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**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH AT JODHPUR**

O.A.NO. 192/2011

Dated this the 17th August, 2012

CORAM

HON'BLE MR. B K SINHA, ADMINISTRATIVE MEMBER

Chain Singh Sisodia, S/o of Shri Padam Singh Sisodia,
Aged about 25 ½ years, resident of Near Bus Stand,
Merta Road, Dist. Nagaur, his later father
Was last employed on the post of Telecom Mechanic,
(TCM) in the office of Senior Section Engineer,
(Telecom) at Merta Road Station, NWR.

.....Applicant

(By Advocates Mr. J.K.Mishra & Mr.A.K.Kaushik)

Vs.

- 1 The Union of India through the General Manager,
Headquarters Office, North Western Railway,
Malviya Nagar, Near Jawahar Circle,
Jaipur.17.
2. Divisional Railway Manager,
North Western Railway, Jodhpur Division,
Jodhpur.

.....Respondents

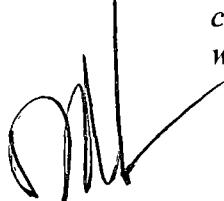
(By Advocate Mr. Vinay Jain)

ORDER

This OA is directed against the order No. E-366/Compassionate/
Appointment/Chain Singh/50 dated 6.4.2010 [A1] of the 2nd respondent rejecting the
request of the applicant for appointment on compassionate grounds.

Relief(s) sought:

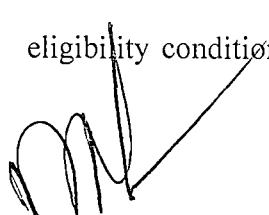
- (i) *That the impugned order dated 6.4.2010 [A1] and any other adverse order, if passed subsequently, may be declared illegal and the same may be quashed. The respondents may be directed to consider the candidature of the applicant afresh as per rules in force and allowed with all consequential benefits.*



- (ii) *That the respondents may be directed to produce, at the time of hearing of this case, the relevant records/case file containing noting relating to consideration of candidature of the applicant for compassionate appointment, for perusal by this Hon'ble Tribunal so as to unfold the facts.*
- (iii) *That any other direction, or orders may be passed in favour of the applicant which may be deemed just and proper under the facts and circumstances of this case in the interest of justice.*
- (iv) *That the costs of this application may be awarded.*

Case of the applicant in brief:

2. The applicant herein is the adopted son of Padam Singh, who while working as Telecom Mechanic in the Railways expired on 3.12.2009. Before that the applicant's adoptive mother also expired on 15.6.2009. The death of Padam Singh was notified by the Railways vide letter dated 11.12.2009 [A4]. Applicant submits that deceased Padam Singh was survived by the applicant as his only adopted son and two sisters. While in service a good sum of money had to be spent on the treatment of his father. The Railways paid the retrial dues of deceased Padam Singh to the applicant, Rs. 5,49,441/- as DCRG, Rs. 43,304 as Group Insurance, Rs. 1,11,000 as Leave encashment in addition to the family pension @ Rs. 6555 plus Dearness Relief from 4.12.2009. However the same was stopped from 2.1.2011 on account of applicant completed 25 years of age. Applicant submitted A5 representation on 17.2.2010 and additional documents on 28.6.2010 for appointment on compassionate ground. The Railways made some enquiries but no appointment was given to him. His representation was later turned down vide letter dated 6.4.2010[A1] stating that he is in sound financial condition, there was no liabilities etc. The matter was again taken up as per letter dated 1.11.2010 [A7]. However, raising a new issue regarding the adoption deed and sound financial condition of the applicant the case was again turned down. Since the applicant is unemployed and the family pension was stopped w.e.f. 2.11.2011, the applicant has filed this OA stating that the family of the deceased government servant is indigent condition needing immediate help by way of employment assistance as the applicant is fulfilling all eligibility conditions and he has submitted all the relevant details for consideration for

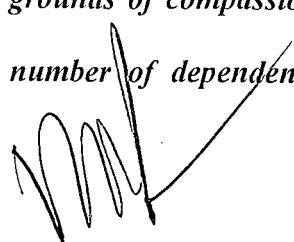




compassionate appointment. He has referred to a decision of the Jaipur Bench of the CAT in *Nirmala Devi Vs. Union of India and others, 2002(2)SLJ CAT 17.*

Stand of the Respondents:

