

CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH, ALLAHABAD

Orders reserved on : 17.1.2018

Orders pronounced on : 21.2.2018

Hon'ble Mr. Justice Dinesh Gupta, Member(J)

O. A. No. 330/01655/2012

Vi shwanath Kharwar adopted son of late Raja r/o village Ruccharpar, Post Lal Road, District- Deoria.

..... Applicant

By Advocate: Sri N. C. Mishra

Versus

1. Union of India, through its Secretary, Ministry of Railways, Rail Bhawan, New Delhi

2. The Divisional Rail Manager (Karmik) Eastern Railways, Lahartara, Varanasi.

..... Respondents

By Advocate : Shri Anil Kumar

ORDER

The Applicant has filed this OA under Section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs:-

i) Issue necessary writ order or direction to the respondents setting aside the impugned order dated 27.5.2012 (Annexure A-1 to the compilation No. 1) passed by the Mandal Rail Prabandhak (Karmik) Eastern Railways, Lahartara, Varanasi.

ii) Issue necessary writ order or direction to the respondents to appoint the applicant on compassionate ground.

iii) To issue any other necessary writ order or direction which this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case.

iv) Award the cost of the application to the applicant.

2. The brief facts emerging from the O.A. are that the applicant is adopted son of Smt. Geeta Devi wife of late Raja Ram. The adoption deed was registered on 3.12.1997 (Annexure No. A-2).

2.1 Smt. Geeta Devi mother of the applicant died on 5.7.2008 leaving her married daughter and the applicant.

2.2 The applicant submitted an application for compassionate appointment and married daughter of deceased has given no objection for appointment of the applicant.

2.3 The applicant filed a suit No. 173 of 2009 for declaration in the Court of Civil Judge(Jr. Div) Deoria for declaring him as adopted son of deceased Smt. Geeta Devi and Civil Judge after inviting objection from the parties has allowed the suit of the applicant on 2.5.2009 declaring the applicant as adopted son of deceased Smt. Geeta Devi.

2.4 After obtaining the order of Civil Court, an application has been filed by the applicant to the DRM (Karmik), Eastern Railway, Varanasi enclosing the decree of Civil Court declaring the applicant as adopted son of deceased Smt. Geeta Devi and sought compassionate appointment.

2.5 Despite the fact that there is no dispute that the applicant is adopted son of deceased, the impugned order was passed by the respondents stating that in view of the legal opinion, the adoption deed is not legally permissible and rejected the claim of the applicant vide order dated 24.5.2010 against which the applicant has filed O.A. No. 1078/2010 which was disposed of by the Tribunal on 22.3.2012 directing the opposite party to take decision afresh. Again the respondents have rejected the claim of the applicant vide order dated 27.5.2012 which was communicated to the applicant on 2.9.2012.

2.6 The opposite party while rejecting the claim of the applicant has referred to the fact that Sri Shiv Charan has not consented to Godnama and as such the adoption is wholly illegal and appears to be suspicious. A perusal of affidavit filed by Sri Shiv Lochan clearly speaks that he had consented to adoption as per

statement of fact referred in paragraph No. 4 of the affidavit.

3. Notices were issued to the respondents who in turn filed the counter reply through which it is stated that adoption deed registered on 3.12.1997 is not a valid adoption as per Section 6 of the Hindu Adoption and Maintenance Act, 1956(herein referred to as Act). As per Section 9 of the Act, when a father is alive, only he can give a child in adoption with the consent of the mother. Whereas in the present case, perusal of the adoption deed (Annexure No. A-2 to the O.A.) discloses that adoption was given by the mother of the child even though father of the applicant is alive and the consent of the father was also not mention in the deed. Further, as per Section 10 of the Act the child given in adoption should not be more than 15 years of age. Whereas the age of the applicant as given in High School certificate when calculated comes to be more than 15 years at the time of adoption i.e.

3.12.1997. Hence the adoption deed registered is not a valid adoption in the eyes of law. The decree passed by the Civil Court was a compromise decree between the applicant and daughter of the deceased and on the basis of said decree, the adoption cannot be considered as a valid adoption. Hence the case of applicant has rightly been rejected by the respondents. Moreover, the applicant has a monthly income of Rs. 5000/- and therefore, he has sufficient means to survive.

4. Rejoinder reply is filed by the applicant through which he has reiterated the facts as stated in the O.A. and denied the contents of the counter reply.

