

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH
JABALPUR

Original Application No.200/00113/2017

Jabalpur, this Thursday, the 22nd day of March, 2018

HON'BLE SHRI RAMESH SINGH THAKUR, JUDICIAL MEMBER

Aatish Mishra
S/o Late Shri Dwarka Prasad &
Smt. Uma Devi Mishra (Mother)
Aged about 31 years R/o Sooraj Ganj
Ward No.16 Itarsi, District
Hoshangabad (M.P.) PIN 461111

-Applicant

(By Advocate –**Shri U.K. Shukla**)

V e r s u s

1. Union of India,
Through its Principal Secretary,
Ministry of Railway,
Rail Bhawan,
New Delhi PIN 110006

2. General Manager,
West Central Railway
Jabalpur Zone
Jabalpur (M.P.)
Indira Market,
Jabalpur (M.P.) PIN 482007

3. Divisional Railway Manager,
West Central Railway
Bhopal Division,
Bhopal (M.P.) PIN 462001

- Respondents

(By Advocate –**Shri Ashok Kumar Mishra**)

ORDER

This application has been filed by the applicant against the impugned order dated 13.04.2016 (Annexure A-6) whereby the appointment of applicant on compassionate ground was rejected by the respondent No.3 on the ground that the applicant is not a legally adopted son.

2. The applicant in this Original Application has prayed for the following reliefs:-

“8.1 That, this Hon’ble Tribunal may kindly be pleased to issue a writ of mandamus or any other writ or direction and accordingly quash the impugned order Annexure A/6.

8.2 That, this Hon’ble Tribunal may kindly direct the respondents to appoint the applicant on compassionate ground in place of the deceased father of the applicant.

8.3 That, this Hon’ble Tribunal may kindly be pleased to call the entire record in relates to the present case from the respondent, in the interest of justice.

8.4 That, this Hon’ble Tribunal may kindly be pleased to grant appropriate direction may deemed fit and proper, in the interest of justice.”

3. The brief facts of the case are that the applicant is an adopted son of Smt. Uma Devi Mishra, widow of late Shri Dwarka Prasad Mishra. The mother of the applicant i.e. Smt. Uma Devi Mishra has adopted a child (Aatish Mishra, the applicant) vide adoption deed dated 05.02.2000 (Annexure A-1). It is submitted that the father of the applicant was working under the establishment of respondent No.3 as Khalashi (C.N.W. Helper). On 03.05.1995 went to

Railway Hospital has not returned back to the applicant till date. The applicant and his mother had lodged a missing report. But nothing could be traced out. Hence the applicant and his mother filed Civil Suit No.01-A/2005 before the Additional Civil Judge-II, Itarsi, wherein the husband of Smt. Uma Devi and father of Aatish Mishra was declared as civil dead. Thereafter the mother of the applicant has filed Original Application No.874/2006 before this Tribunal. The said Original Application was disposed of vide order dated 24.12.2007 (Annexure A-3) with a direction to the applicant to file a fresh representation within a period of 15 days regarding her grievances and her case for compassionate appointment. Thereafter the mother of the applicant has submitted an application for appointment of her son on compassionate grounds to the respondent-department on 10.03.2016 (Annexure A-4). The respondent-department vide letter dated 13.04.2016 (Annexure A-6) has rejected the application for grant of compassionate appointment to her son due to invalid adoption deed. Hence, this Original Application.

4. The respondents in their reply has submitted the mark sheets of High School Certificate Examination 2006 (Annexure A-4) the applicant's father and mother name is mentioned as Shri Ravi Shankar Pandey and Smt. Gyanwati Pandey respectively. It is

found that the applicant has not been actually given and taken by the respective parties i.e. by Ravi Shankar Pandey and Smt. Gyanwati Pandey to Late Shri Dwarka Prasad Mishra and Smt. Uma Devi. Hence, the adoption deed dated 05.02.2000 filed by the applicant is not legal and valid under Section 11 (vi) and 10 (iv) of the Hindu Adoption and Maintenance Act, 1956, and is liable to be declared void under Section 5 of the Hindu Adoptions and Maintenance Act, 1956. Therefore the Original Application is without any merits and is liable to be dismissed.

5. The applicant has filed rejoinder to the reply submitted by the respondents. In regard to invalidation of registered adoption deed, the applicant has submitted he was adopted by his Late adopted father Dwarka Prasad Mishra and his wife Smt. Uma Devi with the consent of the biological father and mother.

