

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH, JAIPUR

O.A. No. 120/2000

Date of order: 9.7.2002

Narayan Lal Sharma S/o Shri Ram Gopal Sharma aged about 23 years Resident of Village & Post, Gadhi Sukha (Kanchanpur) Tehsil Bari, Distt. Dholpur and presently holding the post of E.D.B.P.M. (Extra Departmental Branch Post Master) Gadhi Sukha E.D.B.O. (Extra Departmental Branch Office) under Kanchanpura, Sub-Post Office (Dholpur).

...APPLICANT.

v e r s u s

1. Union of India through
Secretary to the Government of India,
Department of Posts, Ministry of Communication,
Dak Bhawan, New Delhi - 110 001.
2. Chief Post Master General,
Rajasthan Circle,
Jaipur - 302007.
3. Superintendent of Post Offices,
Dholpur Postal Division,
Dholpur.

...RESPONDENTS.

Mr. C.B. Sharma, counsel for the applicant.

Mr. S.S. Hassan, counsel for the Respondents.

CORAM:

HON'BLE MR. A.P. NAGRATH, ADMINISTRATIVE MEMBER.

HON'BLE MR. J.K. KAUSHIK, JUDICIAL MEMBER.

: O R D E R :

(Per Hon'ble Mr. J.K. Kaushik, Judicial Member)

Shri Narayan Lal Sharma has filed this Original Application under Section 19 of the Administrative Tribunals Act, 1985, for seeking a direction to the respondents to allow the applicant to work on the post of Extra Departmental Branch Post Master (E.D.B.P.M., for short), Gadhi Sukha E.D.B.O. by quashing the orders dated 02.12.1999 (Annexure A/1) and 21.12.1999 (Annexure A/2) and to give him regular appointment. It has been further prayed that an appointment letter also be issued in favour of the applicant as he has already been considered for the said post.

2. The brief facts of the case has brought out in the O.A. are that applicant's elder brother Shri Ramniwas Sharma, while working on the post of E.D.B.P.M., Gadhi Sukha, expired on 23.04.1998 due to thunder lighting in the sky. The charge of the said post was immediately given to the applicant by the Departmental Authorities on 24.04.1998. He has been discharging his duties satisfactorily.

3. The further case of the applicant is that the wife of late Shri Ramniwas Sharma also submitted an application for appointment on compassionate ground and she has been offered the appointment to the post of E.D.M.C. cum E.D.D.A. at places far away from the village. She has not been given the appointment on the post of E.D.B.P.M., Gadhi Sukha, for the reason that she is having qualification of VIIIth Standard. The qualification can be relaxed but the respondents are adamant not to provide appointment to the widow on the said post. She is being compelled to give consent to the post of E.D.M.C./E.D.D.A. by the respondent no. 3 by relaxing the educational qualification. On the other hand, the

applicant ~~has~~ fulfils all the conditions to the said post and deserves to be appointed on the same. It is also further case of the applicant that provisional appointee cannot be replaced by making another appointment on provisional basis. The application has been submitted number of grounds which we shall deal subsequently.

4. The show cause notices of the O&A. were issued on 22.3.2000 and an interim order for maintaining status qua regarding the applicant with further direction to the respondents not to dis-engage the applicant if not already disengaged, was issued.

5. The respondents have filed a detailed counter reply to the Original Application and have controverted the facts mentioned in the Original Application. It has been specifically brought on record that the widow of late Shri Ramniwas Sharma has already joined on the post of EDMC cum EDDA, Samora under relaxation of normal recruitment rules on compassionate ground vide letter dated 20.11.2000. It has been further submitted that the applicant was only engaged on a stop gap arrangement and the SDI (P), Bari was directed that no post of EDA was to be filled up without approval of Regional Office and also to terminate the stop gap arrangement either by engaging any nearby EDA or mail overseer to hold the charge of EDBO but the applicant refused to hand-over the charge and he was keeping the charge with ulterior motive unauthorisedly. The widow of late Shri Ramniwas Sharma has been given the appointment under relax~~ed~~ standard as per the rules inforce. She was not eligible for appointment to the post of EDBPM since the minimum qualification required for that post which is

matriculation which she did not have. No regular procedure has been adopted for appointment of the applicant and even the Competent Authority has not given the approval and correct facts have not been brought on record. Therefore the O.A. deserves to be dismissed with costs.

