

Reserved on 10.08.2018

***CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD***

This the ***28th*** day of ***August, 2018.***

PRESENT:

HON'BLE MR. GOKUL CHANDRA PATI, MEMBER- A

ORIGINAL APPLICATION NO. 330/29/2015

Gyanendra Kumar Shukla, son of late Jata Shankar Shukla, R/o village Sanjai, P.O. Barawn, Tehsil Karchana, District - Allahabad.

...Applicant

V E R S U S

1. Union of India through Secretary, Department of Posts, Government of India, New Delhi, Electronics Niketan, 6, CGO Complex, Lodhi Road, New Delhi - 110003.
2. The Chief Post Master General, U.P. Circle, Lucknow - 226001.
3. The Senior Superintendent of Post Offices, Head Post Office, Allahabad.

.... Respondents

Advocate for Applicant : Shri Ajay Rajendra

Advocate for the respondents : Shri Nand Lal Maurya

O R D E R

This applicant has filed this OA seeking the following main reliefs:-

“(i). to issue a suitable order or direction quashing the impugned order dated 5-12-214 passed by the Chief Post Master General, U.P. Circle, Lucknow respondent no. 2 (Annexure No. A-1).

(ii) to issue a suitable order or direction to the respondent no. 2 to consider claim of the applicant for compassionate appointment at the earliest”

2. The facts of the case, in brief, are that after death of Shri Jata Shanker Shukla, GDS Mail Deliverer Baraon Post Office, Tehsil Karchana, Allahabad on 13.03.2008, his wife Smt. Usha Devi filed an affidavit on 01.04.2008 (Annexure A-5 to the OA) before respondent No. 3 requesting for compassionate appointment in favour of the applicant being dependant and adopted son. In this regard, another application dated 14.05.2008 (Annexure A-6 to the OA) followed by affidavit dated 22.05.2008 (Annexure A-7 to the OA) and 02.08.2008 (Annexure A-8 to the OA) were also filed by

Smt. Usha Devi. The respondent No. 2, as per para 4.10 of OA, vide letter dated 13.03.2014 (wrongly mentioned as 13.03.2012) (Annexure A-9 to the OA), required the applicant to submit a certified copy of adoption deed. Then the applicant sent a representation dated 26.03.2014 (Annexure A-10 to the OA) alongwith copy of registered adoption deed. Having received no response, the applicant filed OA No. 863/2014, which was disposed of by this Tribunal vide order dated 07.10.2014 (Annexure A-11 to the OA) with direction to the respondents to consider and decide the representation of the applicant dated 26.03.2014 by a reasoned and speaking order. Thereafter, the Sub Divisional Inspector, Meja, Allahabad inquired into the matter and obtained statement of mother of the applicant on 29.10.2014 (Annexure A-12 to the OA). However, the claim of the applicant was rejected by the respondent No. 2 vide order dated 05.12.2014. Aggrieved, the applicant has filed the instant OA on following grounds: -

- i. The order dated 05.12.2014 is arbitrary and illegal.
- ii. The respondent No. 2 has acted illegally in usurping the power of learned civil court in his own whim or fancy while declaring the registered adoption deed as invalid and without accepting the adoption certificate dated 03.02.2008 (Annexure A-3 to the OA) jointly signed by the family members, relatives and villagers and issued by the Village Pradhan, which clearly shows that Late Jata Shankar Shukla and his wife duly adopted the applicant during his life time before his death on 13.03.2008 and the same is a secondary evidence under Section 16(2) of the Hindu Adoption and Maintenance Act, 1956.
- iii. The respondent No. 2 has wrongly denied the relevancy of registered adoption deed dated 25.06.2008 because he has been adopted according to custom and uses applicable to the parties. The adoption deed is a registered document and holds its field and is a valid and genuine document for all purposes.
- iv. The adoption of the applicant was made under section 10(iv) of the Hindu Adoption and Maintenance Act, 1956 as per custom and uses applicable to the parties permitting persons who have completed the age of 15 years being taken in adoption.

v. The demand by the respondents of adoption deed executed by Late Jata Shankar Shukla is wrong and against section 10(iv), 16(1) and 16(2) of the Act as the adoption made by Smt. Usha Devi is legal and as per section 6 of Hindu Adoption and Maintenance Act, 1956.

