

REGISTERED

CENTRAL ADMINISTRATIVE TRIBUNAL

BANGALORE BENCH

Commercial Complex(BDA),
Indiranagar,
Bangalore - 560 038

Dated : 21-11-87

Application No. 1095 & 1096 & 1100 to 1104/86(T)

W.P. No 6785 & 6786 & 8048 to 8052 / 83

Applicant

Mallappa Shidagirappa Pujari & Ors

To

1. Shri W.K. Joshi, Advocate, 'MALHAR', 7/10, A-5, Kumarakrupa Road, Bangalore-560 001.
2. Shri MS Padmarajaiah, Senior Central Govt. Standing Counsel, High Court Buildings, Bangalore-560 001.
3. Secretary, Posts and Telegraph Department, New Delhi.
4. The Superintendent of Post Offices, Chikodi Division, Chikodi, Distt. Belgaum - 591 201.
5. Post Master, Chikodi, Distt. Belgaum.

Subject: SENDING COPIES OF ORDER PASSED BY THE BENCH IN
APPLICATION NO. 1095 & 1096 & 1100 to 1104/86(T)

Please find enclosed herewith the copy of the Order/~~*****~~ passed by this Tribunal in the above said Application on 27-11-1986.

Encl : as above.

B. V. Venkatesh Rao
S. R. Registrar
SECTION CLERK
(~~REDACTED~~)

Balu*

CDR
11/10/87

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH, BANGALORE

DATED THIS THE TWENTYSEVENTH DAY OF NOVEMBER 1986

Present : Hon'ble Shri Ch. Ramakrishna Rao ... Member (J)
Hon'ble Shri P. Srinivasan ... Member (A)

APPLICATIONS NO.1095 TO 1096 & 1100 TO 1104/86

Malappa Shidagirappa Pujari,
Aratal, Taluk:Athani,
District Belgaum.

Suresh Shamrao Mujumdar,
Pattankudi,
Taluk:Chikodi,
Distt. Belgaum

Shri M.M. Mane,
ED Packer, Athani Bazar
Post Office, Athani,
Dist. Belgaum.

S.A. Nandashwar,
BPM Post Master Chikodi,
Chikodi, Dist. Belgaum,

S.R. Patil
Pattankudi
Taluk: Chikodi,
District Belgaum.

N.B. Ron,
Athani,
Taluk:Athani,
Distt. Belgaum.

T.R. Patil,
Taluk: Athani
District:Belgaum.

... Applicants

(Shri W.K. Joshi ... Advocate)

V.

Union of India by its Secretary,
Post and Telegraph Department,
New Delhi.

The Superintendent of Post Offices,
Chikodi Division, Chikodi,
Distt Belgaum-591 201,

Post Master,
Chikodi, Distt. Belgaum.

... Respondents

(Shri M.S. Padmarajaiah ...)

P. S. file

This application has come up for hearing before the Tribunal Today. Hon'ble Member (A) made the following:

O R D E R

Two of the applicants before us filed a composite writ petition and the other five another composite writ petition before the High Court of Karnataka which have since been transferred to this Tribunal and taken on file as Applications No.1095 to 1096/86 & 1100 to 1104/86.

2. All the 7 applicants are working as Extra Department Agents (EDA). On 14.11.1982 all the 7 applicants took a test for appointment as Postal Attendants test category. We are told that separate qualifying tests are held for EDA for appointment to the post of Postal Attendants. Results were declared on 17.11.1982 (Annexure A) by which 12 candidates were declared successful, all the 7 applicants being listed therein. Four out of the 12 successful candidates were given appointments by order dated 30.11.1982 (Annexure B). All these four persons are before us. They duly joined duty thereafter. In the said order of 30.11.1982 the names of the other 8 are also listed separately and it was stated that they would be placed on the waiting list and that their services would be used for officiating leave vacancies and no outsider should be appointed unless the waiting list candidates were absorbed. These eight included the other three applicants before us. However, by an order dated 16.3.1983 passed by respondent 2 the results of the test held on 14.11.1982 were cancelled and it was proposed to hold a fresh test for which applications were invited. A list of 30 eligible persons who could take the fresh test was given in that letter which included all the seven applicants. At that stage writ petitions ~~xxx~~ were filed before the High Court of Karnataka. Initially the High Court of Karnataka stayed the scrapping of the old selection list as well as the holding of fresh

P. J. Iyer

test by an order dated 31.3.1983. Subsequently by another order dated 4.10.1983 Court modified the stay to say that while the old select list should not be scrapped the holding of a fresh test could go on in which the applicants were also given the right to appear. It transpires that afterwards the test was held and all the applicants took the test but in the result of the test which was announced on 18.12.1983 only one of the applicants viz. Shri MM. Mane was declared successful while the others had failed.

