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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH

O.A. 1116/99

Date: 18.11.99

Between:

Revuri Anil

.. Applicant

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1. Union of India
through
Secretary,
Department of Posts and
Telegraphs,
New Delhi.
2. The Post Master General,
Indian Posts and Telegraphs,
Andhra Pradesh, Abids,
Hyderabad.
3. The Senior Superintendent of
Post Offices,
South East ~~East~~ Division,
Kachiguda,
Hyderabad - 500 027. .. Respondents

Counsel for the Applicant : Mr. Brizmohan Singh for
Mr. D.V.Sitaram Murthy

Counsel for the respondents: Mr. J.R.Gopal Rao

Coram:

Hon. Shri B.S. Jai Parameshwar, Member (J)

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(Per Hon. Shri B.S.Jai Parameshwar, Member (J))

Heard Mr. Brizmohan Singh, learned counsel for the applicant and Mr. J.R.Gopal Rao, learned standing counsel for the respondents.

2. This is an application u/s. 19 of the Administrative Tribunals Act. Application was filed on 22-4-99.

3. The facts of the case may in brief be summarised as follows :

Sri R. Laxman Rao (hereinafter referred to as 'the deceased employee') was working as Asstt. Superintendent of Post Office, South East Division, Hyderabad. He had a wife by name Smt. Venkataratnamma who pre-deceased the deceased employee, on 3-3-1990. The deceased employee had no issues.

4. Sri R. Rama Rao, retired teacher is the elder brother of the deceased employee. He submits that one K. Jayalakshmi is the sister of the deceased employee.

5. The applicant herein is the son of J. Prasad and Malathi Devi having born on 21-3-1976. ^{Smt} Malathi Devi is the sister of Venkataratnamma wife of the deceased employee.

6. R. Laxmana Rao died on 5-7-90. At that time the applicant was a minor.

7. It is not in dispute that the deceased employee had nominated his wife Venkataratnamma and the applicant as his adopted son in the relevant records of the respondent department.

8. The applicant claims that his natural parents gave in adoption to the family of R. Laxman Rao on 5-6-77 as per the custom prevailing in [] the community.

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The department recognised the applicant as the adopted son of the deceased employee and was provided with CGHS facilities.

9. As on 5-7-1990 the applicant was a minor his natural mother Smt. Malathi Devi representing to be the guardian of the applicant got issued a legal notice to the respondents to settle the pension and pensionary benefits of the deceased employee to her. This legal notice was replied by the Post Master General, A.P., Hyderabad by reply notice dt. 20-2-1991 (Annexure A-III page 13). The following paragraphs in the reply notice ^{are} ~~is~~ relevant:

"2. Regarding para 2 of your notice my clients accept Anil as adopted son of Late. R.Lakshman Rao in view of Mr.Anil being shown as alternate nominee in all the nominations filed with the department by late Lakshman though there is no documentary evidence relating to his adoption. So he is entitled to the benefits payable to the deceased R.Laxman Rao as his heir.

3. As regards para 3 of your notice my client states that though Smt.Belugappa Malathi Devi may be natural mother of Mr.Anil, once the adoption of Mst.Anil by late. R.Lakshman Rao is accepted, she ceases to have any right over person and property of Mst.Anil unless she gets an order from a competent court of law to act as guardian of person and property of Mst.Anil. It is only after such a certificate is obtained by Smt.B.Malathi Devi she will be entitled to receive the amounts payable to Ms.Anil as heir and nominee of the deceased R.Lakshman Rao. The amounts due to late R.Lakshman Rao will be duly intimated to the court when steps are taken by Smt.B.Malathi Devi for obtaining a certificate under the Guardian and Wards Act. "

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10. Accordingly Smt. Malathi Devi initiated guardian proceedings in OP No. 225/91 on the file of the court of District & Sessions Judge, Vijayawada. However during the pendency of the application, the applicant attained the majority and hence the application filed by Smt. Malathi Devi was not prosecuted further.

