

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.22946 of 2019

Sanjay Choudhary @ Sanjay Kumar Choudhary, Male, aged about 47 years,
Son of Late Jagarnath Choudhary (Adopted Son of Late Dwarika Choudhary),
Resident of Village- Begampur Bhitari Garhipar, P.S.- Chowk Patna City,
District- Patna- 800009 (Bihar).

... .. Petitioner

Versus

1. The Union of India Through the General Manager, East Central Railway, Hajipur, District- Vaishali (Bihar).
2. The General Manager (Personnel) East Central Railway, Hajipur, District- Vaishali (Bihar).
3. The Divisional Railway Manager, East Central Railway, Danapur, P.O.- Khagaul, District- Patna (Bihar).
4. The Senior Divisional Commercial Manager, East Central Railway, Danapur, P.O.- Khagaul, District- Patna (Bihar).
5. The Senior Divisional Personnel Officer, East Central Railway, Danapur, P.O.- Khagaul, District- Patna (Bihar).

... .. Respondents

Appearance :

For the Petitioner/s	:	Mr. M.P. Dixit, Advocate Mr. S.K. Dixit, Advocate Mr. Sanjay Kumar Chaubey, Advocate Mrs. Swastika, Advocate Mr. Shailendra Kumar, Advocate
For the Respondents	:	Mr. Nishi Nath Ojha, Advocate

CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

and

HONOURABLE MR. JUSTICE ANJANI KUMAR SHARAN

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE SHIVAJI PANDEY)

Date : 06-02-2020

Heard learned counsel appearing for the parties.

2. By way of this writ petition, the petitioner has



prayed for the following reliefs:-

“(A). For issuance of Writ in the nature of Certiorari for quashing / setting aside the order dated 22.07.2019 passed by the learned Central Administrative Tribunal, Patna Bench, Patna, herein after CAT in Original Application No.050/00495 of 2016 as contained in Annexure-2 of the writ application, whereby and whereunder the prayer of the petitioner for quashing the order dated 19.01.2016 as contained in Annexure-1 of the writ application denying him appointment against the post of Trackman has been rejected/dismissed on technicality in spite of his being found successful in all respect which is totally unsustainable and without application of judicious mind.

B. For issuance of Writ in the nature of Certiorari for quashing / setting aside the Order dated 19.01.2016 as contained in Annexure-1 of the writ application, whereby the petitioner has been denied appointment against the post of Trackman on technical ground.

C. For issuance of an appropriate writ(s) / order(s)/ direction(s) in the nature of Mandamus commanding the respondents issue offer of appointment letter in favour of



petitioner against the post of Trackman henceforth with all consequential benefits.

D. Any other appropriate relief(s) for which the petitioner may be entitled to, be granted.”

3. In the present case, the petitioner is claiming that he should be appointed on compassionate ground as Group-D staff as Trackman. The ground has been taken that he was adopted by late Dwarika Choudhary, who was his uncle and when he had fallen ill he had transfer his licence in favour of present petitioner. Late Dwarika Choudhary was a Coolie and it has been claimed by the petitioner that his date of birth is 1979, was adopted by late Dwarika Choudhary in the year 1982. After that he was working as license Porter at Patna Sahib Railway Station all the time. The Indian Railway administration floated a scheme for absorption of Coolies to the post of Trackmen. In pursuance thereof, the petitioner applied for his absorption on Group-D post i.e. Trackman. In turn, the Railway authority has issued admit card to the petitioner and others on 29.04.2008 to appear in the screening test for their absorption as Trackman/Gangman, which was scheduled to be held on 14.05.2008, in which the petitioner appeared and was declared successful. However, the respondents issued one letter dated 12.12.2008, seeking clarification from the petitioner regarding



registration of adoption deed and actual date of handing over and taking over. When the petitioner failed to produce the same, the claim of the petitioner was rejected.

4. Against the action of the respondents, the petitioner filed an application vide O.A. No.685 of 2010, which was dismissed on 19.10.2010 on the ground of limitation. Thereafter, the petitioner preferred a Review Application No.15 of 2011 but, the same was also dismissed on 12.08.2013, led to filing of Writ Petition being C.W.J.C. No.1393 of 2014, which was disposed of vide order dated 07.12.2015, whereby and whereunder the order of the Tribunal was set aside and the matter was again remanded back to the Railway authority to consider the case of the petitioner and pass appropriate order on merit. Whereafter, the Railway Administration examined the case of the petitioner and recorded finding that the claim is unsuitable due to irregular transfer. As per Transfer Letter, badge was transferred from father Dwarika Choudhary to son Sanjay Kumar. However, document attached shows the father name of the petitioner is Jagannath Choudhary. Another ground has been given that the petitioner has failed to bring the registered document of adoption and arrived to a finding that there is no material to show the actual handing over and taking



over the child, which is pre-condition of adoption, unless the condition is satisfied, the adoption cannot be said to be completed.

5. Learned counsel for the petitioner submits that the petitioner has submitted the certificate issued by the Circle Officer, which itself shows the genealogical table, inasmuch as, he has also produced the certificate of adoption but, the same were not considered by the Tribunal. He further submits that Railway Pass and Identity Card issued by the Railway Administration itself shows that it was a valid transfer of license bearing badge no.527, so there is no iota of doubt that the petitioner was not adopted son of late Dwarika Choudhary.

6. Whereas, learned counsel for the Railway Administration submits that as the petitioner has failed to satisfy the authority concerned about his adoption by late Dwarika Choudhary, inasmuch as, the petitioner has not produced the substantial documents to show that he was adopted by late Dwarika Choudhary. He further submits that while rejecting the claim of the petitioner two grounds have been given by the Tribunal; first the adoption has not been followed by registration of adoption deed and second, there is no document of handing over and taking over the child. Of course, registration is not an



essential but, the fact remains that there is no any unimpeachable document reflecting actual handing over and taking over the child, inasmuch as, no document has been brought to show that the child has been accepted by the adopted family as adopted son, after the adoption the adopted son loses all his rights from the natural / biological parents.

7. In support of the submission, learned counsel for the Railway has placed reliance on the decision of the Hon'ble Supreme Court rendered in the case of ***Lakshman Singh Kothari vs. Smt. Rup Kanwar*** reported in ***AIR 1961 S.C. 1378***.

8. Having considered the rival contentions of the parties, as per the petitioner he has taken birth in the year 1979 and adoption has taken place in the year 1982 i.e. at the age of four years, the natural corollary would be that in all the places his father name should have been the name of the adopted father but, record itself shows that he has always carried the name of his natural/ biological father even at the stage of the schooling that itself suggests that adoption has not been taken place, mere transfer of license somehow or others or the certificate issue by the Circle Officer cannot be said to be documentary proof about the adoption of the petitioner by late Dwarika Choudhary. So far the certificate issued by the Circle Officer is concerned, the



Circle Officer can give the certificate of genealogical table, but his certificate of adoption has no relevance in the eye of law. The law prescribes that the registered document would be clinching evidence of adoption, which has not been brought on record nor any other material has been brought to show the factum of adoption.

9. In such view of the matter, we do not find any error in the orders of the Tribunal. Hence, this writ petition deserves to be dismissed accordingly, the same is dismissed.

(Shivaji Pandey, J)

(Anjani Kumar Sharan, J)

pawan/-

AFR/NAFR	N.A.F.R.
CAV DATE	N/A.
Uploading Date	12.02.2020
Transmission Date	