6. We have heard the learned counsel for the parties and have carefully perused the records of the case.

7. The factual aspect of the matter is not in dispute, it is not disputed that ~~he~~ the widow of late Shri Ramniwas Sharma has already joined on the post of EDMC cum EDDA, Samora and she has been given appointment under the relaxation of the normal recruitment rules as per ^{her} qualification. The applicant did not face any selection and charge was given to him to meet out the emergency since Shri Ramniwas Sharma, brother of the applicant, suddenly expired and the post of EDBPM was vacant.

8. The learned counsel for the respondents has submitted that the applicant is continuing on the post of EDBPM, Gadhi Sukha in the garb of interim order passed by this Tribunal in his favour and they have filed the M.A. for vacation of the interim order which is also listed today. Since the applicant is continuing on the said post. It has not been possible for them to make the regular selection for the same. It has been further submitted that the applicant has no right ^{least} to say legal or vested right to hold the post and the O.A. deserves to be dismissed and the interim order vacated.

9. On the other hand, the learned counsel for the applicant has submitted that the applicant has already rendered more

than three years service on the post of EDBPM and he is entitled to get the benefit of para 15 of Section 4 method of recruitment of service Rules for postal ED Staff, Swamy's Compilation at page 87 wherein provision has been made for including the name of discharged in waiting list for consideration of giving alternative employment.

10. The learned counsel has taken support of the judgement dated 14 September, 2001 passed in O.A. no. 263 of 2001, Kailash Chand Sharma Vs. Union of India and Ors. ^{by this Bench} wherein it has been held that if a provision ED Agent is continued for more than 3 years his case would be considered for alternative employment. A reliance on para 10 is placed which is extracted as under:-

"The learned counsel appearing on behalf of applicant has placed before us the provisions made in D.G.P.&T.'s letter dated 19th May, 1979 and circular dated 30th December, 1999 in regard to the provisional appointment of ED Agents. We have perused the same and find that the aforesaid instructions, inter alia, deal with the question of finding alternative employment for the ED Agents who may have continued as a provisional ED Agent for more than 3 years. The applicant in the present OAs was appointed on 8.10.1997. From 1.6.1999 he has continued under the stay orders passed by this Tribunal and is supported to be working as provisional basis, even at ~~xx~~ present. Thus, for one reason or the other, he has succeeded in completing more than 3 years as provisional EDBPM and, therefore, technically speaking he is liable to be considered for alternative employment in accordance with the aforesaid circular instructions. The relevant provision made in the said instructions reads as under:-

"Efforts should be made to give alternative employment to ED Agents who are appointed provisionally and subsequently discharged from service due to administrative reasons, if at the time of discharge they had put in not less than 3 years' continuous approved service. In such cases, their names should be included in the waiting list of Ed Agents discharged from service, prescribed in D.G.P. & T. Letter No. 43-4/77-Pen., dated 23.2.1979."

Since the learned counsel for the applicant has made earnest submissions in this regard, we have after some consideration thought it proper to provide by this order that the applicant will be considered for alternative employment in accordance with the aforesaid provisions."

...6...

