

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD

BENCH, ALLAHABAD

(This the 28th Day of November 2019)

Hon'ble Mr. Rakesh Sagar Jain, Member (J)

Original Application No.330/00946/2015

(U/S 19, Administrative Tribunal Act, 1985)

Pramod Singh son of Late Iswari Trackman, R/o Village Badaura, Post
Rekhpanchampur, District Lalitpur (U.P)

..... Applicant

By Advocate: Shri I.M. Kushwaha

Versus

1. Union of India through General Manager, North Central Railway,
Head Office Subedarganj, Allahabad.
2. The Divisional Railway Manager, North Central Railway, Jhansi.
3. Assistant Divisional Railway Engineer (North Central Railway), Lalitpur.

..... Respondents

By Advocate: Shri P. Mathur

ORDER

1. The present Original Application has been filed by applicant Pramod
Singh seeking following reliefs:-

- "(i) To issue order or direction in the nature of certiorari to
quash or set aside the order dated 07.11.2013 passed by
D.R.M. (N.C.R.) Jhansi respondent No.2 (Annexure No. 16
of Compilation -1).***
- (ii) Issue order or direction to the respondent NO.2 to
consider the claim of petitioner for compassionate***

appointment as made representation dated 27.10.2014 (Annexure 18) and 23.4.2015 (Annexure 19) and also other claims.

(iii) To pass any such and further order as deem fit in the facts and circumstances of the case.

(iv) To issue award cost and compensation in favour of applicants".

2. Application has been filed for condoning the delay in filing the present O.A. Learned counsel for the applicant adduced the argument on this Misc. Application. Looking to the reasons advanced by the applicant in his M.A., the circumstances of the case and in the interest of justice, the delay in filing the O.A. is condoned.

3. Case of applicant Pramod Singh, as per, the O.A. is that deceased Ishwari was a bachelor and was working as a Trackman in the respondents department at the time of his death on 26.3.2014. It is the further case of applicant that deceased Ishwari adopted the applicant in 1993 vide adoption deed (Annexure A-2) which was registered on 18.10.2010 in the office of Registrar, Lalitpur, U.P. That Ishwari also filed applications before respondent No.2 for nominating the applicant as his legal heir in the official record of the department on the basis of having taken applicant as his adopted son. That Civil Suit 344 of 2010 filed in Civil Court (Senior Division), Lalitpur by the applicant regarding the adoption deed was decreed by the said Court vide judgment dated 2.2.2001 wherein the Civil Court had decreed suit in favour of applicant that he is the adopted son of deceased Ishwari, as per, vide adoption deed which was registered on 18.10.2010. It is further case of applicant that in 2011, deceased Ishwari also submitted a Form (Annexure A-7) before respondent No.

2 for nomination of applicant in P.F., G.I.S. and D.C.R.G. as his nominee. It is also averred in the O.A. that applicant passed 8th class in 1999 and the following documents i.e. photocopy of the marksheet dated 20.05.1999 (Annexure A-9), photocopy of the O.B.C. certificate and Residential Certificate (Annexure A-12) and photocopy of Election Commission Card (Annexure A-13) mention the name of as his father as Ishwari

4. It is further averred in the O.A. that Ishwari, father of applicant made several representations including application dated 22.11.2013 to the respondents which was rejected by respondent No.2 vide impugned order dated 07.11.2013 (Annexure A-16) and is subject matter of challenge in the present O.A. Applicant also submits that his applications for appointment on compassionate ground is also pending and the direction be also given in this regard.
5. In the counter affidavit, the respondents have submitted that the impugned order rejecting the application of the applicant and his deceased father have been rightly rejected by way of a reasoned and speaking order. Applicant is not an indigent person and not entitled to compassionate appointment. Hence, the O.A. deserves dismissal.
6. I have heard and considered the argument of learned counsel for the parties and gone through the pleading on record.
7. Before proceeding further, the impugned order dated 07.11.2013 is reproduced below:-

