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**CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05**

(DESTRUCTION OF RECORD RULES, 1990)

INDEX

O.A/T.A No. 211/003

R.A/C.P No.

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SECTION OFFICER (Judl.)

FORM NO. 4
(SEE RULE 42)

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWALATI BENCH

ORDERSHEET

Original Application : 211/03

Misc Petition No. : _____

Contempt Petition No : _____

Review Application No: _____

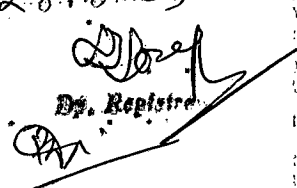
Applicants:- Harpati Nath

Respondents:- H.O.I Jams

Advocate for the Applicants:- Dr. M. Pathak, D. Boruah, B. Pathak
J.D.S.

Advocate for the Respondents:- case

Notes of the Registry	Date	Order of the Tribunal
-----------------------	------	-----------------------

This application is in
 form but not in time
 condonation Petition is
 filed / not filed
 of Rs. 50/- deposited
 vide IPO/BP No. 96/59603
 dated 28.8.03

 D. Registrar

18.9.2003

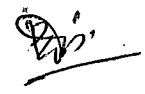
Present : The Hon'ble Sri K.V. Praha-
 ladan, Member (A).

 Heard Dr. (Mrs.) Mr. Pathak,
 learned counsel for the applicant.

 Issue notice on the respond-
 ents to show cause as to why the
 application shall not be admitted.
 Returnable by 30.10.2003.

 List on 30.10.2003 for
 show cause and admission.

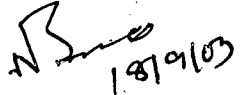
steps taken alongwith
envelops.



mb


Member

for order dated
18/9/03


18/9/03

Notice and order dated
18/9/03 Sent to D/S for
issuing to the respondent.
25/9

30.10.2003 Heard Dr. (Mrs.) M. Pathak, learned counsel for the applicant. Put up again on 21.11.2003 for admission. In the meantime, the respondents may file written statement if any.

No written statement has been filed.

[Signature]
20.11.03

mb

[Signature]
Vice-Chairman

21.11.2003 Present : The Hon'ble Smt. Lakshmi Swaminathan, Vice-Chairman
The Hon'ble Shri S.K.Nair, Administrative Member.

Mr. B. Baruah, learned counsel for the applicant.

Mr. S. Sengupta, learned counsel enters appearance on behalf of the respondents. He seeks and is allowed further four weeks to file reply. Two weeks for rejoinder.

List on 5.1.2004 before Single Bench, if available.

[Signature]
Member

[Signature]
Vice-Chairman

bb

5.1.2004 ~~The~~ Heard Dr. (Mrs.) M. Pathak, learned counsel for the applicant and also Mr. S. Sengupta, learned counsel for the respondents.

The O.A. is admitted. List it for hearing on 27.1.2004.

[Signature]
Member (A)

mb

17.2.2004 On the plea of Ms. U. Das, learned counsel, made on behalf of Dr. Mrs. M. Pathak, learned counsel for the applicant, the case is adjourned and again listed on 4.3.2004 for hearing.

[Signature]
Member

bb

28.1.04
W/s submitted by the respondents.

[Signature]

4.3.2004

Heard the learned counsel for the parties. Hearing concluded. Judgment delivered in open court, kept in separate sheets. The application is disposed of. No order as to costs.

10.3.04

Copy of the
judgt has been
sent to the office
for stamping the doc
to the applicant
as well as to the
Adv. Standby counsel.
MS

nkm


Member

Reminded COPP -

12/3/04. Road
copy 15/3/2004
(S. S. S. S.)
RA/2004

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

O.A./~~R.A.~~No. 1111 211 of 2003

DATE OF DECISION 4.3.2004

Shri Harpati Nath

.....APPLICANT(S).

Dr M. Pathak, D. Boruah, B. Pathak and
J. Das

.....ADVOCATE FOR THE
APPLICANT(S).

-VERSUS-

The Union of India and others

.....RESPONDENT(S)

Mr S. Sengupta, Railway Counsel

.....ADVOCATE FOR THE
RESPONDENT(S).

THE HON'BLE MR. K.V. PRAHLADAN, ADMINISTRATIVE MEMBER

THE HON'BLE

1. Whether Reporters of local papers may be allowed to see the judgment ?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the Judgment ?
4. Whether the judgment is to be circulated to the other Benches ?

Judgment delivered by Hon'ble Member

194

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No.211 of 2003

Date of decision: This the 4th day of March 2004

The Hon'ble Shri K.V. Prahladan, Administrative Member

Shri Harpati Nath
S/o Late Mathura Nath
Village & P.O.- Sorbhog,
District- Barpeta, Assam.Applicant
By Advocates Dr M. Pathak, D. Boruah,
B. Pathak and J. Das.

- versus -

1. The Union of India,
Represented by the Secretary,
Government of India,
Ministry of Railways,
New Delhi.
2. The General Manager,
N.F. Railway,
Maligaon, Guwahati.
3. The Divisional Railway Manager (P)
Rangia Division,
N.F. Railway, Rangia.
4. The Senior Section Engineer (P Ways)
N.F. Railway,
Barpeta Road.Respondents
By Advocate S. Sengupta, Railway Counsel.

.....

O R D E R (ORAL)

K.V. PRAHLADAN, ADMINISTRATIVE MEMBER

law

In this application the applicant has prayed for a direction to the respondents to appoint him on compassionate ground in any Group 'C' or 'D' post as per the Scheme of the Railway Board dated 6.10.1995. The applicant claims to be the legally adopted son of Shri Mathura Nath, a permanent employee of the N.F. Railways, who died in harness on 10.6.1999. According to the applicant since he is the legally adopted son of Late

Mathura Nath, he is entitled to all the benefits as a natural son of a deceased father including appointment on compassionate ground.