5.1 It is further submitted that the mother of the applicant and the applicant had filed Civil Suit before the Additional Civil Judge-II, Itarsi where the respondents themselves had contested in the same Civil Suit. However, the said Civil Suit has been decreed in favour of the applicant and in this way it was affirmed that the applicant is the adopted son of his adopted father and mother.

5.2 The applicant has further submitted that the adoption deed is valid and legal in the eyes of laws. In this connection, the provision

under Section 16 of Hindu Adoption and Maintenance Act, 1956 which is reproduced as under:-

“16. Presumption as to registered documents relating to adoption Whenever any document registered under any law for the time being in force is produced before any court purporting to record an adoption made and is signed by the person giving and the person taking the child in adoption, the court shall presume that the adoption has been made in compliance with the provisions of this Act unless and until it is disproved.”

5.3 The other objection regarding change of name of father and mother in the mark sheet of the applicant, the applicant has made an application to the Board of Secondary Education Madhya Pradesh, Bhopal for making correction in the father's and mother's name of the applicant after adoption. However, the Board on 05.11.2005 (Annexure A-7) has stated that the same is not permissible.

6. Heard the learned counsel for the parties and perused the documents and pleadings annexed therewith.

7. In the present Original Application the case of the applicant has been rejected on the ground that the adoption deed is not valid. It is clear from the documents itself that as per Annexure A-1 the adoption deed was prepared on 05.02.2000 and has been signed by the doner and the done. The adoption deed has further been witnessed by two persons. Furthermore, the adoption deed has been registered by the Sub-Registrar, Itarsi on 05.02.2000. If this

document is seen minutely it has been clearly mentioned in the deed that the husband of the donee is missing since May 1995. It has been mentioned that virtually in the year 1994, the applicant Atish Kumar was taken in adoption orally with the consent of her husband. Thereafter her husband was missing since 1995. So as per adoption deed (Annexure A-1) it has a presumption of validity. Moreover, this deed has been duly registered as per law by the Sub-Registrar, Itarsi. The applicant has clearly submitted in the rejoinder that he was adopted by his Late adopted father Dwarka Prasad Mishra with the consent of Smt. Uma Devi and also of the biological father and mother of the applicant. This fact is also clear from the adoption deed. So presumption of truth lies in favour of the legal validity of the adoption deed until or unless it is declared illegal by the competent court of law.

8. It is also clear that the adopted father of the applicant was working under the establishment of the respondents and since 03.05.1995 he was missing and an F.I.R. was lodged. It is also not disputed that a Civil Suit No. 01-A/2005 was filed before the Additional Civil Judge-II, Itarsi and a decree was passed regarding the civil death of Shri Dwarka Prasad Mishra. The mother of the applicant has also preferred representation dated 10.03.2016 (Annexure A-4) and has requested the respondent department for

compassionate appointment for person (the applicant.) though, the mother of the applicant had earlier applied but due to medical disability case could not be persuaded. As per Annexure A-5, it is clear that compassionate appointment can be given to adopted child. From the documents it is itself clear that the child has been adopted and later on the adoption deed was put in writing as per law and has been registered as per law also.

9. As per Hindu Adoption and Maintenance Act 1956, Chapter II, Adoption, Section 11 (vi) which states as under:-

11. Other conditions for a valid adoption :-

(vi) the child to be adopted must be actually given and taken in adoption by the parents or guardian concerned or under their authority with intent to transfer the child from the family of its birth or in the case of an abandoned child or a child whose parentage is not known, from the place or family where it has been brought up to the family of its adoption. Provided that the performance of datta homan, shall not be essential to the validity of an adoption.

10. Moreover, being the registered document the deed cannot be said as invalid unless declared by the competent court of law. Moreover, Annexure A-6 dated 13.04.2016 is itself vague and is not a speaking order and no reasons has been assigned for declaring the adoption deed as invalid. It is pertinent to mention that without declaring the adoption deed as illegal, void by the

competent court of law, the presumptions lies in favour of the validity of the adoption deed.

11. Resultantly, we are of the affirmed view that Annexure A-6 dated 13.04.2016 is illegal and unlawful and the same is quashed and set aside. The respondents are directed to consider the case of the applicant for appointment on compassionate grounds in view of the observations made above within a period of 60 days from the date of receipt of a certified copy of this order. No order as to costs.

(Ramesh Singh Thakur)
Judicial Member

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