

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

Second Floor,
Commercial Complex,
Indiranagar,
Bangalore-560 038.

Dated: 20 AUG 1993

APPLICATION NO(s). 100 of 1993.

Applicant(s) Amaresh

v/s. Respondent(s) Superintendent of
Posts, Raichur and Others.

To

1. Sri. Amaresh, S/o. Kadappa, Branch Post Master, Tidigal, Sindhanur Taluk, Raichur District.
2. Sri. S. S. Hosur, Advocate, 852, Third 'C' Main, E-Block, Second Stage, Rajajinagar, Bangalore-10.
3. The Superintendent of Post, Raichur.
4. The Sub-Divisional Inspector, Tidigal, Sindhanur Taluk, Raichur District.
5. Sri. Amargundayya Swamy, S/o. Veerappayya, R/o. Tidigal, Sindhanur Taluk, Raichur District.
6. Sri. M. Vasudeva Rao, Central Govt. Stng. Counsel, High Court Building, Bangalore-1.

SUBJECT:- Forwarding of copies of the Order passed by
the Central Administrative Tribunal, Bangalore Bench
Bangalore.

Please find enclosed herewith a copy of the ORDER/
STAY/INTERIM ORDER passed by this Tribunal in the above said
application(s) on 03-08-93.

Mr. J. S. J. S.
for DEPUTY REGISTRAR
JUDICIAL BRANCHES
20/8/93

short) terminating his services from the post of Branch Post
Master (BPM for short), Tidigal and appointing R-3 in his place.



2. Briefly stated the case of the applicant is as below:

The applicant who is a resident of Tidigal village, and who has passed SSLC examination came to be appointed as BPM provisionally to the vacant post by R-1 by order dated 25.4.1992 (Annexure A-1). In spite of the rule 14 of the ED Agents Rules (Rules for short) stating that the appointing authority R-1 has got the power to transfer/absorb/terminate, R-2 terminated the service of the applicant even without holding any enquiry and has required the applicant to hand over charge to R-3 who was appointed in his place. The applicant made a representation as in Annexure A-3 to the higher authority. R-3 is unfit for the post because as Secretary of VSNN, he had misappropriated society amounts and there is also criminal case pending against him for offences punishable under Sections 504, 506, 323 and 355 Indian Penal Code. Hence the applicant is seeking to quash the impugned order in Annexure A-2 dated 21.2.1992 and to pass such other order deemed fit.

3. R-1 and 2 who have filed their reply, oppose the application on the following grounds. One Malleshappa, BPM, Tidigal, was removed from service by memo dated 30.3.1992 for certain irregularities after holding the prescribed procedure under Rule 8 of EDDA Rules. The SDI, Sindnoor, was directed to provisionally appoint to the said post of BPM. Meanwhile a notification was issued to the Employment Exchange (EE for short), Raichur, to send a list of eligible candidates for the said post of BPM, Tidigal. The SDI, Sindnoor, appointed the applicant to the post of BPM Tidigal only on provisional basis with effect from 25.4.1992 (Annexure A-1). The provisional appointment was subject to termination of the service of the applicant when regular appointment was made and that applicant was not entitled

to make any claim for the post along with some other conditions. Because the EE did not sponsor the candidates within the stipulated time, a local notification calling for the applications was issued and Amaragundayya, R-3 herein and the applicant, have made applications. In the meanwhile a complaint from the Secretary, W.S.S.N. Society Niyamata, Tidigal, was received alleging that Amaragundayya, R-3, while working in the Society misappropriated an amount of Rs.6,000 and he was removed from service. But the enquiry revealed that there was no documentary evidence to show such a position and the allegation was due to personal enmity between the Secretary of the Society and R-3 besides there was no complaint registered against the R-3 in the police station in this regard. After considering the respective merits and aspects of the case, R-3 was selected to the post of BPM on 16.11.1992 because he had secured more marks in SSLC examination and had more landed properties than the applicant. After selection SDI, Sindhanoor, was directed to appoint R-3 as BPM Tidigal on regular basis on 23.11.1992 terminating the provisional appointment of the applicant. When SDI, Sindhanoor visited Tidigal on 30.11.1992 for making regular appointment he found the applicant was unauthorisedly absent from duty from 25.11.1992 and did not open the office upto 7.12.1992. Even after six months the applicant was holding the charge of the office by refusing to hand over charge to the regularly selected candidate. The applicant being provisionally appointed has no vested right to the post when regularly selected candidate is appointed for the post particularly when R-3 is having better qualification and higher income. The termination of the service of the applicant is not on the ground of any misconduct but because of regular selection made to the post. Thus the applicant cannot maintain this application at all.



