

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

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

Dated:- 13 JUN 1994

APPLICATION NUMBER: 771 of 1993.

APPLICANTS:

Sri.C.Thippesha v/s. Secretary,Dept.t.of Posts,NDelhi & Others.

1. Sri.S.K.Mohiyuddin, Advocate,
No.11,Jeevan Buildings,
Kumarapark East,Bangalore-1.
2. The Assistant Postmaster General(Staff),
Bangalore-560001.
3. Sri.G.Shanthappa,Addl.CGSC,
High Court Bldg,Bangalore-1.

RESPONDENTS:

Subject:- Forwarding of copies of the Orders passed by the
Central administrative Tribunal,Bangalore.

Please find enclosed herewith a copy of the ORDER/
STAY ORDER/INTERIM ORDER/, passed by this Tribunal in the above
mentioned application(s) on 07-06-1994.

S. Chandra 18/6
for DEPUTY REGISTRAR
JUDICIAL BRANCHES.

gm*

Qc
Issued

Jm

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

O.A. NO.771/1993

TUESDAY THIS THE SEVENTH DAY OF JUNE 1994

Shri A.N. Vujjanaradhya ... Member [J]

Shri T.V. Ramanan ... Member [A]

C. Thippesha,
Aged 22 years,
S/o Chandrappa,
Hadikere P.O.,
Tarkere Taluk.

... Applicant

[By Advocate Shri S.K. Mohiyuddin]

v.

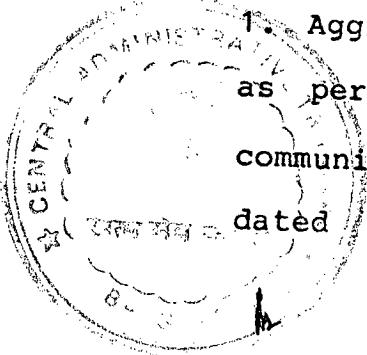
1. Union of India through
Secretary, Department of Posts,
New Delhi.
2. Director of Postal Services,
S.K. Region, Office of the
Chief Post Master General,
Bangalore-1.
3. The Superintendent of Post
Offices, Chickmagalur.
4. The Sub-Divisional Inspector
[Posts], Birur Sub Division,
Birur.

... Respondents

[By Advocate Shri G. Shanthappa ... Standing Counsel]

O R D E R

Shri A.N. Vujjanaradhya, Member [J]:



1. Aggrieved by the order of his removal from service as per Annexure A-4 dated 25.5.1991 and subsequent communications at Annexures A-9 and A-13 respectively dated 16.3.1992 and 30.6.1993, applicant has made

this application under Section 19 of the Administrative Tribunals Act, 1985.

2. Briefly stated, the case of the applicant is as below: To fill up the post of ED BPM, Hadikere, Respondent ['R' for short] No.3, SPO Chickmagalur, called for applications as per Annexure A-1 dated 26.2.1991. Applicant who had made the application for the said post, was selected as per Annexure A-2 dated 27.3.1991 and was directed to undergo training. Accordingly the applicant underwent training and had worked as BPM Hadikere upto 26.5.91 when he was relieved by R-4 SDI[P], Birur, as per Annexure A-4 on the ground that a Criminal Case ['CC' for short] was registered against him. Applicant had got sent two legal notices dated 11.7.1991 [Annexure A-7] and 7.3.1992 [Annexure A-8] because of his arbitrary and irregular relief and to reconsider his case for which R-3 has given reply dated 16.3.1992 [Annexure A-9] stating that the Department cannot wait for years to fill up the post as the CC registered against the applicant was not settled. The appeal therefrom submitted by the applicant on 26.3.1992 [Annexure A-10] to R-2, Director of Postal Services, was not considered. In the meanwhile, the CC against the applicant and others in CC 1338/91 was finally disposed of by judgment dated 9.11.1992 [Annexure A-11] acquitting all the accused. Therefore, another representation was submitted by the applicant on 16.11.1992 [Annexure A-12] to R-3

requesting for his reappointment in view of his acci-
tal in CC. But R-3 had rejected the representation
on the ground that the applicant had recorded a nega-
tive answer in the declaration furnished by him in
attestation form by his communication dated 30.6.1993
[Annexure A-13], which again is incorrect. Hence
the applicant seeks to quash Annexures A-4, A-9 and
A-12 respectively dated 25.5.1991, 16.3.1992 and
30.6.1993, to direct the respondents to reappoint
him with all consequential benefits. In their reply,
the respondents seek to justify their action.

3. Shri S.R. Reliyudin, the learned counsel represent-
ing the applicant contended that the services of
the applicant, who was regularly appointed, could
not have been terminated arbitrarily, but he ought
to have been put off duty pending CC, that R-4 who
is not the appointing authority, had no power to termi-
nate his services of by virtue of Annexure A-4 and
urged that the post ought to have been kept vacant
till the CC pending against the applicant was finally
disposed of and finally that applicant had made
any false declaration in his attestation form. Shri
S.S. Uthappa, the learned Standing Counsel, concurred
with the above contentions and tried to justify the
action with reference to the records that he has pro-
duced.

4. The main point which tilts the decision in this
application is whether the applicant was regularly
appointed so as to conclude that action of the respon-

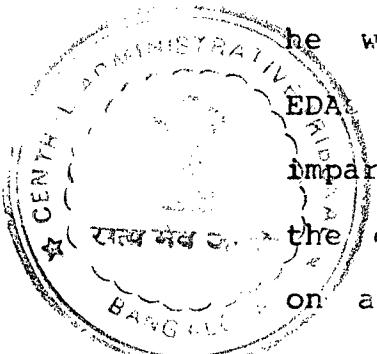
dents are without authority and are arbitrary and unjust. For this purpose we propose to consider the contentions of the learned counsel for the applicant in detail.

5. The main contention advanced on behalf of the applicant is that the applicant was regularly appointed on selection as ED BPM, Hadikere and because of such appointment only, he was imparted training for the post. In this connection the learned counsel for the applicant drew our attention to Section IV relating to Training Programme in Swamy's Compilation of Service rules for ED Staff in Postal Department found at pages 77 and 78 and drew our attention particularly to the heading C relating to expenditure and para below [c] which reads thus:

"EDAs appointed on regular basis and in a clear vacancy will only be imparted the above training. EDAs appointed in leave arrangement and on ad hoc arrangement against put off vacancy will not be imparted the above training."

Placing emphasis on this provision, the learned counsel for the applicant contended that imparting of training pre-supposes appointment on a regular basis in a clear vacancy and only such persons will be entitled to undergo training. Because the fact of applicant having undergone training is admitted by the respondents it is the contention of the learned counsel for the applicant that he must have been appointed regularly and, therefore, his services could not have been dispensed with without putting him off duty and following

the procedure prescribed for his removal. No doubt, the provision on which the learned counsel relied upon makes mention of the imparting of training to EDAs appointed on regular basis in a clear vacancy. But we are unable to agree with the further contention of the learned counsel that because the applicant was imparted training he must be presumed to have been appointed on a regular basis in clear vacancy. It is not as if that always the appointment would precede the imparting of training. It is not the case of the applicant that he was issued any regular order of appointment. Though he states that he was regularly appointed, when questioned, the learned counsel was unable to refer to any document showing that the applicant was regularly appointed by means of an order in writing. The respondents plead that regular order of appointment was to be issued only after the verification of the antecedents of the applicant and in the meanwhile he was imparted training. Because it was reported that the applicant was involved in a criminal case, no appointment order was issued to him. A perusal of the records produced by the respondents also makes it clear that no regular order of appointment was issued to the applicant and he was not regularly appointed to the post for which he was selected. While the proposition that only EDAs who were appointed on a regular basis would be imparted training as per the provision quoted above, the converse that no EDA who has not been appointed on a regular basis could not be imparted training



cannot be said to be correct. If at all the department had violated any of the provision of the EDA Rules, such authority may be liable to dereliction of his duty under relevant provision and because of such dereliction of duty it is not open to the applicant to contend that he must be presumed to have been regularly appointed. Having regard to the facts of this case, ie., there being no order of appointment of the applicant as ED BPM, we are unable to hold that the applicant was regularly appointed and only thereafter he was imparted training.

