

Annexure A 2

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE NCH:

O.A. NO.508/93

WEDNESDAY THIS THE SEVENTEENTH DAY OF NOVEMBER 1993

SHRI V. RAMAKRISHNAN ... MEMBER [A]

SHRI A.N. VUJJANARADHYA ... MEMBER [J]

Agasi Pampapathi,
S/o Agasi Veeranna Gowda,
Aged 23 years,
At & PO Devalapura, SC
Hospet Taluk, Devasamudra Post,
Pin:583 129, Bellary District.

... Applicant

[By Advocate M.R. Achar]

v.

1. The Superintendent of Post Offices, Bellary Division, Bellary.
2. Sub. S/o Sub Divisional Inspector, Siruguppa Division, Siruguppa.

Sri S.S. Basavaraj,
C/o Sub Divisional Inspector,
Siruguppa Division,
Siruguppa.

... Respondents

[By Advocate Shri M. Vasudeva Rao ..
Addl. Central Government Standing Counsel]

O R D E R

Shri A.N. Vujjanaradhy, Member [J]

1. In this application filed under Section 19 of the Administrative Tribunal Act, 1985, the applicant is aggrieved by the action of Respondent ['R' for short] Nos.1 and 2 in directing to hand over charge of Devasamudra Sub Office.
2. The case sought to be made out by the applicant, as could be seen from his application as well as rejoinder, is as below:

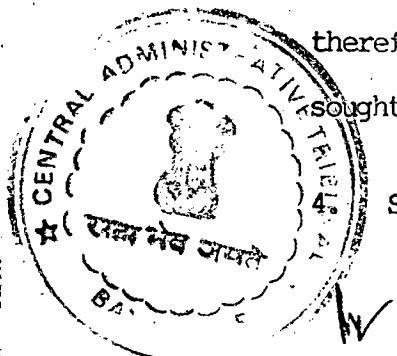
The applicant joined on 24.3.1991 as Substitute of



Devasamudra S.O. Steps were taken to fill up the said post regularly by calling for applications on 20.7.1991. The applicant also made his application for appointment on 15.10.1991. The applicant was appointed as per order dated 15.10.1991 [Annexure A]. The Sub Divisional Inspector ['SDI' for short] attempted to take over the charge of the Sub Office illegally even though the applicant has been performing his duties satisfactorily. The applicant has been working for more than 2 years and there has not been any fresh notification for selection. The amended rules for appointment are not applicable to the recruitment which had already taken place during 1991 and the revised notification came into force only during the year 1993. Therefore, the reasons given for not considering the application of the applicant on the ground that he has failed in SSLC as mentioned in letter dated 26.5.1993 is illegal and is not in accordance with law. Therefore, the applicant has sought declaration that selection of R-3 is illegal and for consequential reliefs besides declaration that taking over of charge from the applicant forced illegal. However, the applicant has been continuing to hold the charge of the S.O. Devasamudra and he has not handed over charge of the same.

3. R-3 S.S. Basavaraj who is now stated to have been selected as Branch Post Master Devasamudra is not represented as he has not been served with notice. R-1 and 2 oppose the application contending that the appointment of applicant was only temporary to be continued till the regular appointment was made and that R-3 who had passed SSLC with better marks was preferred and, therefore, the applicant is not entitled to any of the reliefs sought.

Shri M.R. Achar for the applicant contended before us that



the applicant having been regularly appointed could not have been terminated and the reasons assigned for the alleged non-consideration on the ground that that the applicant is a non-metriculate is not valid and, therefore the applicant is entitled to continue in service. On the other hand, it is the contention of Shri M. Vasudeva Rao, learned Standing Counsel for the respondents that the appointment of the applicant as BPM is only a temporary appointment till regular appointment was made to that post and as R-3 was selected regularly because he had passed SSLC and he was preferred, the applicant cannot continue to hold the charge of BPM and he should hand over the charge as directed. We have also perused the records produced by the parties.

