

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

Second Floor,
Commercial Complex,
Indiranagar,
Bangalore-38.

Dated: 10 JAN 1994

APPLICATION NO(s) 749 of 1993.

APPLICANTS: S.K.Manjunatha v/s RESPONDENTS: Sr.Suptd.of Post Offices
Shimoga Division, and Others.

TO.

1. Sri.G.Venkatachala,
Advocate, No.16,
Second Floor,
S.S.B.Mutt Bldgs,
Tank Bund Road, Bangalore-9.
2. The Senior Superintendent of Post Offices,
Shimoga Division, Shimoga-577202.
3. Sri.G.Shanthappa, Addl. Central Govt. Sg. Counsel,
High Court Bldg, Bangalore-1.

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

-xxx-

Please find enclosed herewith a copy of the
ORDER/STAY ORDER/INTERIM ORDER/, Passed by this Tribunal
in the above mentioned application(s) on 749 03-12-1993.

R. Shanmugam
DEPUTY REGISTRAR
JUDICIAL BRANCHES.

gm*

CETRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

O.A.No.749/93

FRIDAY THIS THE THIRD DAY OF DECEMBER 1993

Shri Justice P.K. Shyamasundar ... Vice-Chairman

Shri V. Ramakrishnan ... Member [A]

S.K. Manjunatha,
S/o late Sri Kalanaika,
Major,
Ex.Branch Post Master,
Sindhuwade Post,
Mandagadde,
Thirthahalli Taluk,
Shimoga District.

... Applicant

[By Advocate Shri G. Venkatachala]

v.

1. The Sr. Supdt. of Posts,
Shimoga Division,
Shimoga-577 202.
2. The Asst. Supdt. of Posts,
Shimoga West Sub-Division,
Shimoga-577 201.
3. Sri I.C. Prasad,
Branch Post Master,
Sinduwadi Post,
Thirthahalli Taluk,
Shimoga District.

... Respondents

[By Advocate Shri G. Shanthappa
Addl. Central Govt. Standing Counsel]

ORDER

Shri V. Ramakrishnan, Member [A]:

The applicant S.K. Manjunath has sought a direction to the Postal Department to reinstate him as Extra Departmental Branch Post Master ['EDBPM' for short], Sindhuwade.

2. The applicant was provisionally appointed as EDBPM with effect from 8.1.1992 by order at Annexure A-2. It was made clear

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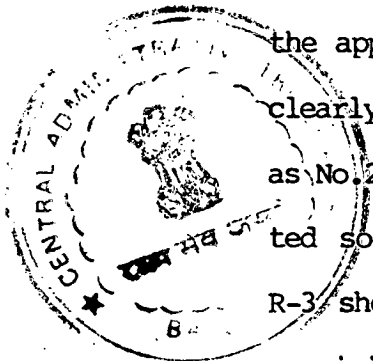
in the said order that the provisional appointment would be terminated when regular appointment was made. Subsequently the applicant was informed orally that Respondent ['R' for short] 3, I.C. Prasad has been selected for the post and he should hand over charge to Prasad. The applicant is aggrieved that he was not given an opportunity to state his case nor was he formally removed from the post. He had represented to the Department as at Annexure A-3 requesting that he should be continued as EDBPM and not be replaced by Shri Prasad.

3. The department's stand is that in response to their advertisement to fill up the post on regular basis 4 candidates were sponsored by the Employment Exchange and the applicant as also R-3 figured in the list forwarded by the EE. The department went into the question of selecting the candidate for the post and decided that R-3 who has passed 9th standard and who has an annual income of Rs.20,000 was the most suitable person. However, as there was a criminal case pending against him, he was not offered the appointment but the applicant was provisionally appointed to the post in 1992. According to the department, later on the criminal case was closed and R-3 was exonerated and the Department, therefore, proceeded to replace the applicant with R-3.

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4. We have gone through the records where the case of the applicant and R-3 were considered by the department. R-3 although served is absent and is placed ex-parte. We find that in the statement showing the particulars of various applicants, there is a recommendation that R-3 Prasad should be appointed to the post primarily because his annual income is highest of the 4 candi-

dates. The statement also indicates that the candidate was involved in a criminal case. The service rules for ED staff clearly provide that so far as the educational qualifications are concerned the minimum requirement is 8th standard but candidates possessing matriculation or equivalent qualification should be preferred. As regards the income, the candidate must be one who has adequate means of livelihood. It is admittedly the position that the applicant has passed SSLC whereas R-3 had passed only 9th standard. The department has not complied with the instructions that person possessing matriculation or equivalent qualification should be preferred inasmuch as it disregarded the claim of the applicant and selected R-3. The stand taken by the department that R-3 has higher income is not relevant as nowhere they have brought out that the applicant does not have adequate means of livelihood which is all that is required under the relevant instructions.

5. We, therefore, hold that the department ^{while undertaking} ~~has not applied~~ ~~its mind to~~ the process of selection ~~and~~ have not complied with the relevant instructions. We accordingly quash the appointment of R-3. The fact that the department provisionally appointed the applicant pending disposal of criminal case against R-3 would clearly show that in their assessment the applicant was graded as No.2. In the circumstances the applicant whose case was rejected solely on the ground that his income is less than that of R-3 should be offered the appointment as EDBPM to which he was provisionally appointed in the place of R-3. Now that the appointment of R-3 is quashed the department has to chose and appoint the applicant S.K.Manjunatha. The direction in this regard should be complied within a period of one month. No costs.



TRUE COPY

Sd/-
SECTION OFFICER
CENTRAL ADMINISTRATIVE TRIBUNAL
ADDITIONAL BENCH
BANGALORE
MEMBER [A]

Sd/-
VICE-CHAIRMAN

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH, BANGALORE

REVIEW APPLICATION NO.6/1994
IN O.A.NO.749/1993

THIS
MONDAY / THE THIRTEENTH DAY OF MARCH, 1995

MR. JUSTICE P.K. SHYAMSUNDAR VICE CHAIRMAN
MR. V. RAMAKRISHNAN MEMBER (A)

I.C. Prasad
Branch Post Master,
Sinduwadi Post,
Thirthahalli Taluk,
Shimoga District Applicant

(By Advocate Shri M.V.Vedachala)

v.

1. The Sr.Suptd. of Posts,
Shimoga Division,
Shimoga - 577 202
2. The Asstt. Supdt. of Posts,
Shimoga West Sub Division,
Shimoga 577 201
3. S.K. Manjunatha
S/o late Shri Kalanaika,
Ex Branch Post Master,
Sindhuwadi Post, Manadagadde,
Thirthahalli taluk,
Shimoga District Respondents

(By learned Standing Counsel)
Shri M.V. Rao for R-1 & 2
Shri G. Venkatachala for R-3

O R D E R

MR. JUSTICE P.K. SHYAMSUNDAR, VICE CHAIRMAN

We have heard Shri Vedachala for the review
petitioner as also the very sticky submissions made
on behalf of the contesting respondent No.3 by
Shri Venkatachala, Advocate. The dispute herein
is regarding the order we made on 3.12.93 while

disposing of O.A.No.749/93 quashing the appointment of review applicant as Extra Departmental Branch Post Master (EDBPM for short) at a village called Sindhuwadi in Thirthahalli Taluk of Shimoga District. The review applicant who himself was a party respondent in that application had remained absent on four successive dates of hearing i.e. on 4.11.93, 11.11.93, 30.11.93 and 3.12.93 despite service of notice on him. On 3.12.93, he was placed ex parte after noting his absence. On that date, we allowed that application by directing the Department to consider the applicant in the O.A. for appointment in place of the review applicant mainly on the ground that the review applicant was less qualified educationally than the applicant in the O.A. It transpired that the applicant in the O.A. was an SSLC passed whereas from the records produced before us it transpired that the review applicant was only a 9th standard pass. The service rules for the ED staff clearly provide that so far as educational qualifications are concerned, the minimum requirement is 8th standard but a candidate possessing matriculation or equivalent qualification should be preferred. Mainly on the ground that the applicant in OA 749/93 Shri Manjunath was an SSLC whereas the review applicant Shri I.C. Prasad was only 9th standard pass, we asked the Department to give the appointment to the former. The review applicant is aggrieved by the aforesaid order of the Tribunal and has herein filed this review application.

2. When it was pointed out that although the review applicant had been served in due course, he had remained absent, learned counsel for the applicant told us that the review applicant had been given an assurance by the Sr. Suptd.. of Posts, Shimoga Division that his case will be taken care of by the Department's counsel. Finally, when it did go against him, he filed this review application in which he says that he was misled by the departmental authorities in regard to the need for defending his own appointment by arranging for suitable representation in that behalf. It also transpires that he had come to Bangalore on 17.11.93 and met with an accident which resulted in serious personal injuries as a consequence of which he was obliged to take treatment in a private hospital at Rajamahar Vilas Hospital, Bowring Hospital and also M.S. Ramaiah Hospital at Bangalore. Shri Vedachala says that the man was fighting for his life following the mishap, was so gravely injured that it required medical assistance at three different hospitals in Bangalore and that was the reason why he neglected his own interest by not appearing before this Tribunal. He says that the applicant should not suffer because of a quirk of fate due to an accident in which he was badly injured. He has also produced some documents along with the review application relating to the educational qualifications of the review applicant. He points

