

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR.

ORIGINAL APPLICATION NO. 368/2011

Jaipur, the 23rd day of April, 2013

CORAM :

HON'BLE MR. ANIL KUMAR, ADMINISTRATIVE MEMBER

Amit Saxena son of Late Shri U.C. Saxena aged 25 years, by caste Saxena, House No. 35, Lane No. 8, Sarswati Colony, Baran Road, Kota (Rajasthan).

... Applicant

(By Advocate: Mr. Neeraj Batra)

Versus

1. Union of India through the General Manager, Western Railway, Jabalpur.
2. Deputy Chief Material Manager (Establishment), West Central Railway, Kota (Rajasthan).

... Respondents

(By Advocate: Mr. Anupam Agarwal)

ORDER (ORAL)

The applicant has filed this OA thereby praying for the following reliefs:-

- "(a) Direct the respondent to consider the case of the applicant for compassionate ground appointment in place of his father with immediate effect.
- (b) The impugned order dated 11.02.2011 & 04.04.2011 (Annexure 1 & 2 respectively) may be quashed and set aside.
- (c) Pass such other orders or issue such directions as may be deemed fit in the interest of justice.
- (d) Cost of the OA awarded in favour of the humble applicant."

2. The brief facts, as stated by the learned counsel for the applicant, are that the applicant was given under the guardianship of Late Shri Umesh Chandra Saxena and his wife, Smt. Vandana

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Saxena, vide order dated 23.09.1986 by the Special Magistrate, Family Court, Jaipur (Annexure A/7). That the father of the applicant, Late Shri Umesh Chandra Saxena was an employee of the respondent department. He expired while in service with the respondents on 03.09.1995. That the applicant has been brought up as adopted son by Late Shri Umesh Chandra Saxena and his wife, Smt. Vandana Saxena. That the applicant was educated by Late Shri Umesh Chandra Saxena and his wife, Smt. Vandana Saxena. In all the certificates of the applicant, father's name has been shown as Shri Umesh Chandra Saxena and mother's name as Smt. Vandana Saxena.

3. That after the death of Shri Umesh Chandra Saxena, the applicant and his mother submitted an application to the respondents in March, 2005 stating that the applicant has attained the age of 18 years and hence his candidature for appointment on compassionate grounds may be considered.

4. The respondents asked the applicant to appear for the written test and screening for considering appointment on compassionate grounds.

5. That the applicant is the adopted son of Late Shri Umesh Chandra Saxena. Afterwards the respondents asked the applicant to produce an adoption deed in respect of the applicant to consider his candidature for appointment on compassionate grounds. In compliance of this direction, the applicant furnished

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an adoption deed dated 26.03.2009 which has been registered at office of the Sub-Registrar-VIII, Jaipur (Annexure A/26).

6. That the respondents then asked for an affidavit from the applicant's mother, Smt. Vandana Saxena, which was furnished to the respondents alongwith letter dated 25.03.2011. Thus from the perusal of the documents on record, it is proved that the applicant is the adopted son of Late Shri Umesh Chandra Saxena and his wife, Smt. Vandana Saxena. Therefore, the respondents be directed not to insist for issuance of declaration suit by the competent court regarding adoption and the applicant be given appointment on compassionate grounds treating him as an adopted son of the deceased employee on the basis of records available with the respondents.

7. On the other hand, the learned counsel for the respondents submitted that the bare perusal of the adoption deed, submitted by the applicant, would clarify that the applicant had been adopted subsequently to death of Late Shri Umesh Chandra Saxena. Para 2(iii) of RBE No. 106/1998 provides that "the legal adoption process has been completed and has become valid before the date of death/medical decategorisation/ medical incapacitation (as the case may be) of the ex-employee.

8. In view of this provision, the applicant's request for appointment on compassionate grounds cannot be considered. He has been advised vide letter dated 11.02.2011 and 04.04.2011

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(Annexure A/1 & A/2 respectively) to file a declaration suit in the competent court and get a decree in his favour and submit the same to the respondents so that the respondents can consider the applicant's case for appointment on compassionate grounds.

9. He further submitted that the order of the Family Court, Jaipur (Annexure A/7) clearly provides that Shri Umesh Chandra Saxena would complete all requisite formalities of adoption of the child within six months thereof and accordingly fulfill all responsibilities of maintaining him accordingly. It is only a certificate of guardianship. It did not disclose the adoption of the applicant by Late Shri Umesh Chandra Saxena and his wife, Smt. Vandana Saxena. That the applicant has not been able to give any document, which could prove that he was the adopted child of Late Shri Umesh Chandra Saxena and his wife, Smt. Vandana Saxena. He further argued that letters dated 11.02.2011 and 04.04.2011 (Annexure A/1 & A/2 respectively) are advisory in nature and it is not mandatory for the applicant to follow the advice. As such the applicant cannot have any grievance against these orders. Therefore, the OA has no merit and it should be dismissed with costs.

10. Heard the learned counsel for the parties and perused the documents on record. From the perusal of the record (Annexure A/7), it appears that the family court at Jaipur gave a certificate of guardianship of the applicant in favour of Late Shri Umesh Chandra Saxena. He was further directed to complete the

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formalities of legal adoption within six months. It appears that Late Shri Umesh Chandra Saxena could not complete the requisite formalities for adoption, as directed by the family court vide their order dated 23.09.1986 (Annexure A/7). However, the applicant was brought up and educated by Late Shri Umesh Chandra Saxena and his wife, Smt. Vandana Saxena. Subsequently, the wife of Late Shri Umesh Chandra Saxena brought an adoption deed registered at Jaipur on 26.03.2009 (Annexure A/26). She has also given an Affidavit (Annexure A/27) as required by the respondents, stating that her husband, Late Shri Umesh Chandra Saxena, and she initially took the applicant under their guardianship, vide order dated 23.09.1986 of the family Court at Jaipur. That they had taken the applicant on adoption as per the social customs & rituals and since then, the applicant has been brought up by them. That she has also got the adoption deed registered on 26.03.2009. She has also stated in her application dated 25.03.2011 (Annexure A/28) that so far no one has objected about the adoption of the applicant.

11. Under the facts and circumstances of the present case, I deem it proper and just to allow the applicant to file a representation before the respondents, stating all the relevant facts within a period of one month from the date of receipt of a copy of this order and the respondents are directed to consider and decide the same by passing a reasoned & speaking order according to the provisions of law expeditiously but not later than

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a period of three months from the date of receipt of the representation given by the applicant.

12. If any prejudicial order is passed against the applicant, he is at liberty to file substantive OA.

13. With these observations, the OA is disposed of with no order as to costs.

Anil Kumar
(Anil Kumar)
Member (A)

AHQ