2. The respondents have filed their written statement disputing the claim of the applicant. In their written statement the respondents have stated that the adoption of the applicant was not in conformity with the provisions of the Hindu Adoption and Maintenance Act, 1956 and therefore, his request for appointment on compassionate ground could not be acceded to.

3. Heard Mr B. Pathak, learned counsel for the applicant and also Mr S. Sengupta, learned Railway Counsel. The learned counsel for the applicant submits that the adoption of the applicant was as per rules and as a legally adopted son of late Mathura Nath he was entitled for appointment on compassionate ground. Therefore, the respondents had acted illegally and arbitrarily in not providing him with compassionate appointment. The learned counsel for the respondents, on the other hand, submits that adoption of son/daughter should be strictly under the extant provisions of Hindu Adoption and Maintenance Act, 1956. Since the adoption of the applicant was not in conformity with the provisions of the above Act, the applicant could not be appointed on compassionate ground. Therefore, the action of the respondents cannot be said to be illegal or arbitrary in not providing the applicant with compassionate appointment.

law

4. On hearing the learned counsel for the parties and on perusal of the records I dispose of the application

with.....

with the following directions:

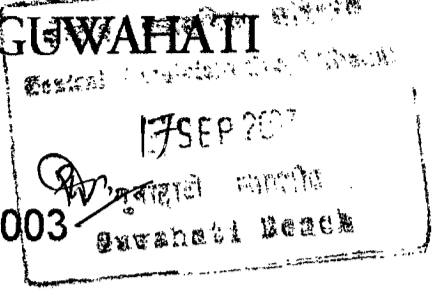
The respondents may consider the case of the applicant for compassionate appointment. As far as the dispute regarding the adoption is concerned, it is for the respondents to decide ^{on its validity} and act upon. The applicant may also file a fresh representation giving all details in support of his case and the respondents shall consider the same and pass a reasoned and speaking order as per rules.

The O.A. is accordingly disposed of. No order as to costs.

KV Prahladan
(K. V. PRAHLADAN)
ADMINISTRATIVE MEMBER

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH AT GUWAHATI

O.A. No. 211 /2003



Sri Harpati NathApplicant

-versus-

Union of India & others Respondents

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Filed by:

Bibhash Pathak
(Bibhash Pathak)
Advocate

Date: 12.9.03

10

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH : AT GUWAHATI**

O.A. No. 211 /2003

Sri Harpati NathApplicant

-versus-

Union of India & othersRespondents

SYNOPSIS OF THE CASE

Date	Particulars	Annexure	Page
	One Mathura Nath was a Railway employee working as Gangman under the respondent. He was a permanent staff.		
10.6.99	Mathura Nath died in harness.	F	15
26.1.99 27.1.99	During his lifetime he adopted a son through registered deed. The name of the adopted son is Sri Harpati Nath (the applicant).	D & E	13, 14
	The deceased father and the applicant belong to the OBC category.	C	12
	Harpati Nath passed the HSLC and HSSLC Exams. So he is eligible for appointment in any Group D or c post under the respondents on compassionate ground.	A & B	10, 11
26.7.99 20.9.00 11.12.01 4.4.03	The applicant submitted applications for appointment on compassionate ground to the respondents as per the scheme of the respondents.	G, H, I & J.	16, 17, 18, 19
22.4.03	The application for compassionate appointment dated 4.4.03 was duly forwarded by the respondent to the competent authority alongwith the service particulars of the deceased father.	K & L	20, 21, 22
	No action has been taken on those applications by the respondent and hence this application.		

Filed by:

Bibhash Pathak
(Bibhash Pathak)
Advocate
Date: 12.9.03

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH: AT GUWAHATI

(An Application under Section 19 of the
Central Administrative Tribunal Act, 1985)

ORIGINAL APPLICATION NO. OF 2003

BETWEEN

Shri Harpati Nath
Son of Late Mathura Nath
Village & P.O. Sorbhog
District- Barpeta (Assam)

... Applicant

-versus-

1. Union of India
Represented by the Secretary,
Govt. of India, Ministry of Railways,
Rail Bhawan, New Delhi-1.
2. The General Manager, N.F. Railway,
Maligaon, Guwahati-11.
3. The Divisional Railway Manager (P),
Rangia Division, N.F. Railways, Rangia.
4. Senior Section Engineer (P Ways)
N.F. Railway, Barpeta Road.

... Respondents

Sri Har Pati Nath

DETAILS OF THE APPLICATION

1. PARTICULARS OF THE ORDER AGAINST WHICH THE APPLICATION IS MADE:

- (i) This application has not been made against any specific order but for appointment on compassionate ground in any Group 'C' or 'D' posts under the respondents as provided by the Scheme as in Railway Board Circular No. E(NG)II/84/RC-1/26 dated 6.10.95 as amended from time to time, after the death of the father who died in harness on 10.6.99.
- (ii) The applicant has made application/representation on 26.7.99, 20.9.2000, 11.12.2001 and 4.4.2003 seeking appointment on compassionate grounds immediately after the death of his father and thereafter, but the respondents have not considered his case till now and no reply so far has been issued in that regard.

2. JURISDICTION OF THE TRIBUNAL:

The applicant declares that the subject matter of the instant application is within the jurisdiction of this Hon'ble Tribunal.

3. LIMITATION:

The applicant further declares that the subject matter of the application is within the period of limitation prescribed under the Section 21 of the Central Administrative Tribunal Act, 1985.

4. FACTS OF THE CASE:

- 4.1 That the applicant is a citizen of India and a permanent resident of Village and P.O. Sorbhog, District - Barpeta, Assam and as such he is eligible to all the rights and privileges guaranteed under the

Sri Harpati Nath

Constitution of India and all other laws/ schemes framed thereunder.

- 4.2 That the applicant has passed the H.S.L.C. Examination in 1994 and Higher Secondary Examination (Arts) in 1996. Moreover, the applicant also belongs to the OBC category.

Photocopies of the HSLC and Higher Secondary Pass Certificates and the OBC Certificate are enclosed hereto as **Annexure A, B & C** respectively.