3. Shri S.K.Joshi, learned counsel for the applicants contends that the old select list in which the names of all the applicants appeared should not have been cancelled and a fresh test should not have been held and that all this was done without giving applicants an opportunity of being heard, thus offending the principles of natural justice. The applicants were not informed why the old list was scrapped and a new test was being held. If the authorities thought that some malpractice had occurred in holding the original test and if they felt that the applicants were responsible for those malpractices they should have given an opportunity to the applicants of being heard before taking the drastic step of cancelling the old select list and holding a fresh list. Four of the applicants had actually been appointed and their services were likely to be terminated without giving an opportunity of being heard. The other three who were on the select list had acquired a right to be appointed

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xxxxxx and this was being denied to them again without hearing them.

4. Shri M.S.Padmarajaiah learned counsel for the respondents produced the records of the respondents to say that an enquiry was made into the conduct of the original test and it was found that Shri P.Fama, the then officaiting Supdt. of Post Offices had indulged in malpractices when conducting the test. Allegation had been made that he had received bribes for issuing appointments. Several representations were received by the respondents from service association referring to these malpractices and also pointing out that as against three months' notice that should have been given for holding the test only one months notice had been given, and 50 candidates were called for the test while only 5 times the available vacancies i.e., only 30 candidates should have been called and finally that a select list of 12 persons had been made as against the existing vacancies of only six. In view of all these, the respondents had no alternative but to cancel the existing list and to hold a fresh test. In this situation it was not necessary to give the applicants an opportunity of being heard.

5. We have given the matter careful thought. Shri Joshi's contention that termination of service of persons who had been selected for appointment after holding a test and denying the opportunity of employment to persons who had been put on the select list and were under the impression that they would be appointed

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Without giving any of them an opportunity of being heard was against the principles of natural justice has substance. If there were malpractices in the office of the respondents and if the applicants were not aware of them, they cannot be made to suffer unless the applicants themselves were parties to the malpractices. In any case the reason for cancelling the result of the earlier test, leading to the cancellation of appointments of 4 of the applicants and the denial of appointment to 3 others should have been put to them and their explanation obtained before scrapping the old list. We, therefore, direct the respondents to give all applicants an opportunity of being heard in the matter before taking a final decision on the question as to whether service of 4 persons already appointed should be terminated and also as to whether the other persons who were on the select list should or should not be offered appointment. At this stage Shri Padmarajaiah interjected to say that since the applicants had taken the second test they had implicitly accepted its validity and, therefore, they cannot now question it. We are not inclined to agree with this because the whole matter turns upon whether the scrapping of the old select list was rightly made without giving the applicants an opportunity of being heard since they were put on that select list in the first

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instance. The role, if any, of the applicants in the irregularities that occurred would be an important factor to be taken into account and that could not be ascertained and acted upon without hearing the applicants. This is an elementary rule of natural justice. It may here be pointed out that the High Court stayed even the holding of the second test but when the stay was lifted the Court gave no opinion as to the validity of holding it. In the circumstances we repeat what we have said earlier that the respondents should give ^{the} ~~the~~ applicants an opportunity of being heard before taking a final decision on scrapping the old select list. Till a decision is taken thereon the persons selected on the basis of the second test should not be offered any appointment. We understand that one of the persons selected in the second test is one of the applicants and that he has accepted the post. His appointment, will not be affected but no other appointments should be offered till the directions given here are implemented.

6. In the result the application are allowed as indicated above, no orders as to costs.

Sd/- Sd/-
Member (J) Member (A)
True copy -
ak.

R. V. Venkatesh s/o
DEPUTY REGISTRAR
CENTRAL ASST. REGISTRAR
ADMIN. DEPT.
BANGALORE