

CENTRAL ADMINISTRATIVE TRIBUNAL

CALCUTTA BENCH

Present : Hon'ble Mr. Justice S.N. Mallick, Vice-Chairman.

Hon'ble Mr. B.P. Singh, Administrative Member.

II.

O.A. No.1459/97

Anup Kr. Choudhury

- v e r s u s -

1. Union of India, service through the Secretary, Ministry of Communication, Department of Post, Govt. of India, Dak-Tar Bhawan, New Delhi.
2. The Chief Post Master General, West Bengal Circle, Yogayog Bhawan, Calcutta-700 012.
3. The Superintendent of Post Office, North Hooghly Division, Chinsurah, Hooghly.
4. The Inspector of Post Office, Arambagh Sub-Division, Arambagh, Hooghly.
5. Sri Raj Kumar Kundu, residing at village and Post Office Radhaballavpur, P.S. Goghat, District-Hooghly.

...Respondents

II.

O.A. 1401/98

Raj Kumar Kundu

- v e r s u s -

1. Union of India service through the Secretary, Ministry of Communication, Department of Post, Dak-Tar Bhawan, New Delhi-110 001.
2. The Chief Post Master General, West Bengal Circle, Yogayog Bhawan, Chittaranjan Avenue, Calcutta-700 012.
3. The Superintendent of Post Office, North Hooghly Division, Chinsurah, Hooghly.
4. The Inspector of Post Offices, Arambagh Sub-Division, Arambagh, Hooghly.
5. Shri Anup Kumar Choudhury, Extra Departmental Branch Post Master, Kishorepore Branch P.O., Hooghly, Vill. & P.O.-Kishorepore, Via-Bara Dangal, P.S.-Khanakul, District-Hooghly.

...Respondents

For the applicant in O.A. No. 1459/97 : Mr. S.K. Ghosh, counsel.

For the respondents in O.A. No. 1459/97 : Mr. S.P. Kar, counsel.

For the Pvt respdts. in O.A. 1459/97 : Mr. M.K. Bandyopadhyay, counsel

For the applicant in O.A. No. 1401/98 : Mr. M.K. Bandyopadhyay, counsel

For the Off. respdt. in O.A. 1401/98 : Mr. B.K. Chatterjee, counsel.

For the Pvt. respdt. in O.A. No. 1401/98 : Mr. S.K. Ghosh, counsel.

Heard on 1.12.99

Order on 17-01-2000

O R D E R

B.P. Singh, AM

The applicant Sri Anup Kumar Choudhury has prayed for the following reliefs:-

- "8. (a) The impugned order of termination dated 22.12.1997 issued by the Superintendent of Post Offices North Hooghly Division be set aside and/or quashed.
- (b) Direction be given to the respondents to allow the applicant to run the Kishorepore Branch Post Office regularly as before and not to run as before from the house of the applicant not from the Barodangal Sub-Post Office.
- (c) The applicant be declared as appointed on compassionate ground with effect from 6.2.95.
- (D) The respondent No.5 be declared to have not fulfilled the requirements for appointment in the post of EDBPM, Kishorepore Branch Post Office."

2. O.A. No. 1459/97 has been filed by applicant Sri Anup Kr. Choudhury who is respondent No. 5 in O.A. No. 1401/98. O.A. No. 1401/98 has been filed by Shri Raj Kumar Kundu who is respondent No.5 in O.A. No. 1459/97. Both the O.As are on the same subject matter. Both O.As have been heard together and common order is being passed.

in O.A. No 1459/97

3. The fact of the case is that the father of the applicant Sri Birendra Nath Chowdhury was the regular Extra Departmental Branch Post Master (EDBPM), Kishorepore Branch Post Office, Hooghly. The father of the applicant died on 18.2.94. Before the death of the father of the applicant whenever his father was ill or was not in a position to perform the duties

