point. As per the Circular of the Railway Board dated 20.5.88, adopted son or daughter can be

considered for appointment on compassionate ground provided following three conditions are fulfilled :-

- "i) There is satisfactory proof of adoption valid legality ;
- 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 deategorisation / medical incapacitation (as the case may be) of the ex.employee."

7. In this case, two important facts are required to be noticed. Pabu Ram died on 24.7.93. The applicant was alleged to have been adopted by a deed dated 21.7.93. The adoption of applicant few days ~~back~~ before the death of Shri Pabu Ram creates doubt in the matter. Simply because pensionary benefits were given to the applicant on the basis of Succession Certificate, it does not prove that he was validly adopted son of the deceased. The order of the learned District Judge, Merta, is in favour of three persons i.e. the present applicant Shri Arjun Ram and two real daughters of the deceased. It has been held by the learned Judge that the applicants are entitled to receive from the Railways the G.P.R. and D.C.R.G. amount. This Certificate is not in favour of the applicant exclusively. Therefore, it cannot be said that treating the applicant as adopted son of the deceased, Succession Certificate was granted to him alone.

8. In the instant case, the applicant has alleged that an Adoption Deed (Annex.A-2) was executed which is a sufficient proof of adoption. But in my

opinion, this argument is not helpful to the applicant. In Hindu Adoption and Maintenance Act, 1956 (for short "the Act"), provisions regulating the adoption have been laid down. Section 6 of the Act narrates requisites of a valid adoption, Section 7 narrates capacity for a male Hindu to take in adoption. Section 9 of the said Act speaks about persons capable of giving in adoptions. Section 10 narrates persons who may be adopted and Other conditions for a valid adoption has been laid down in Section 11. Keeping in view these requisites and requirements of a valid adoption as provided in law, the matter in controversy is required to be examined.

9. Section 6 of the Act says no adoption shall be valid unless (i) the person adopting has the capacity, and also the right, to take in adoption ; (ii) the person giving in adoption has the capacity to do so ; (iii) the person adopted is capable of being taken in adoption ; and (iv) the adoption is made in compliance with the other conditions mentioned in this Chapter. Here, it becomes necessary to examine whether the adoptive father was capable of adopting the applicant. At the cost of repetition, I may say that adoption having taken place merely three days before the death of Shri Pabu Ram creates enough doubt ^{about} The physical and mental condition of the deceased in respect of taking the applicant in adoption. Section 7 says, any male Hindu who is of sound mind has the capacity to take a son in adoption. There is no mention of sound state of mind

of Pabu Ram in the adoption deed. This strengthens the inference about the doubtful nature of the adoption.

10. Section 9(1) says no person except the father or mother or the guardian of a child shall have the capacity to give the child in adoption and Sub Section (2) says that subject to the provisions of (Sub Sections (3) & (4), the father, if alive, shall alone have the right to give in adoption, but such right shall not be exercised save with the consent of the mother unless the mother has completely and finally renounced the world or has ceased to be a Hindu or has been declared by a Court of competent jurisdiction to be of unsound mind.

11. Keeping above two conditions in view, if the adoption deed is examined, then it would be clear that there is no mention of natural father giving the son i.e. the applicant in adoption to Shri Pabu Ram. There is also no mention in the deed that mother of the applicant was agreeable to this adoption. Therefore, it cannot be said that applicant was given in adoption to Shri Pabu Ram by his natural father with the consent of the natural mother of the applicant. Therefore, the adoption of the applicant can not be termed as legal and valid.

12. Section 10 of the Act says no person shall be capable of being taken in adoption unless the following conditions are fulfilled namely :-

- "(i) he or she is a Hindu ;
- (ii) he or she has not already been adopted ;
- (iii) he or she has not been married, unless there is a custom or usage applicable to the parties which permits persons who are married being taken in adoption ;
- (iv) he or she has not completed the age of fifteen years, unless there is a custom or usage applicable to the parties which permits persons who have completed the age of fifteen years being taken in adoption."

The applicant in the OA has stated his age as 20 years and the OA was presented in the Tribunal in July 1996. The adoption is alleged to have taken place in July 1994. Thus, the applicant was 18 years of age at the time of adoption and in any case was more than 15 years of age. A person, who is more than 15 years of age, cannot be legally adopted, unless the custom or usage permit. In the instant case, no such custom or usage have been mentioned in the adoption deed nor any such custom or usage has been pleaded in the O.A., therefore, the applicant could not have been legally adopted by the deceased Shri Pabu Rām.

13. In view of the above discussion, I am of the opinion that grant of Succession Certificate in favour of the applicant, who was co-applicant with the real daughters of the deceased, confers no right on the applicant. WIR 1996 Raj 180, cited by the learned counsel for applicant does not help the applicant in the instant case. The rule propounded in this case cannot be applied because of difference of facts. In the cited case, applicant had filed a



Jm

Civil Suit pleading himself to be an adopted son of the deceased and prayed for grant of decree for pensionary benefits of the deceased. In that case, a will of the deceased also came to be produced in the court in which the applicant was described as adopted son. After the detailed inquiry in the suit, a decree in favour of the applicant was granted in respect of pensionary benefits of the deceased. In view of the specific declaratory decree of the civil court, it was held by the Hon'ble High Court that applicant be provided with a suitable employment. Thus, the facts and circumstances of that case are absolutely different than the case in hand. Therefore, the said ruling does not help the applicant.

14. In AIR 1991 286, Smt. Chandrani Bai Vs. Pradeep Kumar, it has been held that "As regards facts of adoption though it is true that absence of a registered document creates a suspicious circumstance but that is not sufficient to reject the same when cogent and reliable evidence is adduced by the adoptee".

In the instant case, there is no registered adoption deed but it is also not necessary that there should always be a registered adoption deed. What is necessary is that adoption should be free from suspicion. In the instant case, looking to the adoption deed and other related facts, adoption cannot be treated to be free from doubt.

15. Even if for argument sake, the adoption deed is held to be genuine and adoption of the applicant

W

.3.

as per law, even then, the applicant has not been able to make-out a case of compassionate appointment. The deceased has adopted the applicant barely four days before his death. Thus, strictly speaking, he can not be termed as dependant of Pabu Ram. The deceased has two daughters as is clear from order of the District Judge (Annex.A-4). There is no mention in the application that the applicant is maintaining the daughters as an adopted son and he will be under an obligation to lookafter them till they are married. There is also no mention of facts relating to financial hardship, sources of Income and utter financial incapacity to maintain and subsists, therefore, the compassionate appointment cannot be ordered to be considered and made merely for asking and on the ground that the applicant is an adopted son of the deceased and his family member and dependent. There may still be much harderer cases pending consideration before the concerned authorities for compassionate appointment.

16. In (1994) 27 ATC 537, the Hon'ble Supreme Court has held that "object of compassionate appointment is to enable the penurious family of the deceased employee to tide over the sudden financial crises and not to provide employment. Mere death of an employee does not entitle his family to compassionate appointment. The authority concerned must consider as to whether the family of the deceased employee is unable to meet the financial crises resulting from the employee's death".

3m

...9



17. Keeping in view the rule laid down by the Hon'ble Supreme Court and discussion made above, it is difficult to hold that the applicant is entitled to be considered for compassionate appointment in the instant case.

18. In view of the above discussion, the O.A. deserves to be dismissed and is hereby dismissed with no order as to costs.

My
(A.K.MISRA)
Judicial Member

MENSA

1. ~~Kan~~ 30/5/97

2. S.S.T 3/6

3. lib.

Part II and III destroyed
in my presence on 22/5/93
under the supervision of
section officer () as per
order dated 17/5/93

Section officer (Record)