- 4.3 That the applicant is the only son (adopted) of Late Sri Mathura Nath. The adoption of the applicant took place in accordance with the provisions of Hindu Adoption and Maintenance Act, 1956 through registered deeds registered at the Sub-Registry Office, Barpeta vide No. 56 dated 27.1.99 and deed No. 64 dated 28.1.99. As such, the applicant is entitled to all rights and privileges as that of a natural son. The Railway authorities have also accepted the son-ship of the applicant as son of Late Sri Mathura Nath and accordingly the terminal benefits of Late Sri Mathura Nath has been paid to the applicant including his widowed mother. The law is also well settled that the legally adopted son is entitled to all the benefits as a natural son of a deceased father including the benefit of compassionate appointment.

Photocopies of the adoption deeds dated 27.1.99 and 28.1.99 are enclosed hereto as **Annexure D & E** respectively.

- 4.4 That the adoptee father of the applicant, Late Sri Mathura Nath was a permanent employee of the N.F. Railways and was serving in the Group D post of Gangman under SSE/P.Way/BPRD. The father of the applicant died in harness on 10.6.1999 and the death certificate was issued by the competent Government authorities.

Sri Har Pati Nath

Photocopy of the death certificate is enclosed hereto as **Annexure F**.

- 4.5 That after getting the death certificate of his Late father, the applicant immediately made an application to the DRM/P/APDJ, N.F. Railway on 26.7.99 praying for appointment on compassionate ground. This application was duly received by the Senior Section Engineer (P.Way), N.F. Rly, Barpeta Road (Respondent No. 4) on 26.7.1999. Thereafter, the applicant approached the said Respondent No. 4 several times but he was only given a verbal assurance that his case will be considered. As the applicant got no favorable response from the respondents, he and his widow mother are facing severe financial hardships due to the loss of income at the death of the only earning member of their family.

Photocopy of the application-dated 26.7.1999 is enclosed as **Annexure G**.

- 4.6 That after waiting for a long time on the verbal assurance given by the respondents, the applicant sent two other applications by post to the on 20.9.2000 and 11.12.2001 to the competent authority for consideration of his appointment in any Group D or C post on compassionate ground. The mother of the applicant, Reni Bala Nath also made another application on 4.4.2003 for the compassionate appointment of her son (the applicant) which was duly received and forwarded by the Respondent No.4 on 22.5.2003 alongwith the service particulars of the deceased father of the applicant, Late Mathura Nath, Ex-Gangman, SSE/P.Way/BPRD. But even thereafter the respondents have taken no steps to appoint the applicant on compassionate ground nor have they given any reply to the applications.

Photocopy of the applications dated 20.9.2000, 11.12.2001 and 4.4.2003, the forwarding letter dated 22.5.2003 and the service particulars of Late Mathura Nath are enclosed hereto as **Annexure H, I, J, K and L** respectively.

Sri Harpati Nath

- 4.7 That the applicant, Sri Harpati Nath is the only son (adopted) of Late Mathura Nath. The applicant is under the responsibility to look after all the affairs of the family and as a result is facing great financial hardship. Under the circumstances, it is therefore, highly essential for the applicant to get a job so that he may protect himself and his widowed and ailing mother (the wife of the deceased) from starvation and penury. The applicant is willing to accept any kind of job under the respondents.
- 4.8 That on personal contact, the respondents assured the applicant verbally that his case is being considered. But surprisingly, the respondents have taken no steps for the appointment of the applicant. Therefore, the applicant has the reasons to believe that unless legal steps are initiated against the respondents, his case would not be considered at all; and hence, this application.
- 4.9 That the applicant took steps from his side immediately after the death of his father. There has been no delay or laches on his part in making the application for compassionate appointment. But it is the respondents who have delayed the matter without assigning any reason or without any notice to the applicant. Therefore, the action of the respondents is illegal, arbitrary and the inaction on the part of the respondents amounts to violation of the provisions of the principles of natural justice and administrative fairplay and also the provisions of Article 14, 16 and 21 of the Constitution of India.
- 4.11 That there are sufficient vacancies in the establishment of the respondents as the same is understood from the advertisements published in the Newspapers from time to time.
- 4.12 That the applicant demanded justice from the respondents which has been denied to him. That this application has been made bonafide and for the ends of justice.

Sri Harpati Nath

5. GROUNDS FOR RELIEF WITH LEGAL PROVISIONS:

- 5.1 For that the action of the respondents in not considering the appointment of the applicant on compassionate ground is highly illegal and arbitrary and the inaction for not letting the applicant know as to why his appointment has been delayed is violative of the provisions of natural justice.
- 5.2 For that the apparent inaction of the respondents in dealing with the matter is discriminatory and a negligent act which cannot sustain in law.
- 5.3 For that in any view of the facts and circumstances of the case, the applicant is entitled to be appointed on compassionate ground under the schemes of the Indian Railways.
- 5.4 For that the non-consideration of the case of the applicant has amount to violation of the provisions of Article 14,16,21 of the Constitution of India and also the Rules of natural justice and administrative fairplay including the legitimate expectation.
- 5.5 For that the respondents have violated the terms and conditions of their own circulars and guidelines conferring legal rights on the applicant for appointment on compassionate grounds for which they are duty bound to act upon.

6. DETAILS OF REMEDIES EXHAUSTED:

That the applicant declares that he has exhausted all the remedies available to him and there is no alternative and efficacious remedy available to him.

sr: Harpati Nath

7. MATTERS NOT PREVIOUSLY FILED OR PENDING IN ANY OTHER COURT:

That the applicant further declares that he has not previously filed any application, writ petition or suit regarding the grievances in respect of which this application is made, before any court or any other Bench of the Tribunal or any other authority nor any such application or suit is pending before any of them.

