

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

Commercial Complex (BDA)
Indiranagar
Bangalore - 560 038

Dated : 16 JAN 1989

APPLICATION NO. 1577 / 88(F)

W.P. NO. _____

Applicant(s)

Shri K.C. Morab
To

Respondent(s)

V/s The Senior Supdt. of Post Offices, Dharwad & anr

1. Shri K.C. Morab
S/o Shri C.T. Morab
Gandhi Nagar
Vidyagiri
Dharwad - 4
2. Shri M. Raghavendra Achar
Advocate
1074-1075, Banashankari I Stage
Sreenivasanagar II Phase
Bangalore - 560 050
3. The Senior Superintendent of
Post Offices
Dharwad Division
Dharwad - 580 008

4. Shri M.V. Patil
SPM
Garag
Dharwad Taluk
Dharwad District
5. Shri M.S. Padmarajaiah
Central Govt. Stng Counsel
High Court Building
Bangalore - 560 001

Subject : SENDING COPIES OF ORDER PASSED BY THE BENCH

Please find enclosed herewith the copy of ORDER/~~STAY~~/INTERIM ORDER
passed by this Tribunal in the above said application(x) on 10-1-89.

Encl : As above

DEPUTY REGISTRAR
(JUDICIAL)

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE

DATED THIS THE 10TH DAY OF JANUARY, 1989

Present: Hon'ble Shri Justice K.S. Puttaswamy, Vice-Chairman
and
Hon'ble Shri P. Srinivasan, Member (A)

APPLICATION NO. 1577/1988

Shri K.C. Morab,
Aged 45 years,
S/o C.T. Morab,
Gandhi Nagar,
Vidyagiri,
Dharwar.

.... Applicant.

(Shri M. Raghavendrachar, Advocate)

v.

1. Sr. Supdt of Post Offices,
Dharwar Division,
Dharwar.

2. Shri M.V. Patil,
SPM, Garag,
Dharwar.

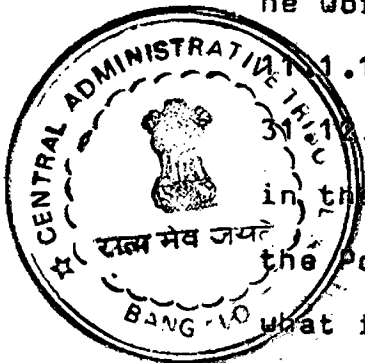
.... Respondents.

(Shri M.S. Padmarajaiah, C.G.S.S.C.)

This application having come up for hearing to-day,
Shri P. Srinivasan, Hon'ble Member (A) made the following:

ORDER

The applicant who entered service in the postal department as a postman in 1969 was promoted as Postal Assistant with effect from 8.12.1972. As a Postal Assistant he worked as an SB Clerk at Dharwar Head Post Office from 1.1.1980 to 31.12.1985 and at Hubli from 1.1.1986 to 31.12.1987. The SB Clerk looks after Savings Bank Accounts in the Post Office. Under an incentive scheme devised by the Postal Department, a Postal Assistant who has passed what is known as the "incentive bonus examination" is given an incentive bonus while working as an SB Clerk in a



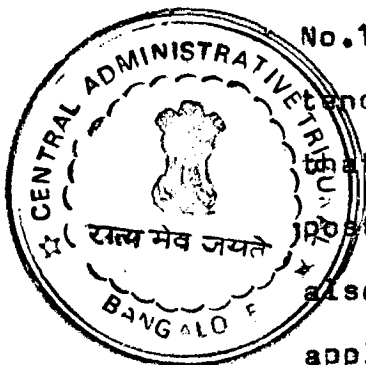
Head Post Office. The incentive bonus consists of a special pay of Rs.20/- per month and 13 paise per Savings Bank Account introduced by him. This incentive bonus is not paid to Postal Assistants who have not passed the examination. The applicant was not paid incentive bonus for the period when he was working as SB Clerk at Dharwar Head Post Office, i.e., upto 31.12.1985. He passed the requisite examination held on 8.12.1985 and he was given incentive bonus as SB Clerk at Hubli (a Head Post Office) from 1.1.1986 till 31.12.1987. With effect from 1.1.1988, he was transferred to the Dharwar Divisional Office. There is no post of SB Clerk in the Divisional Office and therefore, the question ^{of} ~~his~~ receiving any incentive payment while working there did not arise. With effect from 1.5.1988, the applicant was transferred from the Divisional Office, Dharwar to a post office known as Dharwar KVV and there also the question of incentive payment did not arise as it was not a Head Post Office. When he was asked to do SB work in the Dharwar KVV post office, he declined to do so, presumably ^H because there was no incentive payment attached to that post. With effect from 28.6.1988, he was transferred from Dharwar KVV to Gadag post office, once again a place where no incentive bonus is available. This order was made on 28.6.1988. By the same order a certain M.V. Patil who was working in Gadag and who appears as respondent no.2 to the present application was posted to the Dharwar Head Post Office where ^H we are told, ~~that~~ he is working as a SB Clerk. The grievance of the applicant is that he has been denied the post of SB Clerk at the Head office even though a person



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like Shri M.V. Patil who has not passed the requisite examination and who is junior to him has been posted as SB Clerk ^{M as} also some others who are similarly not qualified and ^{H for} junior to the applicant. There are 4 posts of SB clerks in Dharwar Head Office and all the 4 are occupied by persons junior to the applicant who have not passed the examination.

