

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

O.A. No. 369 of 1996

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

ANUP KR. CHOWDHURY

-vs-

UNION OF INDIA & ORS.

For applicant : Mr. M.S. Banerjee, counsel
Mr. S.K. Dutta, counsel
Mr. T.K. Biswas, counsel

For respondents : Mr. S.P. Kar, counsel

Heard on : 23.8.1996

Order on : 11.9.1996

O R D E R

A.K. Chatterjee, VC

The applicant's father was Extra-Departmental Branch Post Master of Kishorepur Branch Post Office and on his death while still in service on 18.2.94 as the family was in distress, about which the postal authorities were satisfied on an enquiry, the petitioner was appointed in his place in February, 1995 initially for a period of five months, which was latter extended from time to time. The petitioner has passed Madhyamik Examination and even before his appointment in Feb., 1995, he had experience of working as EDBRM as he had worked as a Substitute for his father when he was on leave on several occasions and also during his illness. However, without regularising his appointment, an Inspector and an Overseer were insisting upon the petitioner to relinquish the charge of the office. Hence, he has filed the

present application on 19.3.96 for a direction upon the concerned authority to regularise his service and/or other appropriate relief. An interim order was made by this Bench on the date of filing the application that his service was not to be terminated till a regular appointment was made.

2. The respondents in their counter deny that the family was in distress as the elder brother of the petitioner living in the same family, works as an Agent of the Life Insurance Corporation of India and the family had substantial income from landed property owned by it. An enquiry regarding financial condition of the family did not sustain any case for appointment to the petitioner on compassionate ground and his appointment, which was provisional was liable to be terminated at any time without assigning any reason. He was asked to hand-over charge on 6.3.96. He, however, did not hand-over the charge and continuing to this date on the strength of the interim order passed by this Bench.

3. The petitioner has filed a rejoinder, inter alia, denying the statement in the counter that his elder brother was living in the same family or that the family had substantial income from landed property.

4. We have heard the Ld. Counsel for both the parties and perused the records before us. The principal point, which arises for adjudication in this application, is whether the petitioner deserves an appointment on compassionate ground because of the death of his father in harness. Since he is claiming such an appointment, it is primarily his onus to make out a case in this regard and to come out with clean hands. The petitioner stated that the family has an annual income of about Rs. 6000/- from landed property without, however, disclosing the area or the nature of the land owned by it. It is true that the report of the enquiry

ordered by the respondents is not before us, but this is no ground why the petitioner, who has the initial onus in this matter, should withhold the vital information regarding the properties held by the family. It is also on the record that the elder brother of the petitioner works as an Agent of the L.I.C., though there is a controversy between the parties whether he is living in the village home with the petitioner, his mother and other brother or whether he is living in Calcutta separately with his own family in connection with his agency business. Now even if he is living separately from the family, he is under legal obligation to maintain his mother if she is unable to maintain herself. Thus, the main question is the amount of earning of the elder brother of the petitioner or even his capacity to earn to discharge the legal obligation. In the application itself, nowhere the income of the said brother has been revealed, though we find that a letter by him dt. 2.2.96 to the concerned Superintendent of Post Offices stating that he has average monthly income of only Rs. 600/-. The amount of earning from his agency business is a fact within his special knowledge and was capable of being established by much better evidence than a mere bald statement. No explanation was even given for withholding such document. In this state of record, it is not possible to hold that the petitioner's elder brother does not earn or does not have the capacity to earn to extend support to his widowed mother.

5. The Ld. Counsel for the petitioner has drawn our attention to the DGP&T letter No. 43-4/77-Pen. dt. 18.5.79, which inter alia, provides that where an ED Agent dies in harness and it is not possible to make a regular appointment immediately, a provisional appointment should be made for a specific period. In the

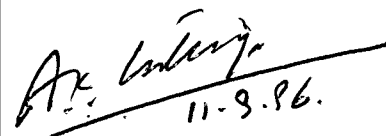
case on hand, the appointment was no doubt made provisionally and for a specific period, but with a rider that the provisional appointment could be terminated before the period mentioned therein. Now this appointment together with the clause reserves the right to terminate the provisional appointment at any time before the period mentioned therein was made in the form prescribed in the DGP&T letter referred to by the Id. counsel for the petitioner. Therefore, it cannot be successfully urged that this letter laid down any inflexible rule that the appointment has to be made for a specific period and could not be terminated before expiry of such period.

6. On the above premises, we find that no case has been made out for any direction from us to appoint the petitioner on compassionate ground which is after all a departure from normal rules of recruitment and can only be allowed to immediate retrieve of family in distress due to the death of its sole earning member and not to enable a member of such family to steal a march over others waiting in the queue behind many of whom may be more deserving than him.

7. We, therefore, dispose of the application with a direction upon the respondents to fill up the post of EDBM in question according to normal rules of recruitment and consider the case of the petitioner, if he is eligible and till regular selection is made, his provisional appointment shall not be terminated.

8. No order is made as to costs.


11/9/96
(M.S. Mukherjee)
Member(A)


11-9-96.
(A.K. Chatterjee)
Vice-Chairman