

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR**

Original Application No. 290/00273/16

Reserved on : 24.10.2016

Jodhpur, this the 3rd November, 2016

CORAM

Hon'ble Ms Praveen Mahajan, Admn. Member

Raj Kumar Singh S/o Late Shri Jai Singh, Age about 18 years, R/o I.N. Colony, Merta Road, Dist. Nagaur, Rajasthan.

The father of the applicant Late Shri Jai Singh was holding the post of Helper-Khalasi/Signal in the office of Senior Section Engineer/S&T (West), Bhagat Ki Kothi, Jodhpur.

.....Applicant

By Advocate: Mr K.P. Singh proxy counsel for Mr Kuldeep Mathur.

Versus

1. The Union of India through the General Manager, Northern Railway Headquarter, Jaipur.
2. The Divisional Rail Manager, North Western Railway, Jodhpur.
3. The Senior Divisional Personnel Officer, North Western Railway, Jodhpur.

.....Respondents

By Advocate : Mr Darshan Jain proxy counsel for Mr Vinay Jain.

ORDER

The present Original Application has been filed U/s 19 of

Administrative Tribunals Act, 1985 seeking following reliefs:

- (i) That the order dated 29.03.2016 (Annex. A/1) and order passed by respondent No. 3 may kindly be quashed and set aside.

- (ii) That the respondents may be directed to consider the applicant for grant of compassionate appointment being the legal son of the deceased employee Shri Jai Singh.
- (iii) That the respondents may be directed to release the amount which has been illegally withheld by them forthwith interest @ 15% p.a. arising out of the service benefit of the father of the applicant.
- (iv) Any other relief, which this Hon'ble Tribunal deems fit and proper in favour of the applicant may be granted. The Original Application may kindly be allowed with costs and all circumstantial benefits may be granted in favour of the applicant.

2. The facts of the case, in brief, are that the father of the applicant Late Shri Jai Singh, serving in the respondent-department as a Helper-Khalasi/Signal in the office of Senior Section Engineer, Jodhpur, passed away on 19.01.2016 leaving behind the applicant who was completely dependent on him. Late Shri Jai Singh through registered adoption deed dated 07.03.2011 (Annex. A/3) legally adopted the applicant as per Hindu Rites and Rituals under the Hindu Succession Act, 1956. As such, the applicant is a legal son of deceased railway employee and is entitled to all the benefits arising out of the services of his father late Shri Jai Singh. After death of his father, the applicant vide communication dated 09.03.2016 (Annex. A/4) requested the respondent authorities for taking the possession of residential quarter No. L-80-A, Medical Colony, Railway, Jodhpur where he was residing with his father. Late Shri Jai Singh has also incorporated the name of the applicant as a nominee for his bank

account with State Bank of India (Annex. A/5). The applicant after death of his father Late Shri Jai Singh, the deceased railway employee, was left in complete financial crises. Shri Jai Singh was the only bread earner and the applicant was solely dependent upon him. The applicant submitted application (Annex. A/6) for compassionate appointment alongwith relevant documents but the respondents without considering the documents annexed with the application rejected the claim of the applicant vide order dated 29.03.2016 (Annex. A/1) on the ground that his name is not available in the service record. The name of Smt. Kiran Devi, mother of the deceased, has been incorporated as the nominee, to receive the benefits arising out of the services of Shri Jai Singh on his death. It has been averred that the grand mother of the applicant whose name was incorporated in the service record of his father had passed away in the year 2008 i.e. prior to the death of his father. Advertently or inadvertently, neither the incorporation death of Smt. Kiran Devi (Annex. A/7) i.e. grandmother of the applicant, nor the fact that the applicant has been adopted by Shri Jai Singh could be incorporated in the service record. Therefore, being aggrieved by the order dated 29.03.2016 (Annex. A/1), the applicant has filed the present OA.

