

Central Administrative Tribunal, Lucknow Bench, Lucknow

Original Application No. 224/2005 and 225/2005

this the 5th day of May, 2006

HON'BLE SHRI K.B.S. RAJAN, MEMBER (J)

(O.A. No. 224/2005)

Jitendra Bahadur aged about 25 years son of late Shri Ram Avadh resident of Village Sagra Brahimpur (Kusuma) Post - Brahimpur Kusuma (Tanda) District- Ambedkar Nagar.

...Applicant

By Advocate: Sri Praveen Kumar

Versus

Union of India through

1. The General Manager, Northern Railway, Baroda House, New Delhi.
2. The Divisional Railway Manager, Northern Railway, Lucknow.

..Opposite Parties

By Advocate: Shri S. Verma

(O.A. No. 225/2005)

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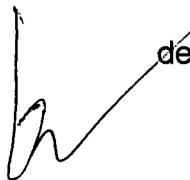
ORDER

BY HON'BLE SHRI K.B.S. RAJAN, MEMBER (J)

O.A. No. 224/2005 has been filed praying for disbursement of the terminal benefits in respect of late Shri Ram Avadh to the applicant while O.A.No. 225/2006 is in respect of compassionate appointment. As these two applications have close nexus and depend upon the nature of adoption deed, a common order would be appropriate in respect of these two OAs.

2. The applicant claims himself to be the adopted son of late Shri Ram Avadh, who was an employee of the Railways. According to him on 1.1.90, the deceased employee adopted the applicant as his son. On 25.4.96, the said adoption deed was registered with the competent authority. The father of the applicant died on 30.4.2006. When the applicant claimed the terminal benefits in the wake of his father's demise, he was asked to produce a copy of the adoption deed and the same was furnished by the applicant. As no payment was made to the applicant, the applicant applied for succession certificate from the court in 2000 and the competent court of law issued necessary succession certificate in 2003. When the applicant presented all such documents and claimed payment of terminal benefits, the respondents by order dated 19.7.2004, asked the applicant to get a declaratory decree in regard to release the amount under the head of "Settlement of Dues". Hence this O.A.

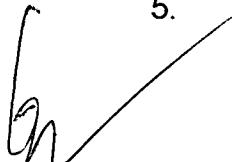
3. According to the applicant, though on 1.1.90, the adoption had taken place, legal colour was given to the adoption only when the same was registered on 25.4.1996. There is no provision at all for a declaration as called for by the respondents and as such the applicant



is entitled to receive the terminal benefits as legal heirs of the deceased railway employee.

4. Per contra, the counsel for the respondents submitted that the applicant's claim is not maintainable on various grounds. According to them, under section 372 for issuance of succession certificate under the Indian Succession Act, 1925, the proceedings are summary in nature and the provision shows that the as successor could at best be custodian of the property in question. It has also been stated that the registration of adoption deed was just five days in advance of the demise of the railway employee. Also the factum of adoption on 1.1.90 is doubtful on account of various reasons including the fact that in the school certificate 1995-96, the name of the applicant's father has been shown as Ram Lagan, who was the natural father of the applicant. In the mark sheet of the Intermediate examination, 2002, though the name of the father of the applicant has been reflected as Ram Awadh (alleged adopted father), the name of the mother has been indicated as Amreeta Devi who is applicant's natural mother. It has also been contended that the applicant's age was shown as 15 years as per adoption deed and according to the Section 10 (iv) of the Hindu Adoption and Maintenance Act, 1956, adoption above 15 years is invalid. It has further been contended that there has been no communication regarding the aforesaid adoption by the deceased Ram Avadh during his life time. It has further been stated that the railway should have been impleaded in respect of succession certificate.

5. Arguments have been heard and documents perused.

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6. As to the legal position regarding succession certificate, the issue of succession certificate is with respect to the present legal heirs, who are entitled to receive the properties of the deceased. If the succession certificate has been issued impleading all those who are entitled to the shares in the property, then all the names would be included, depending upon their entitlements. In the instant case, according to the applicant, all the near relatives have been impleaded and order is specific that the dues from the railways shall be payable to the applicant. This order has not been challenged by the other parties. According to the rules, when nominations have not been made in respect of certain payments, such payment shall be made in accordance with the succession certificate. For this purpose, there is no necessity to implead the railways as a party in the proceedings. As a matter of fact, in respect of succession certificate, the petitioner (for issue the succession certificate) is on one side and the near relatives as well as entire public is on the other side and it is on account of this reason, a public notice is issued before issue of succession certificate. If there be any objection for the railways, it was for the railways to make any objection before the competent court before issue of succession certificate. The public notice is sufficient notice to all concerned including railways.

