

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

Second Floor,
Commercial Complex,
Indiranagar,
BANGALORE - 560 030.

Dated: 3 APR 1995

APPLICATION NO. 856 of 1994.

APPLICANTS: Sri. Krishnamurthy, Devanagundi Village, Bangalore-67,
V/S.

RESPONDENTS: The Chief Post Master General, Karnataka Circle,
and three others.,

To

1. Sri.V.V.Balan, Advocate,
No.75, Muddappa Road Cross,
Maruthisevanagar,
Bangalore-560 003.
2. Sri.G.Shanthappa, Addl.CGSC,
High Court Bldg, Bldg, Bangalore-1.
3. Sri.D.Leelakrishna, Advocate,
Brigade Links, 54/1, G-5,
First Main, Seshadripuram,
Bangalore-560 020.

Subject:- Forwarding copies of the Orders passed by the
Central Administrative Tribunal, Bangalore-38.

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Please find enclosed herewith a copy of the Order/
Stay Order/Interim Order, passed by this Tribunal in the above
mentioned application(s) on 27-03-1995.

Issued on
3/4/95

DEPUTY REGISTRAR
JUDICIAL BRANCHES.

CENTRAL ADMINISTRATIVE TRIBUNAL,
BANGALORE BENCH.

ORIGINAL APPLICATION NO. 856/ 1994

MONDAY, THE 27TH DAY OF MARCH, 1995

SHRI V. RAMAKRISHNAN ... MEMBER (A)

SHRI A.N. VUJJANARADHYA ... MEMBER (J)

Shri Krishnamurthy,
aged 29 years,
S/o Shri Muniappa,
Devanagundi Village,
A/w Kadugodi,
Bangalore - 560 067.

... Applicant

(By Advocate Shri V.V. Balan)

Vs.

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

2. The Senior Superintendent of
Post Offices, Bangalore East
Division, Bangalore - 560 001.

3. Shri I.R. Prabhu,
Assistant Superintendent of
Post Offices, (HQrs),
Bangalore East Division,
Bangalore - 560 001.

4. Shri S. Ravindra,
EDDA, Devanagundi PO,
Bangalore.

... Respondents

(By 1. Addl. Central Govt. Standing Counsel,
Shri G. Shanthappa for R1 to 3

2. Shri D. Leelakrishnan for R.4)

ORDER

Shri V. Ramakrishnan, Member (A)

The applicant Shri Krishna Murthy who belongs to Scheduled Caste is aggrieved by the fact that the postal department did not select him for the post of extra departmental delivery agent (EDDA for short) at Devanagundi post office.



2. The facts in brief as can be gathered from the application and as also brought out during the hearing and from the extracts from the concerned file made available to us are as follows:

When the post of EDDA in Devanagundi post office fell vacant in October, 1991 the department had notified the vacancy to the Employment Exchange situated in Bangalore-9 and Bangalore-27 requesting them to send a list of eligible candidates (not more than 5 and not less than 3) and fixed 20.10.91 as the last date. Employment Exchange, Bangalore-9 sponsored three candidates (which included the applicant) by 20.10.91. As no reply was received from the Employment Exchange, Bangalore-27 one more request was sent on 23.11.91. The Employment Exchange, Bangalore-27 later on sent some names including the private respondent (R.4), Shri Ravindra on 5.12.91. Without waiting for the response from the second Employment Exchange, the department had interviewed candidates sponsored by Employment Exchange, Bangalore 9[✓] on 5.12.91 itself after issuing a notice to them dated 20.11.91. The candidates sponsored by Employment Exchange, Bangalore-27 were interviewed on 20.1.92. After such interview, the Assistant Superintendent of Post Offices, Shri I.R. Prabhu (R.3) recommended the name of Shri S. Ravindra (R.4) to the Senior Superintendent of Post Offices, East Division, Bangalore. The Assistant Superintendent of Post Offices also stated that Shri Krishna Murthy, the applicant may be considered as second preference candidate. He was informed by the Senior Superintendent of Post Offices that he had to select the candidate for appointment and send the file for the Senior Superintendent's ratification. To this, the Assistant Superintendent stated that he preferred the selection of Shri Ravindra for the reason that Shri Ravindra had complied with all the requisite conditions prescribed for the selection besides putting in some

