

(8)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH
CIRCUIT SITTING AT NAGPUR.

O.A.NO. 140/88
TR.A.NO.

199

DATE OF DECISION 5.11.1993

Shri H.Pardeshi.

Applicant(s)

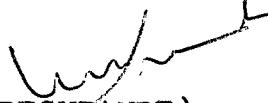
Versus

Union of India & Ors.

Respondent(s)

1. Whether it be referred to the Reporter or not ? M
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not ? M


(N.K.VERMA)
MEMBER (A)


(M.S.DESHPANDE)
VICE CHAIRMAN

mbm:

(9)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL,

BOMBAY BENCH, CAMP AT NAGPUR.

Original Application No.140/88.

Shri H.Pardeshi.

.... Applicant.

V/s.

Union of India & Anr.

.... Respondents.

Coram: Hon'ble Shri Justice M.S.Deshpande, Vice-Chairman,
Hon'ble Shri N.K.Verma, Member(A).

Appearances:-

Applicant by Shri M.M.Sudame.

Respondents by Shri P.N.Chandurkar.

Oral Judgment:-

(Per Shri M.S.Deshpande, Vice-Chairman) Dt. 5.11.1993

The applicant by this application seeks to quash and set aside the order dt. 1.2.1988 passed by the District Magistrate and the order dt. 8.2.1988 passed by the Divisional Railway Manager, Nagpur reverting the applicant from his post.

2. The applicant had born on 5.7.1933. He attended V.P.S. High School, Lonavala where he was admitted on 20.6.1946 and studied upto May 1953 where he passed the XIth Standard examination. He applied for being appointed as Senior Electrical Inspector in the Central Railway and was ^{Se} appointed ~~on~~ by mentioning that he belongs to depressed class. On 10.2.1955 a letter was addressed by the Railway Headquarters of the G.I.P. Railway, Bombay V.T. to the applicant by giving his address as C/o.P.G.Pawar (Shoe Maker). The applicant's contention is that his caste mentioned in the Railway records was Chambhar. The applicant came to be adopted by one Shri Dujai Devidayal Pardeshi on 18.10.1965, ~~who was belonging~~ ^{ed} to Ahir caste. Upon an objection raised by the Union at the instance of some of its members an inquiry was conducted into the applicant's case. An entry was made in the Service Record of the applicant in 1978 that he belongs to

Scheduled Caste. In the proceedings which were held by the Additional District Magistrate culminating in the order dt. 1.2.1988 it was held that the caste certificate produced by the applicant was bogus and that he did not belong to Chambhar caste in view of his adoption. This order came to be challenged before the Divisional Commissioner who suggested that the District Magistrate may re-open the proceedings in the light of the observations made by him and as regards adoption and the question of ^{its} validity the applicant may be directed to agitate the matter before the Competent Civil Court having jurisdiction. The Collector held that he did not have the power to review the earlier orders. The applicant thereafter approached the High Court by filing Writ Petition No.280/1988 and the High Court held that in view of the coming into operation of the Central Administrative Tribunals Act, 1985 it had no jurisdiction in respect of service matters. The applicant therefore filed the present application for the aforesaid reliefs. The Respondents contend that the applicant is not entitled to any of the reliefs claimed. The learned counsel for the Respondents Shri P.N.Chandurkar made the Service Record available for our perusal and it is apparent that while applying for the job the applicant had stated in 1955 that he belongs to depressed class. The exact caste was not indicated, but from the letter dt.10.2.1955 addressed by the Railway Administration to the applicant, it is clear that the applicant's father Shri P.G.Pawar was described as a 'shoe maker'. An entry continued to be made in the Service Record of the applicant that he belonged to the Chambhar Caste, ^{and} that was also the caste mentioned in the School Leaving Certificate which has been produced by the applicant. We see therefore, no reason to doubt the applicant's stand that the applicant was born of Chambhar parents and his caste was recorded as 'Chambhar'.

3. In the narrative which the applicant has given in the application he has stated in para 6.3 that the applicant was born and brought up as 'Chambhar'. Thereafter, on 17.10.1965 Shri Dujai Devidayal Pardesi and his wife Smt. Chotibai adopted the applicant as their son. The applicant also ^{registered} produced the Govt. Adoption Deed dt. 18.10.1965 at (Annexure - I). The adoptive father of the applicant was 'Ahir' by caste and belonged to Other Backward Community (OBC). The applicant has not disputed the position that he was adopted nor has he said that his adoption was invalid. Even in the Writ Petition filed before the High Court it was mentioned that the petitioner who was then 28 years of age was adopted by the adoptive parents on 17.10.1965. The fact of adoption was not a question even in the Writ Petition which was filed before the High Court.

