

**Central Administrative Tribunal
Lucknow Bench, Lucknow**

Original Application No. 332/00394/2016

Order reserved on: 18.01.2019

Pronounced on: 01.02.2019

The Hon'ble Mr. Devendra Chaudhry, Member (Administrative)

Rajesh Kumar Singh, aged about 31 years S/O Late Vikarmaditya Singh, R/O Salempur Nandauparar, Post Sudhiamau, Tehsil Ram Nagar, District- Barabanki.

.....Applicant.

By Advocate : Sri Prashant Chandra for Sri S.K. Srivastava.

Vs.

1. Union of India through the Secretary to the Government of India, Ministry of Indian Railways, Rail Bhawan, New Delhi.
2. Divisional Railway Manager (Personnel), Northern Eastern Railway, Lucknow.
3. Divisional Personnel Officer, Northern Eastern Railway, Izat Nagar.
4. Assistant Personnel Officer, Office of Divisional Rail Manager (Personnel), Northern Eastern Railway, Izat Nagar.

.....Respondents.

By Advocate: Sri Rajendra Singh.

Order

Delivered by: Hon'ble Mr. Devendra Chaudhry, Member (A)

The instant Original Application (OA) has impugned the order dated 15.03.2016 passed by the Respondent-4 (Assistant Personnel Officer office of Divisional Railway Manager, North Eastern Railway, Izzatnagar) whereby the claim of the Applicant for compassionate appointment on a suitable post after demise of his father, Late Shri Vikarmaditya Singh during effective service has been denied in illegal and arbitrary manner.

2. The facts of the case in brief are that vide order dated 15.03.2016, Respondent-4 has informed the Applicant that his case for compassionate appointment cannot be considered as per extant rules as the Applicant does not fulfill the terms and conditions for recruitment for the same. It is submitted that the father of the Applicant Late Sri Vikarmaditya Singh (LVS) was a regular employee of the North Eastern Railway and worked on the post of Track Man (Group-D post) at the time of his death on 23.08.2012 while being posted at Madhana junction, Anwarganj. That, the Applicant is a adopted son of the late Vikarmaditya

Singh and accordingly vide application dated 06.09.2012 laid claim for compassionate appointment, on the grounds of being adopted son of the demised employee. It is further submitted that the Applicant is adopted son since very childhood and except him there are no other legal heir or representative of the demised employee seeking compassionate appointment. That, as per direction of the Respondent-2 vide their letter dated 09.11.2012, the Applicant submitted a copy of registered Will Deed dated 25.09.2010 (Annexure No. A-4) executed by his father late Sri Vikarmaditya Singh in which it is specifically stated that he, the demised employee, being unmarried person and therefore having no child except the Applicant, has adopted him (Applicant) as the only child. Applicant submits that he, Rajesh Kumar Singh is the son of real younger brother Sri Ram Pratap Singh of Late Vikarmaditya Singh and from childhood itself. The demised employee has taken the Applicant as adopted son and given his name even in the school records etc. That, his father, the demised employee, during his lifetime has submitted nomination/declaration form dated 05.01.2008 in the office in which the name of the Applicant as his son (Annexure No. A-6) is specifically mentioned. That, subsequently the Respondents have even made payment of the service dues and death-cum-retirement dues to the Applicant recognizing the fact of his being the adopted son as per registered Will Deed submitted in the office of the respondents by his father (LVS). That, vide his application dated 06.09.2012, however Respondents did not agree w.r.t. the claim of compassionate appointment and directed the Applicant to file a Civil Suit for declaration his adoption claim in Civil Court. Accordingly, the Applicant had filed a Civil suit in Barabanki Civil Court, whereupon, Ld. Civil Court Judge was pleased to order that the Applicant is in fact and law the adopted son vide judgment and order dated 21.09.2015 (Annexure No. A-7) of the Ld. Senior Judge, Junior Division, Court No. 3, Barabanki. That, after the declaratory suit in favour of the Applicant, he submitted his application again for consideration of compassionate appointment. However his claim has not been accepted again and the impugned order dated 15.03.2016 passed in a non-speaking and arbitrary manner. That, as per extant rules, the Applicant being adopted son is a legal claimant of compassionate appointment as provided in the rules and the OA is prayed to be allowed and direction sought to the Respondents for compassionate appointment.