11. The applicant through his legal notice dt. 4-8-1995 (Annexure A-VI page 17-20) claimed the pensionary benefits of the deceased employee. It is stated that then the respondent no.3 directed the applicant to obtain a Succession Certificate from a competent court of law.

12. Accordingly the applicant filed an application in OP No. 578/96 on the file of II Additional District & Sessions Judge, Vijayawada claiming the following sums due to the deceased employee:

(1) DCRG	Rs. 60,770.00
(2) CGEIS	Rs. 32,460.00
(3) Encashment of leave	Rs. 17,087.00
(4) GPF	Rs. 1,307.00
(5) Pay & Allowances from 1-7-90 to 5-7-90	Rs. 501.00
(6) DA arrears from 1-7-90 to 5-7-90	Rs. 17.00

Total:	Rs. 1,12,142.00

13. The District Court allowed the OP 578/96 and issued the Succession Certificate dt. 13-10-1997. A copy of the Succession Certificate is at Annexure A-VII page 21 to 35.

14. Further it is stated that the respondent authorities directed the applicant to execute an indemnity bond in favour of the department in case the payment made was to be found to be an erroneous payment. Accordingly the applicant executed an indemnity

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bond. A copy of the indemnity bond executed by the applicant is at Annexure A-X page 37 & 38 to the OA.

15. Still the department has not released the pensionary benefits. Hence the applicant has filed this OA to direct the respondents to release the benefits including PF, Gratuity, Pention etc. payable to the deceased employee on the basis of the nomination of the said Lakshman Rao in favour of the applicant and Succession Certificate dt. 13-10-97 issued by the II Additional District Judge, Vijayawada with interest @ 18% p.a. from the due date till the date of payment.

16. This is one aspect of the matter.

17. The other aspect is that as already observed the deceased Lakshman Rao had left behind his elder brother R. Rama Rao, retired teacher and a sister by name K. Jayalakshmi.

18. On 20-7-1990 Sri Rama Rao, on a stamp paper of Rs.10/- gave consent styled as settlement deed to the nominee for all the claims due from the postal authorities in respect of the deceased employee. A copy of the settlement deed is at Annexure A-II page 12. Besides he had addressed a letter dt. 20-7-90 (As per Annexure R-II) to the reply.

19. After the applicant produced the succession certificate dt. 13-10-97 through his letter dt. 8-12-97 (Annexure A-VII page 20) which was produced with reference to letter No. C/2-2/8/90 dt. 29-9-95 of the SSP SE Division Hyderabad. But, however, in para 6(f) the applicant submits that he produced the succession certificate through his letter dt. 26-1-98.

20. The respondents took no action on the succession certificate produced by the applicant

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through his letter dt. 26-1-98. On the other hand the respondent authorities addressed a letter to Rama Rao seeking his objections to release the pension and pensionary benefits in favour of the applicant on the strength of the succession certificate produced by the applicant.

21. On 9-1-98 Sri Rama Rao got issued a legal notice as per Annexure R-3.

22. It is stated that respondents took this step as they felt that the applicant had obtained the succession certificate without impleading the department and/or the rival claimants to the pensionary benefits of the deceased employee.

23. On 9-3-98 Sri Rama Rao got issued a legal notice disputing the succession certificate obtained by the applicant and submitted that he would take necessary steps to get the succession certificate revoked by the court and requested the respondent authorities not to pay the terminal benefits to the applicant.

24. The respondents asked the applicant to execute an indemnity bond. Accordingly the applicant executed an indemnity bond in favour of the department on 21-9-98. Again Sri R. Rama Rao, brother of the deceased employee, got issued a legal notice dt. 16-10-98 informing the department that he has filed an application in GL 9514/98 before the II Addl. District & Sessions Judge for revoking the succession certificate granted in favour of the applicant.