3. The respondents have filed Counter Affidavit stating that after death of late Shri Jata Shankar Shukla on 13.03.2008, an application of his wife was received on 14.05.2008 informing that the applicant should be considered for compassionate appointment. Then a set of blank forms was sent to the applicant. Thereafter, an application dated Nil alongwith Godnama declaration certificate dated 25.06.2008 of Smt. Usha Devi on a stamp Paper relating to "adopted son" in respect of the applicant was received on 05.08.2008. After completing formalities, the matter was sent to the Circle Office, Lucknow vide letter dated 28.05.2012. Thereafter, the Circle Office, Lucknow vide letter dated 22.06.2012 required the registered adoption deed of Late Jata Shanker Shukla, a copy of which was forwarded to the applicant but despite several reminders / letters dated 24.07.2012, 07.08.2012, 04.11.2013, 21.03.2014, 28.02.2014 and 29.05.2014, the applicant did not respond. The filed OA No. 863/2014 and in compliance to the order dated 07.10.2014 passed in the said O.A., the representation of the applicant dated 26.03.2014 was decided by the Circle Office, Lucknow vide order dated 05.12.2014. It is stated that the applicant was not adopted by Late Jata Shankar Shukla during his lifetime. It is also stated that even the adoption deed by Smt. Usha Devi is not legal as per section 6 of Hindu Adoption & Maintenance Act 1956.

4. The applicant has filed Rejoinder Affidavit reiterating the contents of O.A. However, it is stated that the applicant had sent required documents to the respondents in response to the letter of the respondents vide his representation dated 26.03.2014 alongwith enclosures (Annexure A-10 to the OA). Receipt of letter dated 26.09.2012 asking for documents as stated in para 9 of the counter reply, has been denied. It is also reiterated that all the required documents including the adoption certificate dated 03.02.2008 and registered adoption deed dated 25.06.2008 have already been submitted by the applicant as well as his mother Smt. Usha Devi before respondent Nos. 2 and 3. It is also stated that the respondents have ignored the O.M. No. 14014/6/86-Estt,(D) dated 30.06.1987,

according to which, the vacancy occurred due to the death of an ED Agent is to be filled by appointing one of his/her near relative on compassionate grounds.

5. The respondents have filed Suppl. Counter Affidavit in which nothing new has been added.

6. Heard Shri A. Rajendra, counsel for the applicant. The respondents counsel was not present. Since the case relates for 2015 and was listed for hearing, it was heard under rule 16 of CAT (Procedure) Rules, 1987 and the respondents' counsel was directed to file written submissions, if he so wishes, within a week.

7. Perused the pleadings as well as the documents on record. The applicant, who is the son of the brother of the deceased employee, claims that he was adopted by the deceased employee vide certificate dated 03.02.2008 (Annexure A-3) followed by a registered deed dated 25.06.2008 executed by the widow of the deceased employee.

8. Following reasons are mentioned in the impugned order dated 05.12.2014 by respondent no. 2: -

(i). There is no evidence that the deceased employee adopted the applicant in his lifetime. Registered adoption deed dated 25.06.2008 has no relevancy with the deceased employee and the deed cannot be accepted as adoption deed of the deceased employee, who died on 13.03.2008.

(ii). As per the Section 10(iv) of Hindu Adoption and Maintenance Act, 1956, the person to be adopted should not have completed 15 years. The applicant completed 15 years on 25.05.2005 and there is no evidence that the deceased employee adopted the applicant prior to 25.05.2005.