3. The respondents filed a reply statement and contested the matter wherein they have stated that the adoption of the applicant itself is not valid in terms of Section 10(iv) of the Hindu Adoption Act, 1956 producing Annexure R.1 to show that the applicant was adopted on 15.2.2003 and the adoption deed was registered on 12.1.2009. The date of birth of applicant is 3.1.1986. Hence when the deed was registered the applicant was 23 years old and as per Section 10(iv) of the Hindu Adoption Act, 1956 the adoption is not valid if the person is more than 15 years of age. On the request of the respondents vide R2 dated 30.3.2009 to produce documents to show that it was before 15 years of age, applicant submitted an affidavit stating that the date of adoption is 15.2.2000 but no document produced to show that 15.2.2000 is the correct date and the affidavit does not show that the applicant's father's name as Padam Singh. Respondents have produced the school/college mark sheets Annexure R4, R5, R6, R7 and R8 to show that the name of applicant's father was Ram Singh. Hence, the respondents contend that applicant has not been adopted by deceased Padam Singh within the time stipulated under Section 10(iv) of the Hindu Adoption Act, 1956. They have not disputed the fact that the applicant was paid all the dues of deceased Padam Singh and the family pension was sanctioned and paid in favour of the applicant till he attained the age of 25 years. The respondents further stated that the representation of the applicant was considered and reply given to him vide letter dated 6.4.2010. They have also referred to the Ministry of Railway Circular No.3/2009 (R.11) which says "*at the time of considering request for compassionate appointment the competent authority are satisfied himself/herself on the basis of balanced and objective assessment of the financial condition of the family that the grounds of compassionate appointment in each case is justified having regard to the number of dependents, assets and liabilities left by the Railway employee.*" The



respondents have further stated that simple grant of pension and other retrial benefits does not mean that the applicant is entitled to be appointed on compassionate grounds as the compassionate appointment is granted on the basis of the penury of the family and its financial position. In this case this applicant has no liability and he has attained the age of 25 years and he is in a position to earn his livelihood on his own. The judgment of Nirmala Devi, cited by the applicant does not tally with the facts of the instant case and hence it is not cannot be followed here. The respondents submit that the impugned order passed is perfectly in order and that there is no merit in the contention of the applicant in the OA, which is to be dismissed with costs.

Facts in issue:

4. Having gone though the pleadings of the parties and having listen to the arguments of the respective counsels the following facts in issue emerge:-

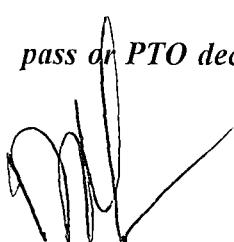
- (i) *Whether the deed of adoption adduced by the applicant is valid and binding?*
- (ii) *Whether the case of the applicant has been rejected in the correct perspective?*
- (iii) *What relief, if any, can be granted?*

5. In so far as the first of the issue is concerned, the case of the applicant that he is the adopted son of Padam Singh who expired while in service of the Railways on 3.12.2009 from the post of Telecom Mechanic in the office of Senior Section Engineer, Telecom at Merta Road, NWR. However, the adopted mother of the applicant had expired on 15.6.2009 and had thus pre-deceased the applicant's father who expired on 3.12.2009. The applicant has adduced the copies of death certificate of both his parents [A2 & A3 respectively]. The applicant following the death of his adoptive father filed an application for compassionate appointment which was rejected on the ground "that he was in sound financial condition and there were no liabilities." Applicant has argued that the deed of adoption is a valid one. The applicant has also submitted that some doubts were raised regarding the adoption after the death of his father. The Assistant Personnel Officer referred the matter to the General Manager (Personnel) NWR vide his letter dated



1.11.2010 [A7]. A perusal of this letter shows that the Assistant Personnel Officer who signed for DRM, NWR, Jodhpur mentioned that when the deed of adoption has been made on 15.2.2003, the age of the applicant was 17 years which was registered without having mentioned the procedures regarding adoption. The same communication challenges the contention of the applicant that it should be read as 15.2.2000 as the date is clearly mentioned as 15.2.2003. The Assistant Personnel Officer further raises doubt that the applicant was a graduate in 2002; he had mentioned the name of his natural father in his Caste Certificate in 2002 and in another certificate in 2008; there is no other member in the family apart from the adopted son himself whom he has to maintain. The applicant submits that the action of the respondents has been whimsical and arbitrary (Para 5 (C)-- page 7 of the OA) as the deed of adoption is good and binding.

