

**CENTRAL ADMINISTRATIVE TRIBUNAL  
JODHPUR BENCH, JODHPUR**

Original Application No. 290/00316/15

Reserved on : 12.07.2016

Jodhpur, this the <sup>22<sup>nd</sup></sup> day of July, 2016

**CORAM**

**Hon'ble Dr. Murtaza Ali, Judicial Member**

**Hon'ble Ms Praveen Mahajan, Admn. Member**

Somu Khan S/o Sultan Khan, by caste Musalman, aged about 56 years, resident of Raiya Nagar, Village Post Boyal, Tehsil Bilara, District Jodhpur at present residing at Railway Quarter No. 1088, Near Hanuman Temple, Old Loco, Railway Colony, Jodhpur.

.....Applicant

By Advocate: Mr Sukhesh Bhati.

**Versus**

1. Union of India through the General Manager, North Western Railway, Jaipur.
2. Divisional Railway Manager, North Western Railway, Jodhpur.
3. Senior Divisional Personnel Officer, DRM Office, North Western Railway, Jodhpur.
4. PWI Incharge, Department of Engineer, New Station Loco Side, North Western Railway, Jodhpur

.....Respondents

By Advocate : Mr Kamal Dave.

**ORDER**

**Per Dr Murtaza Ali**

The OA has been filed under Section 19 of the

order dated 25.09.2014 and seeking a direction for the respondents to consider the adoption deed for granting the benefit of Scheme dated 01.01.2014 to the applicant.

2. The brief facts as stated in the OA are that the applicant is working on the post of Trackman and he adopted Rahamatullah as his son vide registered adoption deed as per customs prevailing in his society. It has been alleged that the applicant applied for his voluntary retirement as well as appointment of his adopted son on compassionate ground in terms of Scheme, 2014 but the respondents have wrongly rejected his application on the ground that there is no provision of adoption in Muslim Law.

3. In the reply filed on behalf of respondents, it has been admitted that the applicant preferred an application for extending the benefit of 'Liberalized Active Retirement Scheme for Guaranteed Employment for Safety Staff' and prayed for appointment of his adopted son Rahamatullah. It has also been pleaded that the application has rightly been rejected on the ground that Muslim Law does not permit adoption.

4. Heard Mr. Sukesh Bhati, Counsel for applicant and Mr. Kamal Dave, Counsel for respondents and also perused the record.

5. It has been argued on behalf of applicant that the customs of adoption is prevailing in his society and accordingly he adopted Rahmatullah as his son by a registered adoption deed dated 03.04.2014 (Annex. A/2). He also enclosed some other adoption deeds (Annex. A/3) executed by other members of his community and relied upon the following judgments:-

- (i) S.B.C.W.P. No. 5745/2006 Mukhtar Ahmed v. State of Rajasthan & Ors decided on 03.12.2013;
- (ii) LRs of Alladeen v. B.O.R. & Ors reported in [2004] 0 Supreme (Raj) 689;
- (iii) Shabnam Hashmi v. Union of India reported in [2014] 0 Supreme (SC) 124

6. Ld. Counsel for the respondents has contended that the benefit of LARSGESS Scheme cannot be extended to the applicant as the said adoption deed dated 03.04.2014 was got prepared only to claim the benefit under the Scheme whereas, in the certificate of Board of Secondary Education, the name of his natural father is mentioned. The respondents also relied upon the judgment rendered in Shabnam Hashmi's case (supra) and also argued that the question of validity of said adoption deed cannot be gone into by this Tribunal as it is not a service matter.

7. In the case of Muktar Ahmed (supra), the applicant Mukhtar Ahmed had sought the compensation

was contended that the adoption deed was valid on the ground that it was customary for the sect of Muslims to which the applicant belonged. He had also filed some other adoption deeds executed by Muslim families of his community. The claim of the applicant was rejected by the department mainly on the ground that there was no provision in the Muslim Law for adoption. In the said case the applicant relied upon the decision of Hon'ble Rajasthan High Court delivered in the case of Mst. Bivi v. Syed Ali reported in 1997 (1) RLR 757 and Keshan Singh v. State of Rajasthan and Ors – SBCWP No. 7356/2012 decided on 10.05.2013. The petitioners while relying upon the above judgments contended that under the customery law, a Muslim could adopt a child even in absence of any statutory provisions in this regard and it has been recognized under the Muslim Personal Law (Shariyat) Application Act, 1937. It has been held by Hon'ble Rajasthan High Court that if by virtue of customs, Muslims have system of adoption and if it has been proved in accordance with law, such adoption can be taken as valid adoption.

