

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

O.A No.442/99

Date of order: 8/3/2001

Abdul Laik, Alias Joseph Anthony, S/o Shri Anthony, R/o
House No.253/5, Anderkot, Ajmer, Rajasthan.

...Applicant.

Vs.

Union of India through General Manager(E), Western
Railway, Churchgate, Mumbai.

2. Divisional Rly Manager, Western Railway, Jaipur, W.R
Jaipur.

3. Dy.Controller of Stores (Estt.) W.Rly, Ajmer

...Respondents.

Mr.P.P.Mathur - Counsel for the applicant.

Mr,U.D.Sharma - Counsel for respondents

CORAM:

Hon'ble Mr.S.K.Agarwal, Judicial Member

PER HON'BLE MR.S.K.AGARWAL, JUDICIAL MEMBER.

In this Original Application filed under Sec.19 of the
Administrative Tribunals Act, 1985, the applicant makes a
prayer to direct the respondents to consider the applicant for
appointment on compassionate ground.

2. In brief the case of the applicant is that he is the
adopted son of Shri Anthony who was residing in the same house
in which his natural parents were residing. It is stated that
Shri Anthony adopted the applicant as his son from his
childhood. According to his customs and ussages Shri Anthony
used to celebrate his birth day also. It is stated that Shri
Anthony executed an adoption deed on 28.1.88 entitling the
applicant to pension and other retiral benefits as his son
which was duly registered before the competent authority. Shri
Anthony also took a loan for the marriage of the applicant as
his adopted son and the said loan was sanctioned after
reaching the conclusion that the applicant is the adopted son

of Shri Anthony. It is further stated that Shri Anthony died on 29.5.94. The applicant filed representation before the respondents to consider him for appointment on compassionate ground on the ground that the applicant is the adopted son of Shri Anthony. The adoption deed was also filed alongwith the representation but his request for appointment on compassionate was rejected on the ground that the applicant cannot be considered to be an adopted son of the deceased Shri Anthony. It is stated that after death of Shri Anthony, the respondents released to the applicant Rs.35084/- on 16.9.94 as the amount of Provident Fund and wages but he was not given appointment on compassionate ground as Shri Shahkudeen, Office Clerk of the respondents department demanded a bribe of Rs.25,000/- from the applicant which he refused. It is stated that the refusal for appointment on compassionate ground is not sustainable in law as the applicant is the adopted son of Shri Anthony by a duly registered adoption deed. Later on the respondents department treated the applicant as adopted son of Shri Anthony and a loan was also sanctioned for the marriage of the applicant after necessary enquiry. Thereafter the respondents released the amount of wages and Provident Fund in the name of the applicant after the death of Shri Anthony. Therefore, the applicant is entitled to be considered for appointment on compassionate ground being the adopted son of the deceased Shri Anthony.

3. Reply was filed. In the reply the respondents denied the fact that the applicant is the adopted son of the deceased Anthony. It is also stated that the applicant filed representation in the year 1995 which was rejected and conveyed to the applicant. Thereafter, the applicant submitted another representation which was also rejected vide letter dated 12.6.97. It is stated that the applicant being Muslim

cannot be adopted by a Christian, therefore the applicant cannot claim himself as the adopted son of Shri Anthony. The Adoption Deed dated 12.4.88 does not have any effect to make the applicant as adopted son of Shri Anthony. The allegation of bribe against Shri Shahbudeen, Clerk, have been categorically denied in the reply and stated that the applicant is not the adopted son of the deceased Anthony. Therefore, the applicant is not entitled to any relief sought for.

4. Rejoinder to the reply was filed reiterating the facts stated in the O.A and stated that the Kerala High Court in the case of Philips Alfred Malvin Vs. Gonsalvis has clearly held that adoption is recognised by Muslim Law and Canon Law, therefore the applicant is entitled to be considered for appointment on compassionate ground, being adopted son of Shri Anthony.

5. Heard the learned counsel for the parties and also perused the whole record.

6. It is an admitted fact that the respondents department rejected the claim of the applicant on the basis of the fact that the applicant is not an adopted son of the deceased Railway employee, Shri Anthony and this view appears to have been taken on the basis of an opinion given by the Law Officer. It is also an admitted fact that adoption deed was executed by Shri Anthony on 12.4.88 which is a duly registered document wherein it is clear that Shri Anthony was adopted the applicant from his childhood. It is also an undisputed fact that withdrawal was allowed to Shri Anthony from his Provident Fund account for the marriage of the applicant for which the department conducted an enquiry and in the enquiry it was revealed that the applicant was the adopted son of Shri Anthony. The applicant himself has averred that Shri Anthony

had taken him in adoption according to the customs, therefore, on the basis of documentary evidence as well as on the basis of conduct of the respondents it is established that the applicant was adopted by Shri Anthony and an adoption deed was executed to protect the interest of the applicant in future.