4. We have heard Shri S.S. Hosur, learned counsel for the applicant and Shri M.Vasudeva Rao, learned Addl. Standing Counsel for Respondents 1 and 2 and perused the records produced by the department.

5. According to the learned counsel for the applicant, the applicant came to be appointed by R-1 the SPO, Raichur and, therefore, R-2 the SDI Sindanur, has no authority to terminate the service having regard to Rule 14 of the E.D. Staff (Service and Conduct) Rules. But the learned counsel had to admit that the applicant was appointed only by R-2 the SDI and not by R-1 as can be seen from Annexure A-1 produced by the applicant himself. Therefore, the appointing authority is R-2 and not R-1. Besides though the appointment came to be made to a vacant post it was a provisional appointment till a regular appointment was made and, therefore, the applicant has no right to claim that his services cannot be terminated without holding a regular inquiry. It is not the case of the applicant that he was removed because of any misconduct on his part. The termination of the services of the applicant was due to the fact that the appointment of the applicant was provisional and that a regular selection and appointment was made as per Annexure A-2. Such an order of termination is not open to challenge by the applicant. Because of provisional appointment, the applicant did not get any right to that post and the order of appointment has made clear that his services were liable to be terminated without notice when regular selection is made. Therefore, we do not find any merit in this contention of the learned counsel for the applicant.

H

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH : BANGALORE

DATED THIS THE THIRD DAY OF AUGUST 1993

present:

Hon'ble Shri S. Gurusankaran ... Member (A)

Hon'ble Shri A.N. Vujjanaradhya .. Member (J)

APPLICATION NO.100/93

BETWEEN:

Ameresh,
S/o Kadappa,
Aged about 22 years,
Occupation : Service,
Branch Post Master, Tidigal,
Taluk Sindhanur,
District: Raichur.

Applicant

(Shri S.S. Hosur ... Advocate)

v.

The Superintendent of Post
Offices, Raichur.

The Sub Divisional Inspector
(Tidigal),
Taluk Sindhanur,
District Raichur.

Sir Amargundayya Swamy,
S/o Veerappayya,
R/a Tidigal,
Taluk:Sindhanur,
Distt: Raichur.

Respondents

(Shri M.Vasudeva Rao ... Advocate for R-1 and 2)

This application having come up for orders before this
Tribunal today, Hon'ble Shri A.N. Vujjanaradhya, Member (J),
made the following:

ORDER

1. In this application filed under Section 19 of the Administrative Tribunals Act, 1985, the applicant is aggrieved by the order dated 2.12.1992 issued by the 2nd respondent (R for short) terminating his services from the post of Branch Post Master (BPM for short), Tidigal and appointing R-3 in his place.



2. Briefly stated the case of the applicant is as below:

The applicant who is a resident of Tidigal village, and who has passed SSLC examination came to be appointed as BPM provisionally to the vacant post by R-1 by order dated 25.4.1992 (Annexure A-1). In spite of the rule 14 of the ED Agents Rules (Rules for short) stating that the appointing authority R-1 has got the power to transfer/absorb/terminate, R-2 terminated the service of the applicant even without holding any enquiry and has required the applicant to hand over charge to R-3 who was appointed in his place. The applicant made a representation as in Annexure A-3 to the higher authority. R-3 is unfit for the post because as Secretary of VSNN, he had misappropriated society amounts and there is also criminal case pending against him for offences punishable under Sections 504, 506, 323 and 355 Indian Penal Code. Hence the applicant is seeking to quash the impugned order in Annexure A-2 dated 21.2.1992 and to pass such other order deemed fit.

