

CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR

Original Application No. 392/2013

Jodhpur, this the 12thth day of January, 2015

CORAM

Hon'ble Mr. Justice Kailash Chandra Joshi, Judicial Member
Hon'ble Ms. Meenakshi Hooja, Administrative Member

Lalit Mohan s/o Late Shri Ram Singh aged about 28 years, r/o H.No.379, Lalit Sadan, Gali No.7, Surya Nagar, Hissar (Haryana), and his father was working as Shunder under Northern Railway, Bikaner Division, Bikaner.

.....Applicant

By Advocate: Mr. R.S.Saluja

Versus

1. Union of India through the general Manager, Northern Western Railway, Jaipur
2. Divisional Railway Manager, Northern Western Railway, Bikaner.
3. Senior Divisional Personnel Officer, Northern Western Railway, Bikaner.

.....Respondent

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By Advocate : Mr. Girish Sankhla

ORDER (ORAL)

Per Hon'ble Mr. K.C.Joshi

In the present OA filed u/s 19 of the Administrative Tribunals Act, 1985, the applicant has challenged the impugned order dated 24.08.2012 (Ann.A/1) by which case of the applicant for appointment on compassionate ground has been rejected by the respondent department and, therefore, he has prayed that:-

2

- A. By an appropriate order or direction, the respondents may kindly be directed to consider Applicant's case for appointment on compassionate ground.
- B. By an appropriate order or direction, the impugned Letter Dated 24.08.2012 (Annexure A/1) of respondent No.2 may be quashed and set aside.
- C. By an appropriate order or direction, the matter of appointment of Applicant may be considered from retrospective effect is the date 18.10.2006 when his first Application for appointment was submitted.
- D. Any other appropriate relief which this Hon'ble Tribunal may deem just and proper in the facts and circumstances of the case may kindly be passed in favour of the applicant.
- E. Application of the Applicant may kindly be allowed with costs.

2. Brief facts of the case, as stated by the applicant, are that father of the applicant late Shri Ram Singh was employed as Shunter in the North Western Railway Bikaner and while working at Hissar he expired on 2.8.1992. The applicant was taken on adoption at the age of one and half years by late Shri Ram Singh and his wife during their life time as they were not having any child from their wedlock. The wife of Shri Ram Singh expired on 14.8.1991. At the time of death of his father and mother, the applicant was minor and therefore, brought up by his near relatives. Date of birth of the applicant is 10.12.1984 and he passed the Matriculation Examination in the year 2000, ITI in Diesel Mechanic in the year 2003 and passed graduation in the year 2012 (Ann.A/3 collectively). Since respondents department did not release the pensionary benefits to the applicant, therefore, he approached the

Court of Civil Judge (Senior Division), Hissar for succession certificate and the succession certificate was given in his favour vide order dated 26.4.2006 (Ann.A/4) and on the basis of this certificate, the respondents have released pensionary benefits in the year 2006. The applicant applied for appointment on compassionate appointment vide application dated 18.10.2006 and also sent repeated reminders, but all in vain. The respondents also held meeting with SC/ST Association on 11.12.2008 and the Association also furnished copies of the request for appointment to the railway authorities, but the applicant has not been provided any appointment. The applicant has also sent a notice through his counsel on 23.1.2013 and requested to consider his case for appointment as he is the only candidate and dependent of deceased Ram Singh, but even after notice and request no heed has been paid by the respondents. According to the applicant, the matter of appointment on compassionate grounds is valid and undisputed besides this, the applicant is poor, orphan boy of deceased having no source of earning to meet both the ends. Therefore, aggrieved of the action of the respondents, the applicant has filed this OA praying for the reliefs as mentioned above.

3. By way of reply to the OA, the respondents submitted that the so called applicant's father expired on 2.8.1992 during the service tenure while working as Shunter under North West Railway, Bikaner, but the applicant was not an adopted son at the time of death of the deceased

employee. The applicant was not given the service benefits of the deceased employee, therefore, he submitted application for succession certificate and when the succession certificate was granted, he was paid amount of service benefits, but the applicant's father never submitted a registered and valid adoption deed during his life of service. If any child do not attain the majority in the said valid adoption deed then he has to submit the application within two years from the date of attaining the majority and till then it can be kept pending for granting benefit of compassionate appointment. It has been further submitted that there is a large difference between succession certificate and adoption deed, therefore, the applicant cannot be granted benefit of compassionate appointment on the basis of succession certificate. The appointment on compassionate ground to adopted son/daughter can be provided on fulfillment of certain conditions - i) there is a satisfactory proof of adoption valid legally, ii) the adoption is legally recognized under the personal law governing the railway servant and iii) the legal adoption process has been completed and has become valid before the date of death/medical decategorization/medical incapacitation of the ex-employee. In the present case, the applicant has neither submitted any documentary proof of legal and valid adoption deed nor submitted any application for granting him appointment on compassionate grounds within prescribed time, therefore, he is not entitled to any relief. The respondents have further submitted that the applicant became major



