GOVERNMENT OF INDIA
MINISTRY OF RAILWAYS
(RAILWAY BOARD)

No. E(W)2004/PS5-8/7 New Delhi, dt.11.08.2005

The General Manager(P),
Eastern Railway,
Kolkata.

Sub: Inclusion of adopted daughter in Post Retirement Complimentary Passes.

Ref: Eastern Railway's letter No. G.470/115/Mis./P dt. 18.2.05 and 22.06.05.

The case has been examined in consultation with Legal Directorate in Board's Office. The opinion rendered by Legal Adviser in the case is as under:

" Sh. Suryanarayana has explained that his son and daughter are living far away from him and he has adopted Ms. Alekhya after executing a valid deed of adoption.

The E(W) Directorate has quoted Rule 2(a) of Railway Servants (Pass) Rules, 1986 - "adopted child means a child for whom there is satisfactory proof of adoption irrespective of the fact whether such adoption is permissible or not under the personal law governing the railway servant concerned."

As per Section II(ii) of the Hindu Adoption and Maintenance Act, 1956 – " if the adoption is of a daughter, the adoptive father or mother by whom the adoption is made must not have a Hindu daughter or son's daughter (Whether by legislative blood relationship or by adoption) living at the time of adoption;"

In view of this provision, the adoption by Mr. V. Suryanarayana is invalid. Although the Pass Rules 1986 permit inclusion of an adopted child when satisfactory proof of adoption has been furnished, it may be pointed out here that the Rules cannot be made in contravention of the provision of a Statutory Act.

It would be pertinent to mention here the observations of High Court, Orissa in Krushna Vs. Narana, AIR 1991 Ori 134 "Even if custom permits adoption of a male child in the presence of a son such a custom is invalid and the adoption would be void."

Even in the deed of adoption Shri Suryanarayana has not mentioned that he has living son and daughter.

Therefore, Legal Directorate is of the view that even though Sh. Suryanarayana has produced a deed of adoption the adoption is invalid being contrary to Hindu adoption & maintenance Act, 1956."

It is requested that Sh. Suryanarayana may be replied in the matter on the basis of the above legal advice.

P.N. Kumaran

(P.N. Kumaran)
Dy. Dir. Estt.(Welfare)
Railway Board.