

(2019) 08 CAT CK 0078

In the Central Administrative Tribunal

Case No : Original Application No. 2322 Of 2018, Miscellaneous Application No. 2583, 2584 Of 2018

Jatinder Pal Singh

APPELLANT

Vs

Union Of India And Anr

RESPONDENT

Date of Decision : 26-08-2019

Acts Referred:

Hindu Adoption And Maintenance Act, 1956 — Section 4, 9, 16
Evidence Act, 1872 — Section 106

Citation : (2019) 08 CAT CK 0078

Hon'ble Judges : Nita Chowdhury, Member (A)

Bench : Single Bench

Advocate : Devinder Chowdhury, AK Srivastava

Final Decision : Dismissed

Judgement

1. The applicant has filed this OA, seeking the following reliefs:-

"i) That Annexure A-1 dated 6.7.2016, Annexure A-4 dated 16.12.2010 and Annexure A-7 dated 16.10.2015 be quashed and set aside and a direction be issued to respondents to consider the case of the applicant for appointment on compassionate grounds objectively.

ii) That the action of the respondents denying the case of the applicant for appointment on compassionate ground on the ground that he is not dependent of Late Sh. Surinder Singh be declared illegal and arbitrary.

iii) That this Hon'ble Tribunal may also pass any other order in favour of the applicant which it may deem fit in the peculiar facts and circumstances of the case.

iv) That cost of the applicant may also be awarded in favour of the applicant."

2. It is the case of the applicant that he is the adopted son of deceased employee - late Sh. Surinder Singh, who while working as Technician Grade-II in the

Railways did on 16.11.2009. The applicant has pleaded that being the adopted son of said deceased employee, he had applied for appointment on compassionate appointment which was rejected by the respondents vide their letter dated 16.12.2012 stating that there is no provision for appointment on compassionate grounds to the nephew. Thereupon, the applicant filed Succession Petition before the Competent Court of Law for grant of succession certificate which was allowed by the Hon'ble Court on 16.01.2015 declaring that the applicant is legal heir of the deceased employee and is entitled to the pensionary benefits of the deceased. The applicant has averred that pursuant to the aforesaid order of competent court of law, the respondents released the pensionary benefits to the applicant in the year 2016. The applicant has pleaded that after having obtained the succession certificate, he had submitted another representation on 05.10.2015 to the respondents and requested them to reconsider his case for appointment on compassionate basis which too was rejected by the respondents vide their letter dated 16.10.2015 on the ground that the adoption deed is not valid as the same is not registered one. The applicant thereafter made representations dated 26.04.2016 and 09.06.2016 and the same was rejected by the respondents on the ground that applicant is not dependent of late Sh. Surinder Singh, who was living alone. The applicant has alleged that once he has been declared as legal heir of late Sh. Surinder Singh by the competent court of law and subsequently especially when pensionary benefits have been released to him, the action of the respondents denying the appointment to him on compassionate basis on the ground that the applicant is not a dependent of late deceased employee is wholly illegal and arbitrarily and cannot be sustained in the eyes of law.

3. The respondents, while contesting the OA, have filed their Counter Affidavit. They have contended in their CA that the applicant of this OA has miserably failed to establish that he was adopted by the deceased Sh. Surender Singh and the adoption deed dated 04.03.1986, which the applicant has submitted, is not a valid in the eyes of law inasmuch as as per provision of Section 9 read with Section 4 of the Hindu Adoption and Maintenance Act, 1956, the valid adoption could only be executed with the consent of both the father and mother capable of giving an adoption and in the present case, the essential ingredient, i.e., consent of mother is missing. Hence, the adopted deed dated 04.03.1986 cannot be said to be a valid and gives no right to the applicant to claim even consideration for appointment on compassionate grounds.

4. The respondents have also contended that this Tribunal has got no jurisdiction to adjudicate the issue as to whether the alleged adoption deed dated 04.03.1986 is valid as the same is to be proved by the parties before the Competent Court of Law.

5. The respondents have contended that the present OA is hopelessly barred by time since the applicant had made his first representation dated 01.09.2010, claiming consideration for compassionate appointment on the ground that he is

nephew of the deceased which was considered by the competent authority and the applicant was conveyed on 16.12.2010 that he was not eligible for appointment on compassionate grounds as he was nephew of the deceased which did not fall within the definition of near relatives under the rules. The respondents have further contended that the applicant, vide his application dated 24.02.2014, brought to the notice of the respondents that he was the adopted son of the deceased employee without enclosing the original adoption deed. The respondents have submitted that this is not a valid adoption deed as the same is not registered one. This request was following by representations dated 25.09.2014, 17.02.2015, 10.07.2015, 10.08.2015, 14.09.2015 and 05.10.2015. The respondents have contended that applicant was informed vide letter dated 16.10.2015 that his claim was not accepted as he was not accepted as the adopted son of the deceased employee since the adoption deed presented by him is not found to be registered and valid. The respondents have contended that the applicant made another representation dated 19.02.2016 following by reminders dated 24.02.2016, 26.04.2016, 09.06.2016 and 04.07.2016, which too was considered by the competent authority and rejected vide order dated 06.07.2016 (Annexure A-1) by passing a reasoned and speaking order. It was categorically brought to the notice of the applicant that he was neither adopted by the deceased nor was the adopted deed registered. They have submitted that repeated representations do not revive the limitation as held by the Hon'ble Supreme Court in the case of S.S. Rathore vs. State of Madhya Pradesh reported as 1990 AIR 10.

6. The respondents have also made contentions with regard to the so called adoption deed and submitted that the same was attested by the Notary on 04.03.1986 whereas the applicant did computer course in 1991 and passed the matriculation examination in the year 1992, computer science and application in the year 1993, 10+2 in the year 1994 and graduation in the year 1999 and in all the certificates, the applicant has been described as the son of Sh. Kashmir Singh Pardeshi, his biological father. They have also submitted that besides that, the applicant is accepted as son of his original parents in the Ration Card issued on 11.09.20015. In view of the same, the respondents are submitted that the adoption deed is fake and cooked up. They have thus prayed that this OA is liable to be dismissed.

7. The respondents have also contended that the applicant has earlier filed an OA No. 1098/2016 before the CAT, Chandigarh Bench seeking quashing of order dated 06.07.2016, order dated 16.12.2010 and order dated 16.10.2015 whereby the respondent, i.e. Division Railway Manager, Ambala has rejected his claim for appointment on compassionate ground on demise of late Sh. Srender Singh but after taking the objection by the learned counsel for the respondent with regard to validity of adoption deed, the applicant who was present in person prayed to the CAT that he may be permitted to withdraw the instate OA with liberty to settle the matter before the Civil Court with regard to adoption but till date he has not submitted any decision of competent court with regard to his valid

adoption.

8. After hearing both the parties and perusing the record, it is an admitted position that the applicant had earlier filed an OA No. 1098/2016 seeking quashment of the same orders which they have challenged in the present OA, i.e.. the orders dated 06.07.2016, 16.12.2010 and 16.10.2015 and the Tribunal, vide its order dated 28.07.2017 passed the following orders:-

"4. On the objection raised by learned counsel for the respondents with regard to validity of Adoption Deed under Section 9 of the Hindu Adoption and Maintenance Act, 1956, the applicant who is present in person prayed that he may be permitted to withdraw the instant OA at this stage with liberty to settle the matter before the civil court with regard to adoption deed.

5. Considering the above submission and objection raised by the respondents with regard to validity of Adoption Deed of the applicant, the present OA is disposed of in above terms and aforementioned liberty."

9. From the above order, it is clear that the applicant was given liberty to settle his claim with regard to validity of adoption deed but the applicant failed to avail of this liberty, as he is not able to submit/obtain the decision of the Civil Court. It appears that the applicant filed the present OA for the reasons that once the Competent Court of Law in his Succession Petition No. 91/2014, has declared him as legal heir of the deceased and subsequently the pensionary benefits were released to him by the respondents, his case may be considered for the compassionate appointment on the basis of succession certificate. We notice that the Hon'ble Supreme Court in the case of State of Chattisgarh Vs. Dhirjo Kumar Sengar in Civil Appeal No. 3242/2009 has dealt with the similar controversy and held as under:-

"17. This Court, times without number, has held that appointment on compassionate ground should not be granted as a matter of course. It should be granted only when dependants of the deceased employee who expired all of a sudden while being in service and by reason thereof his dependants have been living in penury.

The Government of Madhya Pradesh had adopted a scheme for appointment on compassionate ground which was circulated to all concerned in terms of a letter dated 10.06.1994, stating:

"If any government servant dies in harness then either his widow or his legal children (which includes the step son/ daughter also) would be made available service. Service wouldn't be made available to any other member or relative."

The nephew of the deceased employee, therefore, was ineligible for grant of such appointment.

18. Appointment, however, was offered to the respondent without taking into consideration that he had not been able to establish his relationship with the

deceased or that he was in fact totally dependant on him.

The purported deed of adoption was not a registered one. It, therefore, did not carry with it a presumption as envisaged under Section 16 of the Hindu Adoptions and Maintenance Act, 1956.