7. The learned counsel for the applicant has argued that there is no prohibition in law for adoption of a Muslim by Christian father as both Christian law and Muslim law recognise the adoption. In support of his contention he has referred Philips Alfred Malvin Vs. Gonsalvis, 1999(1) KLT 292. On the other hand, the learned counsel for the applicant has argued that the adoption of the applicant who is a Muslim by a Christian father is not valid adoption as there is no law permitting such adoption.

8. I have given anxious consideration to the rival contentions of both the parties and also perused the whole record and judgment.

9. In Philips Alfred Malvin Vs. Gonsalvis, 1999(1) KLT 292, the Kerala High Court held that Hindu Law, Mohammedan Law and Canon Law recognise adoption. Merely because there is no separate statute providing adoption, it cannot be said that the adoption made by Correa couple is invalid. In this case, it is further held that Canon Law does not prohibit adoption. The Code of Canon Law commissioned by the Canon Law Society of America, goes to show that Canon 110 relates to adoption which reads as follows:

'Children who have been adopted according to the norm of civil law are considered as being the children of the person or persons who have adopted them.

Adopted children are usually not at all, or occasionally not wholly, related to the parents adopting them... Church law adopts the civil law

pertinent to the area and states that adopted children are held to be the equivalent of natural children of an adopting couple in those instances in which adoption has been duly formed according to the civil law."

"A Child of parents who belong to the Latin Church is ascribed to it by reception of baptism or, if one or the other parent does not belong to the Latin Church and both parents agree in choosing that the child be baptized in the Latin Church, the child is ascribed to it by reception of baptism but, if the agreement is lacking the child is ascribed to the Ritual Church to which the father belongs."

10. From the above Canon Law, it can be seen that Church has adopted civil law pertaining to adoption. It is further held in this case that Muslim Law recognise adoption if there is custom prevailing in Mohammeden communities. The custom is accepted to have the force of law as it is held in AIR 1936 Lahore page 4. Sec.29 of ~~Oudh~~ Estates Act, 1869 permits a Mohammadeen talukdar to adopt. In the State of Jammu & Kashmir, the existence of local customs regarding adoption has been recognised by virtue of Sri Pratap Jammu & Kashmir Laws Consolidation Act, 1977. The right of the couple to adopt a son is a constitutional right guaranteed under Art.21. The right to life includes those things which make life meaningful. Correa couple might have thought of making their life more meaningful by adopting a son.

11. Although no specific statute/law has been referred by the learned counsel for the applicant so as to prove that Muslim Law and Christian Law permits adoption. But the learned counsel for the respondents also failed to show that there is a prohibition for giving and taking any adoption by Muslim and Christian. To adopt a son is a civil right guaranteed by

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Article 21 of the Constitution of India for making the life meaningful. Therefore, in view of the law laid down by the Kerala High Court (supra) and the facts and circumstances of this case I am of the opinion that the applicant being an adopted son of the deceased Shri Anthony.

12. The applicant also could establish the fact that there is no other bread earner in the family of the deceased after death of Shri Anthony. The applicant in this O.A has specifically stated that indigent circumstances caused in the family and the above mentioned fact have not been controverted in so many words in the reply.

13. In Umesh Kumar Nagpal Vs. State of Haryana, (1994) 4 SCC 138, a Bench of two Judges has pointed out that the whole object of granting compassionate appointment is to enable the family to tide over the sudden crises, the less a post held by the deceased.

14. In Phool Kumari Vs. Union of India & Ors, (1993) 23 ATC 548, it was held that the main object of compassionate appointment is related to the need for immediate assistance to the family particularly in distress. Humane approach is to be followed in dealing in such cases.

15. In Jagdish Prasad Vs. State of Bihar, (1996) 1 SCC 301, Hon'ble Supreme Court has observed that the very object of appointment of a dependant of the deceased employee who die in harness is to relieve unexpected immediate hardship and distress caused to the family.

16. In Director of Education & Anr. Vs. UOI & Ors, (1998) 5 SCC 192, it was held that "The object underlying a provision for grant of compassionate employment is to enable the family of the deceased employee to tide over the sudden crisis resulting due to death of the bread earner which has left the family in pecury and without any means of livelihood. Out of

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pure humanitarian consideration and having regard to the fact that unless some source of livelihood is provided, the family would not be able to make both ends meet, a provision is made for giving gainful appointment to one of the dependents of the deceased who may be eligible for such appointment."

17. In view of the above settled legal position and the fact that the applicant is an adopted son of the deceased Shri Anthony and indigent circumstances still exist in the family of the deceased and in the facts and circumstances of the case, I am of the opinion that the applicant is entitled to be considered for appointment on compassionate ground, being adopted son of Shri Anthony, a railway employee.

18. Therefore, this O.A is allowed and the respondents are directed to consider the case of applicant for appointment on compassionate ground on any suitable post, within a period of 3 months from the date of receipt of a copy of this order.

19. No order as to costs.


(S.K. Agarwal)

Member (J).