

CENTRAL ADMINISTRATIVE TRIBUNAL

BANGALORE BENCH

Commercial Complex(BDA)

Indiranagar

Bangalore - 560 038

Dated : 24 JUN 1988

APPLICATION NOS. 368 to 375, 379 to 390 & 599/88(F)

Applicants

Shri S. Adhiraja Hegde & 20 Ors

v/s

The Senior Supdts. of Post Offices,
Puttur, Udupi & Mangalore Divisions
& another

To

1. Shri S. Adhiraja Hegde
Branch Post Master
Hiriangady
Karkala Bazar
Karkala
Dakshina Kannada District
2. Shri B. Narasimha
Branch Post Master
Perinje
Post : Belthangadi
Dakshina Kannada District
3. Shri Julian D'Costa
Branch Post Master
Mavinakatte
(Via) Giddakatte
Bantwal Taluk
Dakshina Kannada District
4. Shri K.P. Gunapala Hegde
Branch Post Master
Daregudde
(Via) Bulvai, Karkala
Dakshina Kannada District
5. Shri M. Vittal Shetty
Branch Post Master
Belady
(Via) Kanthavara
Karkala Taluk
Dakshina Kannada District

Respondents

6. Shri K. Narasimhachar
Sub-Post Master
Borkatte Post
Miyur Village
Karkala Taluk
Dakshina Kannada District
7. Shri T. Srinivasa Naik
Branch Post Master
Nekre (Via) Kukkundur
Karkala Taluk
Dakshina Kannada District
8. Shri B. Krishna Bhandary
Branch Post Master
Kadeshwilya (Via) Uppinangady
Bantwal Taluk
Dakshina Kannada District
9. Shri John B. Cornelio
Branch Post Master
Puttur - 576 125
Dakshina Kannada District
10. Shri Benedict Rodrigues
Branch Post Master
Benne Kudru - 576 210
Dakshina Kannada District
11. Shri K. Marishchandra Dhanya
Branch Post Master
Koni - 576 217
Kundapur Taluk
Dakshina Kannada District

12. Shri S. Govindhan Hegde
Branch Post Master
Alur - 576 233
Dakshina Kannada District

13. Shri M. Ananda Shetty
Branch Post Master
Hirebattu - 576 123
Dakshina Kannada District

14. Shri P. Keshava Nayak
ED Sub-Post Master
Pernankila - 576 141
Dakshina Kannada District

15. Shri B. Shivarama Shetty
Branch Post Master
Belur Devasthan
Bettu P.O. - 576 221
(Via) Kota
Dakshina Kannada District

16. Shri N. Subbanna Karaba
Branch Post Master
P.O. Nanchar - 576 215
Udupi Taluk (Dakshina Kannada)

17. Shri K. Ishwara Rao
E.D. Sub-Post Master
Paniyur
Dakshina Kannada District

18. Shri P. Vishwanath Nayak
E.D. Branch Post Master
Patla - 576 123
A/W Parkala
Udupi Taluk (Dakshina Kannada)

19. Shri B. Shekhar Shetty
Branch Post Master
P.O. Achaldi - 576 225
Via Saligrama
Udupi Taluk (Dakshina Kannada)

20. Shri H. Narayana Shetty
Branch Post Master
Havanje - 576 124
Udupi Taluk (Dakshina Kannada)

21. Shri K. Narayana Holla
Branch Post Master
Kairengala (Via) Kurnad
Bantwal Taluk
Dakshina Kannada - 574 153

22. Shri P. Viswanatha Shetty
Advocate
No. 11, Jeevan Buildings
Kumara Park East
Bangalore - 560 001

23. Shri M. Raghavendra Achar
Advocate
1074-1075, Banashankari I Stage
Sreenivasanagar II Phase
Bangalore - 560 050

24. The Senior Superintendent of Post Offices
Puttur Division
Puttur (Dakshina Kannada District)

25. The Superintendent of Post Offices
Udupi Division
Udupi (Dakshina Kannada District)

26. The Senior Superintendent of Post Offices
Mangalore Division
Mangalore - 575 002

27. The Post Master General
Karnataka Circle
Bangalore - 560 001

28. Shri M. Vasudeva Rao
Central Govt. Stng Counsel
High Court Buildings
Bangalore - 560 001

Subject : SENDING COPIES OF ORDER PASSED BY THE BENCH

Please find enclosed herewith the copy of ORDER passed by this Tribunal
in the above said applications on 17-6-88.

Encl : As above

R.P. Venkatesh
DEPUTY REGISTRAR
(JUDICIAL)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

BANGALORE.

