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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. NO.1406/2002

New Delhi this the 07th day of February, 2003

HON'BLE SHRI JUSTICE V.S. AGGARWAL, CHAIRMAN
HON'BLE SHRI S.K.MALHOTRA, MEMBER (A)

Shri Ali Abbas
S/o Shri Nathu
R/o A-3, Aman Apartments
Sector 13, Plot No.39,
Rohini
New Delhi-110 085. Applicant

(By Shri K.B.S.Rajan, Advocate)

-versus-

1. The Union of India thro' Chairman, Railway Board
Rail Bhavan
Rafi Marg
New Delhi-110 011.
2. The General Manager (E)
Head Quarters
Western Railways
Churchgate
Mumbai-20. Respondents

(By Shri R.L.Dhawan, Advocate)

O R D E R

Justice V.S. Aggarwal:

Applicant Ali Abbas had applied for the post of Assistant Station Master in the Western Railway. He qualified in the written test as well as the interview and was so selected. He received the offer of appointment and according to him on merit his position was at S.No.87. He had completed the attestation form and was required to furnish indemnity bond in respect of his appointment. He

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was medically examined and according to him was found fit.

2. Despite all the necessary formalities having been completed, his grievance is that he did not receive the letter of appointment. He was informed that one group of candidates had already been sent for training. Applicant had on his enquiry been informed that he has not been issued the appointment letter keeping in view a criminal case pending against him with respect to offences punishable under Section 279 read with Section 337 of the Indian Penal Code.

3. By virtue of the present application, the applicant seeks that the said ground is not tenable. The refusal of appointment subject to the condition that only if he is acquitted in the criminal case, such a fact can take place is illegal.

4. In the reply filed, the basic facts are not in dispute. The respondents plead that after medical examination, Bombay Central Division had sent an attestation form to the Police Commissioner for verification of character and antecedents of the applicant. The Deputy Commissioner of Police had informed that the applicant was facing trial with respect of offences punishable under Section

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271 read with Section 337 of the Indian Penal Code. The case of the applicant was considered by the competent authority in consultation with the Law Officer who opined that the applicant cannot be appointed till he is acquitted from the court.

5. When the matter had come up for preliminary hearing, this Tribunal on 27.5.2002 had directed the respondents to allow the applicant to join the training course starting on 3.7.2002. This was provisional and subject to the final outcome of the present application.

6. Needless to state that the impugned order is dated 26.4.2002 whereby the competent authority had opined that applicant's case can be processed only after he has been acquitted/exonerated from the criminal case. The operative part of the order reads:-

"On reviewing the case in reference to judgment of CAT, Principal Bench, New Delhi dt.05/12/2001 and the existing rules and safety of the public, I am of the view that the appointment of Shri Ali Abbas should be processed only after he has been acquitted/exonerated from the criminal case in which he is involved provided he fulfills all other requirements for the appointment at that point of time."

7. The short question which comes up for consideration is as to whether keeping in view the admitted fact that the applicant is facing trial

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with respect to offences punishable under Section 271/337 of the Indian Penal Code, should he be given the appointment letter or not?

8. We do not dispute that career making is a primary and principal aspiration of any enthusiastic youth and there is no dispute in this regard further to the fact that the applicant is not facing trial with respect of certain serious offences say murder, dowry death, seduction etc.

9. It is always for the appointing authority to consider as to whether the offence for which a person is being tried involves moral turpitude or not. In case it is so, it would be in the fitness of things and proper that the appointment could be deferred in the peculiar facts of a particular case.

10. Our attention has been drawn towards a decision of this Tribunal in the case of **Girish Bhardwaj v. Union of India and others**, [1990] 13 ATC 178. In the cited case, the concerned person was facing trial with respect to offences punishable under Section 498-A Indian Penal Code read with the Dowry Prohibition Act, 1961. This Tribunal had recorded that mere pendency of a criminal case of the nature referred to above will

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not bar a person to be so appointed subject to final outcome of the said decision. The guide-lines of the Government of India, Ministry of Personnel, Public Grievances and Pensions in this regard are:-

"Normally a person convicted of an offence involving moral turpitude should be regarded as ineligible for government service.

While normally a person convicted of an offence involving moral turpitude should be regarded as ineligible for government service, however, in cases where the appointing authority feels that there are redeeming features and reasons to believe that such a person has cured himself of the weakness, specific approval of the government may be obtained to his employment."

11. What is the position herein? The representation of the applicant has been rejected simply because of the pendency of the case referred to above. It has been pointed that the applicant's case shall be processed only if he is acquitted from the criminal case. We find that the said logic and reasoning indeed cannot be sustained. Mere pendency of a criminal case even if it is of trivial nature could not prevent a young aspirant from joining the post. The procedure for verification of character and antecedents for aspirants of Government service is well known. Respondents would be competent to consider the same but subject to that simply rejecting the claim of a person even if it is an offence ^{not} involving moral turpitude would not be appropriate.

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12. Accordingly, we dispose of the present application with the following directions:-

- (1) the appointing authority should consider whether the offence with respect to which the applicant is facing trial involves moral turpitude in accordance with the rules and instructions;
- (2) the competent authority would be within its rights to verify the character and antecedents of the applicant;
- (3) if the appointing authority deems it appropriate to issue the appointment letter, the same should be subject to the final decision in the criminal case pending in the face of what has been held above; and
- (4) Keeping in view the interim order passed by this Tribunal, we direct that a decision in this regard may be taken within four months from the date of receipt of a copy of this order. Till then, the interim order referred to above shall continue.

In the circumstances of the case, we make no order as to costs.

Malhotra
(S.K. Malhotra)
Member (A)

Aggarwal
(V.S. Aggarwal)
Chairman

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