

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

O.A. NO. 142/1997

THIS THE 29TH DAY OF MARCH, 2005

HON'BLE MRS. MEERA CHHIBBER, MEMBER (JUDL.)
HON'BLE MR. K.V. PRAHALADAN, MEMBER (ADMN.)

1. Smt. Radha Devi,
W/o late Koko Mondal,
At present residing at Vill: Purani-rata,
P.O. Rata, PS: Belhar,
Dist: Banka (Bhagalpur), Bihar.
2. Ratan Mondal, S/o late Koko Mondal, aged
about 32 years, Unemployed residing at
Vill: Purani-rata, P.O. Rata,
PS: Belhar, Dist: Banka (Bhagalpur),
Bihar. Applicants.

(By Advocate Mr. B.C. Sinha)

Versus

1. Union of India, service General Manager,
Manager, Eastern Railway, F.P., Calcutta-1.
2. General Manager, E. Rly., Fairlie Place, Cal-1.
3. Divl. Rly. Manager, E. Rly., Howrah. Respondents.

(By Advocate Mrs. R. Basu)

O R D E R (ORAL)

Hon'ble Mrs. Meera Chhibber, Member (Judl.).

By this O.A., applicants have sought the following reliefs:

(I) To set aside and quash the impugned letter dated 7.X.93
(Annex.A3);



(II) To allow the application by appointing applicant No. 2 on compassionate ground commensurating with age, qualification, etc.;

(III) Leave be granted to file the appln. jointly U/r 4 (5) (a) of CAT Procedure Rule, 1987;

(IV) Any other order (s) as deemed fit.

2. It is submitted by the applicants that applicant No. 1 is the widow of late Shri Koko Mondal while applicant No. 2 is the adopted son. Applicant No. 1 applied for compassionate appointment in favour of applicant No. 2 after Shri Koko Mondal expired in harness on 21.3.1993 but her request was rejected in a cryptic manner vide letter dated 7.10.1993 (page 12). Being aggrieved, applicants filed O.A. No. 319/1994, which was dismissed vide judgment dated 24.2.1995 by observing that it is only for the competent Civil Court to conclusively adjudicate on the question of adoption and since there is no decree of the Civil Court, the case of applicant No. 2 cannot be considered for grant of compassionate appointment. Thereafter, the widow of employee filed a Civil Suit in the Munsif Court at Burdwan and the learned Munsif vide its order dated 2.9.1996 declared therein that Mr. Ratan Monal (applicant No. 2) is the adopted son of Smt. Radha Devi (applicant No. 1) and her deceased husband Koko Mondal. The defendant Nos. 1 and 2 (natural parents) were further restrained permanently from claiming themselves to be the natural parents of Ratan Mondal (page 25). Therefore, the applicants once again requested the authorities by giving legal notice through their counsel on 3.11.1996 to grant compassionate appointment to applicant No. 2 in view of the decree mentioned above but since no reply was given by the respondents, therefore, applicants had no other option but to file the present O.A.



3. Respondents have opposed this O.A. by submitting that adoption was made at the age of 28 whereas in terms of Section 10 of the Hindu Adoption and Maintenance Act, 1956, the person, who has not completed the age of 15 years, ^{alone} shall be capable of being taken in adoption. However, since the widow of late Koko Mondal did not submit the original deed of adoption, she was requested to give the certified copy of the deed and on scrutiny of the same, ~~there were~~ ^{were} a number of defects found in the said adoption deed. Therefore, respondents disagreed to offer appointment to applicant No.2 on compassionate grounds. The first O.A. filed by the applicants was dismissed by the Tribunal. Thereafter, applicant No. 1 filed Civil Suit No. 204 of 1995 without impleading Railway Administration as a party therein. Therefore, they could not project their point of view before the learned Munsif. However, Railway administration has filed Suit No. 11 of 1998 in the 2nd Court of Civil Judge (Junior Division), Burdwan for a declaration that the decree passed in T.S. No. 204 of 1995 on 21.8.1996 is not binding upon the Union of India and the same is still pending. They have thus submitted that since the matter is sub judice before the Court, application of applicant No.2 could not have been considered by the respondents.

4. During the course of arguments, counsel for applicants placed on record the final judgment passed by Civil Judge (Junior Division), 2nd Court, Burdwan dated 7.4.2003 to show that the ~~suit~~ ^{case} filed by Railway Administration has been dismissed. He, therefore, submitted that respondents have to consider the case in view of the decree given in favour of applicant No.2 whereas counsel for respondents submitted that Railways have further filed an appeal in the Court of District Judge, Burdwan in T.A. No. 44/2003 which is still pending.



5. On a specific query raised to the counsel for respondents, we were informed that no stay has been granted by the District Judge nor counsel for respondents was able to tell us how long it will take for deciding the appeal or at what stage the appeal filed by the Railway Administration is.

6. In fact, perusal of the order dated 7.10.1993 shows that no reasons were given by the respondents while rejecting the claim of applicants for compassionate appointment on 7.10.1993 as applicant No.1 was merely informed that competent authority has regretted appointment of Shri Ratan Mondal on compassionate grounds. Hon'ble Supreme Court has repeatedly held that whenever an application or representation is given to the authorities, the least that is expected from the respondents is that they should pass reasoned and speaking order so that the person is not dragged to the court unnecessarily. Moreover, when applicants had approached this Tribunal earlier, this Tribunal had rejected the claim of applicants by observing that the point of adoption can be decided only by a Civil Court. Therefore, once applicants have taken a decree from the Civil Court to show that applicant No.2 was the adopted son of Koko Mondal, they had to consider the claim of applicant No.2 in accordance with their own circulars on the point but we were informed that after the decree was conveyed to the respondents, they have not passed any orders on the request made by the applicants till date. After all, compassionate appointment is not to be given as a matter of right and has to be given only in exceptional circumstances when the family is in absolute indigent condition. There are also many other factors which have to be taken into consideration while deciding the case for grant of compassionate appointment. Even though nobody can claim compassionate appointment as a matter of right but none the less when a person

A handwritten signature in black ink, appearing to be 'S. J. S.' followed by a stylized flourish.

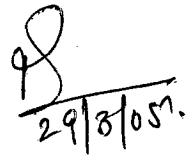
applies for compassionate appointment, he has a right of consideration. In these circumstances, when applicants have already given a copy of the decree passed by the competent court of law in favour of applicant No. 2 declaring him to be the adopted son of late Koko Mondal, we feel the ends of justice would be met if direction is given to the respondents to consider the claim of applicant No. 2 in accordance with their circulars issued by the Railway authorities from time to time on the subject of compassionate appointment and to decide the same by passing a reasoned and speaking order within a period of three months from the date of receipt of a copy of the order, under intimation to the applicants. (Please the said decision shall be subject to the final order to be passed in appeal filed by respondents. P.S.)

7. With the above directions, this O.A. stands disposed of. No order as to costs.

LWP 21/3/05
(K.V. PRAHALADAN)

MEMBER (ADMN.)

'SRD'


29/3/05
(SMT. MEERA CHHIBBER)
MEMBER (JUDL.)