"Ekuuh; dññ; izkkl fud vf/kdj.k bykgkckn }kjk vki ds }kjk nkf[ky fo'k; kdr idj.k ea ikfjr fu.kz fnukad 05-09-2013 ds vuqkyu ea ejs }kjk vki ds okn i=] okn i= ds lkFk layXu] layXudkz laf/kr i=ka o fof/kd iko/kuks ,oa vki ds iR;konu fnukad 15-01-2013 ds v/; ukijDr fuEu Lihfda vkns'k ikfjr fd, tkrsgA

vki ds }kjk iLrq xknukek ftl ds vk/kj ij Jh iækn fl g iæ Jh y{e.k fl g dk uke vki viuh l ok fooj.k eanRrd iæ ds : lk eantZ djuk pkgrsg ml xknukea ea ;g n'kz k x;k gS fd vkus Jh iækn fl g ds l u~1993 ea tc mudh vk;q8 o'kz dh Fkh xkn fy;k FkA ijUrq vki ds }kjk mDr xknukek fnukad 18-10-2010 dh jftLVhdR dj;k k x;k gA bl idkj xknukea ds jftLVhdj.k dh frfFk 18-10-2010 dks vki ds }kjk fy;s x;s dffkr nRrd iæ Jh iækn fl g dh mez 15 o'kz l s vf/kd yxHx 25 o'kz FkA tcfd fof/kd iko/kuka ds vuq kj oSk xknukea ds fy;s gh xkn fy;s x;s yMd@yMd dh mez 15 o'kz l s vf/kd ugh gkuk pkfg;s ,oaxknukes dk jftLVhdR gkuk pkfg,A

vki ds dffkr nRrd iæ Jh iækn fl g ds }kjk mDr xknukea dks oSk ?kS'kr djus gsrq ekuuh; fl foy tt] yfyrij ds le{k okn l d;k 344@2010] iækn fl g cuke ij l knh o vU; iLrq fd;k Fk rkd dffkr nRrd iæ Jh iækn fl g vkidh ikfjokjd l EifRr ij crk nRrd iæ gd j[k l dA ekuuh; U;k;ky; ds }kjk mDr okn vius fu.kz fnukad 02-02-11 ds }kjk foi{kx.kk ds }kjk nkf[ky jkthukes ¼ fu/k i= 18 A½ ds vk/kj ij fuLrkfjr djrs gq lekr fd;k x;k gA tcfd okn i= dh iRfuk ds vuq kj xknukes dks oSk ?kS'kr fd;k tkuk FkA

bl ds vfrfjDr Hkjr fuokpu vk;ks ds }kjk dffkr nRrd iæ Jh iækn fl g ds i{k eafnukad 09-08-

2006 dks igpku i= tkjh fd;k x;k gSftl ea Jh iækn fl æ ds uñ fxZl firk Jh y{eu fl æ dk uke vñdr gA tcfd xknuka ds rF; ka ds vuq kj vki ds }kjk Jh iækn fl æ dks l u~1993 ea xkn fy;k tkuk dgk x;k gA ,d h flFkr ea fuokpu vk;ks }kjk fnukad 09-08-2006 dks tkjh igpku i= ea firk ds uke ds LFku ij vki dk uke fy[kk tkuk pkfg,A

mijkDr ifjflFkr;ka ea ;g fl } ugh gkrk gS fd vki ds }kjk iLrqr xknuka oSk gA vr% vki ds }kjk iLrqr xknuka ,oa mijDr fol æfr;ks ds vk/kkj ij Jh iækn fl æ dk uke vki ds l ok fjdMZ ea nRrd iæ ds : lk ea ugh fy[kk tk l drk gS vkj uk gh mlg vki ds nRrd iæ ds : lk ea folHkx ea dkbZ ykkk fey l drk gA

bl izdkj ekuuh; izkkl fud vf/kdj.k bykgkcn ds }kjk ikjrr fu.kZ; fnukad 05-09-2013 dks vuqkyu gkrk gA”

8. The first ground taken by the respondents for rejecting the nomination of applicant Pramod Singh in the service record of Ishwari is that when the adoption deed was got registered on 18.10.2010, the applicant was more than 15 years old and as per Section 10 of Hindu Adoptions and Maintenance Act 1956 (hereinafter referred to as the ‘Act’), no person is capable of being taken an adoption unless he has not completed the age of 15 years.
9. Applicant in the O.A. taken the plea that he was adopted at the age of 8 years in 1993, which plea has not been specifically denied by the respondents in the counter affidavit. Respondents have limited their challenge to the validity of the adoption of applicant by Ishwari to the fact that the adoption deed was registered in 2010

when the applicant was more than 15 years old and thereby the adoption was in violation of Section 10 (iv) of the Act.