25. Further, it is stated that the applicant through his counsel informed the respondent that the application filed by Sri Rama Rao was dismissed on 9-7-99. Sri R. Rama Rao on 10-7-99 submitted that the application filed by him was dismissed for default

that he would be taking necessary steps for restoration of the same and that the retiral benefits should not be paid to the applicant.

26. The respondents have filed a reply. They have covered more or less the above facts explained.

27. During the course of arguments the learned counsel for the respondents disputed the adoption of the applicant to the deceased employee. He submitted that there was no legal adoption and unless the legal adoption is established by the applicant, the applicant cannot claim the retiral benefits of the deceased employee.

28. It may be noted that the records of the deceased employee maintained by the department clearly establish that the applicant was the second nominee for the benefits like PF, Gratuity etc. Further the respondents did not dispute that the applicant was given the benefits like CGHS on the ground that the applicant was the adopted son of the deceased employee.

29. Having considered or recognised the applicant as ^{the} adopted son of the deceased employee and having fully established that Sri Lakshman Rao had nominated the applicant as adopted son for the benefits in the service records of the deceased employee I feel that it may not be reasonable or proper for the ~~respondents~~ to question the legality of adoption. In fact as per the versions of the applicant he was adopted on 5-6-77 when the applicant was hardly a year and odd. Now the learned counsel for the respondents during the course of arguments strongly contended

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that there can be no estoppel against statute and it is for him to prove the legal adoption. This he submits despite the fact that the department had in the records maintained by it with reference to the deceased employee the name of the applicant having been entered as the adopted son of the deceased employee.

30. The respondent authorities, as already observed, upto the stage of securing an indemnity bond from the applicant acted in a manner favourable to the applicant and obtained all the documents to safeguard the interest of the department in case the payment made to the applicant later found to be erroneous.

31. It is stated that Sri Rama Rao, the elder brother of the deceased employee is claiming to be the legal heir of the deceased employee. For this the learned counsel for the respondents relied upon the Class-II (Heirs) under the Hindu Succession Act. Under Class-II (Heirs) the brother and sister come under Sr.No.(3) & (4). Son comes under Class-I (Heirs)

32. The respondents, during the life time of the deceased employee, had not disputed the status of the applicant as the adopted son. The applicant was given all the benefits, a son of an employee in the department can get. Further, while sending reply notice to the legal notice issued by Smt. Malathi Devi, the respondents categorically submitted that the applicant is entitled to the terminal benefits of the deceased employee.

33. Viewed in this background the applicant comes under Class I Heirs in preference to, and excluding Rama Rao and JayaLakshmi, the brother and sister of the deceased employee.

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34. Under Section 9 of the Hindu Succession Act "Among the heirs specified in the Schedule those in Class-I shall take simultaneously and to the exclusion of all other heirs, those in the first entry in Class II shall be preferred to those in the second entry; those in the second entry shall be preferred to those in the third entry; and so on in succession." As per the principle enunciated u/s.9 of the Hindu Succession Act, Class I heirs exclude all other heirs. Therefore when the adopted son having regarded as Class I heir under the Act will succeed excluding the brother and sister in Class II Heir of the deceased employee.

35. Even Rama Rao has not disputed in his earlier correspondence with the department that the applicant was not the adopted son of the deceased employee. The department appears to be dancing to the tune of Sri Rama Rao.

36. Sri Rama Rao the elder brother of the deceased employee has prevailed upon the department in not releasing the terminal benefits of the deceased employee in favour of the applicant. The applicant has obtained the succession certificate. Succession certificate has been issued by the II Additional District & Sessions Judge, Vijayawada.

37. The respondents disputed the succession certificate obtained by the applicant. It is their contention that the applicant had not impleaded the department or the rival claimants in the application for obtaining the succession certificate. To answer this submission the learned counsel for the applicant brought to my notice the procedure to be adopted by the court before issuing the succession certificate. u/s. 373(1)(b) of the Indian Succession Act which reads as below :

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"373. Procedure on application -

(1) If the District Judge is satisfied that there is ground for entertaining the application, he shall fix a day for the hearing thereof and cause notice of the application and of the day fixed for the hearing -

(a) ...