out that his client is not merely SSLC passed but has even passed PUC from the Mysore University. On the basis of these documents it is urged that a comparative table of the educational qualifications of the review applicant and the respondent did not bear scrutiny at all since he was certainly better qualified than the respondent and therefore the finding that the other person was more qualified than him as found in the order is liable to be set aside and the applicant be given back his job as EDBPM Sindhuwadi.

3. But, the explanation as to why he remained absent which resulted in placing him ex parte on the date of hearing of the O.A. is not satisfactory. He seems to blame the Sr. Supdt. of Posts, Shimoga Division for this omission. We are quite sure that he could not have based himself on the assurance of the Department and thereby denying him the opportunity of appearing before this Tribunal. Having reached this conclusion, we must draw the inference that apparently there was no good reason at all for him not to appear before the Tribunal. Learned counsel for the review applicant also justifies his client's action i.e. non-participation on the dates of hearing on the ground that the review applicant was injured owing to an accident at Bangalore on the 17th November, 1993, and that he was busy restoring his health at three different

hospitals at Bangalore. This is an aspect which is not very satisfactory in that a clear cut picture does not emerge from the documents produced. The medical certificate issued by some Doctor at Bowring Hospital on 17.12.93 refers to the injuries sustained by the applicant on 17.11.93 but the certificate issued by the Rajamahal Vilas Hospital, Bangalore dated 10.2.94 refers to the applicant having been under treatment in that behalf from 16.11.93 to 16.12.93. If the man had met with an accident on 17.11.93, he could not possibly have been under treatment from 16.11.93. Shri Vedachala says that the date 16.11.93 in the Rajamahal Vilas Hospital is a mistake. Then we have the certificate issued by M.S. Ramaiah Hospital where he appears to have taken treatment for some dental affliction as an out-patient. The certificate does not state it is for a dental affliction but this aspect is made clear by another certificate stating that he was treated as an out patient in the hospital for a dental affliction from 22.11.93 to 8.12.93. Although the picture emerging from the conflicting testimony placed before us not quite clear, what does emerge is the fact that he had sustained some injuries to his person between 16th and 17th November, 1993. But even so nothing could have prevented the applicant to appear before the Tribunal on the date this case was actually disposed of. Granting that his injuries were serious but not certainly grave at any rate, the man was not an in-patient in any of the hospitals, he was only treated as an out-patient every time,

he could therefore certainly have taken some time off to pursue his career prospects which was under investigation before the Tribunal and which finally ended up in an adverse order passed in December, 1993. We cannot say that this is a case in which the man had pursued diligently a cause which was likely to effect a serious set back in the pursuit of a career. We think if the man was earnest about it, he would not have allowed the things to drift in the manner as has happened now.

4. Assuming that his absence before the Tribunal was bonafide even then we notice by looking into the documents now produced before us showing that he had passed the SSLC and has taken pre-university examination etc., the relevant consideration being limited to the passing of both the candidates in the SSLC examination since we are to assume that both of them are SSLC passed, the comparative statement of marks shows that the review applicant has a slight edge over the respondent but right through, the review applicant had placed his case on the basis that his educational qualification was only 9th standard pass. The Department during the course of the objections statement filed in the O.A. had put down the applicant as 9th standard pass. What is more, we have the original records before us which show that he had passed in 9th Std. but had failed in SSLC.

In the application he filed for the job he had not filled up the column where the educational qualification had to be mentioned. Even in the Employment Exchange, he was registered as a 9th Standard pass. In the circumstances, it becomes clear to us that on the basis of the higher educational qualification the applicant now wants us to say that he was more qualified than the respondent but all these materials were not placed before us at the time of hearing. We have found his absence at the time of hearing dates something unpardonable and right through he has depicted himself as a 9th Std. pass candidate before the Department and not an SSLC. Having regard to our views as aforesaid we do not think there is any merit in this review application in which we cannot go into new facts. The applications, therefore fails and is dismissed accordingly. No costs.

Sd/-
MEMBER(A)

Sd/-
VICE CHAIRMAN

TRUE COPY

[Signature]
23/3/95
Section Officer
Central Administrative Tribunal
Bangalore Bench
Bangalore