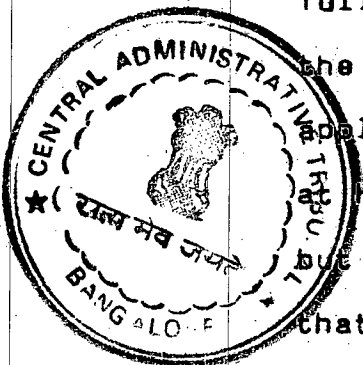
2. Shri M.Raghavendrachar, learned counsel, submitted that the post of SB clerk was a tenure post and when a person who has passed the examination is available only he should be appointed to that post. The applicant worked ~~as SB clerk~~ ^M in Hubli Head Office only for a period of 2 years i.e., from 1.1.1986 to 31.12.1987 as SB Clerk, where he was getting the incentive bonus, having passed the examination. He should not have been transferred from that post without completing the normal tenure of 6 years. In any case, when his juniors were appointed as SB Clerks and particularly, those who had not passed the examination, the applicant should not have been denied appointment as SB Clerk in the Head Office at Dharwar. Shri Achar relies on the decision of the Supreme Court in C.C. Padmanabhan & Others Vs. Director of Public Instruction 1981 (1) SLJ 165 and a decision of the Division Bench of the Karnataka High Court rendered on 2.7.1984 in Writ Petition No.18945 of 1982 (H.S. Bankadmani Vs. Senior Superintendent of Post Offices), in support of his contention that the transfer of the applicant from the tenure ^{M period} post before completion of the tenure was illegal. He also submits that the reply of the respondents to the application clearly indicated that the applicant had been transferred out of the post of the SB Clerk as a punishment measure because of the various acts of



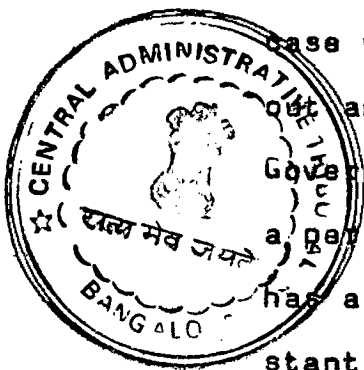
omission and commission complained against him. If that be so, he could not have been transferred without giving him an opportunity ^{to be heard} ~~to be heard~~ in terms of Article 311 (2) of the Constitution and the audi alteram partem rule.

3. Shri M.S. Padmarajaiah, learned counsel for the respondents submits that merely because a period of tenure is fixed for a post it does not mean that a person cannot be transferred out of that post till the completion of the period of tenure. If it was found that the work in a particular post was suffering because of the unsuitability of its incumbent, the respondents were entitled to transfer him from that post in the interest of work. That is all that had happened in this case. The applicant was transferred out of the post of SB Clerk only because the work was not going on smoothly when he was working there. Shri Padmarajaiah submitted that the decision in Padmanabhan's case as well as in Bankadmani's ^{had} no bearing on the present case. This was not a case where transfer was ordered for punishment.

4. We have considered the rival contentions carefully. We have also perused the records produced by the respondents on the subject. We find that the applicant was transferred out of his post as SB Clerk at Hubli from 1.1.1938 not as a measure of punishment but in the interest of work. The respondents found that the work in S.B. Branch was not proceeding smoothly and therefore, they transferred the applicant. No doubt in the process they did notice certain mistakes



committed by the applicant and certain wrong entries made by him in registering^{S M} but they did not consider this a fit case for instituting any disciplinary proceedings^M for imposing any punishment on the applicant. They just took a decision that the work would proceed better if the applicant was transferred out of that post. In fact the applicant did not protest against his transfer from the post of SB Clerk in Hubli because he worked in the Divisional Office Dharwar from 1.1.1988 to 1.5.1988 and at Dharwar KVV till 28.6.1988 and at both places he was not paid incentive bonus. He is challenging the order dated 28.6.1988 by which he was transferred from Dharwar to Gadag and not from the post of SB Clerk entitled to incentive bonus. C.C. Padmanabhan's case was one of reversion from a higher post to which Padmanabhan was promoted to a lower post. The Supreme Court held that the first appointment was a promotion and^{that} therefore the second one posting him back to the former post was a reversion and it was in this context the Court quashed the order making^{M T} second appointment though it was claimed to be a transfer. Similarly, Bankadmani's case was also one of reversion from a higher post without any opportunity of being heard being given to the Government servant. The present one is not a case of a person once promoted being reverted. The applicant has all along been holding the post of a Postal Assistant. We are satisfied that this was not a case of punishment taking an innocuous form.



P. J. K.

5. In view of the above, this application is devoid of merit. We, therefore, dismiss it leaving the parties bear their own costs.



Sd/-
VICE-CHAIRMAN

18/1/89

Sd/-
MEMBER (A)

TRUE COPY

Mr/Mrs.

[Signature]
DEPUTY REGISTRAR (JDL)
CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE

