

**CENTRAL ADMINISTRATIVE TRIBUNAL
AMHEDABAD BENCH**

Original Application No.43/2018
with MA 25/2018 & MA 406/2019
Dated the 07th day of November, 2019

CORAM :

Hon'ble Shri. M.C.Verma, Member (J)

Shri Parmar Sandip J,
S/o Shri Josephbhai Parmar,
Aged 28 years,
R/o: Tiwari Chawl, Sardar Nagar,
Opp. ST. Joseph High School,
Vadodara – 390 002. ... Applicant.

By Advocate Ms S S Chaturvedi

V/s

- 1 Union of India,
Notice to be served through
General Manager, Western Railway,
Churchgate, Mumbai – 400 020.
- 2 Divisional Railway Manager (E),
Western Railway Pratapnagar,
Baroda – 390 004. ... Respondents.

By Advocate Shri M J Patel

O R D E R (ORAL)

Per : M.C.Verma, Judicial Member

1. Being aggrieved, allegedly by non consideration of his
case for compassionate appointment by respondents, Instant

OA has been preferred by the applicant, namely Sandip J Parmar.

2 The case of the applicant, as has been set out in the pleading of OA is that applicant is adopted son of deceased, namely Shri Josephbhai Parmar, an ex employee of the respondents. That he was taken in adoption by his adoptive father on 24/07/06, the deed of adoption is registered and that his adoptive father, while was in service of respondents died on 27.11.2006. That for release of retiral dues of his father, respondents demanded succession certificate and he after obtaining Succession Certificate, dated 11.05.2007 (Annexure A/3) from Court of Additional Sr. Civil Judge, Vadodara, made application, dated 03.02.2009 (Annexure A/5), for settlement of dues and for compassionate appointment. That respondents vide memorandum dated 15.07.2010 released the settlement dues in his favour. That applicant again made an application, on 03.05.2013 for compassionate appointment and also sent one another application, dated 16.07.2013 demanding immediate action for his compassionate appointment, through recognized union. That again, on 24.08.2017 he made representation, with all details and when no response was

received from respondents has filed this OA before this Tribunal, with MA for condonation of delay.

3 On receipt of notice respondents have filed detailed reply denying that application for compassionate appointment of applicant is lying pending with the respondents and that facts are that his application has been decided and has been rejected on 23/9/14 and order was communicated to the applicant and that copy of said order is Annexure R-2 with reply of MA for condonation of delay. That claim for compassionate appointment was on the ground that adoption executed shows that applicant was 19 years of age, that applicant belongs to Christian Community whereas in adoption deed it is mentioned that adoption rituals were performed as per "Hindu Religion". The adoption was not permissible under law. That the application for compassionate appointment was time barred, applicant was major at the time of death of the employee, the death of the employee took place on 27/11/16 and application was made on 03/5/13, meant to say after expiry of time period permissible under Rly Board instructions, issued vide RBE No. 144-2000 dated 28/7/2000. **Rejoinder** has also been filed by applicant but no step was taken to impugn order annexure R-2.

4 After admission matter was listed for final hearing and on 05.11.2019 it was heard in part. Learned counsel for applicant, on 05.11.2019 made submission and urged to direct the respondent to appoint the applicant on compassionate ground, the submissions of applicant's side was refuted by counsel for respondent and it was the contention of Shri M.J.Patel Advocate, learned counsel for respondent that order no. E/890/1(S)/2013) MISC dated 23.04.2019 (Annexure R/2) whereby claim of applicant has been rejected has not been impugned in the OA, that deed of adoption is not valid as the applicant belongs to Christian Community and adoption is not permissible in Christian Community and referring Section 10 of Hindu Adoption Act 1956 he urged that. even in Hindus also the person to be adopted should not have completed the age of fifteen years or more. He also urged that application of applicant was also time barred. Learned counsel for applicant Ms S S Chaturvedi at that stage took adjournment for placing some judgments clarifying the point that adoption is legal one and on her request the matter was adjourned to 06.11.2019.

5 On 06.11.2019 when the matter was taken up and it was found that enclosing copy of order no. E/890/1(S)/2013) MISC dated 23.04.2014 whereby claim of applicant was rejected by

respondent, MA No.406/2019, for amendment has been filed by applicant on 05.11.2019. It has been pleaded in MA that this order no. E/890/1(S)/2013) MISC dated 23.04.2014 has not been communicated to applicant and therefore it is not under challenge in OA, it is necessary to challenge this order dated 23.04.2014 and applicant therefore wants to make necessary amendment in OA, detail of amendment sought were also given in the MA and it was prayed to allow the MA.

6 Matter could not be taken on 6/11/19 as counsel for respondent could not appear on that day and hence the OA as part heard and MA No.406/2019, preferred on 5/11/19 for amendment, both were taken today.