8. RELIEF SOUGHT FOR:

Under the facts and circumstances of the case, the applicant most respectfully prays in this Hon'ble Court that the application be admitted, records of the case be called for and notices be issued to the respondents directing them to show cause as to why the relief sought for should not be granted to the applicant as prayed for and after hearing the parties and perusing the records including the causes, if any shown by the respondents, Your Lordships would also be pleased to direct the respondents :

- 8.1 To consider the case of the applicant for appointment on compassionate ground in any Group C and D post under the respondents;
- 8.2 To pay the cost of the application;
- 8.3 Or may pass order for any other relief to which the applicant is found entitled to under the facts and circumstances of the case.

9. INTERIM ORDER PRAYED FOR:

Pending disposal of the application, the applicant prays for grant of an interim order to direct the respondents to allow the applicant to work in any casual or work-charged basis against any vacant post or job in the establishment of the respondents.

Sri Harpati Nath

10. The application is filed through Advocate.

11. PARTICULAR OF I.P.O.:

I.P.O. NO. : 96159603
Date of Issue : 27.8.03
Issued from : Guwahati
Payable at : Guwahati

12. LIST OF ENCLOSURES:

As stated in the INDEX.

Verification ...

Secy Narpati Math

VERIFICATION

I, Shri Harpati Nath, son of Late Mathura Nath, aged about 26 years, permanent resident of village and Post Office- Sorbhog, District- Barpeta, Assam, do hereby solemnly affirm and state that the statements made in the application in para

are true to my knowledge and belief

, those made in para _____ being matter

of records, are true to my information derived therefrom and the

rest are my humble submission and legal advice. I have not

suppressed any material fact of the case.

And I sign this verification on this _____ th day of September, 2003 at
Guwahati.

Shri Harpati Nath

Deponent

Sl. No. ()

OFFICE OF THE
 BARANAGAR J. P. S. & M. P.
 SCHOOL : SORBHOG
 Estd. - 1936

Panchajali Printers, Sorbhog-781317

CERTIFIED that Sri / Miss Harpati Nain
 son / daughter of Sri Manobendra Nain an inhabitant
 of village Sorbhog town under Sorbhog
 P. S. in the District of Barpeta Appeared / passed in the H. S. L. C. /
 AHM Examination in 1994 as a Regular / Private / Compartmental candidate
 under the Board Roll N4-502 No 464 being placed in the
3rd Division / Under the compartmental chance /
~~and could not come out successful.~~ His date of birth is 1.3.77

So far as I know his / her conduct and character were good.

I wish him / her success in life

Date - 23.7.94

Principal

Baranagar J. P. S. & M. P.

School: Sorbhog.

Office

Certified to be true Copy.

SR
 Advocate

Office of the Barnagar J R P H S & M P School

SORBHOQ

ESTD. - 1936

No. 114 Dated Sorbhog, the 25th June 1996

Certified that Sri / Smti. Harpal Nath
son / daughter of Manabendra Nath an inhabitant of
village / town Sorbhog W. No. - 3 under Sorbhog P. S.
in the District of Barpeta passed the Higher Secondary
Examination 1996 with Science / Arts stream bearing Roll No. 427
No. A-26 being placed in the 3rd Division.

While he / she was a student of this Institution his / her conduct
and character were good.

I wish him / her success in life.

COUNTER SIGN
[Signature]
Asstt. Inspector of Schools
B. D. Barpeta.

[Signature]
Principal,
Barnagar J R P H S & M P School
SORBHOG
B. D. Barpeta

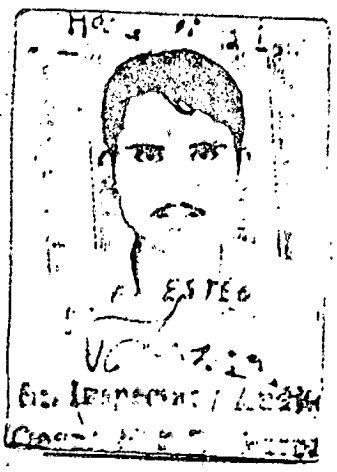
Purbanchal Printers, Sorbhog-781317.

Certified to be true Copy.

[Signature]
Advocate

All Assam Other Backward Classes Association

(Registered under the Society Registration Act, Act XXI, 1860 & Recognised by the State Govt. of Assam Vide Memo No. TAD/MISC/112/76/13 dated the 3rd March 1976)
Registration No. 890
S. K. Barua Road, Guwahati-781022



Sl. No. H 751

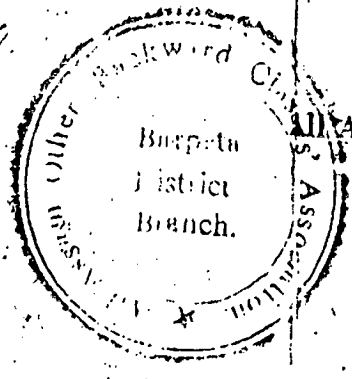
Date 17.5.90

Certified that Shri / Shrimati Honhoti Nath
Son / Daughter / Wife of Shri / Late Manabandira Nath of
Sorbhog W. No-3 Village/Town/TE under the Sorbhog P/S in
the District of Barpeta Assam belongs to Jogi (Nath) Caste/
Community/Tribe which is recognised as Other Backward Class/~~More Other Backward Class.~~

Generally his / her family resides at Sorbhog W. No-3
Village/Town/TE under Sorbhog P/S in the District
of Barpeta Assam.

Counter Signature
A. D. C. / S. D. O.

[Handwritten signature]
21/05/90
15/20



[Handwritten signature]
President / General Secretary
All Assam Other Backward Classes Association.
Barpeta District Branch
District Branch
(Seal)

Certified to be true Copy.

[Handwritten signature]
Advocate

ENGLISH TRANSLATION

(Seal)
Sd/- Illegible
(A. K. Das)
27.1.99

Deed No. 56/9(N) Date: 29.1.99

(SEAL)

ADOPTION DEED

Stamp Paper (50.00 + 10.00 = 60.00)

THIS deed is executed by Sri Manabendra Nath, son of Late Birmal Nath, by profession is service, P.O. Sorbhog Town, Ward No.3, Mouza - Dhamachaka Bansi, P.S. Sorbhog, District and Mahkuma - Barpeta

IN FAVOUR OF

Sri Mathura Nath, son of late Birmal Nath, by Religion Hindu, by profession in service, P.O. Sorbhog Town, Ward No.3, Mouza - Dhamachaka Bansi, P.S. Sorbhog, Mahkuma and District - Barpeta, Assam.

