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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL :HYDERABAD BENCH
HYDERABAD

O.A.NO.254 OF 1999.

DATE OF DECISION: 27-9-1999.

BETWEEN:

Sri Kanikelli Subba Rao.

.....Applicant

A n d

1. Divisional Railway Manager,
South Central Railway, Vijayawada.
2. Sr.Divisional Railway Personnel Officer,
South Central Railway, Vijayawada.
3. Union of India, rep. by General Manager,
South Central Railway, Rail Nilayam,
Secunderabad.

.....Respondents

COUNSEL FOR THE APPLICANT :: Mrs. Anitha Swain

COUNSEL FOR THE RESPONDENTS :: Mr.V. Bhimanna

CORAM:

THE HON'BLE SRI JUSTICE D.H.NASIR, VICE CHAIRMAN

ORDER:

(PER HON'BLE SRI JUSTICE D.H.NASIR, VICE CHAIRMAN)

1. In this case for appointment on compassionate ground, the applicant (K. Subba Rao) stakes his claim that he was the adopted son of the deceased K. Sessaiah, IOW/BVRM, who expired on 18-2-1993. The deceased had rendered his services as Khalasi with the respondents from 1-7-1973 to 18-2-1993. After his death his widow Mrs. Veeramma, had settlement of family pension, vide P.P.O. No. 59044101292, dated: 16-7-1993, through Savings Bank Account No. 27/8771. The applicant was born on 10-4-1974 and was officially taken in adoption on 22-11-1990 by late K. Sessaiah. Further according to the applicant as per the recitals of adoption deed, the said Subba Rao, the applicant, had been residing with K. Sessaiah and K. Veeramma, who provided for all needs and necessities to the applicant. Education was also provided to him by the deceased Sessaiah right from his childhood. But the Adoption Deed was officially executed on 22-11-1990.

2. It is further the case of the applicant that his mother submitted an application for appointment on compassionate ground. At that time the applicant was 14 years old. When the representation for appointment on compassionate ground was made, the applicant was studying in Xth Class and completed ITI (Fitter). However, they had no source of income. The applicant also pleads that he was entering 25th year of his age and that he may lose the chance of getting job due to over age.

3. In the reply statement filed by the respondents, the claim advanced by the applicant is strongly opposed. According to the Respondents consequent upon the death of K. Sessaiah, his wife applied for appointment on compassionate ground for her adopted son on 19-12-1994 i.e., almost two years after the death of her husband. The applicant's date of birth was 10-4-1974 and the Adoption Deed was registered on 22-11-1990. It was evident from the same that the applicant's age was 16 years, 7 months and 12 days at that point of time. Further according to the respondents as per Section. 10 (iv) of Hindu Adoptions and Maintenance Act, 1956, no person could be taken in adoption if he has already completed the age of 15 years. On an inquiry being

made by the Department, it was learnt that the applicant had studied at A.R.K.R. Municipal High School, Bhimavaram, during June, 1991, where his name was shown as Boddu Subba Rao and father's name as Sri Mose, who was his natural father. According to the respondents, therefore, even after the alleged registration of the Adoption Deed on 22-11-1990, the applicant continued to use his natural father's name as the name of his father. In the Transfer Certificate issued on 2-12-1993 by the Head Master of the School, the applicant's date of birth was shown as 14-8-1978. On discontinuing his studies from the aforesaid School, he joined a private School Shantiniketan, Gollapudi, where the applicant's name was registered as Kanikelli Subba Rao with adoptive father's name as late K.Seshaiah and his date of birth as 10-4-1974.

4. It is also submitted on behalf of the respondents by the learned Standing Counsel that the widow of the deceased employee had submitted an affidavit declaring that the adoption was registered on 22-11-1990, when the applicant was 16 years old. The case had been examined and rejected by the Competent Authority and the widow was accordingly advised by letter dated 19-8-1997.

5. With the above facts in view the learned Standing Counsel for the Respondents argued that the applicant's contention that he was 14 years old at the time of registration of the Adoption Deed dated 22-11-1990 was not correct since admittedly he was 16 years, 7 months and 12 days old as per the recorded date of birth in the Secondary School Certificate. According to them the age of his foster mother was only 47 years as per the declaration of the members of the family for the purpose of Passes and PTOs executed by the late employee on 10-5-1991, while he was still in service.

6. From the material appearing on the record of the case with particular reference to the Secondary School Certificate dated 8-6-1995, the date of birth of the applicant is mentioned as 10-4-1974, and therefore on the date on which the alleged

Adoption Deed was registered, the applicant had already completed 16 years of age, if we agree that the applicant was actually adopted on the same day on which the deed was executed and registered and not earlier by oral adoption.

7. This aspect of the case that the applicant was entitled to compassionate appointment is a factual aspect, which is required to be investigated by the Officers of the respondents. The respondents have not shirked their responsibility of making such investigation from which it is concluded by the respondents that no satisfaction could be derived from the material collected during investigation that this was a genuine case ^{of} adoption. It would not be legal and proper for this Tribunal to unsettle the finding of fact by the Officers of the respondents. Nothing has come on record to doubt its correctness. The material produced by the applicant also does not help us in arriving at a definite conclusion that he was genuinely adopted by the deceased employee during his life time at the appropriate age of the applicant. This situation raises a suspicion regarding the correctness of the claim advanced by the applicant, more particularly with regard to his adoption by the deceased employee. With such suspicious version on record, we cannot record the finding of fact contrary to the findings arrived at by the respondents after making the necessary inquiry.