(b) to be posted on some conspicuous part of the court-house and published in such other manner, if any, as the Judge, subject to any rules made by the High Court in this behalf, thinks fit, "

Thus it is submitted that the court before issuing the succession certificate had followed the procedure enumerated in section 373 of the Indian Succession Act and nothing prevented either the department or Rama Rao to appear before the court and to oppose the application.

38. Section 381 of the Act clearly states the effect of the certificate :

"381. Effect of certificate -

Subject to the provisions of this Part, the certificate of the District Judge shall, with respect of the debts and securities specified therein, be conclusive as against the persons owing such debts or liable on such securities, and shall, notwithstanding any contravention of Section 370, or other defect, afford full indemnity to all such persons as regards all payments made, or dealings had, in good faith in respect of such debts or securities to or with the person to whom the certificate was granted. "

Therefore even the succession certificate is defective it will indemnify the department in releasing the terminal benefits of the deceased employee in favour of the applicant. It is for Sri Rama Rao and Smt. K. Jaya Lakshmi who claim to be the brother and sister of the deceased to establish their rights in a competent court of law.

39. Now the applicant having produced succession certificate and has even executed the indemnity bond I find absolutely no reason for the department to deny or to refuse to release the retiral benefits of the deceased employee in favour of the applicant. The respondents are not justified in keeping the amount with them. I feel it is not proper on their part to approach Sri Rama Rao for each and every thing. When the applicant produced the documents as desired by them they should have taken a decision whether to release the pensionary benefits to the applicant or not.

40. The application for revoking succession certificate filed by Sri Rama Rao came to be dismissed on 9-7-99 for default. Sri Rama Rao stated that he will be filing an application for restoration. The department has waited Sri Rama Rao to get his remedies exhausted. It is for that purpose the department has taken indemnity bond from the applicant. Therefore in view of the Section 381 of the Indian Succession Act and in view of the fact that the applicant has executed the indemnity bond in favour of the department there is no justification for the respondents to deny the terminal benefits to the applicant. In that view of the matter I issue the following directions :

- (a) Application is allowed.
- (b) The respondents shall release the terminal benefits of the deceased R.Lakshman Rao in favour of the applicant within four months from the date of receipt of a copy of this order;
- (c) On their failure to pay or release the terminal benefits to the applicant within the above stipulated time the respondents shall pay interest thereon @ 10% p.a., till the date of payment.

41. No order as to costs.

B.S.JAI PARAMESHWAR
18.11.99
(B.S.JAI PARAMESHWAR)

Member (J)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH : HYDERABAD

6/12/99
16/12/99

1ST AND 2ND COURT

COPY TO :-

1. BOHM
2. HRRN M (A)
3. BBSJP M (J)
4. D.R. (A)
5. SPARE
6. ADVOCATE
7. STANDING COUNSEL

TYPED BY
COMPARED BY

CHECKED BY
APPROVED BY

THE HON'BLE MR. JUSTICE D.H.NASIR

VICE - CHAIRMAN

THE HON'BLE MR.R.RANGARAJAN :
MEMBER (ADMN.)

THE HON'BLE MR.B.S.JAI PARAMESWAR :
MEMBER (JUDL.)

* * *

DATE OF ORDER: 18/12/99

MA/RA/CP.NO.

in
OA. NO. 116/99

ADMITTED AND INTERIM DIRECTIONS
ISSUED

ALLOWED

CP CLOSED

(8 copies)

RA CLOSED

DISPOSED OF WITH DIRECTIONS

DISMISSED

DISMISSED AS WITHDRAWN

ORDERED / REJECTED

NO ORDER AS TO COSTS