This deed of adoption is executed today, with sound health and mind I have given my own son Sri Harpati Nath to my own younger brother in adoption as his son.

Sd/- Sri Manabendra Nath,


written by Osman Ali, Ward No.1 (from page 2)

From today I have no right over the son. I will be punished if I acted contrarily.

Therefore, with sound health and with own will and free mind I have executed this adoption deed. Date : 27.1.99 Witness : Sri Manabendra Nath Written by: 1) Sd/- Jogendra Chandra Nath, S/o. Late Nabin Chandra Nath, Ward No.3 Sorbhog. 2) Witness Sri Satya Das Nath, Somar Khat, written by Osman Ali, Ward No. 1, No. 562/563 Name- Manabendra Nath, P.O. Sorbhog Town, Mouza Damka (50.00 + 10.00) Osman Gonce Stamp Vendor Barnagar Sd/- Illegible 27.1.99

(Seal)

Certified to be true Copy.


Advocate

ENGLISH TRANSLATION

(Seal)
Sd/- Illegible
(A. K. Das)
28.1.99

Deed No. 64/10(12) Date: 28.1.99

(SEAL)

ADOPTION DEED

This deed is made between Sri Harpati Nath, Son of Sri Manabendra Nath., by religion Hindu, P.O. Sorbhog Town, Ward No.3, Mauza Damkachaka Bansi, P.S. Sorbhog, District & Mahkuma - Barpeta, Assam

-AND-

Sri Mathura Nath, son of late Birmal Nath, by Religion Hindu, by profession in service, P.O. Sorbhog Town, Ward No.3, Mouza - Dhamachaka Bansi, P.S. Sorbhog, Mahkuma and District - Barpeta, Assam.

KNOW ALL MEN BY THIS DEED of adoption of a son that I have at present no children. I have adopted the aforesaid boy as my son considering the future prospect. No legal heir or other co-sharer can demand in near future. Today, in presence of witnesses I have accepted the adopted son by executing this deed of adoption.

Date : 28.1.99

This deed is read to both the parties. Sri Mathura Nath, Sd/- Osman, Witness.

1. Witness Sri Jogendra Chandra Nath,
S/o. Late Nabin Nath, Sorbhog, and
2. Witness Sri Satyaban Nath, Somarkhat

Written by Osman Ali, Ward No. 1
977/978 Sri Mathura Nath, P.O. Sorbhog Town
Ward No.3, Mouza - Damkachaka Dawki (50.00 + 10.00)

S.N. Das, Stamp Vendor Sorbhog Sd/- Illegible 27.1.99


(SEAL)

19.2.99

From today he will get the right and ownership over all moveable and immovable property alongwith all the service benefit of my service. (Sri Mathura Nath and Osman) Written by Osman Ali, Ward No. 1 Former Page (3) and he has been adopted from this day. After my death he will perform all the rituals and shall become the owner of the property.

(SEAL)

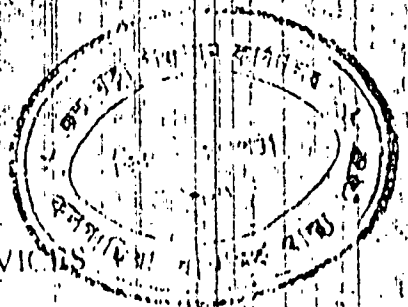
Certified to be true Copy.


Advocate



सत्यमेव जयते

Sl. No. 0056998



GOVERNMENT OF ASSAM
(অসম চৰকাৰ)
DIRECTORATE OF HEALTH SERVICES
(স্বাস্থ্য সেৱা সঞ্চালকালয়)
CERTIFICATE OF DEATH
(মৃত্যুৰ প্ৰমাণ পত্ৰ)

ISSUED UNDER SECTION 12/17 of the Registration of Births and Deaths Act, 1969.
(জেনা আৰু মৃত্যুৰ প্ৰমাণ আইন ১৯৬৯ নং ১৬/১৭ অংশত নিৰ্ধাৰিত)

This is to Certify that the following information has been taken from the original record of Death which is in the register for Registration unit of _____ of District _____ of the State of Assam.

ইয়াৰ দ্বাৰা প্ৰমাণিত কৰা হয় যে তলত দিয়া বিৱৰ্তিত তথ্য অসম ৰাজ্যৰ _____ জিলাৰ _____ পৌৰসভাৰ _____ মৌজাৰ অন্তৰ্গত _____ পঞ্জীয়ন গোটেৰ পঞ্জীয়ন মূল অভিলেখৰ পৰা সংগ্ৰহ কৰা হৈছে।

Name/নাম : _____
Sex/লিংগ : _____
Date of Death/মৃত্যুৰ তাৰিখ : _____
Place of Death/মৃত্যুৰ স্থান : _____
Registration No./পঞ্জীয়ন নং : _____
Date of Registration/পঞ্জীয়নৰ তাৰিখ : _____

Signature of _____
Deputy Registrar

Stamp Sig. of Chief _____
Deputy Registrar

Medical and Health Officer
Sorbhog, SHG

Certified to be true Copy.

Advocate

DT:

27/26/04/99

To,

The DRM/P/APDJ,
N. F. Railway.

Sub:

Prayer for Appointment on Compassionate Ground.

Respected Sir,

Most respectfully I beg to state that I am the only son (adopted) of Late Mathura Nath Ex-Gangman under SSE/P-Way/BPRD who was dead on 10.6.99.

So, I humbly request you kindly to enlist my name to provide me a job in Rly. Establishment on compassionate ground.

The particulars in support of my Educational Certificate is attached herewith.

I, shall be highly obliged to the authority concerned for this act of kindness.