6. The respondents on the other hand have submitted a number of anomalies whereby they have reached a conclusion that the applicant continued to mention the name of his natural father even after the adoption. *"It is also submitted that the documents which has been submitted by the applicant does not reflect his father's name as Shri Padam Singh. Applicant passed Secondary examination in the year 2002. Copy of the Mark Sheet is submitted herewith and marked as Annexure.R/4. Applicant passed Senior Secondary Examination in the year 2004, copy of the Mark Sheet is submitted herewith and marked as Annexure.R/5. Applicant passed BA examination in the year 2008; copy of the Mark Sheet is submitted herewith and marked as Annexure.R/6. Applicant has also obtained bonafide certificate in the year 2008, in which also name of father has been shown as Ram Singh. Copy of the Bonafide Certificate is submitted herewith and marked as Annexure.R/7. Applicant has also submitted the Ration-Card and in this ration Card also name of father of applicant has been shown as Ram Singh. Copy of the Ration Card is submitted herewith and marked as Annexure.R/8. It is also just and proper to submit that applicant was student till the year 2008 but none of the pass or PTO declaration was submitted by the applicant's father containing the name*



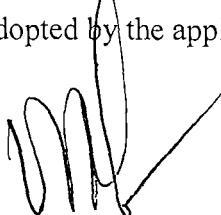
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of the applicant. For ready reference copy of the Pass/PTO is submitted herewith and marked as Annexure.R/9. It is also just and proper to submit that in none of the nomination as made by employee Shri Ram Singh does not show the name of applicant. For perusal copy of nomination as submitted by the employee Shri Ram Singh in department is submitted herewith and marked as Annexure.R/10. Thus from this it is clear that except adoption deed there is nothing on record to show that applicant has been adopted by late Shri Ram Singh.” Through the records submitted by the respondents in their counter affidavit it does appear that the applicant continued to use the name of his natural father and did not use the name of adopted father as for even after the deed of adoption. There is a clear mention in the affidavit filed by the deceased employee and his wife which mentions that the adoption has taken place as per the customary rights on 15.2.2003. This affidavit is dated 12.1.2009 and has been filed before the Notary Public. In a decided case in *State of Chhattisgarh & others Vs. Dhirjo Kumar Sengar Vs. Dhirjo Kumar Sengar JT 2009(8) SC 407* in a disputed case of adoption the responsibility of proving adoption lies upon the party seeking benefit from it the court held:

“18.4. In terms of Section 106 of the Indian Evidence Act, the respondent having special knowledge in regard thereto, the burden of proving the fact that he was adopted by Chittaranjan Singh Sengar was on him. He did not furnish any evidence in that behalf. Even the records clearly show to the contrary.”

19. It is in the aforementioned premise the contention in regard to the breach of audi alteram partem doctrine must be considered.”

7. In the instant case the claim is that the adoption has taken place as per the customary rights of the family. However, there is no evidence adduced to prove the act of adoption as per customary rights. On the contrary there is substance in the contention of the respondents that even after the so called adoption the applicant continued to use the name of his natural father in place of the deceased employee. This gives rise to natural presumption of facts that the adoption has not taken place and it is only a subterfuge adopted by the applicant to obtain appointment on compassionate grounds.

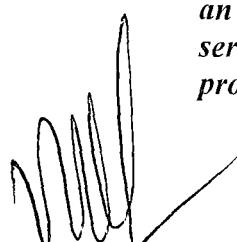


8. In so far as the rejection of the case is concerned it has been on the ground that he has no family liability to look after and the pensionary benefits amounting to Rs. 5,49,441/- have already been paid to him besides pension of Rs. 6555/- from 4.12.2009 to 2.1.2011. The applicant has submitted that the pension has been stopped ever since from 2.1.2011 since the applicant had completed 25 years of age. One of the prime requirement in order to acquire eligibility for compassionate appointment is the family must have rendered indigent due to the sudden loss of income on account of death of bread winner so that it does not able to maintain itself. Here, it is to be remembered that there is no family of the applicant and the applicant had only himself to look after. I am of the considered opinion that as the applicant being a graduate is able to look after himself by finding a suitable job in the job market. The case takes a turn for the worse when we consider the finding in respect of issue No.1 which renders the deed of adoption itself as doubtful. It is clarified that the indigence of dependents of diseased employee is a first pre-condition to bring the case under the Scheme of compassionate appointment. In a decided case of *Union of India and another Vs. B.Kishore* [(2012) 2SCC (L&S) 84 the Hon'ble Supreme Court has held:

“7. On going through the judgment passed by the High Court, it is evident that it is based on a complete misconception about the scheme of compassionate appointments. Contrary to the High Court’s observation, indigence of the dependants of the deceased employee is the first precondition to bring the case under the scheme of ‘compassionate appointment.’ The very purpose and object of the scheme is to provide immediate succour to the family of an employee that, on his death, may suddenly find itself in a state of destitution. If the element of indigence and the need to provide immediate assistance for relief from financial deprivation is taken out from the scheme of compassionate appointments, it would turn out to be a reservation in favour of the dependants of an employee who died while in service which would be directly in conflict with the ideal of equality guaranteed under Articles 14 and 16 of the Constitution.