7. As regards the age of the applicant at the time of adoption as on 25.4.96 when the deed was registered, though his age was shown in the deed as 15 years, the authentic documents for ascertaining the age being the school certificate, the age at the time of adoption should be calculated as per the age declared in the school certificate. The school certificate, as such, declares the date of the applicant as 15.7.1981. As such, on the date of registration of

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adoption deed , the age of the applicant is 14 years 9 months and 10 days. Hence, the adoption cannot but be held as a valid adoption. That the applicant has indicated the initial adoption as 1.1.90 only goes to show that he was adopted on 1.1.90 and the same has been reflected in the adoption deed itself vide page 3 of the adoption deed. In any event, the adoption deed having been registered on 25.4.96, on which date, the applicant was less than 15 years old, the date of adoption as 1.1.90 is of less consequences. The contention that the deceased employee did not inform the railways of the adoption is also not fatal to the case of the applicant as the adoption deed was registered on 25.4.96 and the adoptive father (railway employee) unfortunately expired within 5 days of registration of the deed.

8. As regards the reflection of the natural mother's name and adoptive father's name in the intermediate certificate, the same also cannot be fatal to the case of the applicant. In all expectations, as the applicant was born to Amreeta Devi , her name was shown as mother and at the time of issue of certificate, the applicant was already adopted as son by Sri Ram Avadh, his name was reflected. Under the above facts and circumstances, it can be safely valid that adoption deed is legally executed deed and that complied with the requirements of the provisions of Section 10 (iv) of Hindu Adoption and Maintenance Act, 1956 and the fact that in the succession certificate, the relationship of the applicant has been clearly mentioned as adopted son of late Shri Ram Avadh confirms that the court which issued the succession certificate is also aware of this fact. In so far as payment of terminal benefits is concerned, the succession certificate was have to be acted in respect of the share admissible to the applicant from out of terminal benefits of late Shri Ram Avadh. In case, according to the records held by the

railways, there has been certain nominations in favour of the other family members, the same shall also be taken into account. If there is no such nomination, the amount shall have to be paid in equal shares to all the family members of late Ram Avadh. For this purpose, the applicant may file necessary documents to show as to the other family members of the deceased and claim his share.

9. In view of the above, the O.A. is allowed. The respondents are directed to act upon the adoption deed, the succession certificate and the nominations if any available in the record and release the terminal benefits on the basis of the above documents. It is for the applicant to establish his entitlements to the amount that he claims as payable to him by producing other documentary evidence if any to the existence or otherwise of any other family members of late Ram Avadh. This direction is to be complied with within a period of 4 weeks from the date of communication of this order. On receipt of the above, within three months thereafter the respondents shall work out the extent of due payable to the applicant/other relief if any and disburse the same.

10. As regards O.A. No.225/2005, according to the respondents, one Smt. Chatura is a family member. Respondents have also, as stated above, challenged the legal validity of the adoption deed. The compassionate appointment is provided for, as a measure to tide over the sudden financial crisis of the deceased family. It is available to any one of the family members subject to various conditions stipulated in the executive instructions. If Smt. Chatura is one of the legal heirs and also the applicant is another legal heir, it is for them to decide as to who would be considered for appointment on compassionate ground. Normally, in the event of the widow

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surviving to the deceased employee, she get the priority for consideration for compassionate appointment and subject to her request for such appointment to any of her children, the case would be considered. In the present case, the natural mother of Chatura and the adoptive mother of the applicant is no longer alive; as such, it is for the applicant to get no objection certificate from Smt. Chatura for compassionate appointment. If for any reason, there is a dispute about Smt. Chatura as the daughter of the deceased Ram Awadh, as contended by the applicant, it is for the applicant to prove the same. In view of this in so far as compassionate appointment is concerned, the Department shall consider the case of the applicant subject to his satisfying the Department that no other surviving family members will be contesting his case for compassionate appointment. No costs.



(K.B.S. RAJAN)
Member (J)

HLS/-