

CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH

OA No. 148/2003.

Jaipur, this the 11th day of July, 2005.

CORAM : Hon'ble Mr. M. L. Chauhan, Judicial Member.

Anand Singh
S/o Shri Bhanwar Singh,
Aged about 27 years,
R/o Sunder Nagar Colony,
Kota.

... Applicant.

By Advocate : Shri Rajveer Sharma.

Vs.

1. Union of India through its General Manager,
Western Railway, Church Gate,
Mumbai.
2. Divisional Railway Manager,
Western Railway, Kota.

... Respondents.

By Advocate : Shri Hawa Singh proxy counsel for
Shri V. S. Gurjar.

: O R D E R (ORAL) :

The applicant who claims to be adopted son of Late Shri Bhanwar Singh has filed this OA thereby praying that the impugned order dated 2.4.02 (Annexure A/1) be quashed and set aside and respondents be directed to appoint the applicant as Class IV employee on compassionate basis against the permanent post in regular pay scale since the date of filing of appeal of the applicant with all consequential benefits. Vide impugned order dated 2.4.02 (Annexure A/1) applicant has been informed that the adoption deed is not valid, as such, appointment on

compassionate ground cannot be granted to the applicant. The applicant has alleged that he was adopted by Late Shri Bhanwar Singh who was Railway Servant and died during the service on 27.12.99. It is averred that a valid adoption deed was executed between the natural parents and Shri Bhanwar Singh, adopted father. The copy of the adoption deed dated 28.11.1997 has been filed with this OA as Annexure A/2. It is further stated that the name of the applicant was also inserted in service record as nominee which is evident from the relevant record dated 27.10.1998 (Annexure A/3). It is further stated that the adoption deed (Annexure A/2) has been recognized valid by the competent authority, District and Session Judge, Kota, in the proceeding u/s 372 of Indian Succession Act and on the basis of such adoption deed Annexure A/2 he was declared as the son of Late Shri Bhanwar Singh vide order dated 3.3.01 and a certificate in this respect was issued in Case No.156/2000 on 15.3.01. It is further stated that in view of such decision the non-applicants have no right to challenge the judicial finding that too without any reason and logic. Thus, according to the applicant the impugned order which is illegal, arbitrary and malafide deserves to be set aside.

2. Notice of this application was given to the respondents. Respondents have filed reply. Respondents have also taken the ground of limitation. It has been

stated that Late Shri Bhanwar Singh died on 27.12.1999 whereas the application for claiming the appointment on compassionate grounds was moved by the applicant on 27.8.2001 (Annexure A/6). Further the respondents have contended that the adoption deed is not a valid adoption deed because it only makes a statement of some adoption at a time, indefinite, vague and unknown. Moreover, the contents of the alleged adoption deed Annexure A/2 are self contradictory because till the execution of the alleged adoption deed the applicant (claiming himself to be adopted son) was describing himself as a son of his natural father. There is nothing on record to substantiate the fact that the applicant was given in a valid adoption since the essential ceremony for a valid adoption has not been fulfilled and the applicant has not placed on record any cogent and reliable evidence, worth the name, showing that the adoption deed is a valid document. It is further stated that if the applicant is the only son of his natural father then adoption of the only son is prohibited since Vasishtha and Baudhayana say, "let no man give for accept an only son, as he must remain for the obsequies of his father". Saunaka says "by no man having an only son is the gift of a son to be ever made." Thus, according to the respondent the inference is irresistible that there is a prohibition against accepting also, since it is the offence of extinction of lineage, denounced by Vasishtha is incurred by both giver and receiver. Therefore, the alleged

adoption deed (Annexure A/2) is not a valid document supporting the alleged adoption of the applicant by any stretch of imagination.

