

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

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

Dated:- 9 AUG 1994

APPLICATION NUMBER: 312/94

APPLICANTS:

Sri. M. Venkatesha. v/s. Supt of Post Offices, Bellary and Others
To.

RESPONDENTS:

- ①. Sri. S.K. Mohiyuddin, Advocate, No. 11, Teevam Buildings,
Kumarapark East, Bangalore-560002.
- ②. Sri. M. Vasudev Rao, Addl. C.S.C. High Court Bldg, Bangalore-1
- ③. Sri. S. Ranganatha Jois, Advocate, No. 36, Shankarpark,
Shankarapuram, Bangalore-560004.

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

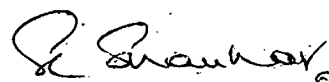
Please find enclosed herewith a copy of the ORDER/
~~STAY ORDER/INTERIM ORDER~~, passed by this Tribunal in the above
mentioned application(s) on 18-07-94

Issued on

10/8/94

R.

o/c

for  9/8
DEPUTY REGISTRAR
JUDICIAL BRANCHES.

CENTRAL ADMINISTRATIVE TRIBUNAL,
BANGALORE BENCH.

ORIGINAL APPLICATION NO. 312/ 1994

MONDAY, THE 18TH DAY OF JULY, 1994

Shri Justice P.K. Shyamsundar ... Vice Chancellor

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

Shri M. Venkatesha, Age 27 years;
S/o Shri Daivanthappa, M.
C/o Shri M. Rudrappa,
E.D. Packer,
Hosahalli P.O.,
Kudligi Tq.

... Applicant

(By Advocate Shri S.K. Mohiyuddin)

Vs.

1. Superintendent of Post Offices,
Bellary.

2. Sub-Divisional Inspector,
(Posts); Kudligi,
Bellary District.

3. Shri K. Kotresha,
S/o late Shri Jogi Bhemappa,
Hosahalli Post,
Kudligi Taluk.

... Respondents

(By Advocate 1. Shri M.V. Rao for R1 & 2.
2. Shri Ranganatha Jois for R3).

ORDER

Shri Justice P.K. Shyamsundar, Vice Chairman

We have heard both sides. This application questions appointment of R-3 as E.D. Packer of Hosahalli village in Bellary District. The applicant being seriously aggrieved by the selection of R-3 to that post in his place. Although, admittedly he is manning that post in a temporary capacity for nearly three years, he thinks the same is an added criteria. Admittedly, he possesses all the qualifications educational and otherwise. He has passed SSLC with a total of 228 marks. However, he did not merit selection amongst



a field of five when considered for the post as ultimately, the job went to R-3, Kotresha, who has also passed PUC, belonged to Scheduled Caste and had secured about 277 marks in the aggregate.

2. We find from the records and there is no dispute about it, Kotresha's SSLC marks card could not be perused by the appointing authority as for some reason, it was not produced. There was some correspondence between Kotresha and the authority, the former claiming that he had sent the SSLC Marks card but the file indicate that the marks card had not been received. There was no good reason why the marks card has not been received by the authority which should have been received by the appropriate quarters.

3. Be that as it may, the selection of Kotresha raises two questions (i) whether he belonged to the Scheduled Caste and (ii) whether on the basis of the higher rating of having got through the PUC course, he could have been selected to the post in question which prescribe the qualification of 8th standard with preference being given to SSLC. What becomes obvious is all those being equal, somebody with the higher qualification of SSLC will be preferred if the rest of the field was confined to those who had passed the 8th standard course. But, surely, the rules and the notification inviting applications did not stipulate that somebody who had qualification higher than SSLC could be accepted.

4. Apparently, the 3rd respondent, Kotresha with PUC was over-qualified. Well, of course, if a person with a better qualification was in the run, on that score selection could not be faulted. But, then, if it had been stipulated that the job would go to persons with higher qualifications, i.e. persons with qualifications above SSLC, probably, many more persons with PUC qualification with better rating would have applied and therefore the circumstance of jacking up of the higher qualification of Kotresha while considering him with the rest of the aspirants

who were either 8th standard or SSLC and thereby allowing steal a march, its tenability is the question. The criterion adopted in regard to selection on the basis of higher educational qualification is really erroneous and totally arbitrary since it was not the requirement of the rules. The other reason which found favour with the authority is that Kotresha is a member of the Scheduled Caste, but apropos the same there is absolutely nothing on record to bear out that assumption. But, Shri Jois for R-3 says that he has got with him a declaration that his client belongs to the S.C. community. We take his word. But we also take notice of the fact that the said declaration is not before us. Thus the selection of R-3 on the ground of his caste label and on the ground of higher education must necessarily fail. For the reasons mentioned above, we think the authorities have erred seriously in conferring a boon on the third respondent, while at the same time over-looking the claims of the applicant in every way. We also notice that the appointing authority designated under the statute to make this appointment is the Sub-Divisional Inspector who is respondent No.2 herein. As a matter of fact, he had actually recommended the applicant's candidature. But, we do not know why he did not issue the appointment order. We do not see anything in the rule that requires the making of the appointment being made subject to concurrence of the higher authority like R-1, Superintendent of Post Offices. In this case, the appointment of R-3 has been made by R-1, who apparently was not the authority to make or issue the appointment order. On this ground also, the selection of R-3 has to fail. Hence, we allow this application, quash the appointment of R-3, Kotresha as per Annexure A-3. We direct

....4/-



R-2 to make a de-novo selection in accordance with rules and on this occasion whoever may be the selected candidate, the appointment order should be issued by R-2 and by nobody else. We direct the cases of all the candidates considered earlier shall again be considered afresh. During this interruption, the applicant who has the benefit of a stay order will continue to work as ED Packer on a provisional basis pending final selection.



Sd-
TRUE COPY

Sd-
P.K. Shyamsundar

(P.K. Shyamsundar)
Vice Chairman

SECTION OFFICER
CENTRAL ADMINISTRATIVE TRIBUNAL
ADDITIONAL BENCH
BANGALORE