6. When once a conclusion is reached that it is not proved that the applicant was appointed on a regular basis, department requiring to follow the procedure to put off the applicant from duty under Rule 9[1] of the EDA Rules pending inquiry into the allegation of mis-conduct against him will not arise. In the present case, the applicant was relieved with immediate effect from the post of BPM Hadikere as per letter No.AII/184/dlgs issued by Supdt. of Post Offices, Chickmagalur, communicated to the applicant by Sub Divisional Inspector, Birur, as per Annexure A-4. This order is contended to be without authority as SDI is not the appointing authority so far as the applicant is concerned and that the applicant who was regularly appointed could not have been relieved without placing him under put off duty. Annexure A-4 came to be issued by SDI on the direction of SPO Chickmagalur, the appointing authority and, therefore,

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the contention is without any force and cannot be upheld.

7. But, the fact remains that the applicant was relieved from the post in accordance with Annexure A-4 and thereafter he had got issued two legal notices as in Annexures A-7 and A-8 for which the department issued communication as in Annexure A-9 informing him that the CC registered at Tarikeri Police Station in which the applicant was involved was not yet settled though 10 months have elapsed and that the department could not wait years together to fill up the post. This communication is dated 16.3.1992. Thereafter the applicant again made another representation as in Annexure A-10 and he also produced the judgment rendered in CC No.1338/91 on the file of Munsiff and Addl. JMFC, Tarikere, dated 9.11.1992 in which the applicant, who was an accused, and others came to be acquitted. With the copy of the judgment the applicant had made another representation to the Supdt. of Post Offices, Chickmagalur. However, the Supdt. by his letter dated 30.6.1993 [Annexure A-13] informed the applicant that he had given false declaration in the attestation form and, therefore, his service was treated as terminated. From the narration of the facts it is clear that the respondents have not been consistent in their stand. While in Annexure A-4 the applicant was informed that he was relieved with immediate effect in view of the letter issued



by the Supdt. of Post Offices, Chickmagalur, in Annexure A-9 the applicant was informed that the department could not wait for years together for the disposal of CC and in Annexure A-13 the stand taken is that the applicant had given a false declaration in his attestation form. A perusal of the attestation form filed by the applicant would show that no portion of the declaration furnished by the applicant is false. Para 12 in the attestation form found at page 64A of the department file goes to show that applicant recorded negative answers in respect of the following declarations:

- [a] Have you ever been arrested?
- [b] Have you ever been prosecuted?
- [c] Have you ever been kept under detention?
- [d] Have you ever been bound down?
- [e] Have you ever been fined by a Court of Law?
- [f] Have you ever been convicted by a Court of Law for any offence?
- [g] Have you ever been debarred from any examination or resticated by any University or any other educational authority/institution?
- [h] Have you ever been debarred/disqualified by any Public Service Commission from appearing at its examination/selection?
- [i] Is any case pending against you in any Court of Law at the time of filling up this Attestation form?
- [j] Is any case pending against you in any University or any other educational authority/institution at the time of filling up this attestation form?

Further a perusal of the records go to show that none of these declaration is false. The applicant was only prosecuted that too subsequent to filing of this.



attestation form which is dated 1.4.1991. Therefore, we are of the view that the stand of the department that the applicant had made false declaration and therefore, his services be treated as terminated is not justifiable. However, the fact remains that the applicant was not appointed on regular basis to the post. Therefore, he did not acquire any right to continue in the post and that he was required to be put off duty as per Rule 9[1] of ED Rules.

8. When the department was in the process of making appointment on regular basis, the applicant ought to have taken appropriate steps to see that the post was kept vacant and that he was to be appointed on regular basis because he was not barred from being appointed to the post because the CC against him was not with respect to any incident relating to the department and it was entirely on the basis of a private complaint. The applicant did not choose to take such a re-course at the appropriate point of time. Besides he has not impleaded the regularly appointed ED BPM as the party respondent in this application. In his absence we would not be justified in interfering with such appointment at this stage particularly when the applicant has not shown that he has any right accrued to him.

