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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. NO. 867/2001
M.R. NO. 1732/2001

This the 5th day of September, 2001.

HON'BLE SHRI JUSTICE ASHOK AGARWAL, CHAIRMAN

HON'BLE SHRI V.K.MAJOTRA, MEMBER (A)

Arun Marwah S/O K.L.Marwah,
1191, Katra Moshan Khan,
Kashmeri Gate,
Delhi-110006.

... Applicant

(By Shri A.K.Behera, Advocate)

-versus-

1. Union of India through
Secretary, Ministry of Communications,
Department of Telecommunications,
Sanchar Bhawan, 20 Ashoka Road,
New Delhi-110001.
2. Chairman, Railway Board,
Rail Bhawan, New Delhi-110001.
3. Chief General Manager,
Advanced Level Telecommunication
Centre (ALTTC), Ghaziabad (UP).
4. Chief General Manager, BRBRAITT,
Jabalpur (MP).
5. Assistant Director General (SGT),
Deptt. of Telecommunications,
Sanchar Bhawan, 20 Ashoka Road,
New Delhi-110001.

... Respondents

(By Shri B.S.Jain, Advocate)

O R D E R (ORAL)

Hon'ble Shri V.K.Majotra, Member(A) :

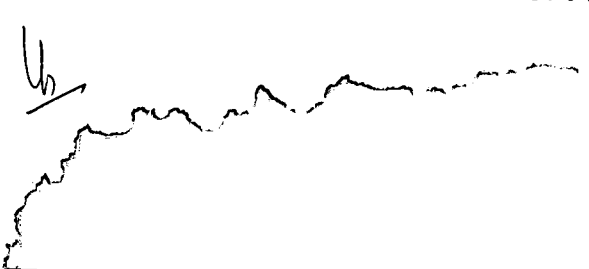
The applicant was selected in the Engineering Services Examination, 1999 conducted by the Union Public Service Commission (UPSC) in July, 1999. His result was declared in May, 2000 and he was assigned rank No.27 in the all India merit list in the Electronics and Telecommunications branch as per Annexure A-2 which is the marks-sheet issued by the UPSC in respect of the

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applicant for the said examination. The UPSC sent the dossiers of the applicant to the Ministry of Railways which is the nodal Ministry for the purposes of Engineering Services Examination. The character and antecedents of the applicant were verified and the police did not find anything adverse against the applicant.

2. It is alleged that while the applicant was expecting his appointment orders, a complaint was lodged by the wife of his elder brother against her husband, his parents and also the applicant. Allegations were made of several offences punishable under Sections 406/498A/509, 354/34, 120B^{etc.} IPC. On 11.4.2001, an ad interim order was passed directing the respondents to provisionally send the applicant for training which was scheduled to begin from 16.4.2001. The applicant has contended that offer of appointment to the applicant on the basis of an allegedly malicious complaint relating to a matrimonial dispute of his brother cannot be withheld by illegal, arbitrary and unjust action of the respondents. The applicant has sought quashing of the action/order withholding his offer of appointment and also a direction to the respondents to accord him all consequential benefits including joining from the date of joining of persons who had secured lower rank than the applicant.

3. In their counter, the respondents have stated that since they are not in a position to comment upon the genuineness of the complaint made by Smt. Vandana, and because criminal cases are pending against the applicant under FIR No.385 dated 27.7.2000, there is nothing

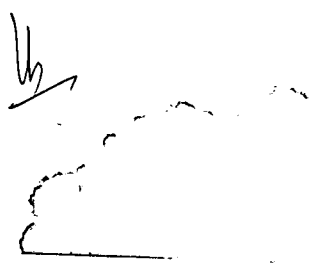


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illegal in withholding