5. Counsel for applicant has placed reliance on the following case laws:-

i) Amit Kumar Vs. State of U.P. and others reported in 2015(7) ADJ 372 (LB)

ii) Ashwani Kumar Vs. Vidya reported in 2007- LAWS (All) 1-3

iii) Sunil Kumar Pandey Vs. Union of India reported in 2007 (2) BBCJ 253

6. Counsel for applicant submitted that the respondents have rejected the claim of applicant for compassionate appointment on false and after thought grounds. The case of the applicant is very simple. The Applicant was legally adopted son of Raja Ram and his wife Geeta Devi long back in the year 1982 and at that time, the adoption deed could not be registered. Later on, the same was registered on 3.12.1997 and on the basis of the said adoption deed, the applicant has filed a suit against the daughter of late Raja Ram and Geeta Devi in which on the basis of compromise, decree was passed and applicant was declared as adopted son of Raja Ram and Geeta Devi. Smt. Geeta Devi was employee of the respondents' organization who expired in 2008 leaving behind her married daughter and applicant. The married daughter has given no objection in case respondent gives compassionate appointment to the applicant. The applicant's case was considered and respondents rejected the claim of applicant for compassionate appointment on the ground that adoption deed is not valid. The applicant preferred an O.A. before this Tribunal and this Tribunal while disposing of the O.A., send back the matter to the respondents for re-consideration as the respondents have not given any ground on which the respondents have rejected the claim of the applicant. In compliance of the order passed by this Tribunal, the respondents have passed the impugned order rejecting the claim of the applicant on the ground that in the adoption deed consent of the natural father of the applicant was not taken. Secondly, the adoption deed though was made in the year 1982 but the same was registered on 3.12.1997 and in case 3.12.1997 is taken as date of adoption, at that time applicant was more than 15 years of age, as such as per Hindu Adoption and Maintenance Act, 1956, he cannot be given adoption. Besides, treating the adoption deed of the applicant as invalid, the respondents have also rejected the claim of the applicant on the ground that applicant has independent income, marriage of his sister has taken place during the life time of his mother Geeta Devi and Geeta Devi has left no liability on the shoulder of the applicant and the applicant was more than 26 years of age at the time of death of Geeta Devi and in fact was not dependent on Geeta Devi. The applicant subsequently argued that consent of the father of the applicant was taken at the time of adoption but the deed was registered by the natural mother of the applicant later on and in the mean time, adopted father of the applicant has expired and natural father was not available. The contention of the respondents that consent of the natural father was not taken at the time of registration. The applicant though was above the age of 15 years, however, as per Section 10 (iv) of Hindu Adoption and Maintenance Act, 1956, a person should be less than 15 years of age for taking adoption. There is a specific provision that 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. Counsel for applicant argued that in

applicant's case, there was a custom that a person above the age of 15 years can be taken into adoption. Counsel further submitted that in Section 2(2) of the Hindu Adoption and Maintenance Act, 1956, it is clearly provided that Act shall not apply to the members of any Scheduled Tribe within the meaning of clause (25) of Article 366 of the Constitution unless the Central Govt., by notification in the official Gazette, otherwise directs.

7. The counsel for applicant submitted that applicant belongs to Scheduled Tribe category and Hindu Adoption and Maintenance Act, 1956 will not apply in his case. He further submitted that so far as other grounds on which the respondents have rejected the claim of the applicant is concerned, the applicant was dependent at the time of death of her mother Geeta Devi and otherwise he was eligible for compassionate appointment but the respondents have rejected the claim of the applicant.

8. Counsel for respondents in reply to the same submitted that applicant has not taken any ground that he belongs to Scheduled Tribe category neither in the pleadings nor he has filed any proof of the same. Secondly, the applicant was admittedly above the age of 15 years when the adoption deed was registered and as such as per Section 10 of the Hindu Adoption and Maintenance Act, 1956, he was not eligible for given in adoption. Further consent of natural father was not mentioned in the registered adoption deed nor his signature was there. He further submitted that applicant was more than 26 years of age when the mother of the applicant Geeta Devi expired leaving behind married daughter and applicant and late Geeta Devi left no liability on the shoulder of the applicant and the applicant was major and having its own independent income, as such was not dependent on the deceased Geeta Devi. Therefore, respondents have rightly rejected the claim of the applicant for compassionate appointment. Counsel further submitted that so far as retiral dues is concerned, payment was made to both applicant and applicant's sister being entitle to receive the retiral dues.

