

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

O.A. No.814 of 1997

Present: Hon'ble Mr. Justice G. L. Gupta, Vice-Chairman
Hon'ble Mr. S. Biswas, Administrative Member

Paritosh Chandra Das, S/o Praladh Chandra
Das, residing at Village Budhar, P.O. Birghai
District - Uttar Dinajpur

... Applicant

VS

1. Union of India through the Secretary, Department of Post and Telegraph, New Delhi
2. The Post Master General Northern Region, Siliguri, Dist. Darjeeling
3. The Superintendent of Post Offices, Dinajpur Division, Balurghat

... Respondents

For the Applicant: Mr. P.K. Panja, counsel
For the Respondents : Mr. B. K. Chatterjee, counsel

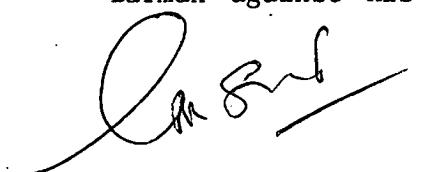
:: Date of order: 12 -06-2002

O R D E R

Per Mr. Justice G.L. Gupta

Through this application the applicant seeks directions to the respondents to allow the applicant to resume his duty as Extra Departmental Branch Post Master, Birghai.

2. The facts. It is averred that the applicant was appointed as Extra Departmental Branch Post Master (EDBPM) of Birghai Branch Office under the Debinagar Sub Office in February, 1981. It is further averred that on the allegations that the applicant received a deposit of Rs.103/- on 5.4.82 and Rs.20/- on 12.4.82 from one Jharu Chandra Barman against his Post Office Saving Bank Account, but he did not



record the entry in the Post Office Saving Bank Journal, an F.I.R. was lodged against him on 22.4.82.

The applicant's case is he has been discharged by the Special Court, Balurghat vide order dated 22.3.95 for the alleged offence, yet the respondent authorities did not allow him to resume the duty, instead an advertisement was published in 'Banga Prakash' on 2.7.97 inviting applications for the post held by the applicant. Hence this O.A.

3. In the reply, the respondents' version is that the applicant was appointed provisionally with effect from 12.2.81 as EDBPM against a post which had fallen vacant due to placing the regular incumbent under put off duty. It is averred that in the appointment letter of the applicant it was clearly stated that the appointment was provisional and would be terminated without notice, if the regular incumbent was taken back in service. It is stated that the put off duty of regular incumbent was revoked vide memo dated 10.9.81 and the applicant was directed to make over charge to him, but he filed a Civil Suit in the Court of Munsif, Raiganj and obtained an injunction and confirmed on the job on the basis of the Court order. However, the Civil Suit was ultimately dismissed on 13.7.82.

The respondents' case is that the applicant was found to have defalcated the deposits made by Shri Jharu Chandra Barman and therefore, he was placed under put off duty vide order dated 17.4.82 and he had handed over the charge to the Overseer of Mails on that date. It is averred that the selection process for the post of EDBPM which fell vacant afterwards, was started, but held up due to the filing of the case bearing No. OA 1210/95 before this Tribunal.

4. In the rejoinder, the applicant has reiterated the facts



stated in the O.A. It is averred that in view of the judgment of the Supreme Court in the case of Haryana State Electricity Board vs. Suresh and Others all the employees who work for 240 days or more cannot be denied absorption.

5. We have heard the learned counsel for the parties and perused the documents placed on record. The applicant has not filed the appointment order whereby he was appointed as EDBPM. However, it has not been denied in clear terms in the rejoinder that the applicant's appointment was made on the short term vacancy caused due to the put off duty order of the regular incumbent on provisional basis and with the condition that if the regular incumbent was taken back on duty his appointment would be terminated without notice.

6. It is, therefore, evident that the applicant was given appointment on the short term vacancy caused due to putting the regular incumbent off duty. It is evident that put off duty order of the regular incumbent was revoked by the respondents on 10.9.81. The applicant had thus worked for 7 months only before the regular incumbent took over the charge of the post. It is different thing that the applicant continued on the post on the basis of injunction order issued by the Civil Court No.C.S. 306/81.

7. It is not disputed that the Civil Suit was ultimately dismissed. The effect of the dismissal of the Civil Suit was that the applicant stood discharged from holding the post of EDBPM with effect from 10.9.81.

8. It is alleged that the applicant had defalcated the money deposited by one of the depositors during the time when he was holding the post on the basis of the injunction order issued by the Civil Court. That being so, even if the applicant has been



discharged by the Criminal Court in 1995 in the criminal case, the applicant cannot legally claim his appointment/ absorption on the post of EDBPM. The appointment of the applicant, as already stated, was on provisional basis and with the stipulation that if the put off duty of regular incumbent was revoked his service would stand terminated. Not only that, his service had already come to an end on 10.9.81.

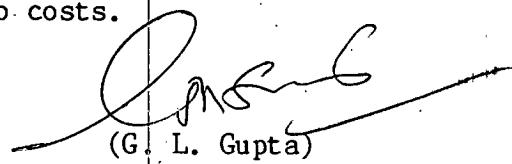
9. In our considered opinion, after the dismissal of the Civil Suit the applicant did not have a right to join the post of EDBPM. In other words, there is no effect of the order of Criminal Court passed in 1995.

10. The Supreme Court decision referred to in the rejoinder was not relied on by the learned counsel for the applicant during arguments. Without the proper citation of the case, we ourselves have not been able to know the ratio of the said case. In any case in view of the conditions of appointment the applicant cannot have an assistance of the said Supreme Court ruling.

11. For the reasons stated above, we find no merit in this O.A. which is hereby dismissed with no order as to costs.


(S. Biswas)

MEMBER (A)


(G. L. Gupta)

VICE-CHAIRMAN