4. Shri M.M. Sudame, learned counsel for the applicant, however, tried to contend that the Additional District Magistrate by his order dt. 1.2.1988 could not have proceeded on the basis that the adoption was valid in view of the clear provisions of Section 10(iv) of The Hindu Adoptions and Maintenance Act, 1956 which provides that no person shall be capable of being taken in adoption unless the four conditions mentioned therein are fulfilled, one of them being that he or she has not completed the age of 15 years, unless there is a custom or usage applicable to the parties which permits persons who have completed the age of fifteen years being taken in adoption. As we have pointed out above the applicant has not challenged his adoption at any stage and the question whether the custom as contemplated by Section 10(iv) existed or not could not have come up for consideration. Before us also, the application proceeds on the assumption that the adoption

was valid. At one stage Shri Sudame stated that he would seek an amendment by urging that the adoption was invalid. But, since the adoption has not been challenged eversince it admittedly took place on 18.10.1965 and since the applicant had stood by the adoption eversince, we do not think that the applicant should be now granted an adjournment for questioning the adoption. We would proceed to consider the question whether ^a the change of caste was brought about by virtue of adoption. In Sitabai V/s. Ramchandra (A.I.R. 1970 SC 343), a Bench of three Hon'ble Judges observed as follows:

"It is clear on a reading of the main part of Section 12 and sub-section (vi) of Section 11 that the effect of adoption under the Act is that it brings about severance of all ties of the child given in adoption in the family of his or her birth. Correspondingly, these very ties are automatically replaced by those created by the adoption in the adoptive family. The legal effect of adoption is to transfer the child from the family of its birth to the family of its adoption. The Scheme of Sections 11 and 12 is that in the case of adoption by a widow the adopted child becomes absorbed in the adoptive family to which the widow belonged. The child adopted is tied with the relationship of sonship with the deceased husband of the widow."

Their Lordships approved the decision in Ankush Narayan V/s. Janabai Rama Sawat (A.I.R. 1966 Bom 174). If this is the legal position, ^{which} evidently follows from Section 12 of the Act that an adopted child shall be deemed to be the child of his or her adoptive father or mother for all purposes with effect from the date of adoption and from such date all the ties of the child in the family of his or her birth shall be deemed to be severed and replaced by those created by the adoption in the adoptive family. Since Section 4 of the Act provides for overriding effect of Act, (a) any text, rule or interpretation of Hindu

law or any custom or usage as part of that law in force immediately before the commencement of this Act shall cease to have effect with respect to any matter for which provision is made in this Act; (b) any other law in force immediately before the commencement of this Act shall cease to apply to Hindus insofar as it is inconsistent with any of the provisions contained in this Act. It necessarily follows that it would also substitute ^{the} caste of the adoptive family for the caste of the natural family. Such a view was taken by Learned Single Judge of Delhi High Court in Khazan Singh V/s. Union of India & Ors. (A.I.R. 1980 Delhi 60) wherein the learned Single Judge observed:

"on adoption as in the case of a birth, the adoptee acquires the caste of the adoptive parents without anything more to be done by him or by others."

We, respectfully agree with this view.

5. Shri Sudame, learned counsel for the applicant relied on the observations of Smt. Roopa Ravindra Kankanawadi V/s. The Commissioner, Hubli & Ors. (1984 LAB. I.C. 1028). That was the case where a question arose whether a woman not belonging to Scheduled Caste by birth cannot be regarded for the purposes of reservation of posts made by the State in exercise of its power under Clause 4 of Article 16 of the Constitution of India, and the learned Single Judge took the view that:

"A person who was not a member of a Scheduled Caste by birth until marriage and therefore did not belong to backward class at all, cannot all of a sudden be regarded as backward class just because her husband belongs to Scheduled Caste and that she would not belong to a class of persons who are inadequately represented in the services of the State."

Obviously, the question of induction into a family by adoption which is covered by the Statute viz.

The Hindu Adoptions And Maintenance Act, 1956 would

be different from a woman inducted into the family by virtue of her marriage. Our attention was drawn to the observations in para 22 to the effect that the correct view to take is the word 'Scheduled Castes' used in the reservation order only covers persons who are Scheduled Caste by birth, and who are found to be the most backward classes of citizens and does not include a woman of forward class, who becomes the wife of a man belonging to Scheduled Caste by birth. This, however, would not make any difference to the approach we are taking, because by virtue of adoption the statutory result would be induction of the child in the adoptive family as if the child were born into the family. Considering all these aspects, we find that the learned Additional District Magistrate was right in his view that the applicant ceased to be a member of the Scheduled Caste by virtue of his adoption by parents who belonged to Ahir Caste. The applicant was granted promotion only because he belonged to Scheduled Caste and once it is found that he did not belong to the reserved category by virtue of his adoption, the natural consequence was to revert him to the post from which he was promoted. No exception can be taken from the course adopted by the Respondents.

6. In the result, we see no merit in the application. It is accordingly dismissed with no order as to costs.

N. K. Verma
(N. K. VERMA)
MEMBER (A)


(M. S. DESHPANDE)
VICE-CHAIRMAN

B.