

CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH, PATNA
OA/050/00743/17

Reserved on : 30.07.2018
Pronounced on : 27.08.2018

C O R A M

HON'BLE MR. JAYESH V. BHAIRAVIA, JUDICIAL MEMBER

Ritesh Kumar Prabhakar, adopted son of Late Dharam Nath Bhagar, Resident of Village/Mohallah- Hariharpur, P.O.- Rajauli, P.S.- Hajipur (Sadar), District- Vaishali at Hajipur (Bihar).

..... Applicant.

- By Advocate: - Mr. M.P. Dixit

-Versus-

1. The Union of India through the General Manager, East Central Railway, Hajipur, P.O.- Digghi Kalan, P.S.- Hajipur, District- Vaishali at Hajipur, Pin Code- 844101 (Bihar).
2. The General Manager (Personnel), East Central Railway, Hajipur, P.O.- Digghi Kalan, P.S.- Hajipur, District- Vaishali at Hajipur, Pin Code- 844101 (Bihar).
3. The General Manager (Stores), East Central Railway, Hajipur, P.O.- Digghi Kalan, P.S.- Hajipur, District- Vaishali at Hajipur, Pin Code- 844101 (Bihar).

..... Respondents.

- By Advocate: - Mr. S.K. Ravi

O R D E R

J.V. Bhairavia, J.M.:- This OA has been filed by the applicant seeking the following reliefs:-

"(i) That your Lordships may graciously be pleased to quash and set aside the impugned order dated 23.10.2017 as contained in Annexure- A/1 in view of the order dated 13.08.2011 as contained in Annexure A/3 passed by the Competent Court of Civil Jurisdiction and also in view of the Principle/ Law laid down by Hon'ble Patna High Court

rendered in the case of Union of India & Ors. Vs. Most. Shitali Devi reported in 2002(4) PLJR 62, Para 4.

(ii) That your Lordships may further be pleased to direct/command the respondents to consider the case of Applicant and issue offer of appointment letter in favour of Applicant henceforth.

(iii) That your Lordships may graciously be pleased to direct/command the respondents to grant all consequential benefits in favour of the applicant.

(iv) Any other relief or reliefs including the cost of the proceeding may be allowed in favour of the Applicant.”

2. The brief facts of the case is as follows:-

2.1. The case of the applicant is that he is adopted son of the deceased Railway employee, namely, Late Dharam Nath Bhagat who died in harness on 03.05.2010 while working as Peon under the Respondent No. 3. It is pleaded that the said deceased employee and his wife, namely, Smt. Pramila Devi were issueless. Therefore, they had adopted the applicant on 31.12.1996 as their son with due and proper consent in writing by his biological parents, namely, Shri Amar Nath Bhagat and Smt. Asha Devi that too in presence of independent witnesses.

2.2. It is submitted by the applicant that the deceased Railway employee had declared the applicant as his adopted son in his service particulars. The Railway department had granted all the benefits in favour of the applicant including Railway Pass, PTO etc. considering the applicant as the son of the Late railway employee. Unfortunately, the father of the applicant died in harness on 03.05.2010 leaving behind the widow and the applicant as legal heirs.

2.3. It is contended that after the death of his father (deceased railway employee) the widow and the applicant had submitted an application for appointment on compassionate ground in favour of the applicant. It is also submitted that in response to it the Railway authorities had asked the applicant to bring declaration of the competent Civil Court about adoption of the applicant as son of late Railway employee for further consideration. Accordingly, the applicant along with his mother had filed a Title Suit No. 65 of 2010 on 31.08.2010 and the Lok Adalat vide its order and Decree dated 13.08.2011 (Annexure A/3) passed in the said Suit declared the applicant as the adopted son of the deceased railway employee, i.e. Late Dharam Nath Bhagat.

2.4. Thereafter, as directed by the respondents vide letter dated 19.12.2013 the applicant had produced the Original copy of the said Adoption Decree. The applicant then met with concerned respondents a number of times for appointment on compassionate ground, but in vain.

2.5 After a lapse of four years, vide impugned order dated 23.10.2017 the request of the applicant for appointment on compassionate ground was rejected on the ground of non-availability of proper adoption document.

2.6. The learned counsel for the applicant placed reliance on the judgment passed by the Hon'ble High Court, Patna in the case of Union of India & Others Vs. Most. Shitali Devi as reported in 2002(4) PLJR 62 and submitted that the case of the applicant is required to

be considered sympathetically and without any hyper technical issues. It is further submitted that the father of the applicant had adopted the applicant on 31.12.1996. At the relevant time the applicant was minor. Subsequently, his name was recorded in the service record of father of the applicant as his son. Accordingly, the applicant was granted admissible benefits being the son of railway employee during the lifetime of his father. The learned counsel also relied upon the judgment passed by Hon'ble High Court of Patna in CWJC No. 7300 of 2001 in **UOI Vs. Most. Sitali Devi and Anr.** and submitted that the compassionate appointment sought by the family members of the deceased employee on the rule of harness and not on harsh technicality. Therefore, the case of the applicant is required to be considered sympathetically.

