

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

O.A No.319/2000

Date of order: 8/3/2001

1. Smt.Mathlesh Kumari Chauhan, W/o late Sh.Hari Om Singh, R/o House No.779/29, Gulab Bari, Ajmer.
2. Pawan Kumar, S/o late Shri Hari Om Singh, R/o House No.779/29, Gulab Bari, Ajmer.

...Applicants.

Vs.

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

2. Chief Works Manager, Loco Workshop, W.Rly, Ajmer.
3. Deputy Chief Electrical Engineer (W), W.Rly, Railway Power House, Nagra, Ajmer.

...Respondents.

Mr.F.V.Calla - Counsel for the applicant.

Mr,T.F.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 quash and set aside the communication dated 6.9.99 and to consider the case of applicant No.2 for appointment on compassionate ground.

2. In brief facts of the case as stated by the applicants are that Shri Hari Om Singh, who was Group-D employee in the Railway, was married with applicant No.1. It is stated that applicant No.2 is the adopted son of Shri Hari Om Singh. Applicant No.2 was also allowed the facilities of Railway free passes as son of Shri Hari Om Singh. In the school record also applicant No.2 has been shown as Son of Shri Hari Om Singh. So also in the Ration Card and Medical Card applicant No.2 has been shown as son of Shri Hari Om Singh. It is stated that an

adoption deed to this effect was prepared on 24.4.98 in which it is mentioned that applicant No.2 who is living with the deceased from his childhood was adopted from the natural parents. It is further stated that Shri Hari Om Singh died in Ajmer Hospital due to Cancer. Thereafter applicant No.1 moved an application to provide employment to applicant No.2 on compassionate ground but the same was rejected on the ground that adoption deed is not registered. It is stated that thereafter, applicant No.1 went to Aligarh on 21.1.99 and a fresh adoption deed was prepared and the same was got registered before the competent authority. It is stated that there was no earning member in the family except Shri Hari Om Singh and the condition of the family of the deceased is indigent and if the compassionate appointment is denied, it will be unjust to the deceased family. Therefore, the applicant filed the O.A for the relief as above.

3. Reply was filed. In the reply it is stated that applicant No.2 is not legally adopted son of the deceased Shri Hari Om Singh. It is stated that the first document filed by the applicant was executed before Notary Public, therefore, the claim of the applicant was rejected as the adoption deed was not registered. Thereafter the adoption deed was registered before Sub Registrar on 25.1.99, after the death of deceased Hari Om Singh. It is also stated that at the time of adoption the age of applicant No.2 was above 15 years, therefore, in view of the provisions given in Hindu Adoption & Maintenance Act, 1956, applicant No.2 is not a legally adopted son of the deceased Hari Om Singh. Therefore, the applicant has no case for interference by this Tribunal.

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

5. Admittedly, name of applicant No.2 has been shown as

son of the deceased Shri Hari Om Singh in school record. It also reveals from the evidence produced before this Tribunal that free passess had also been issued by the respondents to applicant No.2 at the request of the deceased Hari Om Singh who has shown applicant No.2 as his son. In the Ration Card and Medical Card name of applicant No.2 has been shown as son of Hari Om Singh. It is not mandatory that a written document is required to be executed and its registration. Registration of a written document i.e. adoption deed is not required before the competent authority for proving the factum of adoption. The only requirement for a valid adoption is that the applicant should have been adopted in accordance with the provisions given in Section 6 and 10 of the Hindu Adoption & Maintenance Act, 1956. The provisions of Sec.6 and 10 of the said Act is reproduced below:

"6. Requisites of valid adoption - No adoption shall be valid unless-

- i) the person adopting has the capacity and also the right to take in adoption;
- ii) the person giving in adoption has the capacity to do so;
- iii) the person adopted is capable of being taken in adoption; and
- iv) the adoption is made in compliance with the other conditions mentioned in this chapter.

10. Persons who may be adopted,- No person shall be capable of being taken in adoption unless the following conditions are fulfilled, namely,-

- i) he or she is a Hindu;
- ii) he or she has not already been adopted;
- iii) he or she has not been married, unless there is custom or usage applicable to the parties which permits

*Subs*

person who are married being taken in adoption.

6. In the instant case, the applicant No.2 was adopted in his childhood by the deceased Shri Hari Om Singh applicant No.2 was residing with Shri Hari Om Singh as his son who has availed facilities such as free passess, inserted his name in the ration card and medical card of Shri Hari Om Singh.

Therefore, according to the averments made by the applicant, it is abundantly clear that the applicant was adopted by Shri Hari Om Singh from his childhood and date of execution of adoption deed and the same was not registered become irrelevant/immaterial. Undoubtedly, applicant No.2 was below 15 years of age when he was adopted by Shri Hari Om Singh, therefore, adoption of applicant No.2 in no way can be said to be illegal and in contravention to the provisions given in Sec.6 and 10 of the Hindu Adoption & Maintenance Act, 1956.

7. The applicants also could establish the fact that there is no other bread earner in the family of the deceased after death of Shri Hari Om Singh. The applicants in the O.A has specifically stated that indigent circumstances caused in the family and these facts have not been controverted in so many words in the reply.

8. 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.

9. 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.

10. In Jagdish Prasad Vs. State of Bihar, (1996) 1 SCC 301,

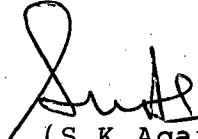
Hon'ble Supreme Court has observed that the very object of appointment of a dependant of the deceased employee who die in harness is to relieve unexpected immediate hardship and distress caused to the family.

11. 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 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."

12. In view of the settled legal position and the fact that the applicant is an adopted son of the deceased Hari Om Singh and indigent circumstances still exist in the family of the deceased, it is a fit case in which direction must be given to the respondents to consider the candidature of applicant No.2 for appointment on compassionate ground.

13. Therefore, this O.A is allowed and the respondents are directed to consider the case of applicant No.2 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.

14. No order as to costs.

  
(S.K. Agarwal)

Member (J).