9. The Court is unable to accept the contention raised by the learned counsel for applicant.

10. On one hand, the applicant has come with the case that he is legally adopted son under the Hindu Adoption and Maintenance Act, 1956 in 1982 but no adopted deed was executed on that date. On 3.12.1997, the adopted deed was registered and he has also filed a suit against his sister alleging him to be adopted son of the Raja Ram and Geeta Devi. At no point of time, the applicant has mentioned that he belongs to Scheduled Tribe neither in the representation nor in the O.A. or nor in pleadings. The counsel for applicant submitted that applicant belongs to Scheduled Tribe and the provisions of Hindu Adoption and Maintenance Act, 1956 are not applicable in his case. The applicant has not taken this plea at any stage nor filed any documentary evidence to show that he belongs to Scheduled Tribe. Thus, the contention of the applicant that he belongs to Scheduled Tribe has no force and according to applicant's own case, adoption has taken place in 1982 and the same was registered on 3.12.1997 and at that time the applicant was above 15 years of age. Secondly, the applicant has tried to submit that custom and usage in his community provides that a person more than 15 years of age can be adopted but neither in the pleadings nor in the O.A., there is any whisper about the custom or usage of the applicant's community and in the absence of any pleadings about the custom or usage of the applicant's community, no person above the age of 15 years can be given adoption.

11. So far as adoption deed is concerned, the contention of the applicant's counsel that adoption was taken in 1982 cannot sustain as before 1976, there was no compulsory requirement of registration of adoption deed. It was only in 1977, registration of deed was made compulsory and it is mentioned that no adoption deed can be held valid unless it is registered. The adoption deed of the applicant was registered on 3.12.1997 and if that date is taken as registration of adoption, admittedly, the applicant was above 15 years of age. As such, as per Section 10 of the Hindu Adoption and Maintenance Act, 1956, no person can be above who is above 15 years of age.

12. So far as decree is concerned, that was between the brother and sister that too on the compromise basis and after the decree the Court while allowing the O.A. directed the respondents to consider the validity of the adoption deed and pass a reasoned and speaking order and in compliance of the same, the respondents have passed the impugned order. The Court has given right to the respondents to see the validity of the adoption deed and they have rightly enquired about the validity of

adoption deed.

13. So far as other grounds on which the respondents have rejected the claim of applicant for compassionate appointment is concerned, it is very relevant to go through the basis on which the appointment on compassionate ground is to be made. Compassionate appointment are construed as violation of Articles 14 and 16 of the Constitution of India and is only in the nature of concession and therefore does not create a vested right in favour of the claimant. A compassionate appointment scheme is a non-statutory scheme and is in the form of a concession and it cannot be claimed as a matter of right by the claimant to be enforced through a writ proceeding. A compassionate appointment is justified when it is granted to provide immediate succor to the deceased employee. Mere death of a Government employee in his harness, it does not entitle the family to claim compassionate employment. The competent authority has to examine the financial condition of the family of the deceased employee and only if it is satisfied that without providing employment, the family will not be able to meet the crisis, that a job is to be offered to the eligible member of the family of the deceased employee.

14. The concept of compassionate appointment has been recognized as an exception to the general rule, carved out in the interest of justice, in certain exigencies, by way of a policy of an employer, which partakes the character of service rules.

15. The philosophy behind giving compassionate appointment is just to help the family in harness to get over the immediate crisis due to the loss of sole breadwinner. This category of appointment cannot be claimed as a matter of right after certain period, when the crisis is over. More so, the financial status of the family is also to be looked into as per the scheme framed by the employer while giving compassionate appointment and such appointment cannot be conferred contrary to the parameters of the scheme.

16. It is pertinent to note the fact that in a liberalized world as of today, there are plenty of avenues of employment available to the general public. Most of the people are not entirely dependent on the income of a single member of the family. Keeping this new social structure in mind, it would be seemingly right for the Courts to ensure that there is no abuse of the scheme of compassionate appointment either by the employer or by the applicant/claimant.

17. The million dollar question is 'Whether offering 'appointment' on compassionate ground (i.e., sympathy) is the only option /solution to mitigate 'hardship and distress of the family of an employee dying in-harness? The answer is an emphatic 'No'. Firstly, the Rules, as such, contain no provision to ensure that the dependent who gets appointment shall continue to maintain other dependents.

18. The above views are examined by the Madras High Court in the case of L. Marimuthu Vs. the District Collector on 30th October, 2017 in Writ Petition No. 2352 of 2014.