DATED THIS THE SEVENTEENTH DAY OF JUNE, NINETEEN EIGHTY EIGHT.

Coram: Hon'ble Shri Justice K.S. Puttaswamy, Vice-Chairman,
Hon'ble Shri B.N. Jayasimha, Vice-Chairman,
Hon'ble Shri L.H.A. Rego, Member (A).

A. Nos. 368 to 375, 379 to 390 and 599 of 1988

1. S. Adhiraja Hegde,
S/o Poovani Kunre,
57 years, BPM, Hiriangady,
Karkala bazar, Karkala, D.K.
2. B. Narasimha,
S/o B. Ramayya,
57 years, BPM Perinje,
Post: Belthangady Tq., D.K.
3. Julian D' Costa,
53 years, BPM,
Navinkatte Post Voz. Giddakatte,
Bantwal tq., D.K.
4. KP Gunapala Hegde,
s/o K. Neeiraja Shetty,
53 years, BPM Daregudde,
via Bulvai, Karkala.
5. M. Vittal Shetty,
s/o Biramanna Shetty,
55 years, BPM Belady viz.,
Kanthavara Karkala tq., D.K.
6. K. Narasimha char, sub-post master,
Borkatte post, Miyur & village,
Karkakala tq., D.K.
7. T. Srinivasa Naik,
s/o Thimmappa Naik,
57 years, BPM Nakre viz.
Kukkundur Karkala Ta. DK.
8. B. Krishna Bhapadary,
s/o Sheena Bhandary,
BPM, Kedeshwalya via
Uppinanagady, Bantwal Tq.DK.Applicants in A. Nos. 368 to
375 of 1988.
9. John B. Cornelio,
s/o Marshal Cornelio,
44 years, BPM, Puttur-576125.

10. Benedict Rodrigues,
Simon Rodrigues,
55 years, BPM,
Benne Kudru-576 210.
11. K. Harishchandra Dhanya,
S/o B. Govindayya,
57 years,
BPM, Koni-576 217.
Kundapur tq.
12. S. Govindhan Hegde,
s/o G. Sadainna Hegde,
53 years, BPM,
Alur-576 233.
13. M. Ananda Shetty,
S/o K. Mahabala shetty,
53 years,
BPM, Hirebett-576 123.
14. P. Keshavanayak,
S/o P. Rangappa Nayak,
49 years,
ED SPM,
Pernankila-576 141.
15. B. Shivarama shetty,
s/o Kushala Hegde,
53 years, Belur division,
Bettu PO. 576 221. via Kota.
16. N. Subbanna Karaba,
s/o N. N. Narasimha Karaba,
56 years, BPM,
PO. Nanchar-576 215.
Udipi tq. DK.
17. K. Ishwara Rao,
s/o K. Krishnaiah,
57 years,
ED SPM, PANIYUR.
18. P. Vishwanatha Nayak,
S/o Govinda Nayak, P.,
52 years, ED BPM, PATLA-576 123, A/W
PARKALA, Udipi tq. DK.
19. B. Shekhar Shetty,
s/o not known,
BPM, PO. ACHLADI-576 225.
Via Saligrama, Udipi tq. DK.
20. H. Narayana Shetty,
S/o Krishnadas Shetty,
55 years, BPM, HAVANDE-576 124. Udipi tq.

21. K. Narayana Holla,
s/o Koliyur Narayana Holla,
57 years, BPM,
Kairangala via Kurnad,
Batwal tq. DK.574 153.

...Applicant in A.No. 599/88.

(Shri P. Viswanatha Shetty, Advocate for applicants in A.Nos. 368 to 375/88 and 599/88, and Shri M.R. Achar for applicants in A.Nos. 379 to 390/88)
vs.

The Senior Superintendent of Post Offices,
Puttur, Udupi and Mangalore Divisions,
of Dakshin Kannada Dist, and

The Post Master General,
GPO, Bangalore.

....Common respondents.

(Shri M. Vasudeva Rao, Addl. CGSC, for respondents)

These cases having come up for hearing before this Full Bench of the Tribunal on 16.6.1988, and having stood for consideration till this day, Hon'ble Shri Justice K.S. Puttaswamy, Vice-Chairman, made the following:

JUDGMENT

On a reference made by a Division Bench, and the further order made thereon by the Hon'ble Chairman under Section 5(4)(d) of

the Administrative Tribunals Act, 1985 ('the Act'), these cases have been posted before us for disposal.

Applicants in A.Nos. 369, 381 and 385 of 1988 are working

as whole time teachers in Government Primary Schools of the place

where they are residing. All the other applicants are working as

whole time teachers in the primary schools established and maintained

by private managements which are in receipt of grants from Government

of Karnataka (GOK) under the Grant-in-Aid Code Rules made by that

Government.

