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**(2003) 02 AHC CK 0133**  
**In the Allahabad High Court**  
**Case No : C.M.W.P. No. 23974 of 2001**

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|---------------------------------|----|------------|
| Mohd. Atiq Khan                 | Vs | APPELLANT  |
| Union of India (UOI) and Others |    | RESPONDENT |

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**Date of Decision :** 20-02-2003

**Acts Referred:**

**Citation :** (2003) 3 AWC 1818

**Hon'ble Judges :** Prakash Krishna, J;M. Katju, J

**Bench :** Division Bench

**Advocate :** Mool Bihari Saxena and Shitla Prasad Pandey, for the Appellant;  
Govind Saran and S.R. Nigam, for the Respondent

**Final Decision :** Dismissed

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## Judgement

M. Katju and Prakash Krishna, JJ.—Heard Sri Mool Bihari Saxena, learned counsel for the petitioner and Sri. S.R. Nigam, learned counsel appearing for the respondents.

2. The petitioner has challenged the impugned order dated 21.3.2002, Annexure-2 to the writ petition passed by the Central Administrative Tribunal, Allahabad.

3. The petitioner claims to be nephew of Mohd. Yusuf who was working as Trolley Man under the Assistant Signal Telecommunication Engineer who was posted in the office of Divisional Railway Manager, Allahabad. It is alleged that Mohd. Yusuf had no son except three daughters and, therefore, he adopted the petitioner on 5.12.1987. All the three daughters of Mohd Yusuf are married and, therefore, the petitioner is living from the date of adoption with Mohd. Yusuf. Mohd. Yusuf bequeathed his property to his nephew. Mohd. Yusuf died leaving behind him his widow and the petitioner. The widow prayed that the petitioner should be given appointment under the provisions of the Dying-in-Harness Rules. The said application of the petitioner was rejected on the ground that there is no provision for adoption under Muslim Law. Feeling aggrieved, the applicant filed an original

application before the Central Administrative Tribunal, Allahabad Branch, which has been dismissed.

4. The question in this case is as to whether a Muslim can adopt any person. Learned counsel for the petitioner has relied on the decision of a learned single Judge of Madras High Court in the case of Moulvi Mohammed and Others Vs. S. Mohaboob Begum, and the decision of a single Judge of Jammu and Kashmir High Court in Mst. Khatija v. Abdul. Razzak . Both the aforesaid decisions are of learned single Judges of different High Courts and hence, they are not binding on us.

5. The aforesaid decisions relied on some custom among the local Muslims. We doubt that there can be any custom of adoption in Muslims. At any event, no such question arose here because there is neither evidence nor proof of adoption of the petitioner or of the custom in the present case.

6. In the Full Bench decision of this Court rendered by Justice Mahmood in Muhammad Allahabad Khan v. Muhammad Ismail Khan ILR (1888) All 290, it was pointed out that while among the Muslims, there is doctrine of acknowledgement of paternity, there is no question of adoption in Muslim Law. This is also the view expressed in Mulla's Muslim Law vide Chapter XVII and in the Principles of Mohammedan Law by Amir Ali vide Part II Chapter I.

7. For the reasons given above, there is no merit in this petition and it is accordingly dismissed.