19. In the case of Umesh Kumar Nagpal Vs. State of Haryana and others reported in 1994 (4) SCC 138, is reproduced hereunder:-

''2....The whole object of granting compassionate employment is thus to enable the family to tide over the sudden crisis. The object is not to give a member of such family a post much less a post for post held by the deceased. What is further, mere death of an employee in harness does not entitle his family to such source of livelihood. The Government or the public authority concerned has to examine the financial condition of the family of the deceased, and it is only if it is satisfied, that but for the provision of employment, the family will not be able to meet the crisis that a job is to be offered to the eligible member of the family....''

It was further held as under :

''6. For these very reasons, the compassionate employment cannot be granted after a lapse of a reasonable period which must be specified in the rules. The consideration for such employment is not a vested right which can be exercised at any time in future. The object being to enable the family to get over the financial crisis which it faces at the time of the death of the sole breadwinner, the compassionate

employment cannot be claimed and offered whatever the lapse of time and after the crisis is over.''

20. In MGB Gramin Bank v. Chakrawarti Singh, at paragraph 6 the Apex Court held as follows: -

''6. Every appointment to public office must be made by strictly adhering to the mandatory requirements of Articles 14 and 16 of the Constitution. An exception by providing employment on compassionate grounds has been carved out in order to remove the financial constraints on the bereaved family, which has lost its breadearner. Mere death of a Government employee in harness does not entitle the family to claim compassionate employment. The Competent Authority has to examine the financial condition of the family of the deceased employee and it is only if it is satisfied that without providing employment, the family will not be able to meet the crisis, that a job is to be offered to the eligible member of the family. More so, the person claiming such appointment must possess required eligibility for the post. The consistent view that has been taken by the Court is that compassionate employment cannot be claimed as a matter of right, as it is not a vested right. The Court should not stretch the provision by liberal interpretation beyond permissible limits on humanitarian grounds. Such appointment should, therefore, be provided immediately to redeem the family in distress. It is improper to keep such a case pending for years.''

21. In Shreejith L. vs. Deputy Director (Education) Kerala and others, reported in 2012 (7) SCC 248, before the Hon'ble Apex Court, the appellant therein, contended that appointment on compassionate basis is made only to give succour to the family in financial distress on account of the untimely death of an earning member and therefore such appointment cannot be directed to be made where the family concerned has managed to survive for several years before the appointment is made, by someone, who was eligible.

22. It is well settled, in a catena of decisions extracted supra, that the scheme of compassionate appointment is to tide over the financial constraint of the family and that the person seeking for employment assistance should make an application to the competent authorities within three years from the date of death of the employee, subject to satisfying the eligibility criteria, for the post to which he seeks for. Reference can also be made to the decision in Steel Authority of India Limited v. Madhusudan Das, (2008) 15 SCC 560, wherein, the Hon'ble Supreme Court has clarified the law relating to compassionate appointments and held that it is only a concession and not a right:

''15. This Court in a large number of decisions has held that the appointment on compassionate ground cannot be claimed as a matter of right. It must be provided for in the rules. The criteria laid down therefore viz. that the death of the sole bread earner of the family, must be established. It is meant to provide for a minimum relief. When such contentions are raised, the constitutional philosophy of equality behind making such a scheme be taken into consideration. Articles 14 and 16 of the Constitution of India mandate that all eligible candidates should be considered for appointment in the posts which have fallen vacant. Appointment on compassionate ground offered to a dependant of a deceased employee is an exception to the said rule. It is a concession, not a right. (See SBI v. Anju Jain, (2008) 8 SCC 475 para 33.)''

23. With due respect, decisions made in V. Jaya's case and J. Jeba Mary's case, cannot be considered to be precedents, on the specific issue, as to whether, a minor is eligible to seek for employment assistance on compassionate grounds, on attaining majority, after a long number of years, after the death of the Government servant, de hors the condition that it has to be submitted within three years from the date of death of the Government servant, and when the scheme of employment assistance on compassionate grounds, is to tide over the financial constraint of the deceased family. The issue to be considered is when the scheme provides for a limitation or a specific period within which, an application for employment assistance has to be made, and how the said period of three years from the date of death of the Government Servant has to be computed, whether a person, who is otherwise not eligible to apply within the said period, on account of age or not satisfying the

required qualifications for any post in the service, in which the employee died, can make an application, on attaining majority and whether such application has to be considered irrespective of the period of limitation? On this aspect, this Court deems fit to consider few decisions of the Hon'ble Apex Court.

