

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.NO.260/00 631/2011

Date of Reserve: 01.02.2019
Date of Order: 15.02.2019

CORAM:
HON'BLE MR.SWARUP KUMAR MISHRA, MEMBER(J)

1. Smt.T.Dasalakshmi , aged about 56 years, W/o. Late T.Bhaskar Rao, Ex-Crane Driver under Sr.Divisional Mechanical Engineer, E.Co.Railway, Khurda Road – now residing at Qr.No.A-172/D, Loco Colony PO-Jatni, Dist-Khurda, PIN-752 050.
2. Sri T.Jagadishara Rao alias Sri M.Jagadishara Rao, aged about 35 years, S/o. Late T.Bhaskar Rao, Ex-Crane Driver under Sr.Divisional Mechanical Engineer, E.Co.Railway, Khurda Road now residing at Qr.No.A/172/D, Locl Colony, PO-Jatni, Dist-Khurda, PIN-752 050.

...Applicants
By the Advocate(s)- M/s.G.Rath
D.K.Mohanty

-VERSUS-

Union of India represented through:

1. The General manager, E.Co.Railway, ECoR Sadan, PO-Mancheswar, BBSR, Dist-Khurda, PIN-751 017.
2. The Divisional Railway Manager, East Coast Railway, Khurda Road Division, PO-Jatni, Dist-Khurda, PIN-752 050.
3. The Divisional Railway Manager (Personnel), E.Co.Rly., Khurda Road, PO-Jatni, Dit-Khurda, PIN-752 050.

...Respondents
By the Advocate(s)-Mr.T.Rath

ORDER

PER SWARUP KUMAR MISHRA, MEMBER(J):

Applicant No.1 and applicant No.2 claiming to be the wife and son the deceased railway employee have filed this Original Application in which they have prayed for the following reliefs:

- i) To call for the records from the Respondents and allow this O.A.

- ii) To quash the letter No.P/R/Comp.Appt./0280 dated 25.4.2011 issued by the Divisional Railway Manager (Personnel), E.Co.Railway, Khurda Road at Annexure-A/12.
- iii) To direct the Respondents to provide appointment on compassionate ground in favour of the applicant no.2 with retrospective effect withal service and financial benefits.
- iv) To pass any other order/orders as deemed fit and proper.

2. The sum and substance of the facts are thus: Applicant No.1's husband, T.Bhaskar Rao while working as Crane Driver under the Respondent-Railways died on 11.04.1990, leaving behind him his widow (applicant no.1) and the adopted son (applicant no.2). Applicant No.1 submitted a representation dated 25.01.2005 to the Divisional Railway Manager (Personnel), E.Co. Railway requesting compassionate appointment in favour of her son, applicant no.2. Subsequently, on being asked by the railway authorities, to submit application for compassionate appointment in the prescribed proforma, applicants did submit the same on 29.7.2010. Vide communication dated 25.4.2011(A/12) applicant no.1 was intimated that the competent authority has regretted the request for compassionate appointment which reads as under:

"Sub: Employment assistance on compassionate ground to Sri M.Jagadeswar Rao adopted son of late T.Bhaskar rao, ex-Crane Driver/CCC/KUR expired on 11.04.1990.

Your request for employment assistance on compassionate ground to your adopted son was put up to the competent authority for decision. The competent authority has examined your case and after examination he has regretted your case in view of the following points:

- i) In HSC certificate of the candidate, the father's name is shown as "M.Sriramulu" instead of the name of the ex employee.
- ii) Further, in the Legal Heir Certificate, the wife of the ex employee had raised objection to the adoption deed on

various legal grounds, which is yet to be decided by the District Civil Judge.

- iii) The adoption deed was executed on 09.04.1990, but 3 days prior to the death of the ex-employee, raising doubts about the genuineness.
- iv) It is also revealed that the adoption issue was not intimated to the notice of the administration and no official documents are available regarding the same".

3. Aggrieved with this, the applicants have approached this Tribunal praying for the reliefs as mentioned above.

4. In support of their claims, applicants have pointed out that since the dispute on adoption has been set at rest and the retiral benefits have been distributed between both the applicants equally by accepting the applicant no.2 as adopted son, the grounds taken in the rejection letter do not hold good. The grievance of the applicants is covered by the policy decision of the Railway Board in No.E(NG)/II/86/RC-1/1/Policy dated 20.5.1998 reiterated in No.E(NG)/II/2006/RC-I/Genl./4 dated 11.7.2006. It has been contended by the applicants that the Staff & Welfare Inspector of the Railways having certified after conducting a verification that the documents of adoption and successions certificate dated 02.06.2007 are genuine based on which respondents have disbursed the retiral dues to applicant no.1 and applicant no.2 treating them wife and son, respectively, of the deceased railway employee, nothing stands in the way to grant compassionate appointment in favour of applicant no.2. Applicants have called in question the action taken by the respondents in rejecting the claim for compassionate appointment by stating that the same is contrary to rules, besides being arbitrary, whimsical and colourable exercise of powers. Applicants have also brought to the notice of the Tribunal circular issued by the Railway Board dated 11.12.1990

dealing with appointments on compassionate grounds and have urged that the rules laid down therein should be applied to their case.