3. When the matter was listed for hearing on 6.4.04, this Tribunal after perusing the adoption deed Annexure A/2 made the following observations :-

"Prima facie, we are not at all satisfy with the 'Adoption Deed' submitted, inasmuch as the applicant was 21 years at the time of adoption, whereas as per Hindu Adoption Act, 1956, he only be a child of age less than 15 years. Learned Counsel for the applicant submits that some other record is there to show that the adoption was done at a much earlier date and he seeks time for the same. The time is allowed and the case be listed on 6.7.2004."

Thereafter the matter was adjourned from time to time but the applicant could not produce any material to show that the adoption deed was ^{w. executed} at much earlier date and he was adopted when he has not exceeded the age of 15 years. The applicant, in order to, comply the order dated 6.4.04 made a statement before this Tribunal on 27.4.04 that he has filed a Suit for declaration in the Civil Court at Kota and notices have been issued to the Railways in that matter and as soon as that is finalized the compliance of the order dated 6.4.2004 would be made with a certified copy. Thereafter the matter was adjourned from time to time. Thus, the fact remains that the applicant has failed to show that he was adopted at a time when his age does not exceed 15 years, rather the applicant has filed a Civil Suit thereby seeking

declaration that he is the adopted son of Late Shri Bhanwar Singh.

4. Thus, in view of what has been stated above, I am of the view that the respondents have not committed any infirmity while passing the order dated 2.4.02 (Annexure A/1) whereby it has been stated that the applicant cannot be given appointment on compassionate basis on the ground that the adoption deed is not a valid deed. Admittedly, when the adoption deed Annexure A/2 was executed the applicant has exceeded the age of 15 years. Thus, his adoption was in contravention of Section 10 of the Hindu Adoption and Maintenance Act, 1956 and such adoption deed cannot have the effect of affording the applicant right of legally adopted son of Late Shri Bhanwar Singh. Regarding submission of Succession Certificate in favour of the applicant, suffice it to say, that Succession Certificate under Section 373 of Indian Succession Act only deals with the validity of the Will. Probate does not go into the correctness of the description and relationship. Since the very basis of the applicant being adopted son of Late Shri Bhanwar Singh is still in dispute, as such, no direction can be given to the respondents to treat the applicant as adopted son of Late Shri Bhanar Singh especially when he was 21 years of age at the time of execution of adoption deed ^{and after} ~~as~~ ^{as} the provision contained in Section 5 of the Hindu Adoptions and Maintenance Act, 1956, no adoption shall be made

after the commencement of this Act by or to a Hindu except in accordance with the provisions contained therein, any adoption made in contravention of the said provisions shall be void. The Section also lays down that an adoption which is void shall neither create any right in the adoptive family in favour of any person which he or she could not have acquired except by reason of the adoption, nor destroy the rights of any person in the family of his or her birth. No right, therefore, can accrue to the applicant on the basis of aforesaid provisions especially when the applicant was not admittedly below 15 years of age at the time of adoption. As such, the applicant could not be legally adopted son of Late Shri Bhanwar Singh in terms of Section 10 of Hindu Adoption and Maintenance Act, 1956.

5. Thus, I am of the firm view that no infirmity can be found in the impugned order Annexure A/1 whereby the claim of the applicant for grant of compassionate appointment on the basis of adoption deed Annexure A/1 was declined. Learned Counsel for the applicant argued that the case of the applicant may not be closed at this stage as he has already approached the Civil Court for the purpose of necessary declaration to the effect that he is the adopted son of Late Shri Bhanwar Singh. Learned Counsel for the applicant argued that in case such declaration is given in favour of the applicant, in that eventuality, his right may be protected and the

respondents be directed to reconsider his case on the basis of such declaration, if any, given by the Civil Court.

6. I have given thoughtful consideration to the submission made by the Learned Counsel for the applicant. Needless to add that in case such declaration is obtained by the applicant from a Civil Court in future, it will be permissible for the applicant to reagitate the matter by bringing this fact to the notice of the competent authority and the competent authority will consider the case of the applicant on its own merit and as per law.

7. With these observations, the OA is disposed of with no order as to costs.


(M. L. CHAUHAN)
JUDICIAL MEMBER

P.C./