3. When working as teachers in their respective schools, the applicants with the prior permission granted by the competent authorities of the Education Department of GOK, and the private managements, as is the case, have been appointed and are working as 'Extra-Departmental Agents' (EDAs) for different periods in one or the other Branch Post Office where they are of the place/working as teachers in accordance with the Posts and Telegraphs Extra-Departmental Agents (Conduct & Service) Rules, 1964 (ED Rules). In separate but identical orders made on 8.1.1988, 20.1.1988 and 9.2.1988, the Superintendents of Post Offices of the respective Divisions of the District of Dakshin Kannada (Superintendents), have terminated the services of the applicants from the dates specified in the respective orders made by them. In these separate but identical applications made under Section 19 of the Act, the applicants have challenged, on diverse grounds, the respective termination orders made against them, which will be noticed and dealt by us in due course.

4. In their separate but identical replies, the respondents have resisted these applications.

5. On an earlier occasion, these cases were heard by a Division Bench consisting two of us, viz., K.S. Puttaswamy, Vice-Chairman, and L.H.A. Rego, Member (A). On 25.3.1988, we

referred these cases to the Hon'ble Chairman to be placed before a larger Bench. On that reference, the Hon'ble Chairman has posted these cases before us for disposal.

6. Sriyuths P. Viswanatha Shetty and M. Raghavendrachar, learned advocates, appeared for the applicants. In the course of our order hereafter, we will refer to them as Shri Shetty. Shri M. Vasudeva Rao, learned Additional Standing Counsel for the Central Government, appeared for the respondents.

7. Shri Shetty has urged that the termination of the applicants, who are civil servants of the Union of India (UOI) was in contravention of Article 311 of the Constitution, the Rules, the principles of natural justice, the orders made thereto by Government from time to time, and therefore illegal and invalid. In support of his contention, Shri Shetty has strongly relied on the ruling of the Supreme Court in SUPERINTENDENT OF POST OFFICES v. P.K. RAJAMMA (1977 SCC L&S 374) and a Division Bench ruling of the Karnataka High Court in JAGADISH PATIL v. STATE OF KARNATAKA (1981 (1) KLJ 443).

8. Shri Rao had sought to support the impugned orders of the Superintendents.

9. When the applicants were appointed as EDAs, they were indisputably working as whole time teachers either in a



Government School or a Government-aided private school. On that fact situation, they sought for, and obtained, prior permission to be appointed as EDAs under the EO Rules from the competent officers of the Education Department, evidently in accordance with Rule 284 of the Non-Gazetted Officers - P.O. & R.M.S. made by Government. But for that previous permission, the applicants would not have been appointed as EDAs, is not in dispute.

10. On 11.11.1976, GOK, as a matter of policy, decided and conveyed that the permission accorded to whole time teachers to work as EDAs be withdrawn in a phased manner within a period of six months. That order, which is the basis for terminations of the applicants, reads thus:

" With reference to the correspondence resting with your letter No. E 15. 1099-Misc. 516/73-74 dated 2.11.76, on the subject mentioned above, I am directed to convey the approval of Government that the services of the teachers who are working as Branch Post masters be withdrawn in a phased programme within a period of six months."

On the basis of this order, the Superintendents had earlier attempted to terminate the services of some of the applicants, the validity of which had been challenged by them before the High Court of Karnataka and those cases, on transfer, were disposed of by us on 11.9.1986 (Annexure-Q), leaving open all issues. On the disposal of the earlier cases, the Superintendents apparently taking the view that the order of Government made on

11.11.1976, left them no choice, have terminated the services of the applicants.

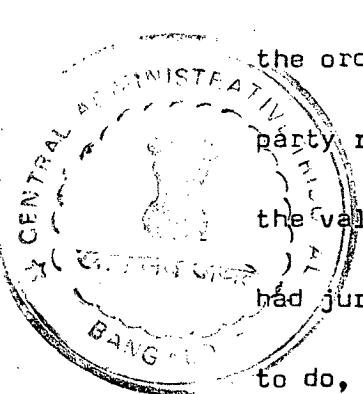
11. The order made by the Superintendent, Puttur, against the applicants in A.Nos. 368 to 375 of 1988, and 2 others, on 8.1.1988, reads thus:

"In view of Govt. of Karnataka orders withdrawing permission to teachers to work as BPMs, please take notice that your service as BPM ED Sub-Postmaster will be terminated at the end of this Academic year i.e., by 31.3.1988."

The orders made against others also are on the same lines.

