

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
CTACK BENCH, CUTTACK

ORIGINAL APPLICATION NO.116 OF 1995
Cuttack this the 20th day of August, 1998

Parasuram Behera

Applicant(s)

-VERSUS-

Union of India & Others

Respondent(s)

(FOR INSTRUCTIONS)

1. Whether it be referred to reporters or not ? Yes.
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not ? No.

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN 20.8.98

G. Narasimham
(G.NARASIMHAM)
MEMBER (JUDICIAL)

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ORDER

MR.G.NARASIMHAM, MEMBER(JUDICIAL): Applicant Parsuram Behera in this application under Section 19 of the Administrative Tribunals, 1985 seeks for quashing of appointment of Res.4 Shri Nirakar Das to the post of E.D.B.P.M., Khajuria under Annexure-4 dated 14.2.1995 issued by Res.3.

2. At first applicant was appointed to this post by order dated 1.12.1990 through a process of selection of the candidates sponsored by the concerned Employment Exchange. Res.4, who was also one of the sponsored candidates preferred O.A.No.140/91 before this Tribunal questioning the authority of the departmental respondents in disqualifying him in the selection only on the ground that even though he had incurred certain loan, he had not disclosed the same. This Tribunal by order dated 23.8.1993(Annexure-1) quashed the appointment of the applicant(Res.4 in O.A.140/91) and directed the department to make the selection afresh considering the case of the applicant, Res.4 and others, who had applied earlier and appoint the candidate found to be suitable for the post. While ordering so the Tribunal allowed the present applicant to continue in that post. Pursuant to this direction of the Tribunal, Res.3 made selection afresh and by order dated 9.2.1994(Annexure-2) provisionally selected Res.4 for appointment to the post by terminating the appointment of the applicant. Thereafter the applicant moved this Tribunal in O.A.69/91 questioning the selection of Res.4 and h

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CUTTACK BENCH, CUTTACK

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CORAM:

THE HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN
AND
THE HON'BLE SHRI G.NARASIMHAM, MEMBER(JUDICIAL)
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Parsuram Behera,
Extra Departmental Branch Post Master
Village:Khajuria, PO:Khajuria
Dist:Dhenkanal

...

Applicant

By the Advocates:

M/s.S.N.Mohapatra
S.Ghosh
K.R.Mohapatra

-Versus-

1. Union of India represented through
the Director General, Posts
Department of Posts,
New Delhi
2. Chief Post Master General, Orissa
P.M.G.Square, Bhubaneswar, Dist:Khurda
3. Superintendent of Post Offices,
Dhenkanal Division
At/Po/Dist:Dhenkanal
4. Sri Nirakara Dash
At/Po/Dist:Dhenkanal

By the Advocates:

Mr.Ashok Mishra,
Sr.Standing
Counsel(Central)
For Res.1-3

Mr.D.P.Dhalasamant
(For Res.4)

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disqualification for selection on the ground that he had no separate property of his own, but possessed joint family property. Through an interim order the applicant was allowed to continue in that post. By order dated 22.6.1994(Annexure-3) this Tribunal quashed the selection of Res.4 and directed the competent authority to hold the selection afresh observing that possessing ^{of} joint family property cannot be ^{a ground} ignored for disqualification. A specific direction was given that the selection process must be completed within 45 days from the date of receipt of the copy of the order and till final selection the applicant would continue in that post. Pursuant to this order a fresh selection was conducted and at the time of selection out of the sponsored candidates by the Employment Exchange only the applicant and Res.4 remained in the field for selection. By order dated 14.2.1995(Annexure-4) Respondent No.3 again selected Res.4 for appointment to this post by ordering termination of services of the applicant. Thereafter the applicant has come up with this application and obtained an interim order that he shall not be disturbed from the post until further orders. Thus in this way the applicant has been continuing in the post since 1.12.1990 ^{and explicitly} through the strength of the orders of the Tribunal from 23.8.1993 onwards.

