

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

Original Application No. 69 of 1994

Date of decision: June 22, 1994

Parasuram Behera

...

Applicant

Versus

Union of India & Others

...

Respondents

(FOR INSTRUCTIONS)

1. Whether it be referred to the reporters or not? *Ans*
2. Whether it be circulated to all the Benches of the *ND* Central Administrative Tribunals or not?

~~H. Rajendra Prasad~~
(H. RAJENDRA PRASAD)
MEMBER (ADMINISTRATIVE)

22 JUN 94

ka 22.6.94
(K. P. ACHARYA)
VICE CHAIRMAN

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CENTRAL ADMINISTRATIVE TRIBUNAL
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Parasuram Behera	...	Applicant
	Vs.	
Union of India & Others	...	Respondents
For the Applicant	M/s S.N. Mohapatra, K.R. Mohapatra, S. Ghosh, Advocates	
For the Respondents 1 to 3	Mr. Ashok Mishra, Senior Standing Counsel (Central)	
For the Respondent No. 4	Mr. D.P. Dhalsamant, Advocate.	

...

CORAM:

THE HONOURABLE MR. K.P. ACHARYA, VICE CHAIRMAN
AND
THE HONOURABLE MR. H. RAJENDRA PRASAD, MEMBER (ADMN.)

...

JUDGMENT

K.P. ACHARYA, V.C. In this application under section 19 of the Administrative Tribunals Act, 1985, the petitioner prays to quash the order of appointment issued in favour of Shri Nirakar Dash, Opposite Party No. 4, appointing him as E.D.B.P.M. of Khajuria Branch Post Office.

2. Shortly stated the case of the petitioner is that a vacancy had arisen in the post of EDBPM of Khajuria Branch Post Office and the petitioner had been given an appointment as such. This appointment was challenged by Nirakar Dash, who is Opposite Party No. 4, in the present application.

Vide judgment dated 23rd August, 1993 passed in O.A. No. 140 of 1991, the selection of Parasuram Behera, present petitioner was quashed and it was directed that the cases of the present petitioner, Parasuram Behera, Opposite Party No.4, Nirakar Dash and others be reconsidered and appointment order be issued in favour of such person who is found to be suitable. In compliance with the direction, the competent authority conducted the selection process afresh and has given an order of appointment in favour of Opposite Party No.4 namely Nirakar Dash which is under challenge.

3. In their counter, the Opposite Parties maintain that the selection has been conducted as per rules and there is no illegality in the matter of giving appointment to Nirakar Dash. Therefore, the case being devoid of merit is liable to be dismissed.

4. We have heard Mr. S. Ghosh learned counsel appearing for the petitioner and Mr. Ashok Mishra learned Senior Standing Counsel (Central) appearing for Opp. Parties 1 to 3 and we have also heard Mr. Dhalsamant learned counsel appearing for Opposite Party No.4.

5. The only ground on which the candidature of Parasuram Behera, the present petitioner has been rejected or in other words Parasuram was found to be unsuitable is that Parasuram has relied upon the income from his joint family property and has not given any evidence of income from independent sources.

Mr. Dhalsamant learned counsel appearing for the Opp. Party No.4 emphatically contended that it is incumbent under the rules to give an income certificate from independent sources and such income certificate not having been furnished by the present petitioner, rightly his candidature was rejected.

6. Mr. Ashok Misra learned Senior Standing Counsel (Central) submitted that the department is bound by the views expressed by this Bench in the matter of joint family income which has not been unsettled as yet, and the department has no further say in the matter.

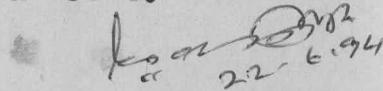
7. We have given our anxious consideration to the arguments advanced at the Bar. In very many cases in the past, we have taken the view that a particular person having an interest in the joint family property, ~~it~~ is deemed to have an income from the said joint family property and such income from the joint family property must be taken into consideration by the appointing authority while assessing income of different candidates. It is further maintained by the petitioner that he is the title holder of a particular property alongwith other cosharers. Therefore, keeping inview the judgment passed earlier, we find no justifiable reason to make a departure from the view already taken in those judgments. Therefore, we do hereby quash the selection of opposite party No.4 ^{it} and is directed that the competent authority should hold

selection afresh and consider the cases of the petitioner Shri Parasuram Behera, Opposite Party No.4, namely Nirakar Dash and other candidates who were on the field at the relevant time and the appointing authority after considering the suitability of all the candidates before him should issue order of appointment in favour of the person who is found to be suitable. The selection process must be completed within 45 days from the date of receipt of a copy of the judgment. Till the final selection is completed, Petitioner Shri Parasuram Behera would continue.

8. Thus, the application is accordingly disposed of leaving the parties to bear their own costs.



MEMBER (ADMINISTRATIVE)
22 JUN 94



22.6.94
VICE-CHAIRMAN

Central Administrative Tribunal,
Cuttack Bench/K. Mohanty/22.6.94.