The learned counsel for the applicant has made earnest submission in this regard and has submitted that the applicant has completed more than 3 years continuous service and his case is fully covered by the aforesaid judgement and the same may be decided by applying the ratio of the said judgement. Further the learned counsel for the applicant has also placed reliance on the judgement of Hon'ble the Supreme Court in Union of India and Ors. Vs. Debika Guka and Ors. 2000 (3) ATJ 362. The order passed therein a very brief and is extracted as under:-

"2. The grievance before us in this appeal is in relation to an order passed by the Central Administrative Tribunal, Calcutta Bench holding that substitute Extra Departmental Agents of the Postal Department who have worked for 180 days or more in one calendar year continuously can claim to be regularised. The Tribunal gave a further direction that the Appellants should determine on the basis of available records the period for which the Respondents have worked continuously and if such period in any calendar year exceeds 180 days, neglecting short artificial breaks, should absorb them in future vacancies, provided they satisfy the eligibility conditions. When similar matters came up before this Court in Writ Petition No. 1624 of 1986 and connected matters, this Court held that the claim on behalf of substitutes ordinarily is not entertainable but made it clear that, however, if they have worked for long periods continuously, their cases could be appropriately considered by the department for absorption. When this Court has already decided that there cannot be a legal claim on the basis that they have worked for 180 days continuously, it may not be necessary for us to consider that aspect of the matter. Indeed, if it is shown that they have worked for long periods continuously, it will be for the department to consider the same whether that was a proper case for absorption or not and pass appropriate orders. Thus, we think the whole approach of the Tribunal is incorrect in the light of the decision of this Court. Therefore, we set aside the order passed by the Tribunal. However, it is open to the Appellants to examine the case of the Respondents, if they have worked for long period, to absorb them, as the case may be. The appeal is allowed."

The applicant has submitted that his case is also covered by the aforesaid judgement of the Apex Court and the case could be decided on the similar lines.

11. On the other hand, the learned counsel for the respondents have submitted that the applicant was not appointed even on provisional basis and he was only given the charge just to meet

the contingency and emergency. The charge was ordered to be taken from him, he had not completed 3 years of service, on the post of E.D.B.P.M. and it is only due to grant of the interim order, he has been continued on the said post and has completed more than 3 years, thus, the ratio of the judgement passed in Kailash Chand Sharma Vs. Union of India and Ors. (Supra) has no application to his case and the question of grant of any alternative appointment to the applicant does not arise. As regards the judgement of Hon'ble the Supreme Court in Debika Guha's case (Supra), the Tribunal order passed by holding that substitute Extra Departmental Agent of Postal Department who have worked for 180 days for more in one calendar year continuously can claim to be regularised as further direction to absorb them in future vacancies, was set aside and only observation was made that it would be offered to appointment, to examine the case by the respondents, if they have worked for long period, to absorb them, as the case may be. Thus no substantive relief was granted in that case and the contention of the applicants are not sustainable. There is no infirmity, illegality or arbitrariness in the action of the respondents, asking the applicant to hand-over the charge of the post of E.D.B.P.M., Gadhi Sukha.

12. We are of considered opinion that the applicant was not appointed on provisional basis inasmuch as no order to this effect has been issued by the Respondents. At the most, the applicant could be considered as a substitute. Thus the para 15 relating to grant of certain benefits to a provisional E.D.A. as indicated in the judgement of Kailash Chand Sharma (Supra) has no application to the case of applicant and no direction relating to grant of any

alternative appointment can be issued in the matter. As regards the other judgement quoted by the applicant i.e. in Debika Guha and Ors.'s case (Supra), no direction for regularisation or absorption as such can be given and it would be for the respondents to examine his case and considered absorption, in case, he has worked for a long period.

13. In this view of the matter, we pass the order as under:-

"The Original Application is dismissed. However, it is open to the respondents to examine the case of the applicant and if he has worked for a long period, to absorb him, as the case may be. Further it is also directed that the applicant shall be continued on the post of E.D.B.P.M. till he is replaced by a duly selected candidate or his case is examined for absorption in the light of observation of Apex Court in Debika Guha's case (Supra), as the may be, which ever later. No order as to costs."


(J.K. KAUSHIK)
Judl. Member


(A.P. NAGRATH)
Adm. Member

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