5. One Agasi Nagappa was the regular BPM of Devasamudra SO and on his resignation when he was selected as Postman regularly, the applicant Agasi Pampathi, the brother of the said Nagappa was working as a Substitute in the said office. Subsequently the applicant was issued an appointment order which is in the following terms:

"Sri A. Pampathi is offered to the provisional appointment. He should clearly understand that the provisional appointment shall be terminated when regular appointment is made and he shall have no claim for appointment."

This order dated 15.10.1991 indicates clearly that the appointment was provisionally made which would stand terminated when regular appointment is made thereby indicating that the appointment of the applicant is not a regular one. However, the applicant has been continuing to perform the duties of the said SO since 24/3/91 when he was posted as substitute BPM till this day. For some reason or the other, the selection of a regular BPM was delayed in the department. Only during 1993 it was communicated that R-3 Basavaraj was selected on regular basis but no order of appointment on that basis is issued to this Basavaraj. From

Anv



3
the records it could be seen that R-3 was selected because he had additional qualification of Diploma after passing SSLC. When the applicant did not hand over charge and wanted to know reasons for not selecting him, R-1 issued him the letter dated 26.5.1993 giving out the reasons in the following terms:

"Vide DG[P] No.17.366/91 ED Trg. dated 12.3.93 circulated under PMG Dharwad No.NKR/STA.3/578/88 dt. 30.3.93 the minimum qualification to hold the post BPM Is fixed as MATRICULATION. Since you have not passed the matriculation examination, your candidature was not considered while making regular selection. Sri S.S. Basavaraj stands selected on regular basis. His selection is based on marks secured by the candidate in the SSLC examination. You are directed to hand over the charge of the office to Sri SS Basavaraj."

From this reply, it is clear that the applicant was not considered for the post of BPM because he had not passed matriculation examination. The reference to the letter dated 12.3.1993, copy of which is also produced by the applicant, disclose that the said order would come into force with effect from 1.4.93. In other words, this notification has no application to the facts of the present case inasmuch as the notification for selection and appointment as BPM Devasamudra came to be issued in this case during the year 1991 ie., long prior to the letter dated 12.3.1993. Consequently the communication of R-1 dated 26.5.93 quoted above, cannot be said to be valid. The applicant even though has failed in matriculation was eligible for consideration because the minimum qualification as per the notification issued by the department itself is 8th standard. Of course, the said notification mentions that candidates possessing matriculation would be preferred. But the non-consideration of the applicant itself has vitiated the selection process. The department has also failed to consider the applicant having been working as BPM since March 1991. As can be seen from page 70 of Swamy's Compilation of Service Rules for ED Staff in Postal Department 1990 Edition, it was decided by the Deptt. that working ED agents should be given priority

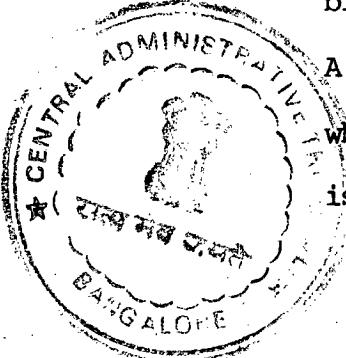


14

over all categories except retrenched ED Agents for selection to various ED posts if they satisfy all the conditions prescribed in the letter dated 24.10.1976. In the present case, the applicant having rendered service as ED BPM ordinarily should have been preferred over other applicants inasmuch as he possesses other required qualifications namely minimum educational qualification of 8th standard as well as residential status. Thus the non-consideration of the applicant for selection as BPM on regular basis is clearly illegal and cannot be sustained. The selection process without proper consideration of the application of the applicant is thus vitiated and, therefore, selection of R-3 also cannot be sustained.

6. When we required the department to make available a copy of the order of appointment issued to R-3 appointing him as BPM because the learned counsel for the applicant contended that even in cases of regular appointment only the order in the form as found in Annexure A quoted in para 5, would be issued, the official respondents submitted that no order of appointment is issued to R-3. Under the circumstances we are unable to accept the contention of the learned counsel for the applicant that even in cases of regular appointment the order would be issued only in the form of Annexure A and not in any other form.

7. Though it is contended by the learned Standing Counsel for the official respondents that the appointment of the applicant was only provisional and, therefore, temporary which was terminable when regular appointment was made as can be seen from Annexure A itself, the applicant could not have refused to hand over charge when regular appointment was made and, therefore, the application is not maintainable. This contention, we are afraid cannot be



AM

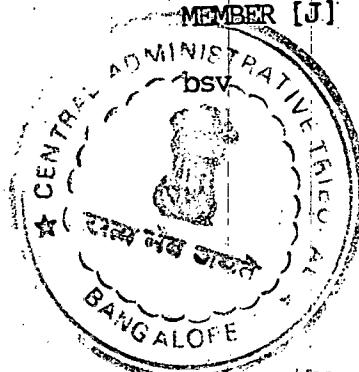
accepted inasmuch as the selection process itself is found to be vitiated.

8. In view of what is discussed above we have to necessarily quash the communication dated 26.5.1993 as also the alleged selection of R-3 as BPM Devasamudra and direct the official respondents to consider the application of the applicant also afresh along with that of R-3 in accordance with rules and take a fresh decision in the light of what is discussed above.

9. In the result we allow the application in part and quash the communication dated 26.5.1993 passed by R-1 bearing No.B-6/- BPM/D.PURA as also the selection of R-3 S.S. Basavaraj and direct R-1 and 2 to consider the application of the applicant along with that of R-3 and take a fresh decision having regard to comparative merits of each of these persons. This may be done at an early date and at any rate not later than 3 months from the date of receipt of a copy of this order.

SD

MEMBER [J]



SD

MEMBER [A]

TRUE COPY

S. S. Basavaraj
SECTION OFFICER 20/4/94
CENTRAL ADMINISTRATIVE TRIBUNAL
ADDITIONAL BENCH
BANGALORE

20/4/94

This document is referred
to Annexure in the
Affidavit of Sri
.....

Oath Commissioner

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

ISSUE OF CERTIFIED COPY/ENDORSEMENT

(a) Sl.No. of the Application : O.A. NO. 508/93

(b) Name and Address of the Applicant : Sh. S. S. Basavaraj
S/o. S. Malappa, Devaiahandra,
Hospet (Tq), Bellary Dist.

(c) Date of Presentation of application for copy : 20.4.94

(d) Number of pages, required order (copy) OA/RA/CP/No. dated : 6 pages, copy of Final order
dt. 17.11.93 in OA 508/93

(e) Copying fee charged
Particulars of cash receipt
No., Date : Rs. 12/- paid via CR NO. 34,
dt. 20.4.94

(f) Urgent : Urgent
Ordinary :

(f) Date of preparation of copy : 20.4.94

(g) Date of delivery of the copy to the applicant : 20.4.94



/True copy/

S. G. Rama Rao
SECTION OFFICER
CENTRAL ADMINISTRATIVE TRIBUNAL
ADDITIONAL BENCH
BANGALORE

R
20/4/94

DEPARTMENT OF POSTS

Anneexure A

'RL-AD'

From:

The Supdt. of Post Offices, Sri. S. S. Basavaraja,
Bellary Divn.,
Bellary 583 102.

To:

S/o Mallappa,
R/o Devasamudra B.O.
Devalapur S.O.

No. B6/BPM/Devasamudra dated at Bellary the 25.3.94.

Sub: Appointment to the post of BPM
Devasamudra BO A/W Devalapura S.O.

Ref: This office memo no. B6/BPM/Devasamudra
dated 21.4.93.

.....

This is to inform you that your selection
for the post of BPM Devasamudra BO is hereby cancelled
in view of CAT Bangalore order dated 17th Nov '93, in
case no. 508/93.

*Supdt. of Post Offices,
Bellary Dn., Bellary-2.*

*This Document is referred
to in the
order of the
S. S. Basavaraja*

With Comminboluwa

CENTRAL ADMINISTRATIVE TRIBUNAL

BANGALORE BENCH

Second Floor,
Commercial Complex,
Indiranagar,
BANGALORE - 560 033.

