

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH**

OA No. 197 of 2017

Present: Hon'ble Mr. Gokul Chandra Pati, Member (A)

Premasila Swain, aged about 42 years, D/o Late Jalia, Ex-Head Gangman, under PWI/KUR, permanent resident of At/PO – Beraboi, PS – Delanga, Dist. – Puri, Odisha.

.....Applicant

VERSUS

1. Union of India represented through General Manager, East Coast Railway, E.Co.R. Sadan, Chandrasekharpur, Bhubaneswar, Dist. – Khurda.
2. Chief Personnel Officer, E.Co.Rly., E.Co.R.Sadan, Chandrasekharpur, Bhubaneswar, Dist. – Khurda.
3. Senior Divisional Personnel Officer/Khurda Road Division, At/PO – Jatni, Dist. – Khurda.
4. Senior Divisional Financial Manager, East Coast Railway, Khurda Road Division, At/PO – Jatni, Dist. – Khurda.

.....Respondents.

For the applicant : Mr.N.R. Routray, counsel

For the respondents: Mr. S.K.Ojha, counsel

Heard & reserved on : 29.3.2019

Order on : 12.4.2019

O R D E R

Per Mr. Gokul Chandra Pati, Member (A)

The present OA has been filed by the applicant under Section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs :

- “(i) To quash the order of rejections dtd. 25.5.2016, 28./7.2016 & 10.1.2017 under Annexure A/9, A/11 & A/12 respectively.
- (ii) And to direct the respondents to grant family pension in favour of the applicant and pay the arrears from January, 2014.

And pass any other order as this Hon'ble Tribunal deems fit and proper in the interest of justice;
And for which act of your kindness the applicant as in duty bound shall ever pray.”

2. The facts in this case as stated in the OA are that the applicant claims herself to be the adopted daughter of Late Jalia Swain, who was drawing pension after his retirement from Railway service. It is mentioned in the OA that the applicant's father at the time of submission of his pension papers had submitted the Form No. 6 in which the applicant's name was mentioned as his

daughter and the said Form No.6 (copy at Annexure-A/2) was accepted by the respondents. It is also stated that when the applicant's father was in Railway service he had obtained Railway passes in the name of the applicant as his unmarried daughter. Late Jalia died on 22.12.2013 leaving the applicant as his sole legal heir, as stated in the OA. Thereafter, the applicant had submitted her application on 7.5.2014 (Annexure-A/6) for grant of family pension. The applicant had enclosed the legal heir certificate issued by Tahsildar Delanga with her application and the respondents sent the same certificate to the Tahsildar for inquiry. Tahsildar after due inquiry, reported that Sri Jalia had adopted the applicant but no registered deed was available to prove the adoption. On the basis of other documents, the Tahsildar gave his finding that the applicant is the adopted daughter of Late Jalia and the legal heir certificate has been submitted by the applicant to the respondents (copy at Annexure A/5).

3. The applicant submitted representation dated 28.4.2016, which was rejected vide order dated 25.5.2016 (Annexure-A/9) on the ground that registered adoption deed was not produced and it was rejected in spite of the report of Tahsildar, Delanga. The applicant submitted an application to the Divisional Railway Manager, Khurda Road explaining her case that she was the adopted daughter of Sri Jalia based on the documents. But the said representation was disposed of by the respondent no.3 vide the order dated 28.7.2016 (Annexure-A/11).

4. The Counter has been filed by the respondents opposing the OA. It is stated that the applicant had submitted that the ex-employee had submitted the Form No.6 for pension stating "Pramesula Swain" to be his daughter with the Date of Birth 16.7.1975. Copy of the affidavit sworn by Sri Jalia is in Annexure-R/1. It is stated the ex-employee has never declared the applicant with name "Premasila Swain" as his daughter and there is discrepancy in date of birth. The status of the applicant came to the notice of the respondents after the inquiry report. It is further stated that at the time of retirement of the deceased employee on 28.2.1998, the family pension was not sanctioned as he was a widower. After death of Sri Jalia, the applicant submitted the representation dated 12.2.2014 (Annexure-R/3) for sanction of family pension. The applicant was advised to submit the documents as per the letter at Annexure-R/4. The matter was inquired by the Welfare Inspector. His inquiry revealed that the applicant is the daughter of Harihar Swain, brother of the deceased employee who had orally adopted the applicant.

5. It is further averred in the Counter that the applicant submitted a Birth Certificate stating the name of her father to be the deceased employee. In the opinion of the Welfare Inspector, the claim for family pension is not admissible without a valid adoption deed. Due to failure of the applicant to produce the adoption deed and mismatch of the name and date of birth between the declaration of the deceased employee and the documents submitted by the applicant, her case has been rejected.

6. The applicant filed Rejoinder citing the inquiry report of the Welfare Inspector (Annexure-A/13) in which it is stated that she was living as the adopted daughter of the deceased employee although no valid adoption deed is available. It is stated that her father being an illiterate person, had given her approximate age at the time of issue of the pass and that she has furnished all the documents like school leaving certificate, voter ID card and legal heir certificate in support of her claim that she was the adopted daughter of the late Jalia and these documents have not been disputed. It is further stated that the respondents did not insist for production of the adoption deed at the time of issuing the pass, when the deceased employee was in service. Regarding wrong name in the declaration form submitted by the deceased employee, an affidavit has been furnished by the applicant stating that it was wrongly mentioned in the affidavit submitted by late Jalia to the authorities.