24. In Haryana State Electricity Board and another Vs. Hakim Singh, reported in 1997 (8) SCC 85, Haryana Electricity Board challenged an order of the High Court of Punjab and Haryana contending inter-alia that the respondent therein was not entitled to be considered for appointment in the Board on compassionate grounds. In the reported case, father of the respondent therein was a Lineman in employment of the Board. He died on 24.8.1974 in harness, leaving behind him, his widow and minor children, including the respondent. About 14 years, after the death of the said Lineman, widow applied for appointment to her son in the Board, on compassionate grounds, based on two circulars. As per the said circulars, one member of the family of the deceased employee could be considered for employment in the service of the Board, as a goodwill gesture, provided the request for such employment is made within one year of the death of the employee. The respondent filed a writ petition in the High Court contending inter-alia that when his father died, he was only four years old and therefore, his mother could make an application in the prescribed form and when he attained majority, he made a request. The Board did not give any favourable response to the repeated representations made in the matter. The Board took a stand that as the application was not made within the period specified in the circulars, the Board was unable to entertain the request for appointment on compassionate grounds. The High Court ordered the Board to consider the case of the respondent therein for compassionate appointment on the ground that, even if the dependents happened to be a minor child, at the time of death of the employee, the policy mandates his case to be considered by an extended period i.e., the time till the defendant attained majority. The Board's appeal was negatived by the Hon'ble Division Bench, with a direction to comply with the orders of the Single Judge, within a time frame. When the correctness of the above said orders was tested, at paragraph No. 8 of the judgment, the Hon'ble Supreme Court held as follows:

"8. The rule of appointment to public service is that they should be on merits and through open invitation. It is the normal route through which one can get into a public employment. However, as every rule can have exceptions there are a few exceptions to the said rule also which have been evolved to meet certain contingencies. As per one such exception relief is provided to the bereaved family of a deceased employee by accommodating one of his dependents in a vacancy. The object is to give succour to the family which has been suddenly plunged into penury due to the untimely death of its sole bread-winner. This Court has observed time and again that the object of providing such ameliorating relief should not be taken as opening an alternative mode of recruitment to public employment."

As regards the extended period, on attaining majority, the Hon'ble Supreme Court at paragraph Nos. 14 and 15, held as follows:

"14. In that case widow of a deceased employee made an application almost twelve years after the death of her husband requesting for accommodating her son in the employment of the Board, but it was rejected by the Board. When she moved the High Court the Board was directed to appoint him on compassionate ground. This Court upset the said directions of the High Court following two earlier decisions rendered by this Court one in Umesh Kumar Nagpal v. State of Haryana and Ors. [1994 (3) SCR 893], the other in Jagdish Prasad v. State of Bihar and Anr. 1996 (1) SCC 301. In the former, a Bench of two Judges has pointed out that "the whole object of granting compassionate employment is to enable the family to tide over the sudden crisis. The object is not to give a member of such family a post much less a post for the post held by the deceased". In the latter decision which also was rendered by a Bench of two judges, it was observed that "the very object of appointment of dependent of the deceased employees who die in harness is to relieve unexpected immediate hardship and distress caused to the family by sudden demise of earning member of the family". The Learned Judges pointed out that if the claim of the dependent which was preferred long after the death of the deceased employee is to be countenanced it would amount to another mode of recruitment of the dependent of the deceased government servant "which cannot be encouraged, dehorts the recruitment rules."

15. It is clear that the High Court has gone wrong in giving a direction to the Board to consider the claim of the respondent as the request was made far beyond the period indicated in the circular of the Board dated 1.10.1986. Respondent, if he is interested in getting employment in the Board has to pass through the normal route now."