3. R-1 and 2 who have filed their reply, oppose the application on the following grounds. One Malleshappa, BPM, Tidigal, was removed from service by memo dated 30.3.1992 for certain irregularities after holding the prescribed procedure under Rule 8 of EDDA Rules. The SDI, Sindnoor, was directed to provisionally appoint to the said post of BPM. Meanwhile a notification was issued to the Employment Exchange (EE for short), Raichur, to send a list of eligible candidates for the said post of BPM, Tidigal. The SDI, Sindnoor, appointed the applicant to the post of BPM Tidigal only on provisional basis with effect from 25.4.1992 (Annexure A-1). The provisional appointment was subject to termination of the service of the applicant when regular appointment was made and that applicant was not entitled

M

6. It was next contended by the learned counsel for the applicant that R-3 was unfit to be appointed as BPM because he had misappropriated certain amounts in the Society and that criminal case is also lodged against him. From the records produced by the department it is seen that the allegation regarding misappropriation of the funds of the society, there was no material forthcoming and that even no complaint was made to the police in this regard. Besides it is also disclosed from the records that the removal of R-3 was due to the fact of enmity between the Secretary of the Society and R-3. The selection of R-3 came to be made on 16.11.1992 whereas the complaint alleging utterances of certain derogatory words and abuses and assault came to be filed against R-3 by one Malappa of Hampanal village only on 31.12.1992 upon which, it is not the case of the applicant that any charge sheet is filed against the applicant. The matter in pursuance of this First Information Report recorded by the Police on 1.1.1993 may be under investigation and this subsequent complaint that too making some allegations of abuse and assault cannot disqualify R-3 for the appointment unless those allegations are established in a competent court of law. At this stage, on the basis of such complaint R-3 cannot be found to be unfit for the post to which he is appointed. Besides the question of moral turpitude also arises for consideration that the department has produced material to show that R-3 has secured more marks in SSLC than the applicant, and further that income of R-3 is also more than the applicant and further R-3 is holding some landed property also which had influenced preferring of R-3 to the applicant. Thus we



his b
find no irregularity in the selection of R-3 and appointment as BPM Tidigal and consequent termination of the services of the applicant. The allegation that R-2 is interested in R-3 is not supported by any material and the applicant was at a loss to place any material to substantiate the same.

7. After the application was filed, ^{the A} though interim stay sought by the applicant was not granted in this application. However, the applicant had continued to hold the post and also succeeded in obtaining an order from SPD, Raichur, to the effect that handing over charge ^{would b} be kept in abeyance for the time being which order is dated 29.1.1993. Subsequently R-3 was allowed to run the present Post Office in a different premises from 25.6.1993 and the applicant has not been made any payment from that date, was the submission made by the learned counsel for R-1 and 2. This position was not disputed by the learned counsel for the applicant. It was also submitted before us that the applicant was made payment till 25.6.1993 upto which he was running the Branch Post Office.

8. The appointment of the applicant made provisionally did not create any right in him to claim ^{to urge b} that his services should have been b be terminated only by holding enquiry and in accordance with rules and not otherwise, is not tenable as was found already having regard to the provision contained in ^{cl (iii) b} Section 3 relating to method of recruitment in EDDA Rules. The termination of services of the applicant being in accordance with the rules, the applicant cannot make any grievance of the same. Therefore, he is not entitled to urge that Annexure A-2 terminating his services should be quashed and consequently he cannot get any remedy whatsoever in this application. However, we may

ANW

observe that as and when a vacancy again arises for making any fresh appointment, the case of the applicant may be considered along with other eligible candidates taking into account his past services. With these observations the application which lacks merit will have to be dismissed and it is accordingly dismissed. No costs.

Sd-

MEMBER (J)

Sd-

MEMBER (A)

TRUE COPY

OR. *[Signature]* S
SECTION OFFICER
CENTRAL ADMINISTRATIVE TRIBUNAL
ADDITIONAL BENCH
BANGALORE
26/8/93