3. The respondents have filed their written statement and denied the contention of the applicant. The respondents have questioned the validity of adoption of the applicant as per Hindu Adoption and Maintenance Act, 1956. They have also referred to RBE No. 106/88 dated 20.05.1988 and submitted that unless there is satisfactory proof of legally valid adoption and the legal adoption process is completed before the date of death/medical de-categorization/medical incapacitation (as the case may be) of the ex-employee, the adopted son/daughter will be ineligible for appointment on compassionate ground. They have further submitted that though the applicant was adopted by the ex-employee and his wife on 31.12.1996, but the valid adoption process was not

completed prior to the death of the ex-employee. Therefore, the applicant is not entitled to be considered for appointment on compassionate ground as lawful adopted son of the deceased employee (Annexure R/1 refers).

4. The respondents have further submitted that in the Title Suit filed by the applicant for declaration, the Railway Administration was not impleaded as a party and therefore in terms of Sub-section (2) of Section 21 of the Legal Services Authority Act, 1987 the decree as well as Award dated 13.08.2011 in Title Suit No. 65 of 2010 is not at all binding on the Railways. The learned counsel for the respondents has placed reliance on the judgment passed by the Hon'ble High Court, Patna dated 18.09.2013 in LPA No. 1516 of 2012 in support of the aforesaid submission.

5. With regard to issuance of Railway Pass/PTO in favour of the applicant, It is further submitted by the learned counsel for the respondents that it was based on the declaration made by the Late railway employee, i.e. father of the applicant. Subsequently, after the death of father of the applicant the fact of adoption of the applicant was noticed by the Railways during enquiry for compassionate appointment only. It was found that in the service record the said deceased employee had concealed the fact of such adoption of the applicant as son in his family declaration. Therefore, in the service record the applicant was declared as "son" of Late railway employee but not as "adopted son", and accordingly Medical Card, Pass, PTO etc. were issued in favour of the applicant. Therefore, only because

the benefit of railway pass etc. was extended to the applicant, the applicant cannot claim as a matter of right for appointment on compassionate ground.

6. The respondents have further submitted that the deceased employee had more than 14 years time for registering the adoption documents of the applicant as stipulated under sub-clause-III of Clause 2 of RBE No. 106/1988 dated 20.05.1988 (Annexure R/1) read with Section 11 and 16 of the Hindu Adoption and Maintenance Act, 1956 for valid adoption.

The learned counsel for the respondents further submitted that so far as the decision in OA 588 of 1999, which was affirmed by the Hon'ble High Court, Patna vide order dated 25.07.2002, on which the applicant has placed reliance, is concerned, the said judgment will not be applicable in the case of the applicant in view of provision of RBE 106/1988 dated 20.05.1988 (Annexure R/1). The said RBE pertains to consideration of application of adopted son/daughter of the late employee for appointment on compassionate ground and according to it satisfactory proof of valid adoption deed is required. The said RBE was not brought to the notice of the Hon'ble Courts and Tribunal by either of the parties and therefore the said order/judgment (supra) is not binding for the Railways as also in the case of the applicant.

7. In response to the written statement of the respondents and the submissions, the learned counsel for the applicant additionally submitted that as per the law laid down by the Hon'ble Apex Court

in the case of **Smt. Vijayalakshmamma & Anr. Vs. B.T. Shankar** reported in 2001(2) 401 BLJ, a child adopted is deemed to be a member of a family of the deceased husband and the widow. The applicant was adopted in the year 1996 during the lifetime of his father.

8. It is further submitted by the applicant that the Hon'ble High Court of Patna in the case of **Anil Kumar Singh, adopted son of Late Sitaram Singh Vs. the State of Bihar & Ors.** Reported in 2009(3) PLJR 709 was pleased to hold that compassionate appointment in the case of adopted son needs to be considered and a panchnama produced as an evidence of adoption cannot be rejected on hyper technical ground.

By referring the above judgments, the learned counsel for the applicant submitted that the claim of the applicant was erroneously rejected by the respondents and deprived him the right to appointment on compassionate ground being adopted son of the late Railway employee.