of EDBPM for some reason, the applicant used to perform his duties of EDBPM as nominee of the regular EDBPM. In this way, the applicant worked as EDBPM for a considerable period till the date of death of his father on 18.2.94. The applicant has enclosed a copy of one such nomination as Annexure-C. On the death of his father the applicant applied for his compassionate appointment to the post of his father who died in harness. The said application is enclosed as Annexure-D collectively. On the basis of the said application the applicant was given appointment on adhoc basis for a specified period till regular appointment was made to the post as per Annexure-E. The adhoc appointment was subsequently extended for similar limited period on the same terms and conditions. The applicant was not regularised on the post and was under continued threat that the charge of the post will be taken away from him and someone else would be appointed for the post. On this apprehension the applicant filed an application before the Tribunal as O.A. No. 369/96. The Tribunal disposed of the application by giving following directions:-

xxx      xxx      xxx      xxx      xxx

" We, therefore, dispose of the application with a direction upon the respondents to fill up the post of EDBPM 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."

The applicant submits that he fulfilled the prescribed conditions for the post. On 22.12.97, the applicant was told by a villager that Sub Divisional Inspector has issued a memo terminating his services though no such memo was received by the applicant nor the charge of the post office was taken over by anybody. The applicant submits that the said memo of termination of his service was not handed over to him, though he has annexed the same as Annexure-B to the O.A. The applicant performed the duty of EDBPM, Kishorepore Branch Post Office for about ten months when the EDDA was placed on put off duty. He also performed the duty of Mail Carrier in addition to his own duty of the

EDBPM. The applicant further submits that his appointment to the post of EDBPM was on compassionate ground and he was entitled to be regularised on the post. Instead of being regularised his services have been terminated vide Annexure-B. This act of the respondents is malafide and arbitrary. The object of issuing the memo enclosed as Annexure-B is to deprive the applicant from completing three years of service. The applicant further submits that he has completed 180 days service as EDBPM and is entitled to continue in the service. He further submits that the order of termination of service dated 22.12.97 should be declared bad, illegal, malafide and requires to be quashed. The applicant has, therefore, filed this application with the reliefs stated above.

4. We have heard Mr. S.K. Ghosh, Id. counsel appearing for the applicant and Mr. S.P. Kar, Id. counsel appearing for the official respondent and Mr. M.K. Bandyopadhyay, Id. counsel appearing on behalf of the pvt. respondents. We have also gone through the O.A., reply to the O.A. rejoinder to the O.A. and written reply to the rejoinder of the O.A. We have also gone through the departmental records produced by the respondents in the case.

5. The Id. counsel for the applicant has submitted that the order of termination dated 22.12.97 was served on the Anchal Pradhan and the same is also addressed to Gram Pradhan, Kishorepore, Gram Panchayat. Therefore, the service of this order on the Gram Panchayat cannot be treated service on the applicant. Therefore, this order of termination is malafide, bad and illegal on the face of it. The applicant is entitled to be declared as EDBPM, Kishorepore ED Branch Post Office appointed on compassionate ground on account of death of his father in harness. The applicant fulfilled all the requisite qualifications and discharged the duties of the post of EDBPM for a long time continuously for a period of 34 months before 27.12.97 the date on which termination order was issued to the Gram Panchayat with full satisfaction of his superiors. The applicant discharged his duties earnestly and sincerely. He has applied for compassionate appointment on the death of his father who died in harness. The departmental rules also provided for compassionate appointment in the cases where the EDBPM died in harness.

In view of these facts and the departmental instructions the case of the applicant is fully justified for appointment as EDBPM on compassionate ground. The applicant has already worked on the post before the death of his father as well as after the death of his father in various spells to the entire satisfaction of his superiors. In view of these facts and circumstances and the departmental instructions the application requires to be allowed with the reliefs prayed for.