12. From the impugned orders, and otherwise also, it is crystal clear that the terminations of the applicants are founded on the order made by GOK on 11.11.1976.

13. In these cases, the applicants have not challenged the order of GOK and had not impleaded that Government as a party respondent. In their absence, we cannot really examine the validity of the order dated 11.11.1976 of GOK, even if we had jurisdiction to do so, which, prima facie, we are not competent to do, though so stating, we have upheld its validity in A.No. 191 of 1986 (SMT. KAMALAVATHI v. SENIOR SUPERINTENDENT OF POST OFFICES, MANGALORE & OTHERS). We, therefore, refrain from examining the validity of the order of the GOK dated 11.11.1976. On this view,



we propose to examine one of the questions that was not raised and decided in KAMALAVATHI's case. We, therefore, consider it wholly unnecessary to decide on its correctness or otherwise, on which both sides made elaborate submissions and which was one of the reasons for our reference to this Full Bench also.

14. When GOK, as a matter of policy, had decided to withdraw the permissions granted and had communicated the same, we cannot also hold that the UOI and its officers can ignore the same. This is also true of the Government-aided institutions. But, as to how they should deal with the same is essentially a matter for them to decide.

15. In RAJAMMA's case, the Supreme Court ^{has} held that the posts of EDAs were civil posts under the UOI and those holding them were civil servants of the UOI.

16. The removal of the applicants or actions against them are based on the order of GOK. Their removals are not on grounds of any alleged misconduct. In that view, the question of the ^{procedure for} Superintendents complying with the requirements of/removals in disciplinary proceedings, Article 311 of the Constitution, the ED Rules and the principles of natural justice will not arise.

We are of the view that the principles enunciated by the Supreme Court in RAJAMMA's case and the Karnataka High Court in JAGADISH

PATIL's case do not bear on this aspect.

17. Before terminating the services of the applicants, the Superintendents had not issued them the requisite notices as enjoined by the Director General of Posts & Telegraphs (DG) in his Lr.No. 43-34/79, Pen. dated 17.4.1979. In that letter, the DG had directed thus (vide page 37 of Swamy's Compilation of Service Rules for Posts & Telegraphs Extra-Departmental Staff):-

" It has been brought to the notice of this office that ED Agents who are otherwise employed as teacher etc. are being removed from service indiscriminately. The following instructions are issued in this regard:-

- (i) ED Agents who are working as teachers etc., should be removed from service only if the general public and the Gram Panchayat etc., complain in writing that their working simultaneously as EDAs and teachers is not satisfactory. They should be removed from service only after enquiry and after following the procedure for taking disciplinary action against EDAs;
- (ii) Where the working hours of the Post Offices and that of the Schools clash, they should be asked to resign either of the posts, and if they fail to do so, they should be removed from service, after following the prescribed procedure.

2. The timings of the ED Post Offices should be fixed to suit the convenience of the general public and departmental needs."

The instructions contained in this letter of the DG were undoubtedly binding on the Superintendents.

18. Before terminating the services of the applicants, the Superintendents were bound to issue notices in terms of



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the letter of the DG, consider the representations and choices to be made by them, and pass appropriate orders as the circumstances justify in each case.

19. Shri Rao sought to rely on the earlier notices issued in 1979 or so to some of the applicants. We have perused some of those notices produced before us. We are of the view that those notices cannot be construed as notices issued in terms of the order made by the DG. Even if they are so construed, then also having regard to the long lapse of time, we consider it proper not to act on those notices, and uphold the orders of terminations made against the applicants. On this view also, we consider it proper to annul the terminations of the applicants, reserving liberty to the Superintendents to issue proper notices to each of the applicants, consider their cases and pass appropriate speaking orders, in each case.

20. On this view, we consider it unnecessary to deal with all other questions, and leave them open.

21. In the light of our above discussion, we make the following orders and directions:

(1) We quash the impugned orders of terminations made by the respective Superintendents against each of the applicants. But this order does not prevent the respective Superintendents from issuing proper option and show cause notices to the applicants, consider their representations and choices, if any, to be made by them, and pass appropriate orders in each case.

/11/

in accordance with law, and the observations made in this order.

22. Applications are disposed of in the above terms. But in the circumstances of the cases, we direct the parties to bear their own costs.

Sd/-

(K.S. PUTTASWAMY, J.)
VICE CHAIRMAN

Sd/-

(B.N. JAYASIMHA)
VICE CHAIRMAN

17.6.98

Sd/-

(L.H.A. REGO) N 7.6.98
MEMBER(A)

TRUE COPY



R. A. D. [Signature]
DEPUTY REGISTRAR (JDL) *2/6/98*
CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE