

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

Transferred Application No. 20 of 2010
[Writ Petition No. 8152 (S/S) of 2008]

Friday the 01st day of October, 2010

“Hon’ble Mr. Justice A.N. Varma, Member (J)
Hon’ble Lt. Gen. B.S. Sisodia, Member (A)”

Abhishek Singh @ Subham, adopted son of Late Sep. Ram Sewak Singh, under guardianship of Arvind Singh, son of Late Babu Singh, Resident of Village Bala Ka Purwa, Post office Usman Pur, District Barabanki.

Applicant

By Legal Practitioner Shri Suresh Singh, Advocate.

Versus

1. Union of India through Secretary, Ministry of Defence, New Delhi.
2. Integrated HQ of Ministry of Defence (Army) Adjutant General Branch Additional Directorate General Personnel Service (PS-5) New Delhi-110105.
3. Lieutenant Colonel, Chief Record Officer, AOC Records Office, PIN 900453, C/o 56 APO.
4. Senior Record Officer, Army Ordinance Corps Records Office, Trimulgherry Post Secunderabad (A.P.).
5. Zila Sainik Kalyan Evam Punarvas Adhikari, Barabanki.

ORDER

“Hon’ble Mr. Justice A.N. Varma”

1. This matter has come up before us by way of transfer from Lucknow Bench of Allahabad High Court under Section 34 of the Armed Forces Tribunal Act, 2007.

2. One Ram Sewak Singh was a Sepoy in Indian Army. He retired after having served for requisite number of years and was drawing a pension of Rs.3723/-. He died on 22.05.1998. After his death the widow Smt. Jamuna became entitled for Family Pension. Since the couple had no child therefore his widow after his death adopted the applicant on 26.02.2000. Adoption Deed was registered on 15.03.2000. Smt. Jamuna, however, died on 18.12.2002. The applicant applied for grant of family pension on 30.05.2002 through Zila Sainik Kalyan Board Barabanki which was duly forwarded to the competent authority. Vide letter dated 11.08.2007 the claim of the applicant was rejected on the ground that applicant had not been adopted during the life time of the deceased soldier as such his request for grant of family pension could not be acceded to. Aggrieved, the applicant approached the High Court in Writ Petition No. 8152 (S/S) of 2008 praying therein for following relief :-

“1. Issue a writ, order or direction in the nature of certiorari quashing the impugned order dated 11.08.2007 passed by opposite party no. 2 as contained in Annexure no. 1 to this writ petition.

the petitioner as per his right of being adopted son of Late Sep. Ram Sewak Singh with all consequential benefits.

3. *Any other order or direction, which this Hon'ble Court may deem fit and proper, may also be passed in the interest of justice."*

3. We have heard Shri Suresh Singh Learned Counsel for the applicant in support of the petition and Shri Rajendra Singh Central Government Counsel for opposition.

4. Learned Counsel for the applicant vehemently argued that the order impugned in the petition is manifestly erroneous in as much as though the applicant was adopted by Smt Jamuna after the death of Ram Sewak Singh, still he was like a natural born son and was deemed to have been adopted child of the father for all purposes with effect from the date of adoption. In this connection he drew our attention towards Sections 8 and 12 of the Hindu Adoptions and Maintenance Act, 1956 (hereinafter to be referred as the Act). Section 8 of the Act is reproduced herein under:-

"8. Capacity of a female Hindu to take in adoption. – Any female Hindu–

a) who is of sound mind,

b) who is not a minor, and

c) who is not married, or if married, whose marriage has been dissolved or whose husband is dead or has completely and finally

has the capacity to take a son or daughter in adoption.”

5. According to the Learned Counsel any female Hindu who is of sound mind and is not a minor and whose husband is dead has capacity to have son in adoption. As per his submission since after the death of Ram Sewak Singh his mother was a widow and was of sound mind and was also a major, therefore, she had the capacity to take the applicant in adoption. He further argued that the process of adoption was also done through a registered Adoption Deed which was got registered on 15.03.2000. Section 12 of the Act further lays down the effects of adoption which reads as follows :-

*“12. **Effect of adoption.** – An adopted child shall be deemed to the child of his or her adoptive father or mother for all purposes with effect from the date of the adoption and from such date all the ties of the child in the family of his or her birth shall be deemed to be severed and replaced by those created by the adoption in the adoptive family :*

(a) the child cannot marry any person whom he or she could not have married if he or she had continued in the family of his or her birth;

(b) any property which vested in the adopted child before the adoption, shall continue to vest in such person subject to the obligations, if any, attaching to the ownership of such property, including the obligation to maintain relatives in the family of his or her birth;

6. As per the provisions of Section 12 an adopted child shall be deemed to be child of his or her adoptive father or mother for all purposes with effect from the date of the adoption and from such date all the ties of the child in the family of his or her birth shall be deemed to have been severed and replaced by those created by the adoption in the adoptive family.

7. Section 16 of the Act contemplates regarding presumption as to registered documents relating to adoptions. The said provision is reproduced herein under :-

“16. Presumption as to registered documents relating to adoptions.-
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.”

8. Thus from the perusal of the aforesaid provisions it is apparent that from the date of adoption a child who is adopted in a family his ties in the family of his or her birth are deemed to have been severed and the child becomes the son or daughter of the adoptive father or mother. New rights are also created in respect of the adopted son from the date of adoption for the purposes of inheritance and succession as such for all practical purposes he or she is deemed to be a son or daughter of the adoptive father and mother. Moreover, whenever the adoption is

the applicant was adopted by the mother though after the death of Ram Sewak Singh, for all practical purposes his status would be deemed to be that of a natural born son in the family. Had there been any natural born son or daughter out of wedlock of Ram Sewak Singh and Jamuna the said child would have succeeded to the estate of the deceased. Same would be the position of an adopted child. Therefore, it cannot be said that since the applicant was adopted after the death of the deceased soldier therefore he is not entitled for the benefits accruing to the deceased's family. To that extent the order is manifestly illegal.

9. A Short Counter Affidavit has been filed on behalf of the respondents wherein there is no denial about the fact that the widow was not getting family pension after the death of deceased soldier. It has also not been specifically denied that the applicant is not entitled for the pension after the death of his mother. In paragraph 7 of the Short Counter Affidavit it has been averred that vide letter dated 03.01.2003 the applicant was directed to submit Family Pension Form after completing the same but the applicant failed to produce certain documents asked for.

10. It appears that on account of non compliance of the aforesaid directions family pension has not been paid till date, though the Learned Counsel for the applicant states that in compliance of the said letter the documents were placed before the opposite parties.

- a) Registered Adoption Deed dated 15.03.2010.
- b) Original Death Certificate of Ex. Sepoy Ram Sewak Singh and his widow Smt. Jamuna.
- c) Guardianship Certificate.
- d) Certificate of the Bank Authorities regarding payment of life time arrears of Smt. Jamuna to the petitioner or his guardian.

12. The respondent No. 5, thereafter, shall forward the entire record so submitted by the applicant to respondent No. 4 who within three months shall consider the case of the applicant and shall pass necessary orders with regard to payment of family pension.

13. The Transferred Application, in the circumstances, is allowed. The order dated 11.08.2007 passed by the respondent No. 4 as contained in Annexure No. 1 is hereby quashed. The directions given herein above shall be carried out by the respondents within time specified.

14. No order however as to costs.

(Lt. Gen. B.S. Sisodia)
Member (A)

(Justice A.N. Varma)
Member (J)