on 11.12.2002 but he has approached the answering respondents after 10 years and without having valid adoption deed whereas he was to approach to the respondents within a period of two years from the date of attaining majority. The applicant wants to take wrong benefit of the order passed by the ADJ Court, Hisar by which succession certificate in favour of the applicant was issued because in the order, the competent court has only directed upto the relief for releasing settlement dues in favour of the applicant, therefore, it cannot be said that the applicant is adopted son. The ex-employee Shri Ram Singh has never submitted the proof of legal and valid adoption deed. Not only this, the applicant has never submitted an application for granting him appointment on compassionate ground within the prescribed time from the date of attaining majority. According to the respondents, granting appointment on compassionate grounds has correctly been denied for non submission of legal and valid adoption deed before the answering respondents, as well as being a time barred claim of the present applicant, hence, the applicant cannot be granted such benefit only on the ground that the applicant is poor and orphan boy. The applicant remained fail to proof himself as an adopted son of ex-employee, therefore, the present OA is liable to be dismissed.

4. Heard both the parties. Counsel for the applicant contended that on the basis of the succession certificate issued by the competent authority, the applicant has been granted service benefits of the

deceased employee and non-considering the applicant for appointment on compassionate grounds on the plea of not intimating adoption is arbitrary, as the respondents were aware because they were necessary party in a suit of succession, which was filed on 5.8.1995 in the Trial court.

5. Per contra, counsel for the respondents contended that the late Shri Ram Singh expired on 2.8.1992 but prior to his death, he has never submitted valid and registered adoption deed in his service record before the respondents. The applicant has neither submitted any documentary proof of legally valid adoption deed nor submitted any application for granting him appointment on compassionate grounds within the prescribed time, therefore, he is not entitled to be considered for appointment on compassionate appointment as provided under Railway Board Policy dated 20.5.1988.

6. Considered the rival contention of the parties and perused the material available on record. In the instant case, on attaining majority, the applicant has neither filed application for compassionate appointment nor filed any other relevant and supporting documents regarding his qualification and eligibility. Father of the applicant died in the year 1992, date of birth of the applicant is 10.12.1984 and the Civil Suit pending before the parties was decided in the year 2006. The applicant approached this Tribunal in the year 2013 after a lapse of 21

years from the death of the deceased employee, and after 11 years after attainment of majority and after 7 years from the decision in the civil suit, without even filing any application for condonation delay. In the absence of filing of relevant documents by the applicant for compassionate appointment with supporting documents before the respondent department, the right of the applicant cannot be decided in this OA. The deceased employee has also not shown his intention about any adoption thereby registering the applicant as his adopted son in his service life. Thereafter after attaining majority, the applicant has not provided the relevant documents to the respondents claiming for appointment on compassionate grounds and according to the respondents, the applicant claimed such appointment after a lapse of about 10 years without a valid adoption deed.

7. In the case of Haryana State Electricity Board vs. Naresh Tanwar reported in (1996) 8 SCC 23, the Hon'ble Supreme Court observed as under:-

"9. It has been indicated in the decision of Umesh Kumar Nagpal that compassionate appointment cannot be granted after a long lapse of reasonable period and the very purpose of compassionate appointment, as an exception to the general rule of open recruitment, is intended to meet the immediate financial problem being suffered by the members of the family of the deceased employee. In the other decision of this Court in Jagdish Prasad case, it has been also indicated that the very object of appointment of dependent of deceased employee who died in harness is to relieve immediate hardship and distress caused to the family by sudden demise of the earning member of the family and such consideration cannot be kept binding for years."

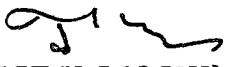


8. The ratio indicated above would give a clear indication that the compassionate appointment is not a vested right which can be exercised at any time in future. The compassionate employment cannot be claimed and offered after a lapse of long time and after the crisis is over.

9. In the instant case the employee died in the year 1992, the applicant attained majority in the year 2002 and after 10 years he has filed application for appointment on compassionate grounds without any valid adoption deed and approached this Tribunal in the year 2013. Therefore, the OA cannot sustain on the ground of delay as well as on merit.

10. Accordingly, the OA is dismissed with no order as to costs.


(MEENAKSHI HOOJA)
Administrative Member


(JUSTICE K.C.JOSHI)
Judicial Member

R/

WS
21/1/2015

Received
From
21/1/2015