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3. The respondents in their reply have stated that as per Railways records Shri Jai Singh, deceased employee, has left no

dependents/legal heirs behind him. Shri Jai Singh in his lifetime has not submitted any document before the Railway Administration that the applicant has been adopted as his son, and, in his service record also, the name of the applicant has not been recorded. The applicant was also not a beneficiary of the privileges due to a Railway employee, being an adopted son. As per the adoption deed, he was adopted by Shri Jai Singh on 21.05.2002 whereas the adoption deed was prepared and signed on 03.03.2011 i.e. almost after a gap of 9 years. The applicant has placed his mark sheet of secondary education for which he appeared in 2011, issued on 19.06.2011 (Annex. R/1) in which, applicant's father's name, has been mentioned as Shri Om Prakash and mother's name has been mentioned as Smt. Renu Kanwar. Merely residing with Shri Jai Singh did not mean that he is his adopted son. As far as being nominated in the bank account is concerned, any person can be nominated for the same. The Bank nomination also creates doubt, since the letter annexed by the applicant with the OA, is dated 14.01.2016, which is just one week before the death of Shri Jai Singh on 19.01.2016. The applicant has submitted the application seeking appointment on compassionate ground, but the same is of no avail, because as per rules, application can be considered only of those dependents whose names are recorded in the service book. That too does not create any right, as the compassionate appointment is only

provided in circumstances of extreme penury to mitigate the immediate hardship faced by the grieved family. Thus, the respondents have averred that on account of the circumstances stated above, the order dated 29.03.2016 (Annex. A/1) passed by the respondents is just and proper.

4. Heard both the counsels and perused the record.

5. Ld. Counsel for applicant, Mr K.P. Singh while referring to adoption deed (Annex. A/3) contended that it is a matter of record that the applicant is legally adopted son of Shri Jai Singh. Therefore, he is a dependent of the deceased employee and entitled to be considered for appointment on compassionate grounds. In support of his arguments, he relied upon the judgment of Hon'ble Rajasthan High Court passed in Pankaj Vs. State of Rajasthan & Ors reported in 2013(1) WLC (Raj.) 390. Quoting from the same, he emphasized that **"With regard to registration of the adoption-deed, it is very strange that no such provisions is there in the Act of 1956 that adoption-deed must be registered one for its being a valid adoption-deed. Adoption can be made under customs, therefore, the adoption-deed filed by the petitioner cannot be treated to be unregistered document for the purpose of denial of appointment on compassionate ground."** In the instant case though, the deceased employee, had got the adoption deed registered on 07.03.2011. He further contended, that mother of

late Shri Jai Singh expired on 27.09.2008 (Annex. A/7). That the applicant has been residing with Shri Jai Singh. The applicant on death of his father i.e. Shri Jai Singh vide communication dated 09.03.2016 requested the respondent authorities to take possession of the residential quarter allotted to Shri Jai Singh, confirming the factum of his stay with Shri Jai Singh. He prayed that the applicant being legally adopted son of Shri Jai Singh, is entitled to be considered for compassionate appointment.

6. Rebutting the arguments advanced by Ld. Counsel for applicant, Ld. Counsel for the respondents, Mr Darshan Jain contended that Shri Jai Singh, the deceased railway employee in his lifetime, did not submit any document before the Railway Administration stating that the applicant is his adopted son. Nor did he ask for any privileges, due to the son of a railway employee. If Shri Jai Singh had adopted the applicant, then he would have declared the same in his service record during his life time, so that benefits of Railway passes and other medical facilities could be availed by the applicant. Merely showing the name of the applicant in the nomination made by Shri Jai Singh in his bank account does not imply or confirm that he is the adopted son. He averred that anyone can be made a nominee in the bank account. The letter annexed by the applicant alongwith his papers, is dated 14.01.2016 i.e. just one week before 19.01.2016, when Shri Jai Singh expired, creating a doubt about its veracity.

Continuing his line of argument, he further contended, that the applicant in his mark sheet of Secondary Education dated 19.06.2011, has mentioned his father's name as Om Prakash and not that of the deceased employee i.e. Shri Jai Singh. All the facts coupled with the absence of nomination/entry in the service record of Shri Jai Singh, make the applicant's case ineligible for being considered for compassionate appointment, and, has been rightly rejected by the respondent-department.

