

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.22496 of 2014

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Rupesh Kumar, S/o Late Binod Kumar, Resident of Qr. No. 541/A, LOCO Colony,
P.O. and P.S. Gaya, District Gaya.

.... Petitioner/s

Versus

1. The Union of India through General Manager, East Central Railway, Hajipur.
2. The General Manager (P), East Central Railway, Hajipur.
3. The Divisional Railway Manager, East Central Railway, Mugalsarai.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Rajiv Krishna Bariar, Advocate.

For the Respondent/s : Mr. Naresh Kikshit, Advocate.

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CORAM: HONOURABLE MR. JUSTICE HEMANT GUPTA

and

HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH)

Date: 28-04-2016

Heard learned counsel for the parties.

2. The present writ application has been filed by the petitioner against the order dated 27.08.2014 passed by the Central Administrative Tribunal, Patna Bench, Patna (hereinafter referred to as the “Tribunal”) by which O.A. No. 263 of 2013 filed by him has been dismissed.

3. The relevant facts for the purpose of consideration of the present writ application are that the petitioner had applied for appointment on compassionate ground on 01.05.2006 claiming to be the son of late Binod Kumar, who died in harness in the year 2006 while working on the post of *Safaiwala* in Railway service. The said

request was turned down by the respondents on 27.07.2007 by the respondents on the ground that he was not the son of the deceased employee, who was the younger brother of late Ashok Kumar. Being aggrieved by the same, the petitioner moved before the Tribunal in O.A.No. 47 of 2007, which was disposed of by an order dated 28.08.2012 with the following observations:

“9. As the dispute is factual and the matriculation certificate and a few certificate testify that the applicant is the son of Binod Kumar and as this is not a forum for making a roving and fishing enquiry, this OA is disposed of with a direction upon the applicant to furnish any other convincing document in his possession, issued by any authority during the life time of Ashok Kumar,(who is as per the respondents, claimed to be the biological father of the applicant), which confirms his parentage and to produce the same before the authorities, which would thereafter within three months decide the claim by passing a speaking and reasoned order. If the claim of the applicant is established, he shall be granted appropriate relief. No costs.”

4. Pursuant to the same, the petitioner again filed a representation which was also turned down by order dated 03.01.2013 against which the petitioner moved before the Tribunal in O.A. No. 263 of 2013, which was dismissed by order impugned dated 27.08.2014.

5. Learned counsel for the petitioner submits that the



petitioner is, in reality, the son of late Binod Kumar, who died in harness in the year 2006 and fulfilling all the conditions, he had applied on 01.05.2006 and subsequently again pursuant to the order passed in O.A.No. 47 of 2009. It is submitted that the petitioner, in support of his claim, had furnished the matriculation certificate, which discloses the name of his father as Binod Kumar and also the certificate of Anchaladhikari, Gaya as well as the Voter Identity Card to buttress such claim. Learned counsel submits that the petitioner cannot be denied appointment, as the materials produced by him have been provided by the officials and such certificates also have the sanctity in law and are presumptive of the facts, as stated above and thus should have been relied upon by the respondents. It is submitted that the petitioner, being dependant on his father i.e. late Binod Kumar, has been left without any succor.

6. Learned counsel for the respondents submits that Ashok Kumar, who was the elder brother of Binod Kumar, died in harness on 17.02.1985, while working as Khalasi under the Railway and thereafter his wife Smt. Sushila Devi, at the time of appointment, had shown the petitioner Rupesh Kumar as her elder son, Mukesh Kumar, younger son and Rina Kumari as daughter and further while availing privilege passes and PTOs in the year 1989, 1993, 1994 and 1998 while submitting family declaration, she had again shown the

petitioner as a son being a family member. It is thus, submitted that the order of the respondents which has not been interfered with by the Tribunal is well founded both on facts as well as in law.

7. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, we do not find any force in the submissions of learned counsel for the petitioner. The petitioner having moved the Tribunal earlier in O.A.No. 47 of 2009 and the same having been “disposed of with a direction upon the applicant to furnish any other convincing document in his possession, issued by any authority during the life time of Ashok Kumar (who is as per the respondents claimed to be the biological father of the applicant), which confirms his parentage and to produce the same before the authorities” and the petitioner, thereafter, having again represented before the authorities, but without meeting such terms of remand to the respondents, cannot be given any indulgence, as he has not brought on record either before the authorities or the Tribunal any such documents issued during the life time of Ashok Kumar. The Tribunal, at the relevant time, while disposing of O.A.No. 47 of 2009 on 28.08.2012, had noted that the petitioner had produced matriculation certificate and a few certificates and was still directed to furnish further convincing document issued during the life time of Ashok Kumar and him not doing so, the authorities cannot be faulted



in rejecting the claim. Even otherwise, we find from the fact that Binod Kumar was shown as the elder son of late Ashok Kumar by his wife at the time of his compassionate appointment in the year 1987 as well as the various privilege passes, which she took in the year 1989, 1993, 1994 and 1998, clearly indicate that the petitioner is the son of Ashok Kumar and not Binod Kumar. It would be worthwhile to note here that late Binod Kumar, in the year 1993, while applying for a railway pass had made a declaration stating that his family consisted of himself only and again in the year 1994, he had made a family declaration stating that he was the sole member. Further, the reasoning of the authorities recorded in the order dated 3.01.2013 states as under:

“The other documents which you have submitted now were earlier also submitted in the Court of Law and taking cognizance of these papers and also the papers filed by Railways, Hon’ble CAT has decided that you should furnish any other convincing document in your possession issued by any authority during the life time of Ashok Kumar and you have clearly failed to produce any such documents as decided by the Hon’ble CAT. As the Hon’ble CAT has already decided that the issue regarding the parentage is disputed and you have to produce additional documents which you failed to do, hence as per Hon’ble CAT orders your case does not merit consideration.

Since you are not the son of late Binod Kumar s/o Bindeshwari but nephew of late Binod Kumar, your

case does not come under purview of compassionate appointment.”

8. Thus, the grounds for rejecting the claim as well as the discussions in the order of the Tribunal upholding such rejection, are cogent and well founded and do not warrant any interference. Accordingly, the writ application stands dismissed.

(Hemant Gupta, J)

(Ahsanuddin Amanullah, J)

Sujit/-

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