The decisions on which the learned counsel for the applicant has relied on do not support the case of the applicant inasmuch as the facts of those cases



are entirely different from the facts of the present case. In T. RAMASWAMY V. SENIOR SUPDT. OF POST OFFICES AND ANOTHER reported in ATR 1988[2] 434, the question of put off duty of the regularly appointed person was under consideration which is not the point in the present case. In SATBIR V. UNION OF INDIA reported in 1988[6] ATC 633 the observation is that termination of service without affording opportunity to explain amounted to denial of natural justice and, therefore, it was further observed that principles of natural justice must be observed wherever necessary. In the instant case observing of principles of natural justice would have arisen had the applicant been appointed on a regular basis. Because the applicant never came to be appointed on a regular basis no fault can be found in respondents relieving him from duty.

10. For the reasons discussed above neither of the impugned orders in Annexures A-4 and A-9 can be found to be arbitrary and cannot be interfered with. The foundation of the case of the applicant that he was appointed on a regular basis is not made out and, therefore, the superstructure, though to some extent justifiable, cannot stand. In the result the application fails and the same is hereby dismissed with no order as to costs.

TRUE COPY

S. Shashank 13/6
SECTION OFFICER
CENTRAL ADMINISTRATIVE TRIBUNAL
bsv
ANNUAL ATAL CHURCH
BANGALORE

S. Shashank
MEMBER [A]

Shashank
Sd —
11/1
MEMBER [J]

CENTRAL ADMINISTRATIVE TRIBUNAL: BANGALORE BENCH: BANGALORE.

REVIEW APPLICATION NUMBER 34 OF 1994

CA 771/93

MONDAY, THIS THE SEVENTH DAY OF AUGUST, 1995.

Mr. Justice P.K. Shyamsundar,

.. Vice-Chairman.

Mr. T.V. Ramanan,

.. Member(A).

C.Thippesha,
Aged 22 years,
S/o Chandrappa, Hadikere P.O.,
Tarikere Taluk,
Chikmagalur District.

.. applicant.

(By Advocate Shri S.K. Mohiyuddin)

—
v.

1. Union of India,
through Secretary, Department of Posts,
New Delhi-110 001.

2. Director of Postal Services
(S.K. Region), Office of the
Post Master General,
Bangalore-560 001.

3. The Superintendent of Post Offices,
Chickmagalur.

4. The Sub-Divisional Inspector (Posts)
Birur Sub-Division, Birur.

.. Respondents.

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O R D E R

Mr. Justice P.K. Shyamsundar, Vice-Chairman:-

There is some technical snag about this application which purports to be a review from an order made by one of us (Mr. T.V. Ramanan) sitting with brother Sri A.N. Vujjanaradhy. Since that Bench is no longer current a separate Bench has to be constituted with the permission of the Hon'ble Chairman, Central Administrative Tribunal. We are now told by Shri S.K. Mohiyuddin, learned counsel for the applicant that he does not press this application but only asks that the claim of the applicant for appointment as ED BPM may be considered whenever an opportunity

arises subject, ofcourse, the applicant making himself available for selection in accordance with the Rules. We agree. In the circumstances, we dismiss this review application as not pressed. At the same time, we place on record the submission of Sri Mohiyuddin that the case of the applicant be considered for permanent appointment as ED BPM whenever an occasion arises. While we record this submission we make it clear that such appointment of the applicant will be feasible only if he applies and fulfils all the requirements of law. With these observations this application stands dismissed as not pressed.

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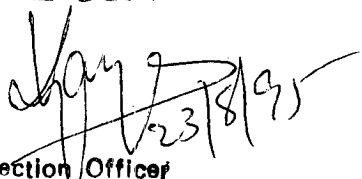
MEMBER(A)

Sd-

VICE-CHAIRMAN

NP.

TRUE COPY


Section Officer
Central Administrative Tribunal
Bangalore Bench
Bangalore