

CENTRAL ADMINISTRATIVE TRIBUNAL

BANGALORE BENCH

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

Dated:- 5 AUG 1994

APPLICATION NUMBER:

834/93.

APPLICANTS:

Smt. G. H. Hemavathi
T.O.

RESPONDENTS:

W.S. The Chief Postmaster General
Karnataka Circle, Bangalore & Others

- ① Sri. D. Leelakrishnan, Advocate, no. 28,
Rajasnow Bldgs, Seshadripuram, Bangalore-20.
- ② Sri. G. Shaasthappa, Addl. C.G.S.C.,
High Court Bldg, Bangalore-1

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 27-07-94

of

Se Shasthappa
18
DEPUTY REGISTRAR

CENTRAL ADMINISTRATIVE TRIBUNAL,
BANGALORE BENCH.

ORIGINAL APPLICATION NO. 834/ 1993

WEDNESDAY, THE 27TH DAY OF JULY, 1994

Shri Justice P.K. Shyamsundar ... Vice Chairman

Shri T.V. Ramanan ... Member (A)

Smt. G.H. Hemavathi,
Wife of Sri Devendra,
Aged about 28 years,
Residing at Patel Janardhana
Building, Avalahalli,
Virgonagar,
Bangalore - 560 049.

... Applicant

(By Advocate Shri D. Leelakrishnan)

Vs.

1. The Chief Post Master General,
Karnataka Circle,
Bangalore - 560 001.

2. The Superintendent of Post Offices,
Virgonagar,
Bangalore - 560 049.

3. The Asst. Superintendent of Post
Offices, East Sub-Division-III,
Bangalore - 560 017.

... Respondents

(By Advocate Shri G. Shanthappa, Additional
Central Government Standing Counsel)

O R D E R

Shri T.V. Ramanan, Member (A)

We have heard the learned Counsel for the applicant and
the learned Standing Counsel for the Respondents.

2. The case of the applicant is that she was appointed as
an Extra Departmental Stamp Vendor (EDSV) at Virgonagar Post
Office for a period of 2 months from 1.8.92 or until regular



arrangement was made to fill up that post, whichever was earlier. The Assistant Superintendent of Post Offices concerned had taken action to fill that post on a regular basis for which he had called for names of eligible persons from the Employment Exchange. After receipt of a panel of names, which contained the name of the applicant also, and after an interview on 18.9.92, the applicant learnt that she had been selected to be appointed to the post on a regular basis but no order of appointment was forthcoming. However, the applicant was allowed to function as EDSV even beyond 30.9.92. On 13.10.93 she came to know from one Sampangaiah, a resident of Avalahalli, in the jurisdiction of Post Office Virgonagar, of which she was also a resident, that the Department had called for a fresh panel of names for the post in question held provisionally by the applicant and that he (Sampangaiah) being one of the candidates sponsored for the post had been called for interview on 15.10.93. The applicant tried her best to prevail upon R-3 to consider her case also as she had already been interviewed on 18.9.92 for appointment to the post on a regular basis but in vain. Hence this application.

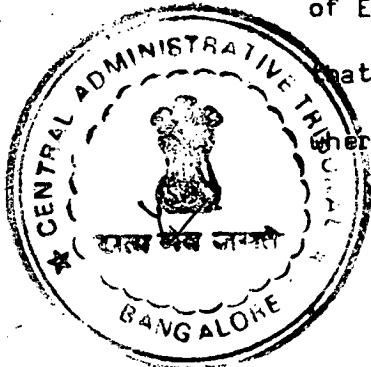
3. The case of the respondents is that because of the residential qualification required for holding this post and the applicant having mentioned that she was residing at Avalahalli for six years, after her initial temporary appointment and before she could be considered for regular appointment, a check was made which revealed that she was a resident of Avalahalli for ^{only} 5 - 6 months. As she had given a false residential address in order to

gain employment, it was decided not to proceed with consideration of the applicant's case for the post but call for a fresh list of candidates from the Employment Exchange which the respondents did on 3.8.93.

