

CENTRAL ADMINISTRATIVE TRIBUNAL  
BENCH AT MUMBAI

ORIGINAL APPLICATION NO. 1036/94

Date of Decision: 13.1.1999

Shri Gowrishankar Vejinath Tagwala Petitioner/s

Shri B. Dattamoorthy, Advocate for the  
Petitioner/s.

v/s.

Union of India Respondent/s

Shri S.S. Karkera for Advocate for the  
Shri P.M. Pradhan Respondent/s

CORAM:

Hon'ble Shri Justice R.G.Vaidyanatha, Vice Chairman

Hon'ble Shri D.S. Baweja, Member (A)

(1) To be referred to the Reporter or not?

(2) Whether it needs to be circulated to  
other Benches of the Tribunal?

  
(R.G. Vaidyanatha)  
Vice Chairman

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
BOMBAY BENCH 'GULESTAN' BUILDING NO:6  
PREScot ROAD, BOMBAY:1

Original Application No.1036/94

Wednesday the 13th day of January 1999.

CORAM: Hon'ble Shri Justice R.G.Vaidyanatha, Vice Chairman  
Hon'ble Shri D.S.Baweja, Member (A)

Gowrishankar Vaijnath Tagwala  
Extra Departmental Branch  
Postmaster, Ashta Harinarayan  
(Dt. Beed).

... Applicant.

By Advocate Shri B. Dattamoorthy.

V/s.

Union of India through  
Superintendent of  
Post Offices, Beed Division  
Beed.

... Respondent.

By Advocate Shri S.S.Karkera for Shri P.M.Pradhan.

O R D E R (ORAL)

¶ Per Shri Justice R.G.Vaidyanatha, Vice Chairman ¶

This is an application filed under Section 19  
of the Administrative Tribunals Act 1985. The respondents  
have filed reply. We have heard counsel for both sides.

2. The applicant is working as Extra Departmental  
Branch Postmaster at Ashta Harinarayan, Dist. Beed,  
Maharashtra. He has approached this Tribunal apprehending  
the termination <sup>at</sup> the hands of the respondents. His  
case is that he was appointed as Extra Departmental  
Branch Postmaster in place of his uncle who was  
working as Branch Postmaster when he took ill. His uncle  
died on 1.2.1992. The applicant continued in that post.  
A notification dated 13.2.92 was issued seeking application  
for filing up the post of EDBPM. The applicant responded  
to the same notification and applied for the post.  
The applicant was duly appointed by the competent authority  
by order dated 12.7.1993. The applicant has continued

in the post since then and is doing the work to the best of his ability. Now he has received an endorsement from the Competent Authority stating that his request for compassionate appointment has not been approved. The applicant's case is that he has been appointed in pursuance of the notification dated 13.10.1992. Now the applicant apprehend that the respondents may terminate his service. Therefore he has approached this Tribunal for restraining the respondents or his subordinates from terminating the services of the applicant and other consequential reliefs.

3. The respondents in their reply have contended that the applicant was engaged to work in the present post on his uncle's illness and is continued in that post till 1.10.1992. It was only a stop gap arrangement till a regular selection is made as per law. It is ~~not~~ admitted that the applicant has sent an application in response to the notification dated 13.10.1992. According to the respondents the applicant was appointed only on temporary basis till the selection of the regular candidate. The applicant has also made an application for compassionate appointment which was rejected by the Chief Post Master General, Bombay. Since the applicant's request for compassionate appointment has been rejected and since he has not been appointed as per rules, he has no right to continue in the present post and therefore he is not entitled to any relief as prayed for in the O.A.

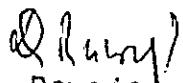
4. Many of the facts are not disputed. In this case the fact that the applicant's uncle was working as EDBPM is not in dispute. It is also not disputed that due to uncle's illness the applicant

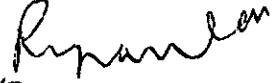
was engaged on stop gap arrangement and continued thereafter till the death of his uncle. It is also brought to our notice that for filling up of the post the department took steps as per rules. The first step was that requisition to the Employment Exchange to sponsor the candidates. The respondents have also brought to our notice that 20 candidates were sponsored from Employment Exchange. Five of them could be communicated and they also declined to take up the job due to poverty etc. Therefore admittedly the step taken by the department to fill up the post through Employment Exchange failed. Then the department published a notification dated 13.10.1992 for filling up the posts. The notification is at page 17 of the paper book. It shows that it is a case of filling up of the posts on regular basis. There is a short point of controversy between the parties. According to the applicant he has responded to the notification and sent an application, which however is denied by the respondents. Subsequently the department has issued an appointment order in favour of the applicant on 12.7.1992. On perusal of the order we notice that it is a case of regular appointment of the applicant with retrospective effect from 1.2.1992. The order does not show that it was a stop gap arrangement or a provisional appointment or appointment on compassionate grounds.

5. It is also an admitted fact that the department has issued the notification. It is true that the applicant's aunt had given an application to the department for compassionate appointment in favour of the applicant and this has not been approved

by the head of the department. It is also not in dispute that in 1992 when a notification was issued the applicant possessed the required qualification for the post. Therefore the applicant was sole applicant and there was no other rival candidate and he was fulfilling all the required qualification. In these circumstances we can hold that it was regular appointment and not an appointment on compassionate ground. It is also seen that right from 1992 till now for nearly 7 years the applicant has worked in that post. It is also seen from the report that the applicant's work throughout is satisfactory. There is no allegation against the work of the applicant. When he fulfills all the required qualification as on the date of notification and he worked in that post for the last 7 years and the applicant's work is satisfactory, we do not find that any case is made out for disturbing him. Even agreeing for a moment that there may be some technical fault in the appointment of the applicant, it is not a fit case that the respondents should now take any action to dis-charge the applicant from the present post.

6. In the result the application is allowed. It is declared that the applicant is regularly appointed to the post in question and is entitled to continue in the same post unless ofcourse his services are terminated under Conduct Rules for mis-conduct etc. In the circumstances of the case there will be no order as to costs.

  
(D.S. Baweja)  
Member (A)

  
(R.G. Vaidyanatha)  
Vice Chairman