2. In this application filed on 20.2.1995 the main ground urged is that in H.S.C.examination he secured more marks than Res.4. While he secured 345 marks out of 800 marks, Res.4 secured 313 marks out of 800 marks. Since marks in the H.S.C.Examination is the main criterion for

selection to the post of E.D.B.P.M., selection of Res.4, who secured less marks than him is not according to law.

3. Respondents in their counter urged that although the applicant secured more marks than Res.4, he cannot be selected as he has been serving as a School Teacher in Raghunath Jew Ucha Vidyalaya, Haladikundi, Khajuria since 16.9.1991 as per the report of Inspector of Schools, Dhenkanal Circle submitted to Res.2 in letter dated 28.9.1994(Annexure-R/1) and as per the D.G.(Posts) letter dated 22.2.1974(Annexure-R/2) the School Teachers would be given the last priority in making appointments as E.D.Agents. Since Res.4 with required qualification was available for selection he was preferred in preference to the applicant who has been serving as school teacher. Had not the applicant been serving as school teacher, in normal course he would have been selected for appointment.

3. In the rejoinder the applicant pointed out that the department has misinterpreted the instructions of D.G.(Posts)(Annexure-R/2). The school teacher in question according to him, was established in the year 1991 and had not been recognised. The applicant being a Graduate was requested by the villagers to take up classes as a temporary measure and this he had done ^{on} honourarium basis without receiving any payment from the school authorities. In support of this he has also filed an affidavit wherein he had mentioned the ^{school} dispute ^{on} recognition on 24.1.1994(Annexure-5). He also enclosed a copy of the letter dated 2.8.1994(Annexure-6) issued by

Headmaster of Raghunath Jew Anchaliika Ucha Vidyalaya, Haladikundi, Khajuria to the Sub-Divisional Inspector of Posts, Dhenkanal clarifying that the applicant has been serving in the school since October, 1991 without any payment and the periods allotted to him are from 10.55 am to 12.55 p.m. Annexure-7 relied by the applicant is the duty hours fixed by the S.D.I.(P) at the Branch Post Office which is from 9.30A.M. to 10.30A.M. and again at 1.30 P.M. to 3.45 P.M. on every working day

4. Thus the main point for consideration is whether in the fresh selection made pursuant to the order dated 22.6.1994 of this Tribunal in O.A.69/94 the applicant has been wrongly disqualified for appointment on the ground of his service as a teacher.

There is no dispute that the applicant has been serving as a teacher since 1991 though according to applicant he has been serving on honorarium basis without receiving any payment. If this disqualification of his service as a teacher is treated as no disqualification under law then in view of his higher marks in the H.S.C. examination in comparison to the marks of Res.4 he has to be selected under the prevailing rules.

Annexure-R/2 is a letter dated 22.2.1974 of the D.G.(P&T) in which instructions in earlier letter dated 2.3.1972 to the effect that no preference would be given to school teachers in the matter of appointment as E.D. Agents finds mentioned. It was decided in this letter that the school teacher should be given the last priority in the appointment of E.D. Agents. In other words it would

follow if no other suitable candidate is available the school teacher having requisite qualification can be preferred for this post.

Learned counsel for the petitioner vehemently urged that this instruction will not be applicable in case of school teachers serving on honorarium basis. At this stage we may take note the fact ^{that in} of the letter dated 28.9.1994(Annexure-R/1) addressed by the C.I. of Schools to the S.D.I.(P)Dhenkanal Sub-Division; there is no mention that the applicant has been working on honorarium ^{basis}. We also cannot overlook the fact that even though he was aware that his disqualification was on account of his serving as a school teacher, he suppressed this fact in this application filed on 20.2.1995. It is only when the respondents brought this to the notice of the Tribunal through their counter, the applicant admitted this in his rejoinder with the plea of honorarium ^{basis}. Thus he has not approached this Tribunal with clean hands.