4. The argument of the learned Counsel for the applicant is that prescription of permanent residential qualification as a condition of eligibility is violative of Article 16 of the Constitution. He cited the judgement of the Ernakulam Bench of this Tribunal in the case of P. B. Kochuthresia vs. Superintendent of Post Offices, Aluva and others ((1993) 24 ATC 59) which declared instructions contained in a circular of the Director General, P&T Board prescribing residential qualification for ED staff as pre-condition to appointment as ED BPM/ SPM ultravires of the provisions referred to above in the Constitution.

5. Learned Standing Counsel for the respondents contends that at the relevant point of time permanent residential qualification as per instructions was a must and that only by a circular letter dated 6.12.93 issued by Director General, Posts this was done away with. Hence non-consideration of the applicant for the post of EDSV cannot be disputed.

6. In the case of Kochuthresia the applicant was aggrieved by her non-selection to the post of EDBPM on the ground that she did not satisfy the eligibility condition stipulated for the post of EDBPM by the Director General of P&T in O.M. dated 30.1.81 that the "EDBPM/ EDSPM must be a permanent resident of the village where the post office is located." In that case the Ernakulam



Bench of this Tribunal considered the constitutionality of that portion of the circular dated 30.1.81 issued by the Director General of P&T which laid down residential qualification for recruitment to the posts of EDBPM. The relevant portion of the said circular read as follows:-

- " (i) The EDBPM/ EDSPM must be a permanent resident of the village where the post office is located. He should be able to attend to the post office work as required of him keeping in view the time of receipt, despatch and delivery of mails which need not be adapted to suit the convenience or his main avocation.
- (ii) ED Mail Carriers, Runners and Mail Peons should reside in the station or the main post office or stage wherefrom mails originate/ terminate, i.e. they should be permanent residents of the delivery jurisdiction of the post office.
- (iii) ED Agents of other categories may, as far as possible, reside in or near the place of their work. (Letter No. 5-9/72-EL Cell, dated 19.8.1973, and 43-312-78-Pen., dated 20.1.1979, stand modified to this extend). "

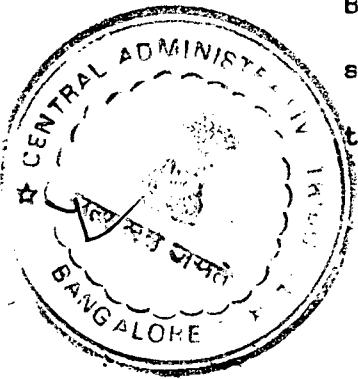
The Tribunal held as follows:-

"The nexus between the attributes of the office of EDBPM/ EDSPM and the eligibility criterion of 'permanent' residence in the village where the post office is situated to the exclusion of all other forms of residence or holding of property in that village, is neither reasonable nor valid. Moreover, such a classification of permanent residents of the village having not been approved by the Parliament and that limited to village only and not to the State as a whole is not saved by Article 16 (3) and is, therefore, totally in conflict with Article 16 (2) of the Constitution. Even the eligibility criterion of residence in the village would be equally violative of Article 16 (2) of the Constitution.

The eligibility criterion of 'permanent' residence cannot be interpreted to mean 'permanent' residence after selection. One could, though read down the residential qualification as a condition posterior rather than anterior to selection, such a reading down of 'permanent residential qualification' would do violence to natural meaning of 'permanent resident' clearly and unambiguously mentioned in the impugned letter. This is apart from the fact that the doctrine of reading down cannot appropriately be applied to administrative instructions.

Even if 'permanent residence' is read down as a post-selection requirement it will still be violative of Article 19(1) (a) of the Constitution. The impugned Circular dated 30.1.1981, to the extent it mandates residence in the village concerned, violates Article 16 of the Constitution. The selection made under the impugned letter requires to be set aside and a fresh selection conducted by replacing the 'permanent' residential condition by a condition of residence simpliciter in the village concerned and that too as a condition to be fulfilled subsequently and not precedent to selection and appointment to the post of EDBPM/ EDSPM. "

7. The post of EDSV, Virgonagar for which the applicant herein was considered falls under "E.D. Agents of other categories" as in clause (iii) of that portion of the Director General, P&T's Circular reproduced above. The stipulation therein is that EDSVs may, as far as possible, reside in or near the place of their work (emphasis added). While in the case of Kochuthresia, the post involved being EDBPM the permanent residential qualification in the village in which the post office is located was a must, here there is a diluted residential qualification in that for the post of EDSV it was not necessary that the EDSV should be a permanent resident of the area covered by the post office concerned but may, as far as possible, be a resident in or near the place of his work (emphasis added). There was thus more flexibility in so far as recruitment to the posts of EDSV was concerned. So, the subsequent finding that the applicant was a resident of Avalahalli for only about 5 - 6 months would not make any difference for consideration of the applicant for the post of EDSV in Virgonagar Post Office. We fully agree with the view held by the Ernakulam Bench of this Tribunal that the condition of residence simpliciter should be required to be fulfilled subsequently and not precedent to selection and appointment. Abiding by this judgement the



circular letter dated 6.12.93 by Director General, Post clearly states as follows:-

" (ii) The Board also decided that having regard to the judgement of the CAT, it may be clarified that while making selections for appointment to ED posts, permanent residence in the village/ delivery jurisdiction of the ED post office need not be insisted upon as a pre-condition for appointment. However, it should be laid down as a conditions of appointment that any candidates, who is selected must before appointment to the post take up his residence in the village/ delivery jurisdiction of the ED post office as the case may be. "

8. We find from the records made available to us by the department that after having obtained the names from the Employment Exchange for filling up the post, the department found that out of 23 candidates sponsored, 21 were not residents of Virgonagar Post Office area and only two were eligible for being considered for the post including the applicant and after due consideration, the applicant was recommended for this post. However, subsequently, owing to the alleged non-fulfilment of the residence condition which is not tenable now, as we have seen above, and also because only two persons instead of three could be considered for the post, it was decided not to proceed any further in the matter but to call for a fresh list of candidates from the Employment Exchange.

9. Apart from the fact that prescription of residential qualification as a pre-requisite for selection as ED Agent has been done away with by the department itself by issue of the circular letter of 6.12.93 making a reference to the judgement of CAT referred to above, the circular making it clear that while making selection for appointment of ED posts permanent residence in the village/ delivery

jurisdiction of ED Post Office need not be insisted upon as a pre-condition for appointment, but a condition should be laid down that after selection the selected person must, before appointment to the post, take up residence in the village/ delivery jurisdiction of the E.D. Post Office. This being the position and even today, the applicant functioning as EDSV in the Virgonagar Post Office, and her residence at Avalahalli not having been denied by the respondents, rejection of the recommendation made for her appointment should not have been ordered. As regards the plea that only two and not three persons from the panel of names sent by the Employment Exchange were considered for the post, this need not, at this point of time when the applicant has already functioned as EDSV for about two years now with the department, even though on a provisional basis, stand in the way of acceptance of the recommendation as regards selection of the applicant for the post of EDSV in Virgonagar Post Office.

10. In the circumstances of the case, we accept this application, quash the letter dated 3.8.93 calling fresh names from the Employment Exchange and direct the respondents to issue an order of appointment appointing the applicant as EDSV in the Virgonagar Post Office on a regular basis. This direction may be carried out within one month from the date of receipt of a copy of this order. No order as to costs.

Set



Mr
Ramanan
Member (A)

Set

(P.K. Shyamsundar)
Vice Chairman

TRUE COPY

S. Shyamsundar
SECTION OFFICER SFS
CENTRAL ADMINISTRATIVE TRIBUNAL
ADDITIONAL BENCH
BANGALORE