5. Per contra, respondents have filed a detailed counter. According to respondents, the Staff & Welfare Inspector in his report dated 27.10.2010 submitted that applicant no.2 is not the legitimate son of the deceased employee and he is the adopted son of the deceased employee. However, it has been reported that the adoption is not in accordance with law. It has been submitted that applicant no.2's name in the Legal Heir Certificate (A/3) and in the Affidavit (R/2) is T.Jagadeswar Rao whereas in the Matriculation Certificate submitted by applicant no.2, his names appears as M.Jagadeswar Rao. Respondents have brought to the notice of the Tribunal that in the High School Certificate and Provisional Certificate cum Memorandum of Marks issued by the Board of Secondary Education, Orissa on 31.8.1995, the applicant no.2's name appears as M.Jagadeswar Rao, S/o.M.Sriramulu, who is his natural father (R/1 series). According to respondents, those certificates having been issued much after the alleged deed of adoption, there should not have been any discrepancy in showing the name of the deceased railway employee as the father of applicant No.2. Further, according to respondents, there is no record available showing either applicant no.1 to be the wife of the deceased or the applicant no.2 as his adopted son. Respondents have pointed out that the deed of adoption was executed on 09.04.1990 while the ex-employee had been admitted in the Railway BHospital, Khurda Road, who expired on 11.04.1990. With these submissions, the respondents have prayed that the O.A. being devoid of merit is liable to be dismissed.

6. We have heard the learned counsels for both the sides and perused the records. In the High School Certificate Examination, applicant no.2's date of

birth is 25.03.1976 and his father's name has been recorded as "M.Sriramulu".

By the time, applicant no.2 was adopted on 04.09.1990, he was more than 14 years old. Although it is claimed that they had submitted a representation dated 25.11.2005 (A/5) and subsequently a joint representation dated 23.05.2005 (A/6), on a close scrutiny of materials on record, it is seen that in the application filed vide A/6 dated 23.5.2005, one succession certificate dated 2.6.2007 has been referred to. Thus, *prima facie*, it appears that such document has been subsequently created for the purpose of this case. Similarly, one copy of adoption deed vide A/1 dated 09.04.1990 was filed by the applicants to show that applicant no.2 is the son of the deceased employee. It is pertinent to mention here that the concerned employee died on 11.4.1990 at Khurda Railway Hospital, i.e., two days prior to the alleged execution of the deed of adoption. In the said deed one Notary Public, Berhampur has given seal and signature. It is quite impossible that while the concerned employee was under treatment for tuberculosis as recorded in A/1 who died on 11.4.1990, would have been shifted from Khurda Road Hospital to the Berhampur in the District of Ganjam in order to enable the notary public to give his seal and signature and identification of the concerned executants. Besides the above, the High School Examination Certificate issued in the year 1995 shown the name of the natural father of the applicant no.2. Therefore, the possibility of applicant no.2 being adopted by the concerned employee as recorded in the adoption deed being dated 9.4.1990 becomes highly suspicious and doubtful. The Welfare Inspector has given a detailed finding on the inquiry conducted by him in Paragraphs-4 & 5 of the counter. It has also been observed in Para-6 of the counter that the only son of the natural father could not have been adopted by the ex-railway employee. There

is also material discrepancy regarding the name of the concerned person who is shown as T.Jagadeswar Rao in the Affidavit (R/2) and M.Jagadeswaar Rao in the Matriculation Certificate. Thus, on the basis of inquiry conducted by the railway authorities, it has been found that applicant nos. 1 and 2 are not widow and adopted son, respectively of the deceased employee. Although the applicants have pointed out that since they have been equally distributed pensionary dues, applicant no.2's case ought to have been considered as if he were the natural born son of the deceased employee. At this juncture, we would like to note that the educational certificates, as mentioned above, submitted by the applicant no.2 vividly disclose that he is the son of SRIRAMULU and not the deceased employee, T.Bhaskar Rao.

7. However, before coming to the closure of the case, it is worthwhile to note that the object of compassionate appointment is to provide immediate succour to the family to tide over the sudden jerk faced due to death of the sole breadwinner. It is an admitted fact that the applicants after a lapse of 20 years of the death of the deceased employee submitted application seeking compassionate appointment, i.e., 29.07.2010. Therefore, the purpose for which the scheme for compassionate appointment has been formulated by the Government, by the efflux of time of two decades, is fully defeated thereby declaring applicant no.2 not deserving for such appointment.

8. For the reasons discussed above, the O.A. is held to be without any merit and the same is dismissed, with no order as to cost.

(SWARUP KUMAR MISHRA)
MEMBER(J)

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