

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH: :CALCUTTA

ORIGINAL APPLICATION NO. 778/96

FRIDAY, THE NINETEENTH DAY OF MAY, 2000

SHRI S.K. GHOSAL. MEMBER (A)
SHRI P.C. KANNAN. MEMBER (J)

Shri Atish Kumar Banerjee,
S/o Late Biman Kumar Banerjee,
working as EDBPM,
Multi Krishnanagar B.O.,
Katua Sub-Division,
Depaprtment of Post,
Government of India, resident of
Village & P.O. Multi Krishnanagar,
P.S. Katwa, Dist. Burdwan. Applicant

By Advocate Shri P.K. Munshi.

Vs.

1. Union of India, through the
Secretary, Department of Post,
Government of India,
New Delhi-110 001.
2. Chief Post Master General
West Bengal Circle,
Yogayog Bhawan,
Calcutta-700 012.
3. Sr. Superintendent of Post Offices,
Burdwan Division,
P.O. & Dist. - Burdwan. Respondents

By Counsel Mr. B. Mukharjee.

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Shri S.K. Ghosal. Member (A)

The applicant was appointed under the order dated 31.5.95 of the 3rd respondent, seen at Annexure -B of the OA, as ^{the} Extra Departmental Branch Post Master (EDBPM), Multi Krishnanagar. It is evident ^{to} from that order that the applicant was appointed to that post on a provisional

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basis for six months, because of the sudden death of one Biman Kumar Banerji who was the father of the applicant. Under his order dated 22.2.96 the services of the applicant were extended upto 31.1.96 by the 3rd respondent. Finally, the 3rd respondent under his order dated 3.6.96, read with the corrigendum, extended the tenure of service of the applicant as ^{QX}EDBPM upto 30.6.96. These latter orders are seen at Annexure-C. Thereafter, the applicant was communicated the order of the same 3rd respondent i.e. the Senior Superintendent of Post Offices, Burdwan Division dated 13.6.1996, seen at Annexure-F. That order states that the case of the applicant has been considered by the Circle Selection Committee for compassionate appointment; but the same has been rejected on the ground that there was no indigency in the family of the applicant. The applicant's grievance is that thereafter he was forced to handover the charge of that post.

2. The applicant has claimed the following reliefs:

"In view of the facts mentioned in para -4 and the grounds in para - 5, the applicant prays for the following reliefs:-

- i) Regulation/absorption in the post of EDBPM at Multi Krishnanagar B.O. against his continuous working in the same capacity since 18.1.95;



ii) Consequential benefits arising out of such regularisation/absorption;

iii) Cost."

3. The main case of the applicant for regularisation, as has been argued by the learned counsel for the applicant, is that he, having been appointed on a provisional basis and having rendered more than 240 days of service at the post, had a right to be regularised as laid down by the Hon'ble Supreme Court. However, we find that there is no such general rule laid down. The Hon'ble Supreme Court has, on the other hand, held that the right of a casual worker for the grant of temporary status and subsequent regularisation against a Group "D" post shall be regulated in terms of the appropriate scheme prepared specially for that purpose by the Government of India. In the present case, the applicant admittedly was not appointed as ^Q/casual worker. On the contrary, by the Annexure-B order mentioned above, he was appointed on a provisional basis as an EDBPM. We are, therefore, of the opinion that the provisions of the scheme, relating to casual workers for regulating their rights to the grant of temporary status and further for their regularisation against Group "D" posts, cannot be held as applicable in this case. Further, continuance as a provisionally appointed ED Agent (here EDBPM) per se for some time even

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exceeding 240 days, when the initial appointment was ⁴³dehors the rules for regular appointment, cannot be treated as having created a right in favour of the applicant. This latter position in law is well-established by now.

4. The learned counsel for the applicant has also contended that by virtue of the principle laid down by a Full Bench of this Tribunal, the service rendered by a substitute ED Agent or by a provisionally appointed ED Agent will have to be reckoned for the purpose of granting weightage when appointments are made to those posts on a regular basis. Here, we must observe that a five Member Bench of the Tribunal whose order was delivered by the Hon'ble Chairman of the Tribunal at Bangalore on ⁴⁴20.4.2000, has held that no weightage can be allowed in respect of the service rendered either by a substitute ED Agent or a provisionally appointed ED Agent. The five Member Bench has overruled the earlier decision of the Full Bench at Ernakulam in Parvathi's case relied upon by the learned counsel for the applicant. It has also been held by the aforesaid five Member Bench, headed by the Hon'ble Chairman of the Tribunal, that the special dispensation allowed in respect of casual workers under instruction No.28 of the Director General of Posts dated 6.6.88, available in Swamy's Compilation, at the time of appointment to certain categories of posts, including ED Agents, are not attracted in the case ⁴⁵of incumbents, who had

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been appointed either as substitutes or provisionally. That instruction is seen at page 98 of Swamy's Compilation of Service Rules for Postal ED Staff, 7th Edition published in 1999.

5. In the light of these case laws and the executive instructions having the force of rules, the main case of the applicant that he ought to have been regularised after working for a period of more than 240 days continuously without interruption, does not seem to have any legal basis.

6. Subsequent to the initial filing of the OA, the applicant has also challenged the appointment of the ⁴³ private respondent No.5 to the aforesaid post of EDBPM Multikrishnanagar on procedural grounds. We observe that the latter appointment has been made admittedly on a regular basis. We also observe that it is incumbent on the Department to make the regular appointment to carry on the activities of the Department. There can be no grievance against the Department for taking action for the regular appointment. Whether while making ^{the} regular appointment the Department has followed the prescribed procedure or not, cannot be investigated in the context of the present OA where the main relief sought is for regularisation of the services of the applicant. The relief sought against the subsequent appointment of the

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private respondent No.5 is not a relief which arises in consequence of the main relief sought by the applicant, namely regularisation of his service. The rights of a provisional appointee as an ED Agent are well-defined. It is not the case of the applicant that in this case a provisional appointee has been replaced by another provisional appointee, in which case the bar against such appointment, as laid down by the Hon'ble Supreme Court, would have applied and the appointment held as invalid. On the contrary, as we have already observed, this is a case where the services of a provisional appointee have been terminated and regular appointment has been made, apparently after following the prescribed procedure. Whether the respondents have power to limit the selection only to three candidates sponsored by Employment Exchange need not be discussed by us at any length. On behalf of the applicant no material has been placed before us to indicate that the respondents were prohibited from considering candidates, less than four in number, sponsored by the Employment Exchange in response to a notification for a vacancy in the post of EDBPM.

7. With these observations, we do not consider it necessary to deal with this aspect of the case any further.

(Signature)