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CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH AT NAGPUR

OA NO.18/2000

Nagpur this the 27th day of September, 2001.

Hon'ble Mr. Shanker Raju, Member (J)

Shri Munna s/o late Vijay Kumar Shaniware,
C/o 08 Jambhulkar, 666 Model Town,
Opp Jaswant Talkies,
Nagpur.

-Applicant

(By Advocate None)

-Versus-

Union of India & Others

-Respondents

(By Advocate Shri P.S, Lambat)

ORDER (ORAL)

None appears for the applicant, even on the second call. This OA is disposed of in terms of Rule 15 of the C.A.T. (Procedure) Rules, 1987.

2. The claim of the applicant is directed against the non-payment of settlement dues and other retiral benefits, to the applicant as the legal heirs of the deceased of the legal heirs of the deceased Govt. servant.

3. Briefly stated, as alleged by the applicant that he is the son of deceased Govt. servant Vijay Kumar who died on 1.1.97. According to the applicant Smt. Padma was the wife of deceased Vijay Kumar and on account of divorce on 5.9.90 papers have been signed as per the customary divorce to that effect a certificate was also issued. According to the applicant he has been adopted by the deceased Govt. servant by way of an adoption deed. As such being the only legal heir of the deceased as per the law he is entitled for all the retiral benefits of the applicant. It is also contended that by way of filing a succession case No.151/97 he has been adjudged as the successor of the deceased Govt. servant and also he has changed his name by using the surname of the deceased father which has been published in the gazette notification of the Govt. of Maharashtra. It is also stated that despite his claim by repeated representations the respondents are yet to disburse the same to the applicant. It is lastly contended that all the formalities as required by the respondents have been completed by the applicant.

2. On the other hand the learned counsel for the respondents submitted, strongly rebutting the claim of the applicant, that the applicant submitted his claim for settlement of dues being a legal heir and adopted son. The adoption deed submitted by the applicant is not *per se* legal. The adoption deed is only signed by a notary and has not been executed before the Court under the Adoption and Maintenance Act. As regards the adoption it is also contended that the applicant who is 20 years of age claims to be the adopted son, which is not permissible, as per the Hindu Adoption and Maintenance Act. Refusing succession certificate of the applicant two fold arguments have been tendered firstly the succession certificate has been obtained without impleading any of the other parties who are staking the claim to the retiral benefits of the applicant and secondly as per the decision of the Apex Court succession certificate is not to be treated as a decree and cannot be used for accord of any benefit. The learned counsel further stated that the wife of the deceased is still alive and the divorce has not been obtained legally and as such one which has been resorted to on the basis of the customs is not a valid divorce and having failed to prove ~~or~~ to show the relevant legal proof of the divorce the marriage between the deceased and his wife still exists as per the Hindu Marriage Act. In this backdrop it is stated that the claim of the applicant is not legally tenable and he has already been apprised of the same by informing the reasons.

3. I have carefully considered the rival contentions of the parties and perused the material on record. Though the learned counsel of the respondents has not been able to furnish the information regarding nomination papers of the applicant but we find that in order to be a legal heir as per the Hindu Marriage Act and Hindu Adoption and Maintenance Act one has to prove that he has been adopted by a person in accordance with the rules and law. The applicant's claim that he had ~~not~~ been adopted by the deceased Government servant and thereafter he changed his name in the gazette of Maharashtra and his resort to deed of adoption executed on 22.12.96 does not inspire confidence. Deed of adoption is prepared and signed by a notary whereas the procedure for adoption is firstly there should be a pre-requisite of the difference of age of at least 21 years the person should not have his own son or daughter and the adoption is take place before the District Judge. Mere production of a certificate of adoption deed signed by the notary would not be sufficient and would not be a legal proof of adoption of the applicant by

the deceased Government servant. As per the rules and instructions on the subject after the death of a Govt. servant his wife and children are the legal heirs and are entitled for the pensionary benefits. The resort of the applicant to show that the deceased Government servant had been divorced his wife according to the customs is absolutely irrational and cannot be given any legal significance. The divorce in the Hindu Marriage cannot be taken without resorting to the proceedings under Section 13 of the Hindu Marriages Act. Having failed to show any decree passed by the competent court to establish that the wife of the deceased has been divorced as per the law the claim of the applicant that having divorced she has no claim for pensionary benefits is of no avail. Apart from it, even after the divorce assuming without admitting the wife was divorced even then the children out of the wedlock are also entitled for the retiral benefits.

4. In this view of the matter the claim of the applicant for settlement of dues of the deceased government servant is not legally tenable and is not entitled to the same.

5. As regards the succession certificate obtained by the applicant from the Court from its perusal it transpires that while the proceedings have been taken up for accord of succession certificate the applicant has not impleaded any of the legal heirs, i.e., wife and children of the deceased Govt. servant. Having obtained an ex parte succession certificate the same would have no significance in law and would not be acted upon by the respondents to disburse the settlement dues to the applicant. Apart from it, the Apex Court, as stated by the learned counsel of the respondents has held that the succession certificate cannot be claimed as a decree and cannot be executed as such. In the result, having failed to establish his right to the settlement dues of the applicant and in absence of any legal and credible proof of the applicant being the legal heir he is not entitled for the pensionary benefits of the deceased Government servant. The OA, therefore, fails and is accordingly dismissed. No costs.

S. Raju
(Shanker Raju)
Member(J)

CENTRAL ADMINISTRATIVE TRIBUNAL,
Mumbai Bench at Nagpur

RA No.2012/2001 in
OA No.18/2000

Nagpur, this the 28th day of February, 2002

HON'BLE SHRI SHANKER RAJU, MEMBER(J)

Sri Munna s/o Late Vijaykumar Shaniware .. Applicants

-Versus-

Union of India

-Respondent

O R D E R (BY CIRCULATION)

The present R.A. is filed, seeking review of my order dated 27.09.2001 passed in OA No.18/2000. I have perused the order dated 27.09.2001. I do not find any error apparent on the face of the record or discovery of new material which was not available with the review applicant despite due diligence at the time of final hearing. By way of this R.A. the review applicant seeks to re-argue the case, which is not permissible. The present R.A. is not maintainable as per the provisions of Section 22 (3) (f) of the Administrative Tribunals Act, 1985 readwith Order 47, Rule (1) of CPC and also in view of the ratio laid down by the Hon'ble Apex Court in K. Ajit Babu & Others v. Union of India & Others, JT 1997 (7) SC 24. The R.A. is accordingly dismissed, in circulation.

S. Raju

(Shanker Raju)
Member(J)

/Rao/

28.2.2002.
Order/Judgment despatched
to Applicant/Respondent(s)
on 23.4.2002.

29/4/02