7 Learned counsel for the applicant pressing the amendment application contends that the application filed for amendment is not barred by time, the order which applicant wants to impugn was never communicated to the applicant. That it is well settled that amendment applications are to be liberally considered and unless any prejudice is shown to be caused to the adversary party, the applications needs to be allowed. Relying on decision dated 11/12/2017 in case titled Mohinder Kumar Mehra Vs Roop Rani Mehra & Ors. passed by Hon'ble Supreme Court in CA NO.19977 OF 2017 she

urged that only a formal order of allowing amendment is required, which would not have caused any prejudice to the respondents.

8 Learned counsel for the respondent refuting the submission and opposing the amendment contends that amendment cannot have been allowed, the OA is at final stage of hearing and had been heard in part also, that applicant has failed to show that in spite of due diligence he could not know about the order, he at least could raise the matter earlier when he received the copy of reply of respondents. Learned counsel has also raised submissions regarding the merits of the claim of compassionate appointment of the applicant and stated that claim of the applicant is also barred by time and adoption is not permissible as well, so even if the amendment sought to be made is allowed, there is no substance in the case of the applicants.

9 Counsel for applicant refuting the submission urged that applicant, his biological & adoptive parents all are Hindus and proviso to Section 10 of Hindu Adoption Act 1956 allowed adoption of the person of age more than fifteen years provided it is permitted by customs. She also urged that

aforesaid adoption is recorded in a registered deed of adoption and the Court has to presume that the adoption has been made in compliance with the provisions of law. She placed reliance on decision dated **18 November, 2010** in case titled Alturi Brahmanandan (d) Through LRS Vs. Anne Sai Bapuji passed by Hon'ble Supreme Court in CIVIL APPEAL NO. 9714 OF 2010 and requests to pass appropriate order.

10 I have considered the submissions of the learned counsel for the parties and have perused the records. The order *"No.E/890/1(S)/2013)MISC, dated 23.09.2014 has been addressed to the applicant and its operative portion reads as under:-*

" Sub: Appointment on compassionate ground.

Ref: Your application dated 03.05.2013.

With reference to your application, it is advised that your request for grant of appointment on compassionate ground cannot be considered as adoption executed at the age of 18 years, which should be done below age of 15 years as per extant rules.

Also request for grant of appointment made is time barred.

Sd/-

For DRM(E), BRC"

11 The main issue, therefore, in the present OA on which extensive argument was made is as to whether or not the

applicant was the adopted son of Late Shri Josephbhai Parmar. In the OA filed, the applicant claimed himself to be the adopted son of Shri Josephbhai Parmar. No adoption after commencement of the Hindu Adoptions and Maintenance Act, 1956 can be made except in accordance with the provisions contained in the Act and any adoption made in contravention of the provisions of the Act shall be void. An adoption which is void shall create no rights in the adoptive family by reason of the adoption.

12 As per Section 6 of the Act one of the requisites of a valid adoption that the person adopted is capable of being taken in adoption. No person shall be capable of being taken in adoption unless he or she is Hindu and he or she has not completed the age of fifteen years.. Though there is also an exception provided therein to the aforesaid required qualification which provides that if there is a custom or usage applicable to the parties permitting persons who have completed the age of 15 years being taken in adoption, such a person could also be validly adopted.

13 The effect and the implication of Section 16 of the Act is that if there is any document purporting to record an adoption made and is signed by the person giving as well the person

taking the child in adoption is registered under any law for the time being in force and if it is produced in any Court, the Court would presume that the adoption has been made in compliance of the provisions of the Act unless and until it is disproved. The registered adoption deed is silent about religion of the parties and shows that age of adopted person is 19 years.

14 Though Counsel for applicant has urged that applicant, his biological & adoptive parents all are Hindus but there is nothing on record to show that that applicant, his biological or adoptive parents are Hindus or that custom in their community permits adoption much-less of the person of age more than fifteen years.

15 The pleading in OA are silent about the religion of the applicant or religion of adopted/biological parents at the time of alleged adoption or about the custom argued and contrarily Annexure A/1, placed on record by the applicant shows that applicant belongs to Christian Community. Annexure A/1 is the application dated 3/5/13 of the applicant which he sent to respondent for Appointment on compassionate ground. The decision of case titled Mohinder Kumar Mehra's case & Alturi Brahmanandan's case (cited supra) relied upon by applicant

renders no help to applicant, in unique facts and circumstances of the present case. Further the applicant was major at the time of death of his so called adoptive father, the death took place on 27/11/2006 and application was made on 03/5/13.

16 The main issue, therefore that the applicant is the adopted son of Late Shri Josephbhai Parmar does not stand established and hence alleged adoption in instant case, which could not be established permissible under law thus create no rights of applicant in the adoptive family by reason of the adoption.

17 In view of legal and factual scenario, discussed above, MA for amendment & the OA both being devoid of merit deserve dismissal and accordingly MA No.406/2019, preferred for amendment & the OA both are dismissed. MA No.25/2018 preferred for condonation of delay also stand disposed of. No order as to cost.

(M C Verma)
Member(J)

abp

