

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

No.D.A.659 of 1996

Present : Hon'ble Mr. Justice A.K. Chatterjee, Vice-Chairman.
Hon'ble Mr. M.S. Mukherjee, Administrative Member.

TARAK CHANDRA SHEE

... Applicant

Vs.

1. Union of India through the Secretary,
Department of Posts, Sanchar Bhawan,
New Delhi-1.
2. Chief Post Master General, West Bengal
Circle, Yogayog Bhawan, Calcutta-12.
3. Post Master General, Calcutta Region,
Yogayog Bhawan, Calcutta-12.
4. Sr. Superintendent of Post Offices,
Burdwan Division, P.O. and District
Burdwan.
5. Sub-Divisional Inspector (Postal),
Memari Sub-division, Burdwan.
6. B.P.M. Keotara B.O., via Nabagram,
District : Burdwan.

... Respondents.

For the applicant : Mr. B.C. Sinha, counsel.

For the respondents: Mrs. B. Ray, counsel.

Heard on : 3.7.1997

Order on : 13.8.1997

ORDER

A.K. Chatterjee, V.C.

The petitioner on being sponsored by ^{anv.} employment exchange was appointed to the post of E.D.B.P.M. of Keotara Branch Office by an order of appointment dated 15.4.1996, but when he reported for duty on 17.4.1996 he was not allowed to join and ultimately ^{it} transpired to him that the authorities had cancelled the appointment on the ground that he was not eligible for the post as his elder brother was engaged as ^{anv.} EDDA in the

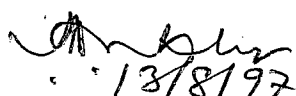
same Branch Office.

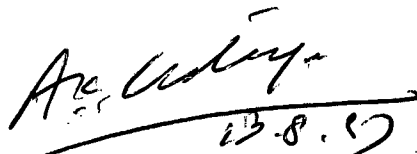
2. The petitioner has filed this application for setting aside the order of cancellation dated 23.5.1996 and a direction upon the respondents to permit him to join the aforesaid post on the ground that the petitioner did disclose in his application about his elder brother's engagement in the same Branch Office and he could not be divested of his right to join the post, imputing the false statement to him.
3. The respondents in their reply contend that the letter of D.G.P & T dated 17.10.1966 provides that appointment of any near relative as EDBPM in the same office should be avoided and the petitioner made no disclosure in the application about his elder brother's employment. In such circumstances, the authorities bound by the departmental rules as stated above, ^{could} ~~would~~ not overlook a material fact which came to its knowledge subsequently and the order of appointment had to be cancelled.
4. Petitioner has filed a rejoinder controverting the grounds taken in the reply.
5. We have heard the ld.counsel for the parties and perused the records before us.
6. There was a controversy between the parties as to whether the petitioner had made disclosure about the employment of his elder brother in his application. The petitioner has filed a ~~separate~~ ^{copy} copy of the application stated to have been made by him through the employment exchange in two pages containing his signature on the 2nd page and disclosure of his elder brother's situation in col.9, also on the 2nd page. On the other hand, the respondents had filed a copy of the application, which according to them was received from the employment exchange consisting of one page only containing a total of 5 columns without the column regarding employment of any near relative and without the signature of the petitioner. Ld.counsel for the respondents has suggested that the copy filed by the petitioner was manufactured subsequently which was evident from the fact that it was not identical ^{with} to the copy of the application filed by

the respondents and stated to have been received by them from the employment exchange. The respondents have pointed out that the date of birth in these two applications have been noted in different style, namely, in one, the date of birth has been written as 1.4.1973 while in the other it has been recorded as 1.4.⁷³~~1973~~. It was also pointed out that the address of the petitioner, though [✓]the same, was also written in different style in the two documents. These differences have been specifically stated in the reply filed by the respondents, but in the rejoinder filed by the petitioner, no effort was made to explain how such difference could occur. ^{Just as it} ~~It is just~~ hard to imagine that an incomplete and unsigned application ^{would} ~~could~~ be given by the petitioner to the employment exchange, thereby incurring risk of its rejection, so also it seems to be highly ^{improbable that} ~~improper~~ if such an application was in fact submitted by the petitioner, the same ^{would} ~~could~~ be forwarded by the employment exchange and ^{would do} ~~could~~ be acted upon by the respondents overlooking the fact that it bore no signature of the petitioner and was incomplete in several particulars. At the same time, as noted above, there is no explanation by the petitioner as to how in the copy filed by him, the date of birth and the address could appear in style different from ^{the} ~~a~~ copy filed by the respondents. However, we do not consider it necessary to embark upon a fact-finding enquiry in this regard as there is no controversy about the broad fact that the elder brother of the petitioner is working as an EDDA in Keotara Branch Office. Therefore, even assuming that the petitioner did disclose in his application about his brother's engagement, which was overlooked by the respondents, an appointment issued in such circumstances through inadvertence against departmental rules cannot be sustained and, therefore, no impropriety can be found in the action of the respondents in cancelling such order. The petitioner might have made a claim for damage but he cannot insist on getting an appointment contrary to departmental rules, nor the respondents because of issuing the

appointment order are estopped from cancelling the same for the simple reason that there cannot be estoppel against rules.

7. We, therefore, see no merit in this application which is, therefore, rejected. No order is made as to costs.


13/8/97
(M.S. Mukherjee)
Administrative Member


13.8.97
(A.K. Chatterjee)
Vice-Chairman