

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH**

No. OA 634 of 2017

**Present: Hon'ble Mr. A.Mukhopadhaya, Administrative Member
 Hon'ble Mr. Swarup Kumar Mishra, Judicial Member**

1. Smt. Sarala Prusty, aged about 78 years, W/o Late Sibanarayan Prusty.
2. Asmita Prusty, aged about 4 years, D/o Late Manoj Kumar Prusty, represented through legal guardian Adhiraj Kumar Prusty, aged about 44 years, S/o Late S.N. Prusty.

Both are residents of Bharati Math Lane, High Court Road, PS- Lalbag, Town/District-Cuttack.

.....Applicants

VERSUS

1. Union of India represented through D.G. Posts, Department of Posts and Telecommunication, Ministry of Communication, Sanchar Bhawan, New Delhi.
2. Bharat Sanchar Nigam Ltd., represented by its Deputy Director General, having its registered office at 7th Floor, Bharat Sanchar Bhavan, Harish Chandra Mathur Lane, Janpath, New Delhi-110001.
3. Bharat Sanchar Nigam Ltd., represented by its Chief General Manager Telecom, having office at Odisha Circle, Bhubaneswar, District-Khurda.

.....Respondents.

For the applicant : Ms.S.Devi, counsel

For the respondents: Mr.M.K.Pradhan, counsel

Heard & reserved on : 13.04.2021

Date of order:02.07.2021

O R D E R

Per Mr.Swarup Kumar Mishra, J.M.

The applicant has filed the present OA under Section 19 of the Administrative Tribunals' Act, 1985 seeking the following reliefs :

- i) Admit the Original Application
- ii) Call for the Records
- iii) Quash the impugned order at Annexure A/10
- iv) And direct the respondents to include the name of the applicant No.2 in the service record of Late Manoj Kumar Prusty as his daughter and extend all the legitimate benefits accrued to and to which she is found entitled to within a stipulated period;
- v) And/or pass any other appropriate order(s)/direction(s) as this Hon'ble Tribunal deems fit and proper in the fact and circumstances of the case.

2. The applicant has claimed that she is the mother of the deceased employee, Manoj Kumar Prusty and in the said capacity she has prayed for inclusion of the name of applicant No.2, who is the adopted daughter of the deceased employee, in the service record of the deceased employee and release of all legitimate benefits in favour of applicant No.2. But the respondents has rejected the claim as per impugned order dated 8.8.2017 (Annexure A/10) which reads as under :

“With reference to your letter dated nil regarding reconsideration of the request made by your late son Manoj Kumar Prusty, Ex-TOA, O/o Executive Engineer (E), Bhubaneswar vide his application dated 17.3.2016 regarding adoption of child. The request has been reconsidered in the light of the guidelines contained in Clause No. 6(5) and 6(9) of the Gazette Notification dated 24.6.2011 of Union Ministry of Women and Child Development which does not permit to adopt a girl child and hence the request is regretted.”

3. It is the further case of the applicant that the brother of the deceased employee is the natural father of applicant No.2 who gave her in adoption to the deceased employee. The said adoption was made when she was about one year old and the registered deed of acknowledgement dated 18.7.2014 with regard to the said adoption was also placed into service in support of her said claim. It reveals from the record that the adoption was made on 18.7.2014 through a registered deed. The deceased employee was a bachelor. He had intimated the authorities about the said adoption vide

communication dated 22.12.2014 (Annexure A/3) and requested for inclusion of the name of his adopted daughter in his service book. But the respondents rejected such request of the deceased employee vide communication dated 22.1.2015 (Annexure A/4). The deceased employee made another representation in this regard on 5.1.2016 which was rejected vide order dated 18.1.2016 (Annexure A/5). The deceased employee made a detailed representation dated 17.3.2016 (Annexure A/6). Subsequently he died on 24.3.2017. The representation was rejected by the respondents vide order dated 8.8.2017 (Annexure A/10) since she is the adopted daughter of the deceased employee inter alia relying on the guidelines contained in Cl. No. 6(5) and 6(9) of the gazette notification dated 24.6.2011 vide Annexure R/1 purported to have been issued keeping in view the Section 41 of Juvenile Justice (Care and Protection of Children) Act, 2000. Section 41 of Juvenile Justice (Care and Protection of Children) Act, 2000 reads as under :

“41. Adoption.—

[\(1\)](#) The primary responsibility for providing care and protection to children shall be that of his family.

[\(2\)](#) Adoption shall be resorted to for the rehabilitation of the children who are orphan, abandoned or surrendered through such mechanism as may be prescribed.

[\(3\)](#) In keeping with the provisions of the various guidelines for adoption issued from time to time, by the State Government, or the Central Adoption Resource Agency and notified by the Central Government, children may be given in adoption by a court after satisfying itself regarding the investigations having been carried out as are required for giving such children in adoption.