10. Law is well settled that adoption can be made orally in accordance with law. In the present case, the adoption deed was registered by the Registrar, Lalitpur in the year 2010. There is no requirement in law that a deed evidencing the factum of previous adoption cannot be executed. In the present case, the factum of adoption of applicant in 1993 is not denied by the respondents. Therefore it cannot be said that a deed evidencing the adoption of 1993 when the adoptee was 8 years old would be invalid on the ground that the adoptee was more than 15 years of age on the date of registration of the adoption deed. This contention of the respondents being devoid of force of law is to be rejected.

11. Regarding the civil decree passed by the civil Court, the stand of respondents while rejecting the said decree that the suit was filed for declaration of the adoption deed which was decreed inter-se the parties and the railway administration was not a party to the suit, as such, no credence can be given to such decree. However, it is to be noted that a decree is passed by a civil court after it is satisfied as to the legality of the claim. The decree has not been challenged by the respondents and taken in conjunction with other documents relied upon by the applicant, tends to clinch the case in favour of the applicant.

12. It has been argued by learned counsel for respondents that the Election Commission identity card dated 09.08.2006 reflects the name of father of applicant to be Lakshman Singh. On the other hand, applicant placed on record Election Commission identity card

dated 03.08.2014, which shows the name of Ishwari as father of applicant.

13. It has been argued by learned counsel for applicant that Election Card dated 09.08.2006 wrongly showed the name of his father to be Lakshman and the same was corrected in Election Card dated 03.08.2014. A sole document in shape of Election card produced by the respondents in comparison to documents produced by applicant which show his father's name to be Ishwari gives credence to stand of applicant that he is the adopted son of Ishwari and is to be entered as nominee of Ishwari in the service record.
14. Plea was raised by respondents that Nomination Form filed in the present O.A bears the thumb impression of Ishwari but the Form filed in previous O.A. did not bear the thumb impression of Ishwari, which raises doubt on the veracity of applicant's bonafide. Respondents, however, not pleaded that the 'Form' filed by Ishwari before them did not bear the thumb impression of Ishwari and in any case the question of thumb impression of Ishwari on photocopy form filed by applicant is immaterial.
15. It be also noted that Section 16 read with Section 11 (4) of the Hindu Adoption and Maintenance Act 1956 clearly envisages a statutory presumption that in the event of there being a registered document pertaining to adoption, there would be a presumption that adoption has been made in accordance with law. There is a presumption as to registered documents relating to adoption under Section 16 of Evidence Act, 1872 which reads as under –

"16 (1) 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.

UTTAR PRADESH AMENDMENT

In its application to State of Uttar Pradesh S.16 is renumbered as sub-section (1) thereof and after sub-section (1) as to renumbered, sub-section (2), inserted namely:

"(2) In case of an adoption made on or after first day of January, 1977 no Court in Uttar Pradesh shall accept any evidence in proof of the giving and taking of the child in adoption, except a document recording an adoption, made and signed by the person giving and the person taking the child in adoption, and registered under any law for the time being in force:

Provided that secondary evidence of such document shall be admissible in the circumstances and the manner laid down in the Indian Evidence Act, 1872."

16. It is clear from the above facts that there is a presumption with regard to a registered document relating to adoption and thus, the adoption deed executed and registered on 18.10.2010 by deceased Ishwari is prima facie, a valid document. Once the registered adoption deed is valid and the same has not been cancelled in any Competent Court, then the respondents have no jurisdiction to reject the claim of applicant.

17. Applicant has also sought the relief of compassionate appointment and averred that he had filed applications being Annexures A-18 and A-19 praying therein that he be appointed on compassionate

ground (referred paragraph 4.21 and 4.22 of the O.A.). The respondents in their counter affidavit to paragraph 4.21 and 4.22 have not denied the receipt of the applications but taken the view that the applicant is not living in penury but is able to sustain himself financially. However, the facts remain that the application for compassionate appointment have not been disposed of by the respondents.

18. In view of the facts of the case as discussed above, the O.A. is allowed and impugned order dated 07.11.2013 (Annexure – A16) passed by respondent No. 2 is set aside. The case is remanded back to respondent No. 2 to re-consider the claims of applicant for entering the name of applicant Pramod Singh as nominee of deceased Ishwari in his service record and appointment on compassionate grounds treating him as adopted son of Ishwari. It be noted that nothing has been observed on the merit of the case insofar as compassionate appointment is concerned, which shall be dealt with by the respondents as per scheme for compassionate appointment by way of reasoned and speaking order within 4 months from the date of receipt of order with intimation to the applicant. O.A. is accordingly disposed of. No order as to costs.

(RAKESH SAGAR JAIN)

Member (J)

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