The adoption was purported to have been recorded on a stamp paper of Rs. 2/-.

We have noticed hereinbefore that in the application for grant of succession certificate, G.S. Sengar was described as his father. Even in the marksheets which had been drawn up on the basis of the record maintained in the school in which he was studying, his father's name was G.S. Sengar. It may be correct that for the purpose of proving that the respondent was adopted son of the deceased, a registered deed of adoption was not imperative in character, but then, he was required to prove that datta homan ceremony or compliance of the other statutory conditions for a valid adoption had taken place.

In terms of Section 106 of the Indian Evidence Act, the respondent having special knowledge in regard thereto, the burden of proving the fact that he was adopted by Chittaranjan Singh Sengar was on him. He did not furnish any evidence in that behalf. Even the records clearly show to the contrary.

19. It is in the aforementioned premise, the contention in regard to the breach of audi alteram partem doctrine must be considered.

Principle of natural justice although is required to be complied with, it, as is well-known, has exceptions. [See V.C., Banaras Hindu University and Others v. Shrikant (2006) 11 SCC 42]

20. One of the exceptions has also been laid down in S.L. Kapoor v. Jagmohan and others [(1980) 4 SCC 379 : AIR 1981 SC 136] wherein it was held:

"In our view the principles of natural justice know of no exclusionary rule dependent on whether it would have made any difference if natural justice had been observed. The non-observance of natural justice is itself prejudice to any man and proof of prejudice independently of proof of denial of natural justice is unnecessary. It ill comes from a person who has denied justice that the person who has been denied justice is not prejudiced. As we said earlier where on the admitted or indisputable facts only one conclusion is possible and under the law only one penalty is permissible, the court may not issue its writ to compel the observance of natural justice, not because it is not necessary to observe natural justice but because courts do not issue futile writs."

(Emphasis supplied)

21. Legality of grant of a valid appointment was dependant upon the proof that the respondent was the adopted son of Chittaranjan Singh Sengar.

He not only failed to do so, the materials brought on record by the parties would clearly suggest otherwise. His application for grant of appointment on

compassionate ground was rejected by the Joint Director of Education. He did not question the legality or validity thereof. He, it can safely be said, by suppressing the said fact obtained the offer of appointment from an authority which was lower in rank than the Joint Director, viz., the Deputy Director. When such a fact was brought to the notice of the Deputy Director that the offer of appointment had been obtained as a result of fraud practiced on the Department, he could, in our opinion, cancel the same.

Respondent keeping in view the constitutional scheme has not only committed a fraud on the Department but also committed a fraud on the Constitution. As commission of fraud by him has categorically been proved, in our opinion, the principles of natural justice were not required to be complied with.

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23. The High Court, therefore, must be held to have committed a serious error in passing the impugned judgment.

A succession certificate can be granted in favour of any person. It may be granted to an heir or a nominee. By reason of grant of such certificate, a person in whose favour succession certificate is granted becomes a trustee to distribute the amount payable to the deceased to his heirs and legal representatives. He does not derive any right thereunder. The succession certificate merely enabled him to collect the dues of the deceased. No status was conferred on him thereby. It did not prove any relationship between the deceased and the applicant. Even otherwise, the respondent and his father were entitled to the said dues being his heirs and legal representatives.

24. The very fact that the respondent had filed an application for grant of succession certificate along with his father, showing themselves to be the heirs and legal representatives of the deceased, is itself sufficient proof to show that he did not claim any benefit in regard to the debts of the deceased as his adopted son or otherwise.

25. For the reasons aforementioned, the impugned judgment cannot be sustained, which is set aside accordingly. The appeal is allowed with costs. Counsel's fee assessed at Rs. 10,000/-."

10. From the above order, it is clear that the succession certificate can be granted in favour of any person. It may be granted to an heir or a nominee. By reason of grant of such certificate, a person in whose favour succession certificate is granted becomes a trustee to distribute the amount payable to the deceased to his heirs and legal representatives. He does not derive any right thereunder. The succession certificate merely enabled him to collect the dues of the deceased. No status was conferred on him thereby. It did not prove any relationship between the deceased and the applicant.

11. In view of the fact that the applicant has failed to produce or submit any decision with regard to validation of adoption deed nor does the succession

certificate entitle him eligible for compassionate appointment, the OA being bereft of merit is dismissed. MA No. 2583/2018 for condonation of delay is also dismissed, as the repeated representations do not revive the limitation as held by the Hon'ble Supreme Court in the case of S.S. Rathore (supra) and pending MA No. 2584/2018 is also dismissed. No order as to costs.