[\(4\)](#) The State Government shall recognise one or more of its institutions or voluntary organisations in each district as specialised adoption agencies in such manner as may be prescribed for the placement of orphan, abandoned or surrendered children for adoption in accordance with the guidelines notified under sub-section (3): Provided that the children's homes and the institutions run by the State Government or a voluntary organisation for children in need of care and protection, who are orphan, abandoned or surrendered, shall ensure that these children are declared free for adoption

by the Committee and all such cases shall be referred to the adoption agency in that district for placement of such children in adoption in accordance with the guidelines notified under sub-section (3).

(5) No child shall be offered for adoption—

(a) until two members of the Committee declare the child legally free for placement in the case of abandoned children,

(b) till the two months period for reconsideration by the parent is over in the case of surrendered children, and

(c) without his consent in the case of a child who can understand and express his consent.

(6) The Court may allow a child to be given in adoption—

(a) to a person irrespective of Marital status or;

(b) to parents to adopt a child of same sex irrespective of the number of living biological sons or daughters; or

(c) to childless couples.”

4. It was inter alia submitted by learned counsel for the applicant that there is one presumption under Section 16 of Hindu Adoption and Maintenance Act, 1956 regarding adoption in question in view of the registered deed and acknowledgement of adoption dated 18.7.2014 which has been produced by her before the respondents. Section 16 of the said Act reads as under :

“16. Presumption as to registered documents relating to adoption. — Whenever any document registered under any law for the time being in force is produced before any court purporting to record an adoption made and is signed by the person giving and the person taking the child in adoption, the court shall presume that the adoption has been made in compliance with the provisions of this Act unless and until it is disproved. State Amendment Uttar Pradesh Section 16 renumbered as sub-section

(1) thereof and after sub-section (1) as so renumbered, the following sub-section (2) shall be inserted, namely:— “(2) In case of an adoption made on or after the 1st day of January, 1977 no court in Uttar Pradesh shall accept any evidence in proof of the giving and taking of the child in adoption, except a document recording an adoption, made and signed by the person giving and the person taking the child in adoption, and registered under any law for the time being in force: Provided that secondary evidence of such document shall be admissible in the circumstances and the manner laid down in the Indian Evidence Act, 1872.” [Uttar Pradesh Civil Laws (Reforms and Amendment) Act, 1976 (U.P. Act 57 of 1976), sec. 35 (w.e.f. 1-1-1977).]

(i) Whenever any document registered under any law for the time being in force is produced before any court purporting to record an adoption made and is signed by the person giving and the person taking the child in adoption, the court shall presume that the adoption has been made in

compliance with the provisions of this Act. The proof of giving and taking of child is not necessary; Pathivada Rama Swami v. Karoda Surya Prakasa Rao, AIR 1993 AP 336.

(ii) If the adoption is disputed, it is for the plaintiff to prove that ceremony of giving and taking has not taken place; Devgonda Raygonda Patil v. Shamgonda Raygonda Patil, AIR 1992 Bom 189.”

She has also submitted that guidelines vide Annexure R/14 is not applicable to the facts and circumstances of the present case since the child is not an abandoned child or surrendered child and she was under protection of her natural father.

5. Learned counsel for the respondents on the other hand submitted that in view of the Guidelines Governing the Adoption of Children, 2011 vide Annexure R/1 and since the deceased employee was a bachelor and was aged about 53 years while the so called adoption was done and the applicant was only one year old, therefore adoption was not permissible and is not legally valid. Relevant portion of the Guidelines Governing the Adoption of Children, 2011 reads as under :

“6(5) In case a single PAP desires to adopt, he or she should not be less than 10 years of age and shall not be above the age of 50 years. The maximum age shall be 45 years to adopt children in the age group of 0-3 years and 50 years for adopting children above 3 years.

6(9) An un-married or single male person is not permitted to adopt a girl child.”

6. It is to be first proved that the concerned person had infact signed on the said document. The question as to whether the applicant No.2 was validly adopted by the deceased employee or not, cannot be gone into and decided by this Tribunal since it is not the appropriate forum to do so. Once the question of adoption is raised the same is to be decided by competent Court of Law. The applicant No.1, if so advised can approach the appropriate forum and file the decision of the said forum before the

respondent authorities in order to enable them to consider her claim in this regard in accordance with law.

7. The OA is accordingly disposed of with direction that in case the applicant No.1 succeeds to obtain such declaration from the competent Court and file the said judgment to that effect before the respondent authorities, then the department can consider her claim for getting the particular financial benefits of the deceased employee in accordance with law within a period of three months from the date of filing of such judgment before the respondent authorities.

8. The OA is accordingly disposed of with the above observation. There will be no order as to costs.

(SWARUP KUMAR MISHRA)
MEMBER (J)

(A. MUKHOPADHAYA)
MEMBER (A)

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