8. In the case of Muktar Ahmed (supra) the judgment of Madras High Court in Moulvi Mohammaed v. Mohaboop Begum reported in AIR 1984 Mad. 7 was relied upon, which reads as under:-

*"It is needless to point out that custom must be ancient and the burden of proof lies upon the party who sets up the custom. The custom to hold good in law must be reasonable and the majority atleast of any given class of persons must look upon it as binding and it must be established by a series of well known concordant and on the whole continuous instances."*

9. In the case of Alladin (supra) the petitioner claimed to be Khatedar of the land of deceased being his adopted son. The trial court rejected the suit but the Appellate Court held that the custom of adoption amongst Muslims of the area was prevailing and the adoption of appellant was held valid. The matter went up to Division Bench of the Board of Revenue and it was held that by virtue of custom, the Mohammadan also have the system of adoption and the Division Bench of the Board has also held that "irrespective of the fact that witnesses in their statements have averred that the custom of adoption was prevalent in their community but in absence of independent witnesses the adoption was not accepted." The matter went upto to the Supreme Court and Hon'ble Apex Court while relying on the earlier decisions has categorically held as under:

*"Undoubtedly, the Muslim Law in its pure form governed of Shariat or Hidaya does not recognize the principle of adoption. However, wherever there exist a custom amongst the Muslim community whether by way of a family custom or by way of community custom or by way of regional custom permitting adoption amongst Muslims, such adoption has been recognized by the courts in India"*

10. In the case of Shabnam Hashmi (supra) a declaration was sought for recognition of the right to adopt and to be adopted as a fundamental right with reference to Juvenile Justice (Care and Protection of Children) Act, 1986 and the rules made thereunder.

In the said case All India Muslim Personal Law Board was also allowed to intervene which contended that Islamic law does not recognise adopted child to be at par with biological child.

Hon'ble Apex Court has also quoted the submissions made by the Board as under:-

"According to the Board, Islamic Law professes what is known as the "Kafala" system under which the child is placed under a 'Kafil' who provides for the wellbeing of the child including financial support and thus is legally allowed to take care of the child though the child remains the true descendant of his biological parents and not that of the "adoptive" parents. The Board contends that the "Kafala" system which is recognized by the United Nation's Convention of the Right of the Child under Article 20(3) is one of the alternate system of child care contemplated by the JJ Act, 2000 and therefore a direction should be issued to all the Child Welfare Committees to keep in mind and follow the principles of Islamic Law before declaring a muslim child available for adoption under Section 41(5) of the JJ Act, 2000."

11. In the said case the provisions of Shariat Law were neither raised nor discussed and therefore, we are of the considered view that in terms of Muslim Personal Law (Shariat) Application Act, 1937, the Muslims can also adopt a Muslim child if the custom

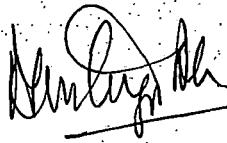
Thus, the application preferred by the applicant, under the LARSGESS Scheme, cannot be rejected only on the ground that there is no provision of adoption in Muslim Law. We are in agreement with the contentions raised on behalf of the respondents that the Tribunal cannot adjudicate the issue of prevailing custom in the community or in the locality to which the applicant belongs and heavy burden lies upon the applicant to prove that the custom of adoption is prevailing in his community, as the adoption has been recognized by Mohmmadan Law as an exception rather than rule. Consequently, the prevalence of this custom has to be proved beyond any shadow of doubt.

12. Accordingly, the OA is allowed and the impugned order dated 25.09.2014 is set aside and quashed. The respondents are directed to seek the evidence from the applicant in respect of custom of adoption prevailing in his community and after satisfying to this effect, they are directed to reconsider the application preferred by the applicant under LARSGESS Scheme within a period of 03 months from the date of receipt of this order.

There is no order as to costs.

  
 [Praveen Mahajan]  
 Administrative Member

Ss/-

  
 [Dr Murtaza Ali]  
 Judicial Member