

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION 5361 OF 2022

Avinash Singh Thakur,
aged 41 yrs,
Plot No. 9, Dr. Ambedkar Colony,
Jaripatka, Indora, Kamptee Road,
Nagpur 17.

.....PETITIONER

..V E R S U S..

1. The Union of India,
through its Secretary,
Ministry of Railways,
New Delhi.

2. The Additional Divisional
Railway Manager,
Office of the Divisional Railway Manager,
SEC Railway, Kangsray,
Nagpur 440 001..

..RESPONDENTS

Mr. C.B. Dharmadhikari, counsel for petitioner.
Mrs. M. Chandurkar, counsel for respondents.

CORAM:- ROHIT B. DEO & MRS. VRUSHALI V. JOSHI, JJ.
DATE : 11.04.2023

JUDGMENT (Per: Rohit B. Deo, J.)

Heard.

2. Rule. Rule made returnable forthwith. With
consent, heard finally.

3. Petitioner Mr. Avinash Singh Thakur is assailing the order dated 12.3.2020, rendered by the Central Administrative Tribunal, Nagpur (CAT) in Original Application (OA) 211/00072/2016, whereby the Original Application preferred by Mr. Avinash Singh Thakur questioning the refusal of the respondents to grant appointment on compassionate grounds, is rejected.

4. It would be necessary to note the averments in the petition to the extent relevant.

4.1 Mr. Avinash Singh Thakur is the natural son of Mr. Ambadas Lade and Mrs. Minakshi Lade. He was born on 14.4.1979 and is aged 44. Mr. Avinash Singh Thakur claims that in 1990, he was adopted by Mr. Barku Singh Thakur and registered adoption deed was executed on 18.12.1999. The adoptive father of Mr. Avinash Singh Thakur expired on 24.6.2000 and the adoptive mother Mrs. Renuka expired on 12.9.1999.

4.2 Mr. Avinash Singh Thakur claims to have studied at Nagpur Residential High School, Sadar which was earlier known as English Primary School, till class IV. Mr. Avinash Singh Thakur claims to have studied in Blue Bells Convent till class IX, and then to have passed the class X examination in 2009 at the age of 30.

4.3 The adoptive father Mr. Barku Singh Thakur was employed with the South Central Railway as a Peon. Mr. Barku Singh met with an accidental death on 24.6.2000. But for the unfortunate accidental death, Mr. Barku Singh would have superannuated after six days on 30.6.2000.

4.4 Mr. Avinash Singh Thakur claims that he applied to the employer on 27.7.2000 for the death benefits, as legal heir of Mr. Barku Singh. The

employer did not oblige. Mr. Avinash Singh Thakur approached the CAT in OA 2181/2001. The application was not entertained since Succession Certificate was obtained by rival claimants. Mr. Avinash Singh Thakur preferred application under section 383 of the Indian Succession Act, 1925 for revocation of the Succession Certificate. The learned Civil Judge held that Mr. Avinash Singh Thakur was the adopted son of Mr. Barku Singh and as a sequitur revoked the Succession Certificate issued in favour of the rival claimant/s.

4.5 Armed with the findings of the learned Civil Judge, Mr. Avinash Singh Thakur re-agitated his claim vide legal notice dated 7.5.2011 and 30.7.2011. He also sought information under the Right to Information Act as to the status of the settlement dues of Mr. Barku Singh. It appears that the employer took a stand that the deceased

employer did not leave behind any legal heir and Mr. Avinash Singh Thakur approached the CAT again in OA 2244/2012. The CAT disposed of the said application as premature observing that after Mr. Avinash SinghThakur obtained Succession Certificate, he was at liberty to agitate the claim. It appears that apart from the application under section 383 of the Indian Succession Act, 1925 seeking revocation of the succession certificate granted to the rival claimant/s, Mr. Avinash SinghThakur had instituted succession case, which was dismissed in default. He therefore, instituted Succession Case 81/2013 and on 11.4.2014, was successful in obtaining the Succession Certificate. He again, applied to the employer for release of the death benefits and since the employer did not respond favourably, approached the CAT in OA 211/2016.

4.6 OA 211/2016 was partly allowed vide

order dated 31.5.2017. The CAT held Mr. Avinash Singh Thakur entitled to death-cum-retiral benefits and did not consider the relief of appointment on compassionate grounds. Mr. Avinash Singh Thakur approached the High Court which allowed Writ Petition 2998/2018 partly and remitted the matter to the CAT. The CAT heard the matter afresh on the limited question of entitlement to appointment on compassionate grounds, and rejected the claim by order impugned.

5. We have heard learned counsel Mr. C.B. Dharmadhikari for the petitioner and learned counsel Mrs. Mugdha Chandurkar for respondents and with their able assistance, the record is scrutinized. We have no hesitation in concluding that the order impugned warrants no interference in writ jurisdiction. We may broadly spell out the reasons which have weighed with us.