8. According to the widow of the deceased employee herself the adoption deed was registered on 22-11-1990 when the applicant was 16 years old. Therefore on that ground alone no relief as prayed for by the applicant could be granted in this case. On examining the English translation of the adoption deed produced by the learned Counsel for the Applicant during the course of arguments on 10-9-1999, it prima facie appears that the applicant was taken in adoption in the year 1981 when he had attained the age of 7 years in accordance with the religious customs and that during 1990 this (adoption deed) document was executed. It is further stated that "during 1981 itself Party No.2's son Chiranjeevi Subba Rao was given to Party No.1 and that Party No.1 took Subba Rao (the applicant) to their house and they were educating this Subba

Rao". We would have readily accepted the above averments made in the adoption deed but for the fact that three different dates of birth of the applicant have come on record. It has also come on record to show that the applicant continued to identify himself as the son of his real father Boddu Mose. It is already stated earlier in this Judgment that in the School where the applicant was studying, his name was shown as Boddu Subba Rao and father's name as Sri Mose, who was his natural father and that even after the registration of the adoption deed on 22-11-1990, the applicant continued to use his actual father's name as the name of his father. This situation creates an element of doubt and the claim advanced by the applicant that he was adopted in 1981 and that his birth date was 10-4-1974 falls under cloud. The mere fact that in the adoption deed it was stated that the applicant had been taken in adoption in 1981 does not give us a definite cause to believe that he was taken in ^{an} adoption in 1981 so as to believe that he was less than 15 years of age when he was allegedly adopted. The two witnesses who have signed as witnesses to the adoption deed could have filed affidavits so as to enable the Tribunal to derive satisfaction that the adoption had actually taken place in 1981 and that in 1990 a mere formality of executing the adoption deed was performed by getting the same registered on 22-11-1990. In our opinion when a document is registered the only presumption which could be inferred from such registration is that the document was executed on that day but not that the contents of the said deed were correct. For establishing the claim that the applicant was adopted in 1981, the registration of the adoption deed in 1990 does not go to the rescue of the applicant's claim. Convincing corroborating ^{ve} material should have been produced by the applicant to render satisfaction that he was actually adopted in 1981. No justification is shown by the applicant as to how the adoption deed came to be registered in 1990 when the adoption had already taken place in 1981, why the document was not registered in 1981 itself and why 8 years elapsed before the document was registered. If no such cause is pleaded or proved, the intention behind registering the adoption deed in 1990 acquires a dubious character.

9. The suspicion stands more confounded by the fact that three different dates of birth have come on record of this case as stated earlier. The applicant makes a statement in paragraph.4 of the OA relating to facts of the case that he was the adopted son of late K.Seshaiah and that his date of birth was 10-4-1974. However, in an affidavit sworn by him on 12-11-1996, he makes a statement on oath that the date of his birth in the School record was indicated as 14-8-1978, but it was inadvertently done so and that on coming to know through his family members and relatives, he furnished his date of birth as 10-4-1974 and that the same was recorded in the SSC issued by the Board of Secondary Education, Andhra Pradesh. Subsequently, in an affidavit filed by the widow of the deceased on 5-2-1997 Kanikelli Veeramma, it is stated that "Kanikelli Subba Ro was taken in adoption by myself and my husband late K.Seshaiah at the boy's age of 7 years during the year 1981" and subsequently to give the adoption a colour of legality, the adoption was registered on 22-11-1990 and at that time the applicant's age was 16 years. It is pertinent to note that in the undated letter addressed to the Divisional Railway Manager, South Central Railway, Vijayawada, (Annexure.A-5, page 18 of OA), it is stated in the third paragraph as follows:-

"We had no any properties to live, and we had no any children. So we have adopted one of my relatives son Sri Subba Ro, s/o B.Mosha of Gollapudi when he is aged 14 years and the adoption deed has been got registered on 22-11-90. His date of birth is 14-8-1977 and he is now studying 10th class". (emphasis supplied).

10. Nothing emerges from the material on record as well as from the submissions made on behalf of the applicant to derive satisfaction as to how three different dates of birth came to be recorded at different stages. This situation aggravates the gravity of the suspicion which emerged from the discussion on the facts and circumstances of the case as stated above. The delay of 8 years in executing the adoption deed is not explained to the satisfaction of the Bench. We are therefore not inclined to accept the

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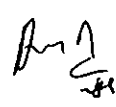
applicant's case that he was adopted in 1981 when he was still below the age of 15 years and that the adoption deed was executed in 1990. We reiterate that the registration of the adoption deed in 1990 does not necessarily mean that the contents of the said deed be ipso facto treated as correct or that it was of an unimpeachable character unless some corroborative evidence had come on record justifying the delay of 8 years in getting the deed registered.

11. For all the above reasons, therefore, we find ourselves not in a position to give any direction to the respondents to accept the applicant's claim that he was adopted by the deceased employee when he had still not completed the age of 15 years as stipulated in Section 10 (iv) of the Hindu Adoptions and Maintenance Act.

12. In the result, therefore, the OA is dismissed. No order as to costs.


(D.H. NASIR)
VICE CHAIRMAN

DATED: this the 27th day of September, 1999


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