Enclos

- 1) Death Certificate.
- 2) Adoption Certificate.
- 3) Educational Certificate,
- 4) Affidavit copy of Mathura Nath.

Yours faithfully,

Sri Harpati Nath

(SRI HARPATI NATH)

Son(adopted of Late Mathura Nath.
Vill: P.O.: Sorbhoy,
Ward No. 3,
Dist: Barpeta (Assam),
Pin - 781317.

[Signature]
Senior Section Engineer (P. Way)
N. F. Rly, Barpeta Road.

Certified to be true Copy

[Signature]
Advocate

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Date -
20/9/2000

To

The DRM/P/APDJ
N.F. Railway

Sub: Prayer for appointment on Compassionate ground

Respected Sir,

Most respectfully I beg to state that I am the only son (adopted) of Late Mathura Nath Ex-Gangman under SSE/P-way/BPRD who died on 10.6.99.

I humbly request you to kindly enlist my name to provide me a job in Railway establishment on compassionate ground. In this regard I have also already made another application on 26.7.99.

The particulars of educational qualification are attached herewith.

I shall be highly obliged to the authority concerned for this act of kindness.

Yours faithfully,

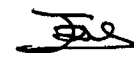
Sri Har Pati Nath

(SRI HARPATI NATH)
S/o. Lt. Mathura
Nath
Vill: PO : Sobhog,
Barpera, Assam

Enclosed:

- 1) Death certificate
- 2) Adoption Certificate
- 3) Education certificate
- 4) Affidavit

Certified to be true copy


Advocate

Dt. 11-12-2001/28

To :

The DRM/P/APDJ
N.F. Railway

Sub: Prayer for appointment on Compassionate ground

Respected Sir,

Most respectfully I beg to state that I am the only son (adopted) of Late Mathura Nath Ex-Gangman under SSE/P-way/BPRD who died on 10-6-99.

I humbly request you to provide me a job in Railway establishment on Compassionate ground.

In this regard I have previously made application on 26-7-99 and 20-9-2000 of which I have got no response.

My educational qualification certificates all enclosed were with.

I shall be highly obliged to the authority concerned for this act of kindness.

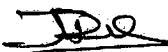
enclosure:-

1. Death certificate
2. Adoption certificate
3. Education certificate
4. Affidavit

Yours faithfully

Sri Har Pati Nath
Sri. Lt. Mathura Nath
Vill: PO: Sorbhog
Borpetta, Akam

Certified to be true Copy.


Advocate

To
The DRM(P)/APDJ
N.P. Railway
Alipurduar Jn.

Dated 4th April/2003

Sub : Comp. apptt. of Sri Harpati Nath,
son of Late Mathura Nath, Ex-G/Man
under PWI/BPRD,

Sir,

With due respect I beg to state that I had already applied with Court Affidavit for appointment of my adopted son Sri Harpati Nath on compassionate ground in Railway in any group 'D' post against the death of my husband Late Mathura Nath. All settlement dues have also been paid in the name of my said adopted son from the authority. But no any arrangement has been made in appointing of my said son till today in the Railway.

I, therefore, request your honour once again and arrange with an appointment in any Group-D Post in Railway to my son at the earliest time so that this poor widow mother would be relieved from economy hardship. I would be highly obliged thereby.

With thanks,

Yours faithfully,

Rini Bala Nath

(Smt. Rini Bala Nath)
Widow of Late Mathura Nath
Ex-Gangman
under PWI/BRRD

Certified to be true Copy,

[Signature]

Advocate

20,

The Divisional Railway Manager, (A)
N.F. Rly., Rangiya.

Sub: Forwarding of application of Sri Harpal Nath for
Compassionate appointment.

One application submitted by Smt. Renu Bala Nath, for
appointment of her adopted son Sri Harpal Nath on Compassionate
ground against the death of late Mathura Nath, ex. gangman under
SSE/P. way/BRD is received in this office. Late Mathura Nath, was
a screened regular Railway staff and his lien was maintained
at the A.P.J. division, who was expired on 10-6-99 while in service.
The original application along with service particulars of Ex. Rly. staff
in duplicate duly filled with countersigned is forwarded herewith
for further disposal of the same from your end.

DA/as above

[Signature]

22/5/03

Chief Section Engineer (U) Dept.
of M. & C. under the
C. & B. Dept. Depots Dept.

[Signature]

NORTHEAST FRONTIER RAILWAY

ANNEXURE - I

PARTICULARS TO BE SUBMITTED BY THE CONTROLLING OFFICER OF THE EX.EMPLOYEE IN CONNECTION WITH APPOINTMENT ON COMPASSIONATE GROUNDS.

The following particulars are furnished in connection with appointment of Shri/Smt. Harbati Nath son/daughter/wife of Late Mahua Nath Ex. ... under SSE/P-way/APRD to a Class III/IV-V post in compassionate grounds :-

1. Name :- Late Mahua Nath
2. Designation & Office :- Ex. gangman under SSE/P-way/APRD
3. Date of birth :-
4. Date of appointment :- 01-01-84
5. Date of death/Medical incapacitation :- 10-06-99
6. Period of service rendered :- 15 Yrs.
7. Period of service left to attain the retirement age :-
8. Last pay and scale :- Rs. 2500 in scale Rs. 2650-4000/-
9. State whether died/medically incapacitated while in service :- Died
10. Cause and nature of death/medical incapacitation :-
11. Whether belongs to SC/ST :- NIL ; OBC
12. In case of medically decategorised staff :-
 - (a) Category for which declared fit for alternative job :- NIL
 - (b) Alternative post offered if any, with pay & Scale :- NIL
 - (c) Loss of emoluments towards the pay & allowances :- NIL
 - (d) Whether alternative job accepted or applied for voluntary retirement :- NIL
 - (e) The date of voluntary retirement :- NIL
 - (f) Actual period of qualifying service for pensionary benefits :-
 - (g) Whether a certificate has been issued by the Rly. Medical Authority certifying that the Ex. Employee concerned has not been declared medically unfit for all post in terms of para 512(ii) of Rly. Medical Manual :-
 - (h) Whether ... or not ?

