

**Central Administrative Tribunal
Jaipur Bench, Jaipur**

O.A. No. 511/2017

Reserved on: 10.09.2018
Date of decision: 25.09.2018

Hon'ble Mr. A. Mukhopadhyaya, Member (A)

Lakhan Singh, adopted son of late Sh. Ram Swaroop, Aged about 39 yrs, By caste-Gurjar R/o Gram - Post Sikandara, Tehsil Bayana, Zilla Bharatpur, Rajasthan - 321401, Lt. Sh. Ramswaroop S/o Late Sh. Ballu, was working as a permanent post of Gangman in West Central Railway, Kota.

...Applicant.

(By Advocate: Shri Abhinav Kasliwal)

Versus

1. Union of India, through Divisional Manager (Establishments), West Central Railways, Kota Junction, Kota (Rajasthan).
2. The General Manager, Central Railways, Near Indra Market, Jabalpur, Madhyapradesh-482001.

...Respondents.

(By Advocate: Shri P.K.Sharma)

ORDER

Briefly, the facts of the case, as stated by the applicant, are that he is the legally adopted son of the late Shri Ram Swaroop, son of Ballu, who was employed as a Gangman in the West Central Railway. After the death of Shri Ram Swaroop on 18.05.1988, he applied for appointment in the respondent-Railways, on compassionate grounds, but this application was rejected by the respondents vide their letter No EE 890/119(88)

(2)

dated 18.03.1991, (Annexure A-1), (which purportedly relates to his application dated 10.10.1990), stating that his adoption by late Shri Ram Swaroop is not valid in terms of Section 11 of the Hindu Adoption Act. Subsequent representations elicited the same response on 14.01.2016, 02.02.2016 and 24.01.2017. During this period, the applicant had also obtained a succession certificate with reference to the amounts relating to GPF, Group Insurance and Leave Encashment of the deceased of Shri Ram Swaroop on 09.04.1990 and also a decree from a civil court which *inter alia* stated that he was the adopted son of late Shri Ram Swaroop; (Annexure A/5). The applicant claims that he submitted all these documents to the respondents. However, the respondents still refused to give him appointment on compassionate grounds. Aggrieved by this, he has filed this OA seeking the following reliefs:

"(a) The impugned letters/order dated 24.01.2017, 02.02.2016, 14.01.2016 and 18.03.1991 (Annexure A/1) be quashed and set aside and the respondents be directed to consider the case of the applicant for compassionate appointment on the suitable post which may be available with the respondents and grant the applicant appointment from the date he submitted the application for the purpose, and

(b) Any other relief which Your Honour may deem fit and proper in the facts and circumstances of the case may also be granted to the humble Applicant.

(c) Costs of the Original Application."

(3)

2. In reply, the respondents state that the applicant has earlier filed OA No.106/1992 before the Jaipur Bench of this Tribunal on the same ground and on the same issue of grant of compassionate appointment which was dismissed on 05.10.1993; (Annexure R-1). They contend that the present OA seeking the same relief on the same grounds is unconstitutional and that the applicant had concealed these facts from the court. As regards the succession certificate the reply states that this has been issued by the competent court is only for purposes of drawal of DCRG, (gratuity), and other retiral benefits and for excess in payments from the deceased bank account. Thus, the succession certificate is not valid for purposes of obtaining compassionate appointment, as evidenced by the fact that it is mentioned therein that "**this certificate is accordingly granted you and empowered you to collect the aforesaid amount and to receive interest accrued thereon up to date of collection.**" Accordingly, the respondents have pleaded that this OA be dismissed.

3. In his rejoinder to the reply submitted by the respondents, the applicant has sought to clarify that earlier OA No.106/1992 filed by him before this court was based only on the ground of the will executed by the applicant's deceased father whereas he is now seeking compassionate appointment on the basis of a valid adoption deed which is supported by the decree granted by the

(4)

Learned Civil Judge accepting the applicant as the legally adopted son of late Shri Ram Swaroop.

4. Counsel for both the applicant and the respondents were heard and the material on record was examined. At the outset, it must be mentioned that a perusal of the order passed by this court in OA No.106/1992, (Annexure R-1), clearly related to an application made by the applicant for appointment on compassionate grounds with the respondents. The applicant's contention that this OA was based only on the will executed by late Shri Ram Swaroop a few days before his death whereas a succession certificate and legally adopted deed form the basis for the claim made in the present OA is also not relevant as this makes no difference to the fact that the earlier OA substantively had the same cause of action, sought the same relief and related to the same parties. Thus, whether this qualifies as a case where the principle of *res judicata* applies or not, what is absolutely clear is that very similar substantive questions of facts and law have been adjudicated by this court earlier between the same parties.

5. There is also a material question as to whether the applicant, who appears to have been getting by since his father's death almost 30 years ago can be considered as a fit case for compassionate appointment. The rules relating to compassionate appointment in the Government are all predicated on the

(5)

perceived need to support the family of the deceased government servant during the period immediately following the death so as to protect them from indigent circumstances and penury visited upon them by the death of the primary bread winner. To this end, the departmental rules of compassionate appointment as well as pronouncements of various courts have always stressed the need for any compassionate appointment to fulfil this essential requirement/criterion. In the present case, after a passage of almost 30 years, it is very difficult to see how the need and therefore the justification for such compassionate appointment can continue to exist.

6. In sum therefore the case for compassionate appointment of the applicant not only appears to have been substantively adjudicated upon earlier, but is also found to be wanting in merit.
7. In the result, this OA is dismissed.
8. There will be no order on costs.

(A.Mukhopadhyaya)
Member (A)

/kdr/