3. Per contra, the Respondents have filed Counter Reply. In which, it is admitted that Late Vikarmaditya Singh was employee of the Railways and demised on the said date. The facts of the Applicant applying for compassionate appointment etc. are also not denied as also the registered adoption Will Deed claim of the Applicant. It is however submitted that w.r.t. compassionate appointment, as per para-3 (kha)(iii) of the Master Circular dated 12.12.1990, the case of the adopted son for compassionate appointment would be considered only when it was declared before the death of the Railways employee and since declaration vide the Civil Court order is of later date (judgment and decree dated 29.01.2015 of the Ld. Civil Judge, Barabanki), which is after demise of the employee on

23.08.2012, hence the Applicant's case cannot be considered for compassionate appointment. The OA, therefore, needs to be dismissed.

4. I have heard Ld. Counsel for both the parties at length and examined the records carefully.

5. Ld. Counsel for the Applicant has cited rulings of the Hon'ble High Court, Allahabad/Lucknow as follows:

- (I) Writ Petition No. 536 (S/S) of 2006-Rita Srivastava v. State of U.P. and others decided on 11.09.2007 [2008 (26) LCD 80].
- (II) Writ Petition No. 7319 (S/S) of 2003-Neeraj Kumar Srivastava v. State of U.P. and others decided on 06.01.2010 [2010 (28) LCD 1438].
- (III) Special Appeal No. 236 of 2014- Sanjay Kumar v. State of U.P. and Others decided on 05.05.2014.
- (IV) Writ-A No. 33892 of 2012- Krishna Kumar v. State of U.P. & Others decided on 22.04.2016.
- (V) Civil Misc. Writ Petition No. 13968 of 2000-Smt. Kanti Devi & Other v. State of U.P. & Ors. decided on 01.12.2006.

The documentary facts w.r.t. the demised employee executing a registered Will Deed and declaratory suit of the Ld. Civil Court are not denied by the Respondents. Now, with regards to examination of the quoted circular dated 12.12.1990, it is revealed that the rules provides for consideration of the case of compassionate appointment of adopted sons and adopted daughters of the demised employee. The relevant extract of the O.M. is reproduced herein for clarity:

".....(b) Adopted sons and adopted daughters

(i) There is 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.

[No.E(NG) II/ 86/RC-1/I/Policy dated 20.05.1988]..."

From the above, it is clear that there is provision in rules for consideration of the claim of the Applicant. It is also a fact that the registered Will Deed in favour of the Applicant as adopted son was executed well before the death of the Railway employee which is, 25.09.2010 (date of execution of Will Deed) which is prior by two years to the death on 23.08.2012. Therefore, from the date of 25.09.2010, the Applicant was a legally adopted son of Sri Vikarmaditya Singh. The registered Will Deed *ab-initio ipso facts* is itself a substantive evidence w.r.t. the claim of being the adopted son. Notwithstanding, the Respondents directed the Applicant to get declaratory suit by Civil Court on top of this (in addition to the registered Will Deed), in compliance of which the Applicant filed a declaratory suit in the Civil Court and the Ld. Civil Judge decreed in favour of the Applicant as the adopted son. The point in the matter is that, the legality of the adoption was established on the date of execution of the Will Deed i.e. on 25.09.2010 and not the date

of judgment of the declaratory suit which had to be filed by Applicant perforce as per directions of the Respondents. The declaratory suit order itself cannot be the date on which the applicant/person fulfilled the requirement of being a the lawful adopted son but, actually it is, the date of the registered Will Deed which is 25.09.2010 because on that date the Will Deed was executed and registered in the competent office. That, this was done well before demise of the employee, therefore, fulfills the condition which requires that **the adopted son was the adopted son** on 25.09.2010 which was before the death of the concerned employee (LVS). It cannot be said that the claim of adoption was created only and only after the judgment date of the declaratory suit. This is unjustified interpretation and utterly pedantic and erroneous to the point of being absurd. It will be travesty of justice if the date of adoption is considered as the date of judgment of the declaratory suit, when the declaration itself was legally valid on the date of registered Will Deed of 25.09.2010 and the declaratory judgment only strengthened the claim. The declaratory suit upholds legal status of 25.09.2010 registered Will Deed and therefore, the Respondents cannot deny justifiable claim of adoption vide date 25.09.2010 whereby the adoption Deed was executed.

6. In conclusion, therefore, the claim of the Applicant that he is adopted son of the demised employee Late Vikarmaditya Singh and that this claim of adoption was legally created on 25.09.2010 which was much before the demise of the employee which was 23.08.2012 is upheld. Therefore, the plea of the Applicant for compassionate appointment is liable to be considered and is therefore accepted. The Respondents are directed to issue appointment letter in favour of the Applicant not later than in three weeks time. The OA accordingly succeeds and is accepted. No costs.

(Devendra Chaudhry)
Member (Administrative)

/JN/