

Central Administrative Tribunal, Lucknow Bench, Lucknow

Original Application No. 180/2008

This the 12th day of April, 2009

Hon'ble Dr. A. K. Mishra, Member (A)

Km. Neelu Vaish, aged about 23 years adopted daughter of late Sri Anil Kumar, resident of 14/94 Ka, Baraf Khana, Udai Ganj, Lucknow.

Applicant.

By Advocate Sri Praveen Kumar.

Versus

Union of India, through,

1. The General Manager, Northern Railway, Baroda House, New Delhi.
2. The Divisional Railway Manager, Northern Railway, Hazratganj, Lucknow.

Respondents.

By Advocate Sri Deepak Shukla for Sri Prashant Kumar.

Order

By Hon'ble Dr. A.K. Mishra, Member (A)

This is an application challenging the order dated 7.4.2008 and 29.4.2008, in which the claim of the applicant for compassionate appointment was rejected by the respondents.

2. Earlier, the applicant had filed O.A. No. 395/2006 in which a direction was given to the competent authority for considering her representation dated 28.11.2005 for appointment on compassionate ground in view of the claim that she was the adoptive daughter of late Anil Kumar, an employee, who died while in service with the respondent authorities.

3. The representation of the applicant was considered in the speaking order dated 29.4.2008 of respondent No.2, which has been challenged in the present application. The applicant was asked to supply documents in support of her contention that she was the adoptive daughter of the deceased employee. In response, she submitted a copy of the registered will deed dated 24.10.2001 executed by the late employee on 19.10.2001 to the effect that the applicant was

adopted by him and that she would be entitled to his movable and immovable properties.

4. The matter was referred by the respondent authorities for legal opinion and the Legal Advisor opined that the applicant had not been adopted through an adoption deed either registered or un-registered. Further, the documents relating to education qualifications of the applicant revealed her father's name as Govind Prasad Vaish. This position had been reflected even in the latest migration certificate of the Lucknow University dated 30.9.2003. Further, he has also referred to some other contradictions in the statement of the applicant before the Civil Judge, Lucknow and finally came to the advise that the applicant was not legally adopted by the deceased employee under the provisions of Hindu Adoptions and Maintenance Act, 1956, so as to be entitled to compassionate appointment under the Rules. The advice was accepted by the respondent authorities and the claim of the applicant for compassionate appointment was accordingly rejected.

5. Learned counsel for the applicant challenged this position on the ground that the factum of the case pointed irrevocably to the position that her status as the adoptive daughter of the deceased employee had been de facto accepted by the authorities and that she had been paid terminal benefits of the deceased employee on the strength of will executed by the deceased employee, duly probated. It does not lie with the respondents to approbate and reprobate at the same time. They could not have accepted the will and recognized the factum for her being entitled to the terminal benefits of the deceased employee and, at the same time, question her status as the adoptive daughter of the deceased employee and deny her representation for compassionate appointment.

6. The learned counsel for the respondents placed before us the provisions of Hindu Adoptions and Maintenance Act, 1956. Section 5 of this Act is extracted below for better appreciation:

"5. Adoptions to be regulated by this chapter (1) No adoption shall be made after the commencement of this Act by or to a Hindu except in accordance with the provisions contained in this chapter, and any adoption made in contravention of the said provisions shall be void.

(2) An adoption which is void shall neither create any rights in the adoptive family in favour of any person which he or she could not have acquired except by reason of the adoption, nor destroy the rights of any person in the family of his or her birth."

Section 16 of the Act has been amended by an Act of the State Govt. of U.P. which is extracted below:-

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

In its application to State of Uttar Pradesh, Section 16 is renumbered as sub section (1) thereof and after sub Section (1) as so renumbered , sub Section (2) ,inserted , namely:-

(2) In case of an adoption made on or after the first 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."



It was submitted by the learned counsel for the respondents that no adoption by way of a registered adoption deed had been made by the deceased employee in favour of the applicant as his adoptive daughter. Therefore, it was valid on the part of the respondents in not accepting the claim of adoption by the applicant in absence of such a registered documents. Further the U.P. amendment to the Hindu Adoptions and Maintenance Act unequivocally provides that no court after 1.1.1977 shall accept any evidence in proof of adoption except through such a registered document. The will executed by the deceased employee may entitle the applicant to his properties but will not, by the definition of law, confer on her the status of a legally recognized adoptive daughter of the deceased employee.

7. I find that the direction of the Tribunal for consideration of the representation of the applicant has been carried out by the respondent authorities. A speaking order has been given giving legal reasons why she could not be accepted as legally adopted daughter of the deceased employee. The legal position has also been made clear at the time of hearing. It is undisputed that an adoption in order to be legally recognized as valid, has to be made by a registered adoption document. No other evidence in this regard could be accepted by a court of law. The fact of execution of a will and bequeathment of movable and immovable properties to the applicant by the deceased employee does not create the right of an adoptive daughter in her favour.

8. Under the circumstances, I do not find any merit in this application, which is accordingly dismissed. No costs.

Arijit
Member (A) 1/04/09