Even assuming he has been serving as a teacher ^{with} honorarium basis, in our view his disqualification on this ground is unassailable. The main object of introducing such a provision is that duties of an E.D.Agent to the public should not suffer on account of his service or engagement as a teacher. Receipt of remuneration from other source doesnot appear to be a criterion for disqualification for selection to the post of E.D.Agent, because under the rules an E.D.Agent must have adequate means of livelihood and must be in

a ^{possession} ~~possession~~ to offer space to serve as the agency premises for postal operations. In other words an E.D. Agent should be financially solvent. Hence receipt of remuneration or income from any other source or occupation by itself is not a disqualification unless such occupation takes away the valuable time of the Agent which has to be utilised by him in doing public service as an Agent. We, therefore, do not agree with the contentions advanced by the learned counsel for the petitioner that in case of a teacher with honorarium basis the circular of D.G. is not applicable.

It is true as per Annexures-6 and 7 regarding his duty hours in the school and the Post office timings in general do not clash. It is also true in Annexure-R/2 wherein it has been mentioned that in circular dated 2.3.1972 it was made clear that in case a school teacher was proposed to be appointed, it should be ensured that the post office working hours could be fixed on his appointment, again, with due regard to public convenience and departmental needs, but yet the facts remained taking note of this instruction in the circular dated 2.3.1972, the D.G.(Posts) in 1974 decided that school teacher should be given last priority in making appointment as E.D. Agent. This apart in letter dated 29.9.1992 of D.G.(Posts) as quoted at page 75 (Swamy's Compilation) of the relevant rules for the E.D. Staff, it has been clearly provided that henceforth school teachers can be appointed as E.D. Agents only in exceptional circumstances and that too with the personal approval of the P.M.G.(Region)

when suitable candidates belonging to other categories are not available. While ~~agreeing~~^{allending} his approval to the appointment of a school teacher as E.D. Agent the P.M.G. will satisfy himself and record detailed reasons in justification thereof. In otherwords, after 29.9.1992 without prior satisfaction and approval of the P.M.G. no teacher can be appointed as an E.D. Agent. In this case there were fresh selections on two occasions for the same post pursuant to the directions of this Tribunal in its judgments dated 23.8.1993 and 22.6.1994, i.e. much after the circular issued by the D.G. in letter dated 29.9.1992. In otherwords, Res.3, i.e., Superintendent of Post Offices, could not have suo motu selected the applicant for the post even after he was satisfied that the duty hours in the post office would not clash with the duty hours of the applicant in the school, without the approval and satisfaction of the P.M.G. and ~~as~~ such approval and satisfaction of the P.M.G. would have ~~necessitated~~^{been} only when no other candidate having the requisite qualifications was available; This is not the case here.

5. We have taken note of the other contentions of the learned counsel for the applicant that since the applicant has been continuing in the post since 1.12.1990, i.e. more than three years, his services cannot be terminated in normal course. It is true that Rule-6 at page 34 of Swamy's Compilation (Supra) indirectly provides that services of an employee who has rendered more than three years of continuous service

shall not be liable to termination, but in the instant case as already indicated the department has terminated his services on two occasions, i.e. by order dated 9.2.1994(Annexure-2) and order dated 14.2.1995(Annexure-4). Even this Tribunal quashed his appointment by order dated 23.8.1993 in O.A.140/91. This order of the Tribunal has never been recalled. Even the order of the department passed on 9.2.1994(Annexure-2) terminating his services has not been quashed. Only by virtue of the interim orders of the Tribunal he has been continuing in service since 23.8.1993 by which period he had not completed three years of continuous service. In this view of the matter we are not inclined to accept the contention of the learned counsel for the petitioner raised in this regard.

6. In view of our above discussion, we are of the view that there is no merit in this application which is accordingly dismissed, but without any order as to costs.

Interim order dt 21-2-95 allowing the applicant to continue in the post stands recalled.

(SOMNATH SOM)
VICE-CHAIRMAN

(G.NARASIMHAM)
MEMBER(JUDICIAL)

B.K.Sahoo, C.M.