

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Civil Writ Jurisdiction Case No.16947 of 2013**

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1. The Union of India through General Manager, North Frontier Railway, Maligaon, Assam
  2. The General Manager, North Frontier Railway, Maligaon, Assam
  3. The Divisional Railway Manager, North Frontier Railway, Katihar
  4. The Divisional Railway Manager(P), North Frontier Railway, Katihar
  5. The Senior Divisional Personnel Officer, North Frontier Railway, Katihar
  6. The Station Manager, Siliguri Junction, Siliguri, North Frontier Railway

.... .... Petitioners

Versus

1. Bijay Kant Mishra, Son of Late Ilaci Mishra, Resident of Village- Shampur, Post Office- Shampur, District- Munger, Official Residence Railway Quarter No. 30A, Mahananda Colony, Post Office- Pradhan Nagar, Police Station- Pradhan Nagar, District- Darjeeling
2. Pintu Kumar Misr. Son of Bijay Kant Mishra, Resident of Village- Shampur, Post Office- Shampur, District- Munger

.... .... Respondents

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**Appearance :**

For the Petitioner/s : Mr. ANIL SINGH, ADV.

For the Respondent/s : Mr. SANJIV KRISHNA BARTAR, ADV.  
Mr. RAJIV KRISHNA BARTAR, ADV.

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**CORAM: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH**

**And**

**HONOURABLE MR. JUSTICE JITENDRA MOHAN SHARMA**

**ORAL JUDGMENT**

**(Per: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH)**

**Date: 12-02-2015**

The present writ petition through Indian Railways is directed against the order dated 02.04.2013 of the Central Administrative Tribunal (for short 'the Tribunal') passed in O.A. No. 597 of 2012, whereby Tribunal has been pleased to allow the application of respondent nos. 1 and 2 in relation to adoption and directed the Railways to take note thereof accordingly.

**2. Sri Anil Singh, learned counsel for the Railways submits**

that a bare look to the circumstances, under which adoption was claimed, would show that adoption is fictitious. He further states that it is in contravention of the regulations.

**3.** On the other hand, learned counsel for the applicants before the Tribunal, being the private respondents before us, contends that before looking to the conduct of the private respondents, it is necessary to see their social status. Respondent no. 1 is a Porter (Kooli) in the Railways. He and his wife have been childless. He has been in the Railways as a Porter under Station Manager Siliguri Junction, Siliguri, North Frontier Railway since 09.05.1978.

**4.** We have heard the parties at length.

**5.** Mr. Anil Singh, learned counsel for the Railways submits that when respondent no. 1 joined Railways service in the year 1978, he was, by regulations, required to give declaration of his family. Subsequently, he declared his marriage but all along beyond this there was no further declaration of any child. It is only on 02.08.2010 that he made an application, which application is Annexure-C to the writ petition, which is not denied. A bare reference to the said application would show that it is an application typed in English and drawn up obviously by someone in the Railways because there are lot of abbreviations used, which abbreviations are common only in Railways. By this application respondent no. 1 sought permission to



adopt a son. Then Railway was informed by respondent no. 1 that pursuant to the permission granted by the competent authority, he had adopted son of his elder brother on 03.10.1992 and deed of adoption dated 21.06.2011 is annexed. Upon receipt of the same, Railways rejected it outrightly on the ground that the private respondent no. 1 had sought permission to adopt but the deed dated 21.6.2011 discloses that the adoption had been done in the year 1992 itself and as such the deed cannot be accepted.

6. On the other hand, learned counsel for the private respondent no. 1 submits that there is no regulation, which obliges an employee to seek permission to adopt. The only requirement in the regulation was that full particulars of the family have to be informed from time to time. That being so, no permission was ever required and the private respondent no. 1 being a Porter only, cannot be associated with intelligence of the level required to meet legal requirements. He would do what he was advised and if on the basis of advice wrongly given, he acted, in such case he should not suffer. In substance what was actually being conveyed was there is no law of Railways, which prohibits adoption nor could there be such a law. If actually even today, private respondent no.1 wants to adopt a child, he can still do it and Railways have absolutely no right to refuse to recognize the same. He further submits that by mere adoption what is the Railways



loosing. Mr. Anil Singh could not point out what was the loss to the Railways. In the present case all he could show is that in case of any accidental death, it may be that the alleged adopted son would claim compassionate appointment but beyond that there does not appear to be any liability fastened on the Railways in the present time. That eventuality has not arisen. But so far as private respondent no. 1 is concerned, on the record of the Railways, he would have an adopted son, who could look after respondent no. 1 when he retires and would be able to inherit or succeed respondent no. 1.

7. Having considered the matter though we find the submissions of Sri Anil Singh to be correct in several aspects but taking a holistic view of the matter, we think that Railways have proceeded on hyper technicality. We must find that there is no provision under any law, which obliges an employee of the Railways to seek permission to adopt. It is someone's misconceived advice that such a letter was written. Adoption deed drawn up to the effect that private respondent no. 1 adopted a son in the year 1992 but shows that he had made no such declaration to the Railways for almost past 20 years. We would only say that had he made this disclosure in 1992, it would not make any difference. Even then Railways could not have refused rather they would be bound to take note of the same. Thus, considering his social status and

considering that no harm is caused to the Railways especially when it is not in dispute that private respondent no. 1 remained childless, we think that the order of the Tribunal should not be interfered with. We can only notice that under similar situation, a Division Bench of this Court presided over by Hon'ble the Chief Justice, had decided similarly in the case of *Union of India and Others Versus Most. Shitali Devi & Anr. 2002(4) P.L.J.R. 62.*

8. We, therefore, see no merit in this writ petition, which is, accordingly, dismissed.

**(Navaniti Prasad Singh, J.)**

**(Jitendra Mohan Sharma, J.)**

Vats/-

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