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service in the post. The Senior Superintendent of Post Offices directed that if the applicant was not willing to take up the post, a letter to that effect may be obtained and kept and subject to this condition the selection of Shri Ravindra was ratified. On getting this letter, the department seems to have made necessary enquiries from the applicant. The applicant replied that it will be convenient for him if he was given the job of EDDA at Medimallasandra which is at a distance of 1½ KMs from Devanagundi. The Assistant Superintendent of Post Offices took it as a statement of unwillingness on the part of the applicant to be posted at Devanagundi and appointed Shri Ravindra to the job on 21.10.92. The applicant was aggrieved by this and had taken up the matter with the Chief Post Master General on 14.3.93 where he requested for a detailed enquiry alleging that Shri I.R. Prabhu, Assistant Superintendent of Post Offices (R.3) had committed various irregularities. He has also challenged the appointment of Shri Ravindra in the present DA and has made Shri Ravindra, Respondent No.4 where he has prayed for a direction that he should be appointed as EDDA in Devanagundi post office. He has also prayed that the Chief Post Master General (R.1) should be directed to take disciplinary action against Shri Prabhu, Assistant Superintendent of Post Offices (R.3).

3. We have heard Shri V.V. Balan for the applicant, Shri G. Shanthappa for the official respondents and Shri D. Leelakrishnan for Shri Ravindra, Respondent No.4. We have also gone through the photocopies of certain correspondence in the concerned file which have been made available to us by the department, as we are informed that the main file has been seized by an investigating agency in connection with certain allegations.

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4. Shri Balan forcefully contends that the action of the department in selecting the applicant is against the relevant rules and is motivated by extraneous considerations. The applicant is living in the same village where the post office is situated. He is a member of the Scheduled Caste and he has passed SSLC where ^{he} has secured 217 marks whereas Respondent No.4 seems to have got lesser marks. Shri Balan contends that the action of Assistant Superintendent of Post Offices in extending the last date given to the 2nd Employment Exchange is not regular. The learned counsel vehemently denies the submission ^{of} to the department that the applicant had expressed his unwillingness to work in Devanagundi. All that he said was that it would be convenient for him if he is posted at Medimallasandra, as he presumed that he was given a choice. He, however, had requested for a post of EDDA anywhere and had never refused appointment at Devanagundi. Shri Balan also says that Shri Ravindra was given job as an EDDA purely as a substitute for the EDDA but it does not give him any claim for preferential appointment as EDDA under the relevant rules. The Counsel contends that on account of these irregularities the appointment of Shri Ravindra should be set aside and the applicant should be appointed in his place.

5. Shri Shanthappa for the official respondents has contended that the application is hit by limitation. According to the Standing Counsel, the applicant had asked for a post in Medimallasandra and he cannot claim posting him there as a matter of right. It is true that Shri Ravindra does not reside in Devanagundi but was residing in a nearby village but that will not disqualify him for appointment as EDDA. Shri Shanthappa also argues that it cannot be generalised that

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any vacancy should be given to SC/ ST candidates. They are to be preferred only if there is a shortfall in the representation in the concerned division. He, however, does not tell us whether there is in fact, such a shortfall in the particular division. He admits that the applicant had secured more marks, namely 217 out of 600 as against Shri Ravindra who secured 214 out of 600.

6. Shri Leelakrishnan for Respondent No.4 contends that the application has been filed very late. He states that the applicant has made reckless allegation against Shri Prabhu, Assistant Superintendent of Post Offices (R.3). Shri Ravindra had been serving for a long time as EDDA and he will be put to great hardship if his services are terminated now. Shri Leelakrishnan further argues that the applicant had given up his claim for the post of EDDA, Devanagundi and he is estopped from challenging the appointment of Shri Ravindra.

7. We have carefully considered the submissions of Shri Balan, Shri Leelakrishnan as also the Standing Counsel. One of the reliefs asked for by the applicant is that we should direct the Chief Post Master General to take necessary disciplinary action against Shri Prabhu, Respondent No.3. We do not propose to go into this question at all, as the necessity or otherwise for taking any such action is to be decided by the concerned authorities keeping in view of all relevant factors and it is not for the Tribunal to give any such direction to them. We reject this part of the prayer.

