

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH, HYDERABAD**

OA.No./020/00345/2017

Date of CAV :10/04/2019

Date of Order: 19/06/2019

BETWEEN:

1. Dega Padma, w/o late Dega Ratnam,
(Ex.Gateman, SSE/P.Way/Kavali), Aged 51 yrs,
r/o Mungamur Village, Bogole Mandal,
SPSR Nellore District, Andhra Pradesh.

2. Dega Venkata Ashok, (Adopted son of late
Dega Ratnam,(Ex.Gateman, SSE/P.Way/Kavali), Aged 23 yrs,
r/o Mungamur Village, Bogole Mandal,
SPSR Nellore District, Andhra Pradesh.

..... Applicants

AND

1. Union of India rep. by the General Manager,
South Central Railway, Rail Nilayam, 3rd Floor,
Secunderabad-500 025.

2. The Divisional Railway Manager,
Vijayawada Division, South Central Railway,
Vijayawada.

3. The Senior Divisional Personnel Officer,
Vijayawada Division, South Central Railway,
Vijayawada.

..... Respondents

Counsel for the Applicants	: Mr. N. Subba Rayudu,
Counsel for the Respondents	: Mrs. Vijaya Sagi, SC for Rlys.

CORAM

Hon'ble Mrs. Naini Jayaseelan, Administrative Member

ORDER**{ As per Hon'ble Mrs. Naini Jayaseelan, Administrative Member}**

The applicants seek to quash and set aside the impugned order impugned order No. B/P. Con.563/III/95/2014 dated 15.10.2015, wherein the request for appointment on compassionate grounds to the adopted son was rejected by the respondents, on the following grounds:

- i) In the SSC Certificate of G. Venkata Ashok, the natural parent's names are recorded instead of adoptive parents.
- ii) Ex. Employee Sri D.Ratnam, while working as Gateman /SSE/ P.way/ KVZ did not mention the adopted son's name in the Pass Declaration executed by him before his death.
- iii) Widow Smt. D. Padma, w/o. Late D. Ratnam also did not mention the adopted son's name in the documents submitted for claiming settlement benefits and had simply mentioned "No Children."

2. Heard Mr. G. Trinadha Rao, representing Mr. N. Subba Rayudu, learned counsel for the Applicants, and Mrs. Vijaya Sagi, learned Standing Counsel for the Respondents.

3. Learned counsel for the applicants argued that the rejection is against the extant guidelines of the Railway Board, and sought a direction to the respondents to consider the case of the applicants for compassionate appointment.

4. It is the contention of the counsel for the applicants that 1st applicant is the wife of the deceased employee and 2nd applicant is adopted son of the deceased employee. The deceased employee worked as Gateman, Group-D, and during his life time, he adopted the 2nd applicant Mr. Dega Venkata Ashok, according to the Hindu Adoption and Maintenance Act, 1956, as per the Adoption Deed, which was duly registered on 03.04.2012, vide Document No.7/2012 of the office of the Sub-Registrar, Kavali. As per Rule 123 of the Indian Railway Establishment Code (IREC), the Railway Board has full powers to make rules of general application to Group-C & Group-D railway servants under their control. Three conditions have been laid down for appointment on compassionate grounds for adopted sons/adopted daughters, vide Board's letter No.E(NG)II/86/RC-1/1 Policy, dated 20.05.1988 circulated under CPO/SC's letter No.P(SC)268/Policy/IV, dated 20.06.1988, which read as under:-

“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.”

5. The learned counsel for the Applicants relied on Section 16 of the Hindu Adoptions and Maintenance Act, 1956, which reads as under:

“16. Presumption as to registered documents relating to adoption.- Whenever any document registered under any law for the time being in force is produced before any Court purporting to record an adoption made and is signed by the person giving and the person taking the child in adoption, the court shall presume that the adoption has been made in compliance with the provisions of this Act unless and until it is disproved.”

6. The learned counsel for the Applicants cited the judgement of Hon’ble Supreme Court in *Mst. Deu and Ors. S Laxmi Narayan and Ors* (1998 (8) SCC 701), dated 01.08.1996, wherein it has been categorically stated that it is not open to the respondents to disprove a deed of adoption but for that they have to take independent proceedings, and therefore, the High Court was fully justified in directing that the legal heir be substituted on the basis of the registered deed of adoption.

