

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

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

Dated **30 SEP 1994**

APPLICATION NO: 621 of 1994.

APPLICANTS:- **Sri.Mahaboob,Raichur.,**

V/S.

RESPONDENTS:- **The Supdt.of Post Offices,Raichur Division,
and two others.**

To


1. **Sr.M.Raghavendra Achar,
Advocate,No.1074 & 1075,
Fourth Cross,B.S.K-Istage,
Mysore Bank Colony,
Opp:Raghavendra Nursing Home
Main Cross,Bangalore-560 050.**
2. **Sri.G.Shanthappa,
Addl.Central Govt.Stng.Counsel,
High Court Bldg,Bangalore-560001.**

Subject:- Forwarding of copies of the Order passed by the
Central Administrative Tribunal, Bangalore.
--xx--

Please find enclosed herewith a copy of the ORDER/
STAY ORDER/INTERIM ORDER/ passed by this Tribunal in the above
mentioned application(s) on 20th Sept, 1994.

Issued on

30/9/94 R


DEPUTY REGISTRAR
JUDICIAL BRANCHES.

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

O.A. NO.621/94

TUESDAY THIS THE TWENTIETH DAY OF SEPTEMBER 1994

Shri V. Ramakrishnan ... Member [A]

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

Mahaboob,
S/o Gulam Hussain,
Major,
Working as EDMC,
Nelahal Branch,
Raichur.

... Applicant

[By Advocate Shri M. R. Achar]

v.

1. The Superintendent of Post Offices,
Raichur Division,
Raichur.
2. The Assistant Superintendent
of Post Office,
Raichur Sub Division,
Raichur.
3. Sri K. Shanthanna, Major,
R/a Ghat Village,
Gadval Taluk,
Karnool District [A.P.]

... Respondents

[By Advocate Shri G. Shanthappa for R-1 and 2]

O R D E R

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

1. The applicant is aggrieved by the appointment
of Respondent ['R' for short] No.3, K. Shanthanna,
as Extra Department Mail Carrier ['EDMC' for short]
of Nelhal Branch Officer.

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

For the post of EDMC, Nelhal Branch Post Office,
the applicant had made an application in pursuance



of notice issued by the Department as at Annexure A-2 dated 8.5.1993 stating that he has all the necessary qualification since he was working there as a temporary EDMC. It is the case of the applicant that he has residential qualification and experience. Besides Government of India notification also talks of reckoning temporary service as ED Agents for eligibility as also the decision of the Ernakulam Bench of this Tribunal rendered in G.S. PARVATHY V. SUB DIVISIONAL INSPECTOR reported in [1992]21 ATC [FB] 13. The applicant further contends that R-3, Shanthanna, is a resident of Ghat village; that he has no experience and that amendment sought to be relied upon by the department is not applicable to the facts of the present case. Therefore, he has sought to quash the appointment of R-3 as EDMC as in Annexures A-7 and A-8 respectively dated 18.1.1994 and 1.1.1994 and for a further direction to R-1 and 2 to select him as EDMC, Nelhal.

3. R-1 and 2 oppose the application contending that the applicant has no residential qualification as also the educational qualification; that R-3 Shanthanna, who has secured higher marks and who is better qualified was selected inasmuch as 8th standard was the minimum educational qualification required. Applicant is not a resident of post village but he is the resident of Rampur village so was not selected. It is further contended that the notification on which the applicant has relied applies only to regular ED-agents and not in case of stop gap ED agents. R-3

is not represented.

4. We have heard Shri M.R. Achar, learned counsel for the applicant and Shri G.Shanthappa, learned Standing Counsel appearing for R-1 and 2. We have also perused the records made available by the department.


5. For the post of EDMC applications were called for and among various other persons, the applicant Mehabood, R-3 Shanthanna had also made applications. These applications were duly considered by the department and R-3 was selected because he was found eligible and had better qualification as he has completed 8th standard and accordingly he was appointed by memos dated 1.1.1994 [Annexure A-8] and 18.1.1994 [Annexure A-7]. So far as the applicant is concerned he was found to be ineligible as he had passed only 7th standard and the minimum qualification was 8th standard as per the amended rule and further that he was a resident of Rampur village and not the post village. The detailed reasoning found in the records of the department read thus--

"This applicant is the son of BPM, Rampur BO, a/w M. Gang. He has not passed required education ie., SSLC. He has studied only upto VII Std. as per the certificate attached with the application. This candidate has been provisionally appointed by my predecessor, without observing the direction of Div. Office instruction as the DO directed to select the candidates from Riachur town only, whereas he is the native of Rampur. The irregular appointment is still continued. This candidate has given false address of Raichur though he is the native of Rampur village. Before this application, he has made another application for the same post, in that application his



education qualification furnished as VIII Std. but in that certificate the father name found different. That seems he had cheated the Govt."