(Contd.)

Certified to be true Copy.

J. D. D.
Advocate

- 2 -

B. Family particulars of the Ex-employee.

(I) Name of the family members.	Relation with the Ex-employees.	Date of birth.	Educational qualification.	Whether employed or not.
1. Smt. Rani Bala Nath	Widow only	10-01-58	NIL	not
2. Sri Harpal Nath	Adopted son	01-03-77	Read up to class IX	not
3.				
4.				
5.				
6.				

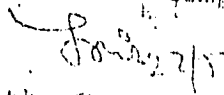
(II) Whether any member of the family already employed with the Railway, if so, indicate when and how he/she appointed.

C. Final Settlement particulars of the Ex-employee.

- 1. P.F. Own Contribution :- Paid
- 2. DCRG :- Paid
- 3. LLLS :- Paid
- 4. Pension :- Paid
- 5. Other dues, if any :- Nil

Certified that the particulars furnished in this case are verified from the service records of the Ex-employee and no member of the family of the Ex-employee has been appointed on compassionate grounds.

Date: _____


 (Signature of the Chief Section Officer of the Employees Welfare Office)

- Enclosure:-
- 1. A copy of the death/medically incapacitation certificate of the Ex-employee.
 - 2. Educational and age-proof certificate of the candidate for which appointment sought for.

27/04

22-

গণপ্রজাতন্ত্রী বাংলাদেশ
Central Administrative Tribunal
2324 JAN 2004
গুৱাহাটী বেঞ্চ
Guwahati Bench

Filed by:
Sukomal Banerjee
Railway Advocate
Guwahati
23.1.2004

32
Anuraj Singh
Sr. D.P.O. Barpeta, N.F. Railway

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH,
GUWAHATI.

ORIGINAL APPLICATION NO. 211 OF 2003.

IN THE MATTER OF :

Sri Harpati Nath ... Applicant

Versus

1. Union of India.
2. The General Manager,
N. F. Railway.
3. The Divisional Railway
Manager (P), Rangiya
Division, N.F. Railway,
Rangiya.
4. Senior Section Engineer
(P. Ways), N.F. Railway,
Barpeta Road.

... Respondents.

A N D

IN THE MATTER OF :

Written Statement for and on behalf of the
Respondents.

The answering respondents most respectfully beg
to sheweth as under :

1. That, the answering respondents have gone through
the copy of the application filed by the applicant and have
understood the contents thereof.

Contd.....2

Amrinder Singh
10/11/04
S. D. Singh
S. D. Singh

-: 2 :-

2. That, the applicant has got no valid cause of action and/or right to file this application.

3. That, this application suffers on ground of misrepresentation of facts and mis-interpretations of rules on the subject.

4. That, the application suffers on ground of infirmities on point of limitation. Late Mathura Nath died on 10.6.99 and the present application has been filed on 18.9.2003 or so i.e. after about 4 years and this is hit Under S. 21 of the CAT Act.

5. That, he has got no right or title for filing the present application as per extant law and rules on the subject of valid adoption.

6. That, for the sake of brevity, the respondents have been advised to confine their replies only on those averments in the application which are relevant and material for a proper decision in the case.

All other allegations to the contrary are denied herewith and the applicant is put to strictest proof of those allegations/averments in the application which are not specifically admitted in this written statement or are not borne on records.

7. That, with regard to averments made in paragraphs 1 of the application it is stated that to be eligible for getting appointment as an adopted son of the deceased Hindu the

34

Arbhusman Singh
02/11/04
Sr. D. O. 1001 Bangalore

employee), the adoption of the son or daughter should be strictly under the extent provisions of Hindu Adoption and Maintenance Act, 1956.

As the adoption of the applicant was not in conformity with the provisions of the above said Act, question of extending the benefit of appointment on compassionate ground does not arise. This matter was already informed to the applicant when he attended office.

8. That, with regard to averments made in paragraphs 4.1 to 4.3 of the application, it is submitted that nothing are admitted as correct except those statements which are borne on records, and, the applicant is put to strictest proof his averments.

It is submitted that from records it is revealed that Sri Harpati Nath (applicant) whose date of birth as per School certificate is 1.3.1977, is the nephew of late Mathura Nath, Ex.Gangman who died on 16.6.1999.

It also appears from records that no adoption certificate has been submitted by late Mathura Nath during his life time. It was only after death of late Mathura Nath that the party had claimed all benefits by way of submitting ^{an} adoption deed dated 28.01.1999. As the said deed was not submitted by the deceased employee during his life time for examination and acceptance by the Railway Authorities and as on examination of the adoption deed now produced it is seen that on the date of adoption, the child (adoptee) already completed the age of 15 years on the date on which the adoption deed was prepared/ executed, the adoption could not be taken as valid one under the provisions of the Hindu Adoption and Maintenance Act, 1956.

35
Amarendra Nath
07/10/4
Sr. D. O. Prangya, N.F. Railway

-: 4 :-

As subsequently Sri Harpati Nath submitted one Will for payment of final settlement dues which was executed by the deceased during his life time, the payment of final settlement dues of late Mathura Nath was made to Sri Harpati Nath on submission of probate issued by the Hon'ble Court (based on Will executed by the deceased).

It is thus well apparent that the Railway Administration has not accepted the deed of adoption of a son as submitted by Sri Harpati Nath.

9. That, with regard to averments at paragraphs 4.4, 4.5 and 4.6 and 4.8 of the application it is submitted that nothing are accepted as correct except those which are admitted hereunder as correct and the applicant is put to strictest proof of those statement/averments which are not admitted hereunder.

It is admitted that late Mathura Nath was a permanent employce of the N. F. Railway and died while in service.

