

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

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

Review Application No.6 of 1994 in

Dated: **23 MAR 1995**

APPLICATION NO. 749 of 1993.

APPLICANTS: **Sri. I.C. Prasad,**

V/S.

RESPONDENTS: **Sr. Supdt. of Post Offices, Shimoga, and others.,**

To

1. **Sri. M.V. Vedhachala, Advocate, No. 101,
First Floor, Kurubarasangha Bldg,
Gandhinagar, Bangalore-560 009.**
2. **Sri. M. Vasudega Rao, Addl. CGSO,
High Court Bldg, Bangalore-1.**
3. **Sri. G. Venkatachala, Advocate,
No. 16, Second Floor, S.S.B. Mutt Bldg,
Bank Bund Road, Bangalore-560 009.**

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 13-03-1995.

Issued on
23/03/95

O/c

for

DEPUTY REGISTRAR
JUDICIAL BRANCHES.

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH, BANGALORE

REVIEW APPLICATION NO.6/1994
IN O.A.NO.749/1993

THIS

MONDAY/THE THIRTEENTH DAY OF MARCH, 1995

MR. JUSTICE P.K. SHYAMSUNDAR VICE CHAIRMAN

MR. V. RAMAKRISHNAN MEMBER (A)

I.C. Prasad
Branch Post Master,
Sinduwadi Post,
Thirthahalli Taluk,
Shimoga District

Applicant

(By Advocate Shri M.V.Vedachala)

v.

1. The Sr.Suptd. of Posts,
Shimoga Division,
Shimoga - 577 202
2. The Asstt. Supdt. of Posts,
Shimoga West Sub Division,
Shimoga 577 201
3. S.K. Manjunatha
S/o late Shri Kalanaika,
Ex Branch Post Master,
Sindhuwadi Post, Manadagadde,
Thirthahalli taluk,
Shimoga District

Respondents

(By learned Standing Counsel)
Shri M.V. Rao for R-1 & 2
Shri G. Venkatachala for R-3

ORDER

MR. JUSTICE P.K. SHYAMSUNDAR, VICE CHAIRMAN

We have heard Shri Vedachala for the review petitioner as also the very sticky submissions made on behalf of the contesting respondent No.3 by Shri Venkatachala, Advocate. The dispute herein is regarding the order we made on 3.12.93 while



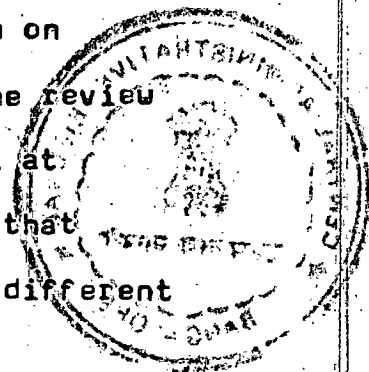
disposing of O.A.No.749/93 quashing the appointment of review applicant as Extra Departmental Branch Post Master (EDBPM for short) at a village called Sindhuwadi in Thirthahalli Taluk of Shimoga District. The review applicant who himself was a party respondent in that application had remained absent on four successive dates of hearing i.e. on 4.11.93, 11.11.93, 30.11.93 and 3.12.93 despite service of notice on him. On 3.12.93, he was placed ex parte after noting his absence. On that date, we allowed that application by directing the Department to consider the applicant in the O.A. for appointment in place of the review applicant mainly on the ground that the review applicant was less qualified educationally than the applicant in the O.A. It transpired that the applicant in the O.A. was an SSLC passed whereas from the records produced before us it transpired that the review applicant was only a 9th standard pass. The service rules for the ED staff clearly provide that so far as educational qualifications are concerned, the minimum requirement is 8th standard but a candidate possessing matriculation or equivalent qualification should be preferred. Mainly on the ground that the applicant in OA 749/93 Shri Manjunath was an SSLC whereas the review applicant Shri I.C. Prasad was only 9th standard pass, we asked the Department to give the appointment to the former. The review applicant is aggrieved by the aforesaid order of the Tribunal and has herein filed this review application.

2. When it was pointed out that although the review applicant had been served in due course, he had remained absent, learned counsel for the applicant told us that the review applicant had been given an assurance by the Sr. Suptd.. of Posts, Shimoga Division that his case will be taken care of by the Department's counsel. Finally, when it did go against him, he filed this review application in which he says that he was misled by the departmental authorities in regard to the need for defending his own appointment by arranging for suitable representation in that behalf. It also transpires that he had come to Bangalore on 17.11.93 and met with an accident which resulted in serious personal injuries as a consequence of which he was obliged to take treatment in a private hospital at Rajamahal Vilas Hospital, Bowring Hospital and also M.S. Ramaiah Hospital at Bangalore. Shri Vedachala says that the man was fighting for his life following the mishap, was so gravely injured that it required medical assistance at three different hospitals in Bangalore and that was the reason why he neglected his own interest by not appearing before this Tribunal. He says that the applicant should not suffer because of a quirk of fate due to an accident in which he was badly injured. He has also produced some documents along with the review application relating to the educational qualifications of the review applicant. He points



out that his client is not merely SSLC passed but has even passed PUC from the Mysore University. On the basis of these documents it is urged that a comparative table of the educational qualifications of the review applicant and the respondent did not bear scrutiny at all since he was certainly better qualified than the respondent and therefore the finding that the other person was more qualified than him as found in the order is liable to be set aside and the applicant be given back his job as EDBPM Sindhuwadi.