6. The CAT has considered several decisions of the

Hon'ble Apex Court and has rightly observed that the object of the schemes which envisage appointment on compassionate grounds is to provide immediate succour to the distressed family and the object is not *per se* to provide employment. The CAT noted that Mr. Barku Singh expired on 24.6.2000 and the application which was preferred by Mr. Avinash Singh Thakur on 11.12.2009 was belated. It is then noted that Mr. Avinash Singh Thakur is aged 41 years (as on the date of application) and is earning livelihood as a painter and he has managed to maintain himself and his family for the last two decades. The CAT finally noted that in view of the order of the CAT, Mr. Avinash Singh Thakur is held entitled to the death-cum-retiral benefits.

7. One extremely significant aspect which is noted by the CAT, and which we cannot ignore since we are called upon to exercise writ jurisdiction, is that Mr. Avinash Singh Thakur submitted fake School Leaving Certificate to the respondents. While on the said aspect, we may note that the learned counsel for Mr. Avinash Singh Thakur fairly did not

join issue with the said observation. Mr. C.B. Dharmadhikari submitted that while the certificate is indeed fake, it was not Mr. Avinash Singh Thakur, but his adoptive father, who obtained the same. Who obtained the fake certificate is of no significance inasmuch as it is clear from the record that the fake certificate was submitted by Mr. Avinash Singh Thakur, knowing fully well that the certificate is fake. We would have been justified in refusing to exercise writ jurisdiction on the ground of the dishonest conduct of Mr. Avinash Singh Thakur alone.

8. However, having examining the rival contentions on merit, we are of the considered view that apart from the submission of the fake certificate, the reasons which are recorded by the CAT do not suffer from any infirmity. Mr. C.B. Dharmadhikari has canvassed painstakingly submissions on the lines of the ground raised in the petition. Mr. C.B. Dharmadhikari has endeavoured to demonstrate that there was no delay as such in staking claim for appointment on compassionate grounds and that Mr. Avinash Singh

Thakur cannot be blamed if the claim could not be pressed and prosecuted in view of the need to obtain the Succession Certificate.

9. The learned counsel for the respondents Mrs. Mugdha Chandurkar would fairly submit, that it was vide application dated 7.2.2008 and not in 2009 as is observed by the CAT, Mr. Avinash Singh Thakur staked claim also to appointment on compassionate grounds. Mr. Avinash Singh Thakur was aged more than 21 years when the adoptive father died on 30.6.2000. The application which he preferred on 7.2.2008 was indeed belated. Mr. C.B. Dharmadhikari was not in a position to invite our attention to any credible material indicating that Mr. Avinash Singh Thakur claimed appointment on compassionate grounds prior to 7.2.2008. We note that in paragraph 11 of the petition, it is averred that Mr. Avinash Singh Thakur preferred application dated 27.7.2000 seeking benefits as legal heir and on the basis of Will dated 29.9.1998. We have not come across any application, much less application

preferred on the date mentioned in the petition, preferred in close proximity of the death of the adoptive father, which claims appointment on compassionate grounds. *Au contraire*, it is not in dispute that Mr. Avinash Singh Thakur addressed communication dated 10.12.2008 to the employer and we may extract the relevant portion:

“Further, I would like to state that at present, I am undergoing my education at St. Josephs Convent, Nagpur, National Institute of Open Schooling in class X. Hence, I do not require employment assistance till I pass my matriculation examination”

The said communication proceeds to request early settlement of the retiral dues. Interestingly, Mr. Avinash Singh Thakur was aged more than 29 years when he conveyed to the employer that he did not need appointment on compassionate grounds, and this was conveyed more than 8 years after the death of employee Mr. Barku Singh.

10. Appointment on compassionate grounds cannot be reduced to backdoor entry in public employment. Such appointments trample on the legitimate expectations and

rights of the lakhs of unemployed youth, who have set their eyes on public employment. Appointment on compassionate grounds is an exception to the constitutional mandate of Articles 14 and 16. The object is to provide immediate succour to the distressed family and to save the family from destitution. The fact that 8 years after the death of the employee, Mr. Avinash Singh Thakur told the respondents that he did not need employment assistance, is self speaking. We need not even consider whether Mr. Avinash Singh Thakur was otherwise eligible to be appointed on compassionate grounds inasmuch as we are in no doubt that if such belated claims are considered, the appointment shall fall foul of constitutional philosophy.

11. The petition is dismissed with costs.

12. We quantify the costs at Rs. 10,000/- (Rupees Ten Thousand) which shall be paid by the petitioner to the respondents 1 and 2 within the next four weeks.

(Mrs. Vrushali V. Joshi, J.)

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Digitally Signed By: BELKHED
RAVINDRA SURESHRAO
P.A. to the Hon'ble Judge

(Rohit B. Deo, J.)

Signing Date: 27.04.2023 11:15