8. In *SBI V. Rajkumar*, (2010) 11 SCC 661 elucidating the nature of the scheme of compassionate appointments this Court observed (SCC P.664 Para.8).

“8. It is now well settled that appointment on compassionate grounds is not a source of recruitment. On the other hand it is an exception to the general rule that recruitment to public services should be on the basis of merit, by an open invitation providing equal opportunity to all eligible persons to participate

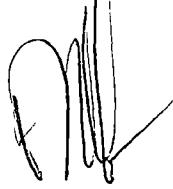


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in the selection process. The dependants of employees, who dies in harness, do not have any special claim or right to employment, except by way of the concession that may be extended by the employer under the rules or by a separate scheme, to enable the family of the deceased to get over the sudden financial crisis. The claim for compassionate appointment is therefore traceable only to the scheme framed by the employer for such employment and there is no right whatsoever outside such scheme. An appointment under the scheme can be made only if the scheme is in force and not after it is abolished/withdrawn. It follows therefore that when a scheme is abolished, any pending application seeking appointment under the scheme will also cease to exist, unless saved. The mere fact that an application was made when the scheme was in force, will not by itself create a right in favour of the applicant”

9. In yet another decided case in *Dev Priye Saini Vs. Government of NCT, Delhi, 2012(2) SLJ 268* the Hon'ble Delhi High Court held:

“5. It is evident from the “Scheme for Compassionate Appointment” that the whole purpose behind providing such an appointment to one of the family members of a government employee who dies in harness, is to help the family tide over the financial crisis in which it suddenly finds itself on account of death of the only bread-earner. The petitioner soon after the death of his father did apply for appointment to the post of LDC, but since he was only 14 years of age, he was ineligible in terms of the Memorandum dated October 09, 1998 wherein, as noticed above, it is laid down that in no case, the lower age limit shall be relaxed below 18 years. Hence, he was informed that his request could only be considered on his attaining the age of majority. Notwithstanding the fact that in view of the age of the petitioner, there was no prospect of his getting immediate employment, the family preferred to wait for him to come of age rather than the eldest daughter applying for the job who suffered from no such disability of age. When asked as to why the daughter did not apply, it was sought to be justified on the ground that she was of marriageable age and in the event of her marriage, should would have ceased to be of any assistance to the family monetarily. The explanation so rendered gives rise to the presumption the family was not in dire need of financial assistance. This is fortified by the fact that the family received Rs. 6,13,969/- as terminal benefits and Rs. 3750/- per month was fixed as family pension. What does one make out from all this? Does it not give a feeling that the family was more keen in securing a job for the son than to rehabilitate itself, for if it was really reduced to a state of penury consequent upon the death of the only earning member, it would not have waited for the son to turn 18. At least, this is how I look at it. Ordinarily, in a situation like this when the survival of a family is at stake, whoever is eligible, be it a daughter or a son or even a wife, anyone of them will seek compassionate appointment and all other concerns including the marriage of a daughter become secondary. As a matter of fact, I feel, had the eldest daughter of the family applied for the job and in the event of her getting the same, it would have enhanced her prospectus of marriage and at the same time, she would have also rendered help to the family. But family instead of exercising this option chose to wait for the petitioner to attain the age of majority as if he had a vested right to compassionate appointment and could lay



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his claim to the same at any point of time. The father of the petitioner had died 13 years ago. The petitioner is now more than 27 years of age. He is still chasing a job to which he has no right. It has been time and again held by the court, particularly, the Apex Court that compassionate appointment cannot be claimed as of right. It is subject to availability of vacancies in the quota prescribed for such appointment and is also subject to the financial condition of the family of an employee who dies in harness. The case of the petitioner was considered not once, not twice but thrice, but each time he was not found fit enough to be recommended. On the first occasion, he was not eligible for consideration, and on the other two occasions, he was not found fit enough to be recommended on the basis of relative merit when compared with cases of similar nature also on account of the cap of 5% quota for such appointments."

10. On the basis of the discussions above it is quite clear that the applicant does not conform to the test of indigence. The respondent authorities are correct in holding this position vide order dated 6.4.2010. It is also further clear that the story of adoption is a doubtful one and the applicant has failed to adduce sufficient evidence in support of it. It is to be clearly stated that the compassionate appointment is not a reservation for the dependents of the serving government employees in job. It is a welfare measure which is to be confined to 5% of the vacancies which are arising. It is prone to both inclusion and exclusion errors. One affluent person implies that one deserving candidate will be out. The Tribunal cannot be a party to sanctifying such dubious claims. Hence the OA is disallowed without there being any order as to costs.

(B K SINHA)
ADMINISTRATIVE MEMBER

Order (new)
for my 10/28/12
furnace to be set.

B/C
10/28/12