25. In Director, Defence Metal Research Laboratory v. G. Murali, reported in 2003(9) SCC 247, the applicant was aged about two years, at the time of death of his father and that his application for compassionate ground appointment made, on attainment of majority was rejected, on the ground of non-availability of posts. The Central Administrative Tribunal, rejected the challenge. However, the High Court directed appointment on compassionate grounds, with a direction to the respondent's therein to create a post to accommodate him. The Civil appeal filed by the Director (Defense) and another, was allowed and at paragraph No. 4, the Hon'ble Supreme Court opined as follows:

"4. We do not find any flimsy ground or technicalities in the Tribunal's order. In fact, we find the High Court's order to be unsustainable. There has been a failure to appreciate what the Tribunal had rightly taken into account, namely, that the writ petitioner and his family had coped without the compassionate appointment for about eighteen years. There was no warrant in such circumstances for directing the writ petitioner's appointment on compassionate grounds and that too with the direction to the respondents to the writ petition to create a post to accommodate him"

26. In State Bank of India v. Somvir Singh, reported in 2007 (4) SCC 778, at Paragraphs 7 and 10, the Hon'ble Apex Court held as follows:

"7. Article 16(1) of the Constitution of India guarantees to all its citizens equality of opportunity in matters relating to employment or appointment to any office under the State. Article 16(2) Protects citizens against discrimination in respect of any employment or office under the State on grounds only of religion, race, caste, sex and descent. It is so well settled and needs no restatement at our end that appointment on compassionate grounds is an exception carved out to the general rule that recruitment to public services is to be made in a transparent and accountable manner providing opportunity to all eligible persons to compete and participate in the selection process. Such appointments are required to be made on the basis of open invitation of applications and merit. Dependents of employees died in harness do not have any special or additional claim to public services other than the one conferred, if any, by the employer. The Hon'ble Supreme Court further held that it is well settled that the hardship of the dependent does not entitle one, to compassionate appointment, dehors the scheme or the statutory provisions, as the case may be."

27. In S. Venkateswaran v. The Additional Director, Land Survey and Records Department [W. P. (MD) No. 9086 of 2011, dated 14.09.2011], it is held as follows:

"The principles enunciated in the above said judgments would make it clear that compassionate appointment is not a vested right which can be exercised at any time, in future. Compassionate employment cannot be claimed after a lapse of time, after the crisis is over. On the facts and circumstances of the above case, the Apex Court proceeded to observe that the employee died in harness in the year 1981 and after a long squabble by the dependents of the deceased, they have arrived at a settlement that the son-in-law (husband of the second daughter) who was unemployed may request for appointment on compassionate grounds. The request so made was accepted by the Personal Manager of the Company subject to the approval of the Director of the Company. The Director (P), who is the competent authority for post facto approval, keeping in view the object and purpose of providing compassionate appointment has cancelled the provisional appointment on the ground that nearly after 12 years from the date of death of the employee such an appointment could not have been offered to the so called dependent of the deceased employee. The Supreme Court held that the decision of the employer was in consonance with Umesh Kumar Nagpal's case and the same should not have been interfered with by the High Court."

28. From the above legal position and observation made by the Apex Court from time to time, it is clear that appointment under dying in harness rules cannot be claimed as a matter of right and while considering the case, employer is duty bound to examine the other consideration like financial position of the family. If we examine the case of the applicant, I found that at the time of death of Geeta Devi, applicant was above 26 years of age and cannot be said to be dependent on her and had his independent income. Secondly, the deceased Geeta Devi has left no liability on the shoulder of the applicant. Thus, there is no illegality in the impugned order and the respondents have rightly observed that daughter of the deceased has already married and retiral benefit has been paid to both applicant and his sister.

29. So far as judgment cited by the applicant is concerned, it is not disputed that adopted son is not entitled for compassionate appointment and come within the definition of the family as held in the case of Amit Kumar Vs. State of U.P. and others (supra). In the present case, the dispute is in regard to validity of adoption deed whether the applicant was legally adopted or not or whether the applicant is otherwise entitled for compassionate appointment or not.

30. In the case of Ashwani Kumar Vs. Vidyा (supra), the only dispute is regarding maintainability of appeal against the rejection order of the applicant's substitution. In the present case, the deed was executed after a lapse of more than 15 years from the date of alleged adoption and there is no presumption which the respondents can rebut at any stage.

31. So far as judgment of Sunil Kumar Pandey Vs. Union of India (supra) is concerned, the same relates to whether no objection was raised from any corner or not. The court has not entered into the validity of the deed. In the present case respondents was given liberty by the Court while allowing the O.A. to decide the representation of the applicant after looking into the validity of the adoption deed. Therefore, the respondents have looked into the validity of the adoption deed and have rightly considered the same.

32. In view of the above discussion, the Court is of the view that there is no sufficient ground to allow the O.A. since the deceased expired in the year 2008 and now we are in the year 2018 and at present the applicant is about 36 years of age,

33. Accordingly, the O.A. is dismissed. No order as to costs.

(Justice Dinesh Gupta)
Member (J)
HLS/-