

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

CALCUTTA BENCH

No. O.A. 159 of 1997.

Date of Order : 18.07.2003.

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

Hrisikesh Mandal

- VS -

Union of India & Ors.

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 against the order dated 23.02.1996 by which the applicant was informed that since the vacancy is not clear one, the same cannot be offered to any other E.D. Official. The applicant prayed for the following reliefs;

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- i) To direct the respondents to cancel, withdraw and/or rescind the impugned memo dated 23.2.96;
 - ii) To direct the respondents not to hold any interview and/or selection scheduled to be held on 14.2.97, in any manner whatsoever, and/or give any appointment to the said post of EDBPM, Gopinathpur B.O., Midnapore, to the exclusion of the applicant;
 - iii) To direct the respondents to allow the applicant to discharge the duties and functions, attached to the said post of EDBPM at Gopinathpur, Dist. Midnapore, as usual before till the applicant is absorbed/appointed to the said post and/or disposal of the application.
 - iv) To direct the respondents to deal with and/or dispose of the representation dated 3.2.97;
 - v) To direct the respondents to produce the entire records of the case before this Hon'ble Tribunal for adjudication of the points at issue."

2. The brief fact of the case is that the applicant was appointed as Extra-Departmental Delivery Agent(EDDA) at Gopinathpur B.O., on 14.12.79 as per annexure 'A' and has been discharging the duties and responsibilities to the satisfaction of all the concerned. The Extra-Departmental Branch Post Master (EDBPM) at Gopinathpur B.O., was placed under put-off duty on 31.01.1985 and again on 1.1.96 and the applicant was appointed as EDBPM on adhoc basis and he continued on such post till filing of the O.A. on provisional basis. During such provisional basis, the post of EDBPM was advertised some times in December, 1996 and the letters for interview was issued to the candidates for interview/selection on 14.2.97. The applicant submits that by working on the post of EDBPM on ad-hoc basis/provisional basis, he has acquired the experience as well as vested rights for such appointment as EDBPM and, therefore, he should have been considered for regular appointment on the said post. The applicant made representation on 05.01.96 and again on 12.02.96 as per annexure A1/2&3. The same was disposed of by the order dated 23.2.96 enclosed as annexure A-2 in which it was clearly stated that as the vacancy is not clear one, the applicant cannot be offered on the said post. The applicant made further representation enclosed as annexure A-4 on 3.2.97, which has not been disposed of. He has repeated the ground which he has made in the earlier representation and prayed for his regularization as EDBPM Gopinathpur B.O... Aggrieved by inaction on the part of the respondent authorities in not considering his candidature for the post of EDBPM, the applicant filed this O.A. and prayed for the reliefs stated above.

3. Sri Samir Kr. Ghosh, ld. counsel appears ~~for the ld. counsel~~ for the applicant and Sri B. Mukherjee, ld. counsel appears for the respondent authorities. Reply and Supplementary reply have also been filed. No rejoinder to the reply has been filed. We have heard the ld. counsels for both parties, gone through the

O.A., reply and supplementary reply.

4. When this case was taken up on 11.2.1997, an interim order was passed by directing that the process of selection to fill up the post of EDBPM, Gopinathpur B.O., should remain stayed till the date fixed. Accordingly, the process of selection to fill up the post of EDBPM, Gopinathpur B.O. is stayed till date as submitted by the ld. counsel for the respondents.
5. The ld. counsel for the applicant has reiterated the above fact and submitted that the applicant has a fundamental right to apply for any post even if he is holding that post and, therefore, the candidature of the applicant should have been considered for the post of EDBPM, Gopinathpur B.O., by the respondent authorities as prayed ^{for} by him through his representation. The ld. counsel further submitted that the applicant has submitted his application dated 05.01.96 enclosed as annexure A-1/2 and further application dated 12.02.1996 enclosed as annexure A-1/3. But inspite of such applications, the candidature of the applicant is not considered. He submitted further representation on 03.02.1997 enclosed as annexure A-4 but the same has also not been considered. Id. counsel submits that the candidature of the applicant should have been considered for the post of EDBPM, Gopinathpur, B.O., and action should have been taken according to rules. In view of the above submissions, ld. counsel submitted that the prayer made in this O.A. should be allowed and the respondent authorities should be directed to consider the candidature of the applicant for the post of EDBPM, Gopinathpur, B.O.,.
6. Reply and supplementary reply have been filed by the respondent authorities. It has been submitted by the ld. counsel, Sri. B. Mukherjee, ld. counsel for the respondents that the post of EDBPM, Gopinathpur is still vacant since the regular incumbent on the post was placed under put off duty w.e.f. 31.1.95 and

and again on 01.01.96. Regular departmental charge-sheet was issued against the said incumbent and the same remained under process. The said disciplinary proceedings was finalized on 25.10.00 by giving a penalty of dismissal from service with immediate effect. The ld. counsel for the respondents submits that now the post of EDBPM, Gopinathpur, has fallen vacant on regular basis but no action for regular appointment on the post has been initiated so far due to interim order dated 11.2.97. Unless the said order is vacated, no action for regular selection on the post can be taken. The ld. counsel for the respondents further submits that in case the said interim order is vacated and the respondents are allowed to start the process of selection on the vacant post action will be taken for filling up post on regular basis according to rules. In view of this, the ld. counsel submits that by disposing this application the interim order should now be vacated and the respondents should be allowed to fill up the post on regular basis as per rules. The applicant may also take chance for selection if he so likes.

7. In view of the above, it is clear that the post of EDBPM, Gopinathpur has fallen vacant on regular basis as the order dated 25.10.00 was passed in the disciplinary case pending against the regular incumbent Shri Dinesh Acharya by which the regular incumbent has ultimately been dismissed from service. The respondents have not initiated action for regular selection on the post because of the interim order dated 11.2.96. We are of the view that the interim order dated 11.2.96 should be vacated and respondent authorities should be directed to take action for filling up the post of EDBPM as per rules.

8. In view of the above, we dispose of this O.A. by vacating the interim order dated 11.2.96. The respondent authorities shall be at liberty to start the process of selection to fill up the post of EDBPM, Gopinathpur as per rules. No costs.


MEMBER (J)
ASVS.


MEMBER (A)