(iii). The applicant is bound to be continuing with his family of birth upto 05.05.2008 as the residence and income certificate dated 05.05.2008 issued by Tehsildar , Karchhana shows the name of applicant's father as Shri Ram Shankar Shukla (brother of the deceased employee). Copy of Intermediate Certificate of the applicant in 2006 shows the name of applicant's father as Shri Ram

Shankar Shukla. Similarly, the Pariwar Register issued on 27.03.2008 shows the name of the applicant's father as Shri Ram Shanker Shukla.

9. The applicant in the OA has stated the following grounds: -

(i). Respondent No. 2 did not consider the adoption certificate dated 02.03.2008 which is signed by the deceased employee, which is a secondary evidence as per the section 16 of Hindu Adoption and Maintenance Act, 1956 (in short 'Act').

(ii). It is wrong to conclude that the adoption deed dated 25.06.2008 has no relevancy with the deceased employee. Both the deceased employee and his wife adopted him as son according to custom and uses applicable to the parties.

(iii) As per the custom and uses of the parties, adoption after 15 years of age is also permissible hence, it is as per section 10(iv) of the Act. It is wrong on the part of the respondents to assume that the adoption is not as per Section 10(iv), 16(1) and 16(2) of the Act.

(iv). It is contended that as a near relative as nephew, the applicant is eligible to be considered for compassionate appointment.

10. Learned counsel for the respondents has filed written submissions mainly reiterating the averments in the Counter Affidavit.

11. The contentions of the applicant in support of his claim are not at all convincing, for the reason that there is nothing on record to refute the reasons mentioned in the impugned order dated 5.12.2014, stating that the income certificate dated 5.5.2008 and Parivar register dated 27.3.2008 showed the name of the applicant's father who is the brother of the deceased employee. Hence, these documents contradict the claim that the applicant was adopted as the son of the deceased employee and there is no explanation for these documents in the pleadings. As per the DoP&T's O.M. No. 14014/02/2012-Estt.(D) dated 16.01.2013, circulating which circulated the scheme for compassionate appointment, the definition of the 'dependent family member' of the deceased employee for the purpose of the scheme of compassionate appointment is stated as under:-

Note I

"Dependent Family Member" means:

- (a) spouse; or
- (b) son (including adopted son); or
- (c) daughter (including adopted daughter); or
- (d) brother or sister in the case of unmarried Government servant or
- (e) member of the Armed Forces referred to in (A) or (B) of this para, -- who was wholly dependent on the Government servant/ member of the Armed Forces at the time of his death in harness or retirement on medical grounds, as the case may be."

12. From the guidelines of DOPT as above, it is clear that the applicant for compassionate appointment has also to prove that he was dependent on the deceased employee. The documents cited in para 7(ii) of the impugned order show that the applicant was not dependent on the deceased employee irrespective of the correctness of his claim to be an adopted son of the deceased employee.

13. Learned counsel for the applicant has cited the case of Sanjay Kumar vs. State of U.P. and another decided by Hon'ble Allahabad High Court (Lucknow Bench) – [2014(32) LCD 1872]. In this case, the appointment of the petitioner under compassionate ground was initially allowed as adopted son of the late employee, but later on it was cancelled since the adoption deed was not registered. The petitioner was also issued the succession certificate from the competent civil court for the retiral dues, which were paid to him. Thereafter, the compassionate appointment was cancelled on the sole ground that the adoption deed was not registered. In the factual background that government had accepted the succession certificate, it was held that cancellation of the compassionate appointment on the ground that the adoption deed was not registered was not correct. It is clear that on facts, the cited case is different from the present OA under consideration, since in the present OA, the applicant did not have the succession certificate. Hence, the cited case is factually distinguishable.

14. In view of above discussions, the applicant has failed to establish adequate justifications in support of his claim for compassionate appointment. Hence, the OA lacks merit and is dismissed.

**(GOKUL CHANDRA PATI)
MEMBER-A**

Anand...