7. Learned counsels for both the parties were heard. Learned applicant's counsel reiterated the averments made in the pleadings of the applicant to argue that the applicant is the adopted daughter based on the documents submitted by her, although her deceased father did not execute a registered adoption deed. He cited the order of this Bench of the Tribunal in the case of Kanda Adikanda Swain vs. UOI and others in OA No. 23/2003 vide order dated 18.7.2003 in support of the applicant's case and also filed a written note of submissions with the copy of the cited judgment at the time of hearing. Learned respondents' counsel argued that submission of the registered adoption deed is necessary as recommended in the inquiry report of the Welfare Inspector and he also cited the judgment of Hon'ble Apex Court in the case of State of Chhatisgarh and others vs. Dhirjo Kumar Sengar, reported in (2009) 13 SCC 600. A written note of submission with a copy of the cited judgment was submitted subsequently by the respondents' counsel.

8. I have perused the pleadings on record and also considered the submissions by the counsels for both the parties. In the case cited by the applicant's counsel, the ex-railway employee had taken voluntary retirement and thereafter, his son had applied for compassionate appointment and the same was rejected by the railway authorities based on the declaration of the ex-

employee at the time of his voluntary retirement and the inquiry report of the inspector. In the cited order, the Tribunal recorded the finding that the case was rejected by an authority without being considered by the General Manager who was the competent authority to take a decision and hence, the respondents were directed to place the matter before the General Manager for an appropriate decision. It is clear that the cited case is factually distinguishable as the rules for compassionate appointment and the rules for family pension (which is the dispute in the present OA) are different and there was a declaration of the ex-employee in the cited case in which there was no mention about his son who applied for compassionate appointment subsequently.

9. In the case of Dhirjo Kumar Sengar (supra) cited by the respondents' counsel, the request for compassionate appointment was rejected by the authority. This fact was not disclosed when a subsequent application was made for the compassionate appointment, which was allowed by the authority subordinate to the authority who had earlier rejected it. The appointment was however, cancelled by the authorities due to lack of legal succession letter. OA filed by the petitioner was dismissed by Tribunal and the ground of violation of the principles of natural justice was raised before the Tribunal by the petitioner. It was held by Hon'ble Apex Court in the case of Dhirjo Kumar Sengar (supra) as under:-

"18. Legality of grant of a valid appointment was dependant upon the proof that the respondent was the adopted son of Chittaranjan Singh Sengar. He not only failed to do so, the materials brought on record by the parties would clearly suggest otherwise. His application for grant of appointment on compassionate ground was rejected by the Joint Director of Education. He did not question the legality or validity thereof. He, it can safely be said, by suppressing the said fact obtained the offer of appointment from an authority which was lower in rank than the Joint Director, viz., the Deputy Director. When such a fact was brought to the notice of the Deputy Director that the offer of appointment had been obtained as a result of fraud practiced on the Department, he could, in our opinion, cancel the same.

19. Respondent keeping in view the constitutional scheme has not only committed a fraud on the Department but also committed a fraud on the Constitution. As commission of fraud by him has categorically been proved, in our opinion, the principles of natural justice were not required to be complied with."

10. It is clear from above that the cited case is factually distinguishable from the present OA since the cited case was on the issue of cancellation of compassionate appointment and there is no allegation of fraud against the applicant in the present OA.

11. In this OA, the deceased employee (Late Jalia) had submitted the Form No.6 in the name of his daughter "Pramesula Swain" to the respondent. Although the respondents have mentioned about difference in the name as

declared by the deceased employee, but the fact that the deceased employee had adopted a daughter was accepted by the respondents since the Form No. 6 was accepted at the time of his retirement with no question raised at that time. It is also on record that Railway passes were issued in the name of the applicant as the daughter of the deceased employee when he was in service. The inquiry report of the Welfare Inspector in his report has stated about the applicant was claiming to be the adopted daughter of the deceased employee and she has produced a number of documents like voter ID card etc. in support of her contentions. But the respondents have not accepted the claim because the Welfare Inspector in his report recommended for production of the adoption deed. No rule or instructions of the Railway Board has been cited by the respondents in support of their averment that production of adoption deed was essential for sanction of family pension although the Form No. 6 was accepted without insisting on any adoption deed. The legal heir certificate produced by the applicant also shows the applicant to be the adopted daughter of the deceased employee and the reasons for not accepting the said legal heir certificate issued by Tahsildar have not been explained in the counter.

12. It is stated by the respondents that the Late Jalia did not take any action to incorporate the name of the applicant for family pension since in the PPO no family pension was sanctioned. He had also declared the name and date of birth of his daughter which are different from the applicant's name and date of birth. These lapses may be due to ignorance on the part of the deceased employee. But the report of Tahsildar and Welfare Inspector show that the applicant was the adopted daughter without adoption deed and there is nothing in the counter to contradict the same.

13. In view of the facts above, rejection of the claim of the applicant on the ground of non-production of valid adoption deed ignoring the legal heir certificate, report of the Tahsildar and other supporting documents filed by the applicant, is not sustainable and the case of the applicant deserves reconsideration as per the provisions of law.

14. In the circumstances as discussed above, the order dated 10.1.2017 rejecting the case of the applicant is quashed and the respondents/ competent authority is directed to reconsider the case of the applicant based on the legal heir certificate and other documents produced by the applicant and pass a speaking and reasoned order regarding claim of the applicant for family pension as per law. It is clarified that the respondents/competent authority before taking a decision in the matter may get the claim re-inquired through another officer and may also ask the applicant to produce any additional documents like the succession certificate from the competent Civil Court except

the registered adoption deed which is not available in this case. Copy of the speaking order on this issue is to be communicated to the applicant within six months from the date of receipt of a copy of this order.

15. The OA is allowed to the extent as above. There will be no order as to costs.

(GOKUL CHANDRA PATI)

MEMBER (A)

I.Nath