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CENTRAL ADMINISTRATIVE TRIBUNAL,
JODHPUR BENCH, JODHPUR


O.A. NO. 230/2002

DATE OF ORDER 27.09.2002

Hari Singh s/o Late Shri Kishan Singh, By Caste Rajput,
r/o Nai Sabji Mandi, Pungal Road, BIKANER. (Presently
applicant is not in service).

...APPLICANT.

V E R S U S

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1. Union of India through
General Manager, Northern Railway,
Baroda House,
New Delhi.
 2. Divisional Personnel Officer,
Northern Railway,
BIKANER.
 3. Divisional Railway Manager,
Northern Railway,
Bikaner.

...RESPONDENTS..

Mr. Vinay Jain : Counsel for the applicant.

CORAM:

HON'BLE MR. GOPAL SINGH, ADMINISTRATIVE MEMBER.
HON'BLE MR. J.K. KAUSHIK, JUDICIAL MEMBER.

O R D E R

PER MR. J.K. KAUSHIK, JUDICIAL MEMBER

Shri Hari Singh has filed this Original Application
under Section 19 of the Administrative Tribunals Act, 1985.

and has prayed that the respondents may be directed to consider the appointment of the applicant on compassionate grounds on any suitable post as per his qualification.

2. The factual matrix of the case as narrated in this Original Application are that the applicant is the son of late Shri Kishan Singh. Late Shri Kishan Singh was employed on the post of HSF-II C&M, SOG in the respondents-department and expired on 29.01.1998 while in service. Late Shri Kishan Singh did not get married and adopted the applicant who was Nephew of said late Shri Kishan Singh. The adoption deed was executed on 05.06.1987 (Annexure A/2).

3. The further case of the applicant is that he was fully dependent on late Shri Kishan Singh at the time of his death. An application was moved on 03.03.1998 to the respondent - department for seeking appointment on compassionate ground on suitable post. A succession certificate dated 12.11.1999 has also been submitted which would further fortify that he is duly adopted son of late Shri Kishan Singh. The applicant further submitted more applications/reminders. His case was also taken up through Divisional Secretary of the trade union to the Divisional Railway Manager, Northern Railway, Bikaner but there has been absolutely no response in the matter. Finally, a notice for demand of justice was got served upon the respondents through his counsel vide letter dated 25.07.2002 but of no vail.

4. The Original Application has been filed on number of grounds namely: (i) as per the scheme for compassionate appointment one family member is required to be given

appointment in place of the employee who died while in Hon'ble service. (ii) the/Supreme Court as well as the Hon'ble Rajasthan High Court in catena of judgements have held that one member of the deceased employee should be appointed as per rules, in case employee died during the service but no steps have been taken in his case. (iii) as per the Scheme and purpose of compassionate appointment there should not be any delay in appointment. The appointment should be provided immediately so as to meet the hardship due to death of bread earner in the family and no reason for denying the appointment are forthcoming. (iv) every-time assurances given for considering the case but his case has not been considered. He has submitted the application for appointment well in time and also obtained succession certificate from the District Court, Bikaner but his case has not been considered so far.

5. The case was listed for admission and we have heard Shri Vinay Jain, learned counsel for the applicant at length and have also perused the records of this case. For the reasons set out in succeeding paras, we are inclined to decide this Original Application at the admission stage.

6. Shri Vinay Jain, learned counsel for the applicant has strenuously argued that the applicant is the legally adopted son of the deceased Government servant, late Shri Kishan Singh and has submitted the application well in time for grant of compassionate appointment. It has been submitted that he is the only dependent family member of late Shri Kishan Singh and as per the rules he is entitled for compassionate appointment in place of his Father. However

despite our specific query the learned counsel for the applicant was not in a position to show the rule on which he wanted to rely.

7. We have inquired the age of the applicant in verification it has been mentioned at page 12, in 1987 as per the adoption deed which is shown as 19 years which would mean that at present his age would be 34 years. However, we could gather from one of the representation dated 2.8.2000 (Annexure A/5) where ~~his age~~ date of birth of the applicant as mentioned 10.07.1971. In this way his age comes out to be 31 years on the date of representation of the Original Application. Now as per the scheme for compassionate appointment of Appendix 2 Swamy's Pension Compilation at page 297, the definition of the dependent family member is as under :-

"NOTE I. - "Dependent Family Member" means:

- (a) spouse; or
- (b) son (including adopted son); or
- (c) daughter (including adopted daughter); or
- (d) brother or sister in the case of unmarried Government servant or member of the Armed Forces referred to in (A) or (B) of this para,

who was wholly dependent on the Government servant/member of the Armed Forces at the time of his death in harness or retirement on medical grounds, as the case may be."

8. The further question arises as to who could be included in the family of the Government servant for the pensionary purposes. As per Rule 54 sub-rule 14 (b), the family means as under :-

- "(b) "family" in relation to a Government servant means
- (i) wife in the case of a male Government servant or husband in the case of a female Government servant.

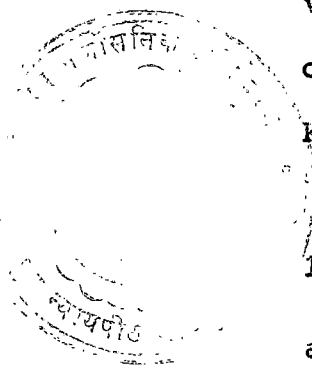

- (ia) a judicially separated wife or husband, such separation not being granted on the ground of adultery and the person surviving was not held guilty of committing adultery.
- (ii) son who has not attained the age of (twenty five) years and unmarried daughter who has not attained the age of (twenty five) years, including such son and daughter adopted legally."


Reading the aforesaid rules together, a son who has attained the age of 25 years cannot be said to be dependent on a Government servant once he cannot be included in the very family of the deceased Government servant for the purpose of grant of pensionary benefits. Thus the son (including adopted son) as included in the definition of dependent family member would not include a son who has attained the age of 25 years and we are required to give this interpretation as per the rules of harmonious construction of the statutes. Once the son who has attained the age of 25 years cannot be said to be dependent and is also not entitled for grant of any pensionary benefits as per the pensionary rules, he could not be said to be dependent for the purpose of compassionate appointment also. In the present case, the applicant had attained the age of 28 years at the time of death of his Father and by now he is of 31 years of age. Thus he cannot be said to be dependent family member of deceased Shri Kishan Singh. And if that be so the applicant ^{not} would be entitled for consideration of appointment on compassionate ground. Hence, the Original Application deserves dismissal on this count alone.

9. We are unable to comprehend that the adoption of the applicant vide adoption deed dated 05.06.1987 could be

construed to be legal one in as much as the age of the applicant on the date of adoption has been indicated as 19 years whereas ~~xxx~~ as per the Hindu Adoption Act one could not be adopted after the age of 15 years until the approved custom permitted such adoption. The perusal of the deed does not indicate that the adoption has been made as per the sanction of the approved custom. As regards the grant of succession certificate, the succession certificate is different matter than the adoption. In this view of the matter, we are also not inclined to accept the bald assertion ~~that~~ that the applicant was adopted son of late Shri Kishan Singh. However, this issue does not remain material, in view of our aforesaid view that the applicant could not be considered to be a dependent family member of late Shri Kishan Singh.

10. In view of the foregoing discussions, we do not find any force in this Original Application and the same is hereby dismissed in limine at the admission stage with no costs.



(J.K. KAUSHIK)
JUDICIAL MEMBER


(GOPAL SINGH)
ADM. MEMBER

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