Review Appln. No. 27 of 1994 in

Dated: 3 APR 1995

APPLICATION NO. 508 of 1993.

APPLICANTS: Sri. S. S. Basavarej,

V/S.

RESPONDENTS: The Supdt. of Post Offices, Ballery Division
and two others.

To

1. Sri. Ashok R. Kalyanashetty, Advocate,
No. 38, Eighth Main, Vasantha Nagar,
Bangalore-560 052.

2. Sri. M. Vasudeva Rao, Additional Central
Government Standing Counsel, High Court
Building, Bangalore-560 001.

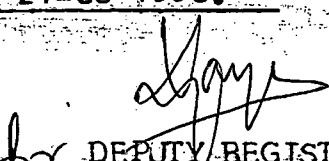
3. Sri. M. Raghavendra Acharya, Advocate,
No. 1074 & 1075, Fourth Cross,
Second Main, Sreenivasa Nagar,
Bangalore-560 050.

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

---xxx---

Please find enclosed herewith a copy of the Order/
Stay Order/Interim Order, passed by this Tribunal in the above
mentioned application(s) on 21-03-1995.

Issued on
8/4/95


DEPUTY REGISTRAR
JUDICIAL BRANCHES.

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

R.A. No.27/94

TUESDAY THIS THE TWENTY FIRST DAY OF MARCH 1995

Shri V. Ramakrishnan ... Member [A]

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

S.S. Basavaraj,
S/o S. Mallappa,
Aged 26 years,
Occ:Unemployed,
R/o Devasandra Post,
Hospet Taluk,
Bellary District.

... Review Applicant

[By Advocate Shri Ashok R. Kalyanashetty]

v.

1. The Superintendent of
Post Offices,
Bellary Division,
Bellary.

2. Sub Divisional Inspector,
Siruguppa Division,
Siruguppa, Bellary Distt.

3. Agasi Pampapathi,
S/o Agasi Veeranna Gowda,
Aged 24 years,
At & PO Devalapura SO,
Hospete Taluk,
Devasamudra Post,
Pin:583 129, Bellary Distt.

... Respondents

[By Advocate Shri M. Vasudeva Rao for R-1 and 2
and by Advocate Shri Shri M.R. Achar for R-3]

O R D E R

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

1. Respondent ['R' for short] No.3 S.S. Basavaraj, in O.A. No.508/93 has filed this Review Application ['RA' for short] on the ground that as observed in the course of the order itself he was not served and was not represented and on that ground alone the order



passed in the said OA will have to be recalled and the present review applicant should be heard in that application.

2. We have heard Shri Ashok B. Kalyana Shetty, for the review applicant; Shri M. Vasudeva Rao, learned Standing Counsel for R-1 and 2 and Shri M.R. Achar, learned counsel for R-3.

3. A perusal of the proceedings in O.A. No.508/93 and the order passed therein would clearly demonstrate that the interest of the review applicant was also considered in the order passed therein on 17.11.1993 wherein the official respondents did support the selection and appointment of review applicant as BPM. As rightly contended by Shri Achar, because R-3 herein namely Agasi Pampapathi was selected subsequently, if at all the review applicant is aggrieved he will have to challenge the said selection and appointment and not seek review of the of the order passed in O.A. No.508/93. We have observed that non-consideration of Agasi Pampapathy for selection was not justified and had directed the official respondents to take fresh decision having regard to the comparative merits of the present review applicant and R-3. Therefore, there is no question of again reconsidering the contention in the O.A. No.508/93 and therefore we see no merit in this RA. The review applicant, if aggrieved by the subsequent selection and appointment of Agasi

Pampapathy, is at liberty to approach the proper authority for necessary redress.

3. In the result we find no merit in this RA and we dismiss the same with the above observations with no order as to costs.

08.1

Sd/-

1/26
Sd/-

MEMBER [J]

MEMBER [A]

bsv



TRUE COPY

Shyam S
Section Officer
Central Administrative Tribunal
Bangalore Bench
Bangalore