7. I have considered the rival contentions and also perused the record. It is a fact that nominee of Shri Jai Singh in official records is Smt. Kiran Devi, mother of the deceased employee who, unfortunately expired on 27.09.2008. The counsel for the respondents, correctly pointed out that there is yawning gap between the adoption and its registration. The adoption, according to Hindu Rites & Rituals apparently took place in the year 2002, whereas the adoption deed was registered after 09 long years i.e. in 2011. However, it is not the case of the respondents that the registration deed is manipulated or forged. Hence, it remains an undisputed matter of record, that the applicant is the legally adopted son of the deceased employee. The gap of 09 years between the adoption (21.05.2002) and registration of the adoption deed (07.05.2011) is not a factor which belies the fact of adoption of the applicant by late Shri Jai Singh. Rather, it strengthens the case of the applicant wherein an

adoption, made under customary laws, has also been registered, making it a valid legal document. The other argument advanced by the Ld. counsel of the respondents is regarding Secondary School Certificate showing the name of the applicant's father as Om Prakash instead of Shri Jai Singh. I feel, at that point of time, the applicant was only 13 years old, and obviously not so familiar either with technical 'innuendos' of filling up an application form by writing the name of his natural father or, of the one who adopted him. The respondents have averred that the father of the applicant Shri Jai Singh named the applicant as his nominee in the bank account, merely one week before his death. They have further contended that anyone can be nominated as a nominee in bank account and this fact alone does not confer a right to be considered for compassionate appointment on the applicant. Here again, no wrong doing on part of the applicant is established. Only an unsubstantiated query has been raised about the timing of the nomination. In any case, this only establishes a connection between the applicant and the deceased employee, rather than detract from the merit of the case.

8. Finally, the Ld. counsel for the respondents, argued that since, the name of the applicant does not figure in official records of the respondent-department as the nominee hence, technically he cannot be considered for compassionate appointment as per

rules of compassionate appointment. The departmental records show the name of Smt. Kiran Devi, mother of the deceased, as his nominee who unfortunately pre-deceased the father of the applicant, Shri Jai Singh. It is a fact that the name of the applicant does not figure in the official records of the department. This is an omission, which late Shri Jai Singh failed to rectify even after the death of his mother in the year 2008. The late Shri Jai Singh was not married and had nominated his mother for all benefits in the event of his untimely death. Given the peculiar facts and circumstances of the case, I feel that the applicant should not be made to suffer for this omission, on the part of his father. The fact remains, that today, there is an adoption deed which is in favour of the applicant, making him the rightfully adopted son of the deceased Shri Jai Singh. No other living person has come forward to put forth his/her claim for compassionate appointment on account of death of Shri Jai Singh. While it is true that the respondents have to rely on the service record available with them for cases of compassionate appointment, however, in view of the circumstances of the case, it can reasonably be deduced that the applicant, who is the adopted son of the deceased has no legal hurdle in being declared as dependent of the deceased employee. Even assuming, that he was only adopted in the year 2011 and not in 2002, legally, the fact of adoption still survives. I strongly feel that it is for the judicial fora to see the totality of the

circumstances as long as no fraud or illegality can be proved by the respondents, the balance of convenience strongly lies in favour of the applicant. Looking to the vulnerability the applicant, both financially as well as emotionally, it would be in the fitness of the things for the respondents to consider his case for appointment on compassionate ground. Keeping in view the spirit, which is the guiding factor behind the compassionate appointment scheme, the legal rights of persons, like the applicant need to be upheld, to give them a chance of earning a decent livelihood.

9. Accordingly, present OA is allowed. Impugned order dated 29.03.2016 (Annex. A/1) is quashed and set aside. The respondents are directed to reconsider the case of the applicant in light of above discussion, if the applicant is otherwise eligible. No costs.


[Praveen Mahajan]
Administrative Member

Ss/-

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