6. The ld. counsel for the respondents has submitted that the father of the applicant Sri Birendra Nath Chowdhury, the regular EDBPM, Kishorepore B.O. died in harness on 18.2.94. The applicant who is the second son of the deceased was provisionally engaged as EDBPM w.e.f. 6.2.95 pending finalisation of his appointment on compassionate ground in relaxation of normal rules of recruitment by the Circle Selection Committee. The provisional appointment was issued in favour of the applicant on 3.2.95, 9.8.95 and 8.1.96 for a specified period and in terms of para 3 of the provisional appointment order, it was made clear that the appointment was liable to be terminated at any time without assigning any reason in as much as the case of the applicant for appointment on compassionate ground was pending for final approval of the Circle Selection Committee and if the case of the appointment on compassionate ground was not considered in favour of the applicant by the Circle Selection Committee, the appointment of the applicant may be terminated without assigning any reason. The Circle Selection Committee considered the case of the applicant for appointment on compassionate ground and rejected the same. The decision of the Circle Selection Committee was communicated vide letter dated 8.2.96. The applicant being aggrieved by the decision filed an O.A. bearing No. 369/96 before this Hon'ble Tribunal which was disposed of on 11.9.96 with direction as quoted above. Since the recruitment of the applicant on compassionate ground was rejected vide communication dated 8.2.96 the applicant was relieved from the charge of EDBPM. He was again engaged as EDBPM in pursuance of interim order dated 19.3.96 passed by the Hon'ble Tribunal, Calcutta Bench in O.A. No. 369/96. The said O.A. was disposed of finally on 11.9.96. In pursuance of the direction of the Hon'ble Tribunal given

in order dated 11.9.96 in O.A. No. 369/96 the selection process for regular appointment to the post was started by the respondents. In all 20 candidates including the applicant was sponsored by the Employment Exchange for the post of EDBPM. The candidates were called for in the office of respondent No.3 on 23.7.97 for verification of their bio data. Amongst the 20 candidates, 13 candidates including the applicant was present at the office of the respondent No.3 on 23.7.97. After completing the formalities the respondent No.3 selected the best candidate viz. respondent No.5 as EDBPM. The respondent No.3 accordingly directed the respondent No.4 to make arrangement for joining of the selected candidate to the post of EDBPM. The applicant instead of handing over the charge to the selected candidate filed the present O.A. The Id. counsel for the respondents further submits that according to ED Agent (Conduct and Service) Rules, when an E.D. Agent goes on leave he is required to engage a substitute on his post at his risk and responsibility after obtaining approval of the competent authority. Under this provision the applicant sometimes worked as substitute of his father particularly for a period from 1.8.90 to 31.8.90 and again from 5.2.94 to 25.2.94 when the original incumbent was on leave. Such working as a substitute on a post does not give any right to the substitute to hold a post. So far as the appointment of the applicant on compassionate ground under relaxation of normal rules of recruitment is concerned, the same was examined by the Circle Selection Committee and the same was rejected by the said Committee. No doubt, the applicant was appointed on provisional basis for fixed periods pending finalisation of compassionate appointment. On the rejection of the compassionate appointment the applicant was relieved of the charge of EDBPM. But he was again engaged in pursuance of the interim order dated 19.3.96 passed by the Hon'ble Tribunal, Calcutta Bench in O.A. No. 369/96. This O.A. was finally disposed of on 11.9.96 by direction upon the respondents to fill up the post of EDBPM 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.

In obedience of this order the regular selection on the post was processed and completed by which the respondent No.5 was selected after being found the most suitable candidate amongst the applicants including the applicant of this O.A. The respondent No.5 secured the highest marks amongst all the candidates and he fulfilled all other conditions of income, property etc. required under the rules. The Id. counsel further submits that according to the existing recruitment rules the permanent residence of the selected candidates may be outside the post village but he should take up his residence at the post village before appointment. This condition was also fulfilled by respondent No.5. The concerned Sub Divisional Inspector of P.O. was directed to make arrangement for joining of the selected candidate vide order dated 9.12.97 and accordingly the Sub Divisional Inspector attended the B.O. to take over the charge from the applicant. But he did not hand over the same. Id. counsel submitting the fact of the case as well as the rule position pleaded that once the compassionate appointment of the applicant was rejected he was to be considered like any other candidate. He was considered alongwith other candidates, but he did not stand in the merit vis-a-vis respondent No.5. Therefore, the respondent No.5 was selected for the post and order of appointment to the post was issued. The respondents have strictly followed the departmental instructions on the subject. They have also complied with the direction of the Hon'ble Tribunal given from time to time. They have considered the case of the applicant alongwith other candidates. They have selected the best candidate on the basis of the merit. This being the factual position there has not been any discrimination or malafide or violation of departmental instructions in the case. The Id. counsel, therefore, pleaded that O.A. requires to be rejected without granting any relief.