8. As regards the main issue as to the entitlement of the applicant for appointment as EDDA, Devanagundi, we are not convinced by the arguments advanced by the respondents that the applicant was not

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entitled to the relief sought. The applicant's name was sponsored by the Employment Exchange, Bangalore-9 within the last date fixed by the Assistant Superintendent of Post Offices alongwith two others. The Employment Exchange was asked to suggest not less than three names and they had done so. The Employment Exchange at Bangalore-27 had not furnished the names within the last date, namely 20.10.91 but on being reminded on 23.11.91 sent certain names on 5.12.91. Shri Ravindra's name was included in this list. Even before waiting for the list from the Employment Exchange, Bangalore-27, the department seems to have taken action to interview certain candidates by their notice dated 20.11.91 and fixing the date of interview as 5.12.91. The applicant had secured more marks in SSLC than Shri Ravindra. He also belongs to Scheduled Caste. Despite all these the Assistant Superintendent of Post Offices preferred Shri Ravindra and the only justification sought to be furnished is that Shri Ravindra had functioned for some time as EDDA against the substitute vacancy and that too for a short period before the vacancy was notified to the Employment Exchange on 3.10.91. Under the rules such service against a substitute vacancy does not entitle him to be given any preference while being considered for regular appointment.

It may also be mentioned that in para 9 of the reply statement Shri Ravindra, R.4 says that he had been working continuously in the post with effect from 3.10.91. The notification to Employment Exchange was also sent on the same date, namely, 3.10.91. The normal practice followed by the department is that a person who secures more marks in SSLC is preferred but this has not been done in the present case. We also do not agree with the

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Contention that the application is hit by limitation. The regular appointment to Shri Ravindra was given on 21.10.92 and the applicant seems to have made a complaint on 14.3.93 to the Chief Post Master General. He has approached this Tribunal in May, 1994. In any case, the Tribunal vide its order dated 2.12.94 has condoned any delay in filing the application.

9. The main thrust of the respondents' case is that when the applicant was asked whether he was willing to accept the post at Devanagundi, he had opted for Medimallasandra and had declined to serve in Devanagundi. The Assistant Superintendent of Post Offices was informed by the Senior Superintendent of Post Offices by letter dated 21.9.92 to the effect that if the candidate at Sl.8 (the applicant) was not willing, a letter to that effect should be obtained and kept. Pursuant to this direction, the Assistant Superintendent of Post Offices had sent a communication to the applicant. A copy of this communication had not been made available to us. We have, however, seen the reply of the applicant which is in Kannada and the English translation thereof is reproduced in the reply statement of the official respondent as follows:

" I had joined Pre-University College in Kadugodi 4 months ago but now I have stopped attending the college. So, kindly give me a post of EDDA anywhere else. It will be convenient if I am given the job of EDDA at Medimallasandra. Because, Medimallasandra is at a distance of 1½ Km. from Devanagundi. Kindly give me a post of EDDA here".

From the copy of the communication sent by the applicant, we find that this is not an exact translation. The applicant had not said "so kindly give me a post of EDDA anywhere else" but had only said "so kindly give me a post of EDDA anywhere". He had, however,

expressed his preference to Medimallasandra for the reasons indicated by him but he seems to have done so on the assumption that he was given a choice. It is not reasonable to conclude from this communication that he had declined the posting at Devanagundi. In view of this position, we do not accept the respondents' contention that the applicant had expressed his unwillingness to be posted at Devanagundi.

10. We also do not agree with the argument that Shri Ravindra should be continued merely because he had put in regular service from 21.10.92, when it is found that his selection in preference to the applicant was not in order.

11. For the reasons brought about above, we hold that the applicant is entitled to be appointed as EDDA, Devanagundi by terminating the services of Shri Ravindra (R.4). We direct the department to take action accordingly which should be done within one month from the date of receipt of a copy of this order. The application is disposed of accordingly. No costs.

Sci-
(A.N. VUJJANARADHYA)
MEMBER (J)

Sci-
27/3/95
(V. RAMAKRISHNAN)
MEMBER (A)

TCV



TRUE COPY

Section Officer
Central Administrative Tribunal
Bangalore Bench
Bangalore
03/4/95