

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO.05 OF 1998
CUTTACK THIS THE 29th DAY OF July' 2005

Smt. Draupadi Behera & Ors.

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Applicant(s)

-VERSUS-

Union of India & Ors.

Respondents

FOR INSTRUCTIONS

1. *Whether it be referred to reporters or not ?*
- 2.
3. *Whether it be circulated to all the Benches of the Central Administrative Tribunal or not ?*

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M.R. Mohanty
29/07/05
(M.R. MOHANTY)
MEMBER (JUDICIAL)

B.N. Som
(B.N. SOM)
VICE-CHAIRMAN

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH : CUTTACK**

ORIGINAL APPLICATION NO.5 OF 1998

Cuttack this the 29th day of July' 2005

CORAM:

**THE HON'BLE SHRI B.N.SOM, VICE-CHAIRMAN
AND**

THE HON'BLE SHRI M.R.MOHANTY, MEMBER(JUDICIAL)

Smt.Draupadi Behera, aged 57 yrs., S/o late Iswar Chandra Behera
resident of Vill – Krushnanagar, Post: Sabira, Via-Soro, Dist: Balasore
Purna Chandra Behera, aged 30 years, S/o late Iswar Chandra Behera
resident of Village-Krushnagar, Post: Sabira, Via: Soro, Dist-Balasore

Applicant

By the Advcates

Dr.D.B.Mishra

- VERSUS-

1. Union of India, represented by it's Director General (Posts), Dak Bhawan, Sansad Marg, New Delhi-110001
2. Assistant Director General (ED & Trg), Dak Bhawan, New Delhi-110001
3. Chief Postmaster General (Orissa Circle), At/Po-Bhubaneswar, Dist: Khurda-751001
4. Superintendent of Post Offices, Balasore Division, At/Po/Dist-Balasore
5. Sub Divisional Inspector (Postal), Soro Sub Division, At/Po: Soro, Dist: Balasore

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Respondents

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- 2 -
By the Advocates

Mr.UB Mohapatra,SSC

ORDER

MR.B.N.SOM, VICE-CHAIRMAN : This Original Application was disposed of by this Tribunal vide order dated 8.9.1998 at the stage of admission. Resultantly, the O.A. was dismissed on the ground that it was without any merit. Being aggrieved, the applicants had carried the matter in a Writ Petition before the Hon'ble High Court of Orissa in O.J.C. No.15059 of 1998. The High Court allowed the Writ Petition and issued direction to the Respondent-Department to appoint the applicant No.2 within a particular time with a condition that the applicant would financially support his mother (applicant No.2) so long as she is alive. This decision, however, was challenged before the Hon'ble Apex Court in an SLP© No.14899/2003 and Civil Appeal No.7/05. The said Civil Appeals were disposed of by the Apex Court directing the Tribunal to reconsider the matter. The parties were also permitted by the Apex Court to place materials in support of their respective stand with further direction as under :

“It goes without saying that C.A.T., after considering relevant materials shall dispose of the matter in accordance with law. We make it clear that we have not expressed any opinion on the merits of the case”.



[Signature]

2. Accordingly, the matter was listed before this Bench on 17.2.2005 when it could not be taken up as no one did appear on behalf of the applicant in view of transfer of brief, which fact we were apprised by the previous conducting counsel. The matter was thereafter listed on 31.3.2005, when Dr.D.B.Mishra, learned counsel appearing for the applicants sought time till 18.4.2005 to make his submission. The learned counsel for the applicants has filed additional materials in support of the claim of the applicant for compassionate appointment. The Respondents, however, have not submitted any new material, but have relied on the earlier counter filed on 18.8.1998 to defend their case.

3. The short question to be answered in this O.A. is whether the family of the deceased EDDA cum M.C. late Iswar Chandra Behera had been separated from his children and whether his youngest son, who is applicant No.2 in this O.A. is living separately after the partition of the property by late Iswar Chandra Behera during his life time or he is living with his mother/widow of deceased EDDA cum MC late Behera.