7. In his supplementary statement the applicant further drew our attention to a news item which appeared in Arambag Patrika, a Bengali weekly newspaper on 29.12.97 in which certain allegations were made against the authorities about the selection of respondent No.5 as well as closure of the Kishorepore B.O. and functioning of the Kishorepore

B.O. from Baradangal Sub Post Office. The respondents denied the allegations and reiterated that the selection has been made strictly according to the prescribed procedure and according to the rules. The orders/directions of the Hon'ble CAT given from time to time in the case have also been fully complied with. The post office had to be closed and shifted to another place because of the adamant and attacking attitude of the applicant and the villagers. Above arrangement was made under intimation to the Gram Panchayat of the village. According to the departmental procedure, the post office has to function but the same was not allowed to function, therefore, the respondents had no other way excepting to close the P.O. and shift the same to another location as a temporary measure which is strictly according to the provisions of the rules. In view of this fact it has been submitted that the respondents have acted according to the prescribed procedure and provision of the rules.

8. We have also seen the relevant records in the case and we find that the selection of respondent No.5 in this O.A. and the petitioner in O.A. No. 1401/98 was made according to the rules and on the basis of merit. The respondent No. 5 in this O.A. and applicant in O.A. No. 1401/98 secured highest marks in Madhyamik examination amongst all the candidates. He secured 573/900 marks whereas the applicant of O.A. No. 1459/97 and respondent No.5 in O.A. No. 1401/98 secured 358/900 marks. Both the candidates fulfilled all the criteria. But the former was selected on the basis of securing the higher marks than the latter which is according to the departmental rules. The respondent No.5 in O.A. 1459/97 and the applicant in O.A. No. 1401/98 had submitted a certificate to the effect of having taken residence in the post village. The same was verified through departmental channel in which it was reported that-

" the selected candidate Sri Raj Kumar Kundu has taken up residence in the post village Kishorepore which is, found to be good for running of B.O. at present. Zerox copy of the agreement of residence is also enclosed herewith for kind perusal."

The said report dated 9.12.97 from Sub Divisional Inspector of P.O., respondent No.4 is addressed to respondent No.3 in O.A. No. 1459/97. Thus this condition has also been complied with according to the rules of the department. It is thus clear from the official record that the respondents have acted according to the rules of the department in the matter.

9. On the basis of the above factual position we find that the applicant in O.A. No. 1459/97 and respondent No.5 in O.A. No.1401/98 applied for compassionate appointment on the death of his father who died in harness. The case was considered by the respondents in the Circle Selection Committee and the same~~s~~ was rejected. Thereafter the adhoc arrangement of the applicant was terminated. The applicant filed an O.A. No. 369/96 against this termination order in which interim order was issued by the Hon'ble CAT, Calcutta Bench that service of the applicant shall not be terminated till regular arrangement is made. This O.A. was finally disposed of on 11.9.96 by continuing the provisional appointment till regular selection was made, in which the case of the petitioner will also be considered, if he is eligible for the same. The respondents acted in compliance of this direction of the Hon'ble CAT and processed the case in which respondent No.5 in O.A. No. 1459/97 and the applicant in O.A. No. 1401/98 was found the best candidate. The entire process of selection by the respondents has been completed according to the departmental rules on the subject. There has not been any violation of any departmental rules and procedures. The case of the applicant in O.A. No. 1459/97 and respondent No.5 in O.A. No. 1401/98 has been duly considered and since the applicant was not the best candidate he could not be selected as EDBPM. The allegation of malafide or discrimination against the applicant in O.A. no.1459/97 and the respondent No.5 in O.A. No.1401/98 is baseless and misplaced. In view of the above discussion, we do not find any justification to interfere in the decision taken by the respondents. We, therefore, reject the O.A. No.1459/97 and allow the O.A.No.1401/98 without passing any order as to costs.

Swami

Mr. T. S. Pillai