In order to be eligible for compassionate appointment of the adopted son, it is very necessary that the adoption should be a valid one as per law and such adoption has been accepted by the Railway Administration. In the instant case, the adoption matter was not communicated/submitted by the late Mathura Nath (ex.Employce) before the Railway Administration during his service period. In the educational qualification certificate submitted by the applicant as Annexure-'A' to the application, the name of father of Harpati Nath (applicant) has been shown as Manobendra Nath and his

Ambarish Jais
07/11/04
Sr. D.O., Bangalore, N.F. Railway

-: 5 :-

date of birth has been shown as 1.3.1977. In all the documents as produced by the applicant as Annexure-'B' (dated 25.6.96), Annexure-'C' (O.B.C. Certificate dated 17.5.1990), Annexure-'D' & 'E' (Adoption Deeds dated 29.1.99 and 28.1.99) also, the name of the father of the applicant has been shown as Manabendra Nath and as such it also appears that no adoption took place prior to 1996. Even, in all these documents there is ^{no} mention of late Mathura Nath as father of the applicant.

The persons who may be adopted has been clearly laid down in Section 10 of the Hindu Adoption and Maintenance Act, 1956 and the relevant extract of said rule is furnished below:

"Section 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 Hindu;
- ii)
- iii)
- iv) he or she has not completed the age of fifteen years, unless there is a custom or usage applicable to the parties which permits persons who have completed the age of fifteen years being taken in adoption. "

In view of the clear provision of the Act, it cannot be said that the adoption of Sri Harpati Nath (Applicant) is valid and he can be taken as an adopted son within the meaning of Hindu Adoption and Maintenance Act, 1956.

37

Ambarish Jais
Sr. D.P. / Rangija, W.F. Railway

-: 6 :-

Again, in the 'Nomination Form' for payment of Provident Fund Money, late Mathura Nath has executed nomination in favour of Sri Harpati Nath as his nephew and Sri Harpati Nath also subsequently submitted 'WILL' for taking payment of F.S. dues.

From above it is well apparent that -

- i) the applicant cannot be accepted as the adopted son of late ~~late~~ Mathura Nath, ex. Railway employee as per rules/laws.
- ii) the adoptee was of more than 15 years of age on the date of execution of the adoption deed.
- iii) no documentary evidences are there to show that the applicant was within the age limit as prescribed by law and rules while adoption took place. Rather facts as stated herein before ^{reveals} that the adopted son's father's name was shown as Manobendra Nath and not as Mathura Nath in all documents submitted by the applicant as Annexures- B, C, D & E etc. of this application.

It is also not correct that any verbal assurance was given by the respondents regarding giving him compassionate appointment in any Group of 'D' or 'C'.

The other allegations as made in paragraphs 4.5 and 4.6 of the application are denied herewith and applicant is put to strict proof of same.

10. That, with regard to averments made at paragraph 4.7 of the application it is submitted that the allegations are not correct and hence are denied herewith.

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Sr. Sd/o (Rangija, N.F. Bahar)
Sankar Jais's

-: 7 :-

It is submitted that the records so far produced by the applicant reveals that the applicant cannot be treated as an adopted son of late Mathura Nath. Rather he is the nephew of the deceased employee and as per extant rules on compassionate appointment on the Railways, nephew cannot be offered appointment on the Railways against compassionate grounds appointments.

11. That, with regard to averments at paragraphs 4.9, 4.11 and 4.12 of the application it is submitted that the allegations of delay, illegality, arbitrariness or in-action etc. as made in this paragraph are quite in-correct and hence denied herewith. There has been no violation of the provisions of the principles of natural Justice and administrative fair-play or provisions of Article 14, 16 and 21 of the Constitution of India, as alleged.

It is submitted that the applicant has not been found eligible for compassionate ground appointment.

It is denied that the applicant was denied Justice or that the application has been made bonafide and for ends of Justice.

12. That, in view of what have been submitted in the above paragraphs of this written statement, none of the grounds for relief as mentioned in paragraph 5 of the application and the relief as sought for under paragraphs 8 and 9 of the application are sustainable under law and fact of the case, and prayers are liable to be rejected.

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Anand Jaisri
Sr. D/o (Bangalore, M.F. Bank)

-: 8 :-

It is completely denied that there has been any violation of law and rules, or the terms and conditions of Railway Board's circulars and guide lines, or rules of natural Justice, as alleged ^{are violated} or the applicant has acquired any legal right for appointment.

of

~~First, in view of what has been stated in the respondents' paragraphs in this regard, none of the grounds as mentioned in paragraphs 4 and 5 of the application are sustainable under the law and fact of the case and the grounds of the applicant are liable to be rejected.~~

It is emphatically denied that there has been any illegal, arbitrary, mala fide action etc. on the part of the respondents or there has been any violation of the principle of natural Justice etc. or any extant statutory rules or procedure etc. as alleged.

13. That, it is submitted that all actions taken in the case by the respondents are quite legal, valid and proper and have been taken after due application of mind and that the present case is based on wrong premises and suffers from misconceptions and mis-representation of rules and laws on the subject.

14. That, necessary enquiries are still under progress and the answering respondents crave leave of the Hon'ble Tribunal to file ^{an} additional written statement, if found

Contd.....9

-: 9 :-

necessary after enquiries, for ends of Justice.

15. That, under the facts and circumstances of the case as stated in the foregoing paragraphs of written statement, the instant application is not maintainable under law and fact of the case and is liable to be dismissed.

VERIFICATION

I, AMBESWAR SAIKIA son of LATE CHANDRA SAIKIA aged about 48 years by occupation, Railway Service, now working as Senior Divisional Personnel Officer, Rangiya Division, N. F. Railway at Rangiya, Assam, do hereby solemnly affirm and state that the statements made at paragraphs 1 and 6 are true to my knowledge and those made in paragraphs 7, 8, 9 and 10 are based on informations as gathered from records of the case file which I believe to be true and the rest are my humble submissions and I sign this verification the Second day of January 2004.

Ambeswar Saikia 2/1/04

SENIOR DIVISIONAL PERSONNEL OFFICER
RANGIYA DIVISION : RANGIYA
NORTHEAST FRONTIER RAILWAY
FOR & ON BEHALF OF
UNION OF INDIA.