3. But, the explanation as to why he remained absent which resulted in placing him ex parte on the date of hearing of the O.A. is not satisfactory. He seems to blame the Sr. Supdt. of Posts, Shimoga Division for this omission. We are quite sure that he could not have based himself on the assurance of the Department and thereby denying him the opportunity of appearing before this Tribunal. Having reached this conclusion, we must draw the inference that apparently there was no good reason at all for him not to appear before the Tribunal. Learned counsel for the review applicant also justifies his client's action i.e. non-participation on the dates of hearing on the ground that the review applicant was injured owing to an accident at Bangalore on the 17th November, 1993, and that he was busy restoring his health at three different

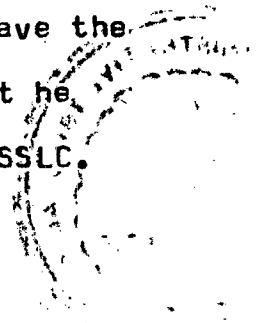


hospitals at Bangalore. This is an aspect which is not very satisfactory in that a clear cut picture does not emerge from the documents produced. The medical certificate issued by some Doctor at Bowring Hospital on 17.12.93 refers to the injuries sustained by the applicant on 17.11.93 but the certificate issued by the Rajamahal Vilas Hospital, Bangalore dated 10.2.94 refers to the applicant having been under treatment in that behalf from 16.11.93 to 16.12.93. If the man had met with an accident on 17.11.93, he could not possibly have been under treatment from 16.11.93. Shri Vedachala says that the date 16.11.93 in the Rajamahal Vilas Hospital is a mistake. Then we have the certificate issued by M.S. Ramaiah Hospital where he appears to have taken treatment for some dental affliction as an out-patient. The certificate does not state it is for a dental affliction but this aspect is made clear by another certificate stating that he was treated as an out patient in the hospital for a dental affliction from 22.11.93 to 8.12.93. Although the picture emerging from the conflicting testimony placed before us not quite clear, what does emerge is the fact that he had sustained some injuries to his person between 16th and 17th November, 1993. But even so nothing could have prevented the applicant to appear before the Tribunal on the date this case was actually disposed of. Granting that his injuries were serious but not certainly grave at any rate, the man was not an in-patient in any of the hospitals, he was only treated as an out-patient every time,



he could therefore certainly have taken some time off to pursue his career prospects which was under investigation before the Tribunal and which finally ended up in an adverse order passed in December, 1993. We cannot say that this is a case in which the man had pursued diligently a cause which was likely to effect a serious set back in the pursuit of a career. We think if the man was earnest about it, he would not have allowed the things to drift in the manner as has happened now.

4. Assuming that his absence before the Tribunal was bonafide even then we notice by looking into the documents now produced before us showing that he had passed the SSLC and has taken pre-university examination etc., the relevant consideration being limited to the passing of both the candidates in the SSLC examination since we are to assume that both of them are SSLC passed, the comparative statement of marks shows that the review applicant has a slight edge over the respondent but right through, the review applicant had placed his case on the basis that his educational qualification was only 9th standard pass. The Department during the course of the objections statement filed in the O.A. had put down the applicant as 9th standard pass. What is more, we have the original records before us which show that he had passed in 9th Std. but had failed in SSLC.



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Section Officer
Central Administrative Tribunal
Bangalore Bench
Bangalore



In the application he filed for the job he had not filled up the column where the educational qualification had to be mentioned. Even in the Employment Exchange, he was registered as a 9th Standard pass. In the circumstances, it becomes clear to us that on the basis of the higher educational qualification the applicant now wants us to say that he was more qualified than the respondent but all these materials were not placed before us at the time of hearing. We have found his absence at the time of hearing dates something unpardonable and right through he has depicted himself as a 9th Std. pass candidate before the Department and not an SSLC. Having regard to our views as aforesaid we do not think there is any merit in this review application in which we cannot go into new facts. The applications, therefore fails and is dismissed accordingly. No costs.



Sd/-
MEMBER (A)

Sd/-
VICE CHAIRMAN

TRUE COPY

[Signature]
23/3/95
Section Officer
Central Administrative Tribunal
Bangalore Bench
Bangalore