

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

CALCUTTA BENCH

No. M.A. 456 of 2002.
O.A. 648 of 1997.

Date of Order : 18.07.2003.

Present : Hon'ble Mr. B.P. Singh, Administrative Member
Hon'ble Mr. N. Prusty, Judicial Member

S. Sanyal

- VS -

D/o. Post.

For the applicant : Mr. Samir Kr. Ghosh, counsel

For the respondents : Mr. B. Mukherjee, Counsel

O R D E R

MR. B.P. SINGH, AM :

This application has been filed by the applicant praying for the following reliefs:

- " a) The respondents be directed to pay the allowances admissible to the applicant as EDDA Shekharbali for the period from 01.09.95 onwards.
- b) The respondents be directed to consider the case of the applicant along with ~~xx~~ other similarly circumstanced persons for appointment as Extra Departmental Delivery Agent and absence of nomination from any Employment Exchange shall not be regarded as a disqualification and regularise his service as EDDA of Shkharbali EDBO.
- c) The applicant shall be conferred Temporary Status as and when vacancy arises
- d) Such other and further order or orders as to your Lordships may seem fit and proper. "

2. The brief fact of the case is that the applicant was appointed on provisional basis on the post of EDDA for a period of six months from 07.09.1994 to 28.02.1995 as per annexure-A/1.

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The said order was issued on 06.09.1994. The applicant was further appointed for a period of 6 months from 01.03.95 to 31.08.1995. Thereafter no appointment order appears to have been issued as the same has not been annexed with this application nor has ~~the same~~ been produced by the 1d. counsel for the applicant at the time of hearing. It is thus clear that the appointment of the applicant as EDDA was terminated on 31.08.1995. In other words from 01.09.1995 he has not been engaged as EDDA by any order as the same has neither been annexed with the O.A. nor has been produced at the time of hearing. The applicant submits that he had worked after 01.09.1995 and, therefore, he should be paid the pay and allowances as admissible to him for the period from 01.09.1995. It has also been prayed that the case of the applicant should be considered along with the other similarly circumstanced persons for appointment as Extra Departmental Delivery Agent without any nomination from employment exchange. He should also be conferred the temporary status as and when vacancy arises.

3. Mr. Samir Kr. Ghosh, 1d. counsel appears for the applicant and Mr. B. Mukherjee, 1d. counsel appears for the respondents. Reply has been filed in this case and rejoinder to the reply has also been filed by the 1d. counsel for the applicant. We have heard the 1d. counsels for both the parties and gone through the application, reply and rejoinder.

4. The 1d. counsel for the applicant has submitted that the applicant should be paid the pay and allowances w.e.f. 01.09.1995 but he has not filed any supporting document regarding the engagement or appointment of the applicant w.e.f. 01.09.1995 onwards. The 1d. counsel for the applicant has also submitted that the candidature of the applicant

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should be considered along with the similarly circumstanced persons for appointment on Extra Departmental Delivery Agent post without nomination from employment exchange.

5. The ld. counsel for the respondents submitted that the father of the applicant, who was EDDA of Sekharbali EDBO, died in harness on 09.07.1994. The wife of the ~~deceased~~ employee prayed appointment to the younger son who is the present applicant in the vacant post. The applicant was issued a provisional appointment on the above request for a period of six months which was further extended by another 6 months as per annexure A1 and A2 to the O.A. The applicant also submitted a representation on prescribed proforma through proper channel for consideration of his case for appointment on compassionate ground. The case of the applicant was considered by the competent authority but the same was rejected. The said decision was communicated to all concerned and the provisional appointment of the applicant was terminated and the applicant was directed to hand over charge to the Branch Post Master, Sekharbali Branch Post Office. The applicant being aggrieved by the said order, filed the application before the Hon'ble CAT, Calcutta being No.O.A. 983 of 1995. The said O.A. was finally disposed of vide order dated 28.08.1996 enclosed as annexure A/4 to the O.A. in which the respondents were directed to consider the case of the applicant for compassionate appointment within a period of 3 months. The case of the applicant was considered in reference to the above order by the respondent authorities vide their order dated 12.05.1997 which is enclosed as annexure R/1 to the reply. According to this order the case for appointment on compassionate ground was rejected as the same was not found justified by the concerned authorities.

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6. The 1d. counsel for the respondents further submits that in reference to the prayer made in the O.A. there is no prayer for reconsidering the appointment of the applicant on compassionate ground and therefore this ground should not be considered in this O.A. Regarding payment of the pay and allowances w.e.f. 01.09.1995, the 1d. counsel submitted that the same prayer was made in the earlier O.A. i.e., O.A. No.983 of 1995 in which the Court did not give any order and only directed for re-consideration of the appointment of the applicant on compassionate ground. The 1d. counsel further submits that no order has been issued for engagement or appointment of the applicant after order dated 14.03.1995 and, therefore, the question of payment of pay and allowances w.e.f. 1.9.95 does not arise. However, he submits that he is not in a position to give a categorical reply on the point at this moment unless he ascertains the fact from the respondents. However, he submits that in case the applicant has actually been engaged or ordered to perform the duty as EDDA w.e.f. 01.09.1995 for any period, the respondents shall make payment for the period subject to verification of the details according to the records available with the respondents and /or materials submitted by the applicant.

7. The 1d. counsel for the respondent further submitted that so far as the consideration of the applicant's candidature for the post of EDDA, without nomination from the employment exchange is concerned, the present rules do not compulsorily require nomination through employment exchange but the candidate has to be registered with the employment exchange. If any notification is published to that effect, the applicant, if eligible, may apply directly according to the such notification and the same shall be considered by the respondent authorities

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according to rules.

8. The ld. counsel for the respondents further submitted that there is no provision for granting temporary status to EDDA in the Rules. No instructions or guidelines has been issued in this respect. Therefore, the question of granting temporary status as EDDA to the applicant does not arise in this case.

9. In view of the above, the ld. counsel for the respondents submits that there is no merit in this case and the case requires to be dismissed.

10. From the above, it is clear that the applicant was engaged two times, each for a period of six months and last of such engagement expired on 31.08.95. Thereafter, he has not been engaged or ordered to work on the said post as no document to that effect has either been enclosed in the O.A. or produced at the time of hearing. Therefore, there does not appear any justification for making payment of pay and allowance for the period w.e.f. 01.09.1995. However, as the ld. counsel for the respondents has already submitted that in case the applicant is found engaged by the department after 01.09.1995 at any point of time and he has actually worked on the post, the respondent authorities shall make admissible payment for such period as per rules after verifying the facts from the departmental records as well as from the materials produced by the applicant establishing his claim that he worked for any period after 01.09.1995. So far as application for any vacancy on the post of EDDA without

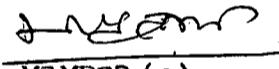
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nomination of the employment exchange is concerned, the present rules clearly provide that as soon as the vacancy is notified, the eligible candidates may apply directly according to the terms and conditions of the notice to the concerned authorities and such authorities are required to take action according to rules for such applications. So far as the granting of temporary status to the applicant is concerned, the same is not admissible according to rules and therefore, the question of granting such temporary status does not arise.

11. On the basis of the above, we find no merit in the case and dismiss the application without any order as to costs. M.A. 456 of 2002 filed for a direction to the respondents for making payment of salary during the period of working is also accordingly disposed of.


MEMBER (J)



MEMBER (A)