4. By way of additional material, the applicants have now filed Annexure-9, which is a certificate dated 22.09.1998 issued by the Sarpanch, Talanagar Gram Panchyat with regard to financial condition of Smt.Draupadi Behera (applicant No.1). Annexure A/10 is a Work Order

issued by the Block Development Officer, Soro, in favour of Smt. Behera, being a beneficiary of Special Indira Awas Yojana (2000-2001). Annexures-A/11 dated 26.11.1997 and A/12 series dated 11.11.1997 are affidavits filed by the widow and son of the deceased ED employee.

5. The learned counsel for the applicant submitted that the applicant No.1 had received an allotment of Indira Awas Yojana, because her family was identified as Below Poverty Line (in short BPL) by the district authority vide Annexure-A/10. The learned counsel for the applicant with the help of Annexure-A/9 (now filed by the applicant) has argued that the Sarpanch having certified that the condition of the applicant No.1 was indigent and that she being a beneficiary of Indira Awas Yojana, which is available to BPL category citizens only, the Respondents have committed blunder in stating that the family is not indigent. He submitted that it would be wholly unacceptable a reason if one Government authority would find a family below poverty line and the another Government authority will call that family as solvent. He, therefore, urged that the matter should be reconsidered.

6. The learned Senior Standing Counsel stoutly refuted the argument of the applicant. Referring to the certificate dated 22.8.1996 (Annexure-A/5) issued by the Member of Parliament by which the applicant

No.1 was certified to be impecunious, the learned Sr.Standing Counsel submitted that the request for compassionate appointment in respect of applicant No.2 was considered at the highest level in the Respondent-Department. However, the application did not find favour on the ground that in the Legal Heir Certificate issued by the revenue authority, all the five brothers and the widow were shown as the legal heirs of the deceased GDS and therefore, it was decided that the family was not in dire financial condition to merit consideration for compassionate appointment. It was further stated that there was no guarantee that even if the request of the dependant for compassionate appointment was acceded to, he would not separate himself from the family and leave the other members unsupported.

With regard to the certificate issued by the Sarpanch, Talanagar Gram Panchyat it was submitted by the learned Sr.Standing Counsel that the said certificate was in conflict with the certificate issued by the revenue authority and also in conflict with the certificate of income in respect of applicant Nos.1 and 2 issued by the Tahasildar, Soro. His argument was that the statement of the applicant No.2 that she was not living separately with applicant No.1 is negated by the separate income certificate issued by the Tahasildar, Soro in respect of both the applicants. To that extent, he argued, that the certificate issued by the Sarpanch was not conclusive.

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7. We have heard the learned counsel of both the sides and also perused the records placed before us. Having regard to the rival submissions, we hold that no clear picture has been projected before us with regard to partition in the family between the widow and five other children. The Revenue Officer's certificate points to the fact that the family is undivided. On the other hand, by filing Affidavit at Annexure-A/11, the applicant No.1 has sought to state that applicant No.2 has been staying with her and that they do not have sufficient source of income as other sons are living separately. But by merely filing fresh affidavits at Annexure-A/11, the applicants cannot conclusively negate the effect of the legal heirship certificate issued by the Revenue Officer, Soro or the income certificates in their favour by the Tahasildar, Soro and these certificates were granted only for the purpose of Govt. dues etc. This apart, the applicants have not obtained necessary orders of the competent Court of Law to prove that the family has been divided into several groups during the life time of the deceased ED employee.

8. However, one point remains to be answered. By filing Annexure-A/10, applicant No.1 has now exhibited an allotment of house under Indira Aash Yojana on being identified below poverty line. The applicant had never earlier filed this certificate before the Respondent-

Department and therefore, they did not have any opportunity to examine the merit of this allotment given to applicant No.1 under Annexure-A/10 and whether such an allotment makes her case more strong. It would be, therefore, in the fitness of things, if we remit this matter to the Respondent-Department to verify the claim of the applicant No.1 that she has been identified as a BPL family, in which case her application for compassionate appointment in respect of her son (applicant No.2) may merit reconsideration. Accordingly, we direct that the Respondents shall carryout necessary inquiry into the matter in consultation with the State Government authorities and take further view in the matter in the next Circle Relaxation Committee meeting.

With these observations and directions, the O.A. is disposed of.

No costs.


(M.R. MOHANTY)
MEMBER(JUDICIAL)


(B.N. SOM)
VICE-CHAIRMAN

BJY/PS