7. The learned counsel for the Applicants also cited the judgment of the Delhi High Court in *Ms. Teesta Chatteraj vs. Union of India*, dated 11.05.2012 in LPA No.357/2012, wherein it was held that since the respondents have not challenged the validity of the adoption deed, there is no scope for any ambiguity in view of the Circular dated 20.06.1988. The contention of the Applicants' Counsel is that the boy was adopted when he was 10 years old and that the said adoption process was in accordance with Section 16 of the Hindu Adoptions and Maintenance Act, 1956, and was *completed* prior to the death of the deceased employee. It is an undisputed fact that the **adoption deed was registered on 03.04.2012 i.e., prior to the death of the deceased employee i.e., 22.08.2013.**

8. The learned counsel for the Applicants further cited the judgment of the Jabalpur Bench of this Tribunal in O.A.No.363/2013, dated 18.09.2014 in *Ashish Kumar Goutam v. The Union of India*, wherein the respondents had raised the plea that since actual give and take of the adopted son does not appear to have taken place under Rule 11 (vi) of Adoption Act, and the Tribunal allowed the OA with the following observations:

“9. The respondents have not produced anything to substantiate their claim of violation of Section 11 (vi) of the Adoption Act in this adoption. Since, it is a registered adoption deed, signed by both the parties, as per Section 16 of the Adoption Act, there is presumption to the effect that the adoption has been made in compliance with the provisions of this act unless and until it is disproved. Since there is nothing to prove to the contrary, the adoption deed shall be presumed to be valid as per law in this case.”

9. The respondents' Counsel argued that, in the instant case, actual give and take of the adopted child has not taken place, since the SSC Certificate of the adopted child is still in the name of the biological parents.

10. The learned counsel for the Applicants reiterated that under Rule 123 of IREC, all the three conditions have been fully complied with viz.,

(i) The registered adoption deed is legally valid.

(ii) The deed is also as per Section 15 of the Hindu Adoptions and Maintenance Act, 1956.

(iii) That the adoption process was completed prior to the death of the deceased employee as per the adoption deed.

11. The learned Counsel for the Respondents reiterated that since the SSC Certificate of Sri G.Venkata Ashok is in the name of the biological parents and not in the name of adoptive parents, actual give and take of the child has not taken place. However, she stated that at this stage, the respondents are not challenging the adoption deed. She also stated that the name of the adopted son has not been entered either in the service register/pass declaration submitted by the deceased employee.

12. The learned counsel for the Applicants argued that even if the adoption deed is not valid, the official respondents have no locus standi to challenge the adoption deed as they have no role in the adoption process. Therefore, if the respondents are not challenging the adoption deed and the 3 criteria as laid down in Rule 123 of IREC guidelines are fully met, then the benefit of compassionate appointment has to be extended to the adopted son. The applicant's counsel reiterated that in the instant case, all the three conditions laid down in Rule 123 of IREC guidelines have been fully complied with and therefore there cannot be any reason to deny the benefit of compassionate appointment to the adopted son.

13. The applicants' counsel submitted that it was due to the failure on the part of the respondents that the applicants could not get the name of deceased employee entered in the SSC Certificate, but this cannot nullify the adoption deed. The applicants also filed Aadhar Card, Voter ID Card etc., which clearly show the name of the applicant's father as Sri Dega Ratnam i.e., the adoptive father. These documents were taken on record during the arguments. Therefore, the first objection in the impugned order does not stand.

14. The applicants' counsel also stated that the second objection that the deceased employee had not mentioned the name of his adopted son in the pass declaration executed by him does not hold ground, since the Serial Circular No.73/2014 clearly states the condition of inclusion in the pass declaration or Ration cards, which is only a facilitating factor, *and not* intended to be a restrictive one. The applicants' counsel argued that the respondents are not challenging the adoption deed merely by arguing that the name of the adopted son in the pass declaration executed by the deceased employee does not nullify a legally valid adoption deed. He reiterated that the Adoption Deed is a registered deed signed by both the parties as per Section 16 of the Hindu Adoptions and Maintenance Act, 1956, and therefore, there is presumption that the adoption has been made in compliance with the provisions of this Act unless and until it is disproved.

15. To rebut the third objection that the widow of the deceased employee did not mention the adopted son's name in the pension papers meant for claiming settlement dues and that simply mentioned "no children", the applicant's counsel again reiterated that if the widow of the deceased employee did not fill up her pension papers on account of the fact that she was illiterate, the same cannot nullify a legally valid Adoption Deed.

16. In view of the above, since the respondents have not challenged the Adoption Deed, and as per Section 16 of the Hindu Adoptions and Maintenance Act, 1956, the adoption is presumed to have been made in compliance of the provisions of the said Act, and the three conditions laid down, vide Board's letter No.E(NG)II/86/RC-1/1 Policy, dated 20.05.1988 circulated under CPO/SC's letter No.P(SC)268/Policy/IV, dated 20.06.1988, have been met, the OA is allowed. The respondents are directed to consider the case of the 2nd applicant for compassionate appointment within a period of three months from the date of receipt of copy of this order. No order as to costs.

(NAINI JAYASEELAN)
MEMBER (ADMN.)

Dated: this the day of June, 2019

Dsn.