9. The respondents have filed their written submission and reiterated their submissions by placing extracts of Section 21 of Legal Service Authority Act (R-1), judgment reported in 2014(4) PLJR 68 in the case of **Bihar School examination Board Vs. Vivek Ranjan Mishra** and the judgment passed in CWJC No. 8374 of 2008 reported in 2014(2) PLJR 107 (Annexure R/4). By referring the said judgments, the learned counsel for the respondents submitted that the Decree passed by the Lok Adalat wherein the railway department was not

party and, therefore, the Award/Dcree passed by the Lok Adalat in the case of the applicant is not binding upon the respondents. Therefore, the respondents are not under any statutory obligation to consider the application for compassionate appointment of the applicant in absence of lawful adoption deed.

10. Heard the learned counsel for the parties and perused the records.

11. On perusal of materials on record, it reveals that the Ex-railway employee, i.e. Dharam Nath Bhagat died in harness on 03.05.2010. The applicant had submitted his application for appointment on compassionate grounds in the year 2010. The respondents had sought various documents with respect to validity of adoption of the applicant as the son of the late railway employee. However, it appears that the application of the applicant was rejected vide impugned order dated 23.10.2017 (Annexure A/1).

It is noticed that for rejection of the applicant's application the respondents had stated that for want of "proper adoption document" the case of the applicant was not found for recommendation for compassionate appointment. The very said order is impugned in this OA.

The learned counsel for the applicant mainly submitted that it was within the knowledge of the respondents that the applicant was the son of Late railway employee. He was adopted in the year 1996 as the son of Late Dharm Nath Bhagat and Pramila Devi. The copy of said adoption deed dated 31.12.1996 duly affirmed and notorised

before the Notary Public in the presence of witnesses was produced before the respondents and the said fact is not disputed by any villager or any material contrary to it has been brought to the knowledge of the applicant by the respondents. Not only that, as per the direction of the respondents the applicant had approached the Civil Court for appropriate declaration of his adoption and accordingly the Civil Court, Vaishali, Hajipur had allowed the Civil Title Suit of the applicant in Lok Adalat and issued Award/decree in favour of the applicant to the effect that the applicant is the adopted son of Late Dharm Nath Bhagat. However, the respondents on a flimsy ground of technicality have rejected the application of the applicant. The learned counsel for the applicant placed reliance on the judgment passed by this Tribunal and the same was confirmed by the Hon'ble High Court of Patna (Union of India Vs. Most. Sitali Devi) (supra).

12. The learned counsel for the respondents in order to justify their impugned action/order at Annexure A/1 submitted that the deceased employee had never declared the applicant's name as "adopted son" in his declaration before the railway administration. Only on the basis of declaration made by the deceased railway employee the respondents had considered the applicant as his son and extended all the benefits to him like Railway Pass etc. It is contended that only at the time of considering the application of the applicant for compassionate appointment it was noticed that the applicant was the adopted son and the said fact was not declared by

the deceased railway employee. Therefore, under the provision of RBE 106/1988 dated 20.05.1988 the applicant was directed to submit registered adoption deed vide their letter dated 19.12.2013 (Annexure A/4 refers). In response to it, the applicant had submitted the copy of Award/decree dated 13.08.2011 issued under the provision of Legal Service Authority Act, 1987 by the Lok Adalat of Civil Court, Vaishali, Hajipur in Civil Title Suit No. 65/2010. However, since the respondents BSNL were not impleaded as party respondent in the said Civil Title Suit, therefore, the said decree was not accepted as it was not binding over the railway administration in terms of Sub Section (2) of Section 21 of Legal Services Authority Act, 1987. In support of the said submission, the learned counsel for the respondents relied on the judgment passed by Hon'ble High Court of Patna in LPA No. 1516 of 2012 **Bihar School Examination Board Vs. Vevek Ranjan Mishra** dated 18.09.2013 reported in 2014 (4) PLJR 68 wherein it was held that "presuming that even if the order of Lok Adalat is genuine, it is not binding on the Board, as it was not party to the proceeding before Lok Adalat". Therefore, vide impugned order dated 23.10.2017 the application of the applicant was rejected for want of valid adoption document.

13. It is also submitted by the learned counsel that any application submitted by adopted son/daughter of deceased railway employee for appointment on compassionate grounds is required to be considered under the provision of RBE No. 106/88 dated 20.05.1988. The said provision stipulates that an adopted

son/daughter will also be eligible to be considered for appointment on compassionate grounds on the following conditions:-

- (i) There is a satisfactory proof of adoption valid legally;
- (ii) The adoption is legally recognized under the personal law governing the railway servant.
- (iii) The legal adoption process has been completed and has become valid before the date of death/medical decategorisation/medical incapacitation (as the case may be) of the ex-employee.

14. It is vehemently submitted by the learned counsel for the respondents that while considering the identical case by this Tribunal in OA No. 558/1999 and the writ petition thereafter, i.e. CWJC No. 7300 of 2001 decided on 25.07.2002 by the Hon'ble High Court of Patna in Union of India & Ors Vs. Most. Shitali Devi & Anr. Reported in 2002(4) PLJR 62, unfortunately the copy of RBE No. 106/88 dated 20.05.1988 was neither brought to the notice of this Tribunal nor before the Hon'ble High Court of Patna. Therefore, the said judgment of Hon'ble High Court and the order passed by this Tribunal as relied upon by the applicant is not binding to the respondents.

15. It is noticed that the father of the applicant was died in harness on 03.05.2010 and the application of the applicant was not decided by the respondents till the year 2017 on the ground of sufficient proof of adoption. It is further noticed that in the year 2010-11 the respondents had informed the applicant to submit a proper declaration issued by the competent Civil Court with respect to adoption of applicant as the son of late employee. The copy of Award/Decree dated 13.08.2011 issued by the Lok Adalat, Civil Court,

Vaishali, Hajipur declaring the applicant as the adopted son of late railway employee was submitted by the applicant. However, on 19.12.2013 the respondents had asked for original copy of the said registered adoption deed. The copy of adoption deed dated 31.12.1996 along with the copy of Decree dated 19.12.2013 were again submitted by the applicant. Thereafter, the respondents had taken four years in considering the application of the applicant and vide order dated 23.10.2017 rejected the application of the applicant on the ground of non-submission of proper adoption document.

The said impugned decision of the respondents cannot be said to be reasonable and just. The very purpose and object of providing compassionate appointment to the legal heirs of the deceased employee has been frustrated by the respondents on absolute technical ground.

At this juncture, it is appropriate to note the observation of the Division Bench of Hon'ble High Court of Patna in the case of Union of India Vs. Most. Shitali Devi and Anr. (supra) as under:-

“ 4. The Court is of the view that this matter should not be made an issue and the logic of a regulation is not going to solve any human problem. If the employee, who are being considered are Class-IV employees then regard being had to the realities it is unlikely that in that strata of the society issueless couples go through the formality of the law and make an adoption and have it duly registered. This is a common law concept. An oriental society such as ours containing an amalgam of many cultures does by practice and custom resort to resolving problems within the family and society, and adoption is one such modality. Indian marriages in general do not see a registration but are conducted on custom. The case before the railway was one such

circumstance. If the railway takes the posture that the strictness of the regulation must apply, then it is clear that no Class IV employees wards may get an employment if adopt. Nobody apprehends death of an earning member so as to keep papers as a record, to be made available for such an eventuality. The eventuality is to seek employment on the rule of harness. In India amongst economically weaker sections of the society, and at times the middle class not excluded, the generality is that children are adopted and are brought up by foster parents without the rigours of a registered document. This is one such matter where a hard or fast rule or a rigid interpretation of the regulation may, perhaps provide a soul-less escape for the railway administration but it will defeat the rule of harness and not solve a problem of life for a class for whom the rule was meant. Fraud, mischief, misrepresentation may by all means be inquired, so as not to render the Rule of Harness in service nugatory. But if the relationship of adoption and foster parents be bonafide and not manufactured to defeat a regulation, such a relationship, exceptions apart as pointed out, should be accepted.

Thus, the Court does not find any error in the observation of the Tribunal and the railway administration ought to accept the decision gracefully."

16. It is also apt to note that the aforesaid judgment has attained finality and the same is squarely applicable to the facts of the present case. It is also appropriate to take note of the judgment passed in the case of **Smt. Vijayalakshmamma and Anr. vs. B.T. Shankar** (supra) by the Hon'ble Apex court in which it was held as under:-

"it is well recognized that, after a female is married she belongs to the family of her husband. The child adopted by her must also, therefore, belong to the same family. On adoption by a widow, therefore, the adopted son is to be deemed to be a member of the family of the deceased husband of the widow".

In the present case, admittedly the widow during the lifetime of her late husband adopted the applicant as their son. It is also noticed that sufficient proof with regard to adoption of the applicant as the son of late railway employee has been placed on record by the applicant. It is found that the relationship of adoption and foster parents cannot be doubted in absence of any materials contrary to it. In view of this fact the respondents ought not to have rejected the application of the applicant on the ground of unsatisfactory proof of adoption. I, accordingly, hold that the impugned decision at Annexure A/1 is not tenable in the light of above discussions as also contrary to the law laid down by Hon'ble Apex Court and Hon'ble High Court of Patna as referred hereinabove (supra).

17. In view of the above discussion, the impugned order dated 23.10.2017 (Anenxure A/1) of the respondents is quashed and set aside and the matter is remitted to the respondents to consider the case of applicant for appointment on compassionate ground afresh, within a period of three months from the date of receipt of this order. Accordingly, the OA is allowed. No order as to costs.

[**Jayesh V. Bhairavia**]
Judicial Member

srk