6. We shall now examine the various contentions raised on behalf of the applicant. Shri Achar refers to Annexure A-6 which is a certificate issued by Municipal Commissioner showing that the applicant is a resident of Raichur and contended that applicant is a resident of Raichur and he had the residential qualification and the observation of the department that he is the resident of Rampur and not the post village is incorrect and will have to be interfered with. This certificate dated 15.9.1993 issued by Municipal Commissioner is not authorised certificate inasmuch as such certificate is required to be issued by revenue authorities and not Municipal authorities. As a matter of fact the applicant has also produced a verifying certificate found at page 45 of the file which is issued by the Tahsildar of Raichur taluk and which shows the applicant as resident of Rampur, a different village as discussed and found in the above quoted department's observation. The applicant having himself produced material to show that he is a resident of Rampur it is not now open to him to contend that he is a resident of Raichur and he is residentially qualified. The department had verified as to the residential qualification of the applicant and found that he was staying at Rampur village. Therefore, we are unable to accept the contention of the learned counsel



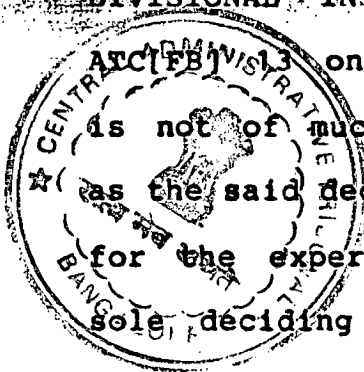
that the applicant is a resident of post village and he is residentially qualified.

7. Coming to the contention that R-3 is a resident of Ghat village and not of post village, it is only a contention about which there is no material placed on record. The application made by R-3 shows that he is resident of Raichur and even the department has found that he is a resident of post village and, therefore, this contention also cannot be accepted.

8. The next contention of the learned counsel is that the applicant was working as a stop gap EDMC in the same branch office and he has the necessary experience and that experience is also a qualification which ought to have been considered by the department as per Government of India notification para 15 quoted in the application. The department has sought to make a distinction about the applicability of this notification stating that it applies to regular employees taking departmental examination and not to stop gap employees. The decision in G.S. PARVATHI V. SUB

DIVISIONAL INSPECTOR [POSTAL] reported in [1992]21 ATC(FB) on which the learned counsel has relied is not of much assistance to the applicant inasmuch as the said decision specifically states that weightage for the experience if admissible should not be the sole deciding criterion in selection of ED agents.

In view of this position the experience as stop gap or temporary EDMC that the applicant had worked is



14

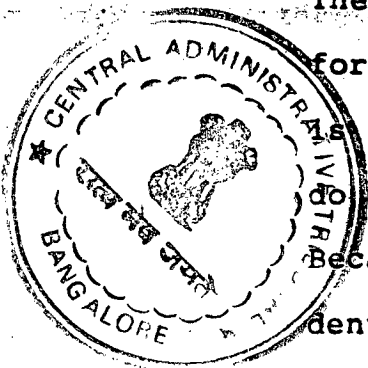
not quite material and on the sole basis of such experience the applicant is not entitled to be selected particularly when he has no required residential qualification.

9. Notice calling for the applications came to be issued by the department on 8.9.1993 as in Annexure A-2. The said notice also made mention of the qualifications and eligibility of the persons intending to apply to the post. One of the conditions stipulated is that a person who applies should have passed 8th standard [SSLC or equivalent would be preferred]. According to the learned counsel for the applicant the amendment to the relevant rule came to be made on 18.3.1993 whereas the vacancy had occurred on 28.7.1991 and, therefore, the amended rule does not apply and as per the earlier rule only 7th standard was the required qualification and not 8th standard as seen from Section III of ED Rules and, therefore, rejection of the claim of the applicant on the ground that he does not possess educational qualification is illegal and cannot be sustained. In this connection the learned counsel also referred to the decision in MAHADEVAN V. STATE OF KARNATAKA reported in AIR 1990 SC 405 where it was held that where the selection process for the appointment has started, the amendment of rule changing the eligibility criteria having no retrospective effect will not affect the selection of the candidate already made earlier. It is no doubt true that the vacancy of EDMC occurred on 28.7.1991

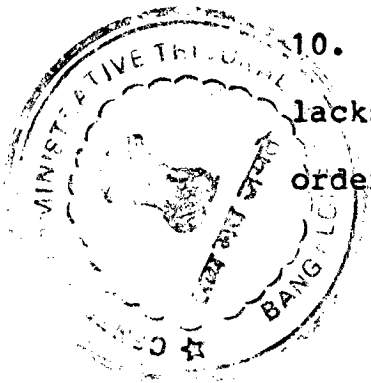
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and amended rule was brought into force on 18.3.1993. Therefore, normally the amended rule would not apply with retrspective effect. But we have come across a subsequent decision of the Supreme Court in UNION OF INDIA V. YOGENDRA SINGH 1994 SCC [L&S] 968 wherein it was held that "no candidate who does not possess the currently prescribed qualifications, but who may possess the educational qualifications prescribed earlier, can be said to qualify or have any vested right to appointment even against some earlier unfilled vacancy. Every candidate who aspires to fill any vacancy must possess the educational qualifications that are then prescribed." The learned counsel for the applicant sought to distinguish this decision in UNION OF INDIA V. YOGENDRA SINGH on the ground that the earlier decision of the Supreme Court in P. MAHENDRAN was not referred to and distinguished and the well reasoned earlier decision of P. MAHENDRAN should be relied upon. We do not propose to go deep into this question and try to resolve the same inasmuch as it is not necessary in the instant case.

The applicant has to fail on facts itself and, therefore, the question of law raised by the learned counsel is not required to be gone into and, therefore, we do not express our view on this aspect in any manner. Because the applicant did not have the required residential qualification and further because R-3 is better qualified, his application was rightly rejected by the department.



12



10. For the reasons discussed above the application lacks merit and it is accordingly dismissed with no order as to costs.

Sd/-

Sd/-

MEMBER [J]

MEMBER [A]

TRUE COPY

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[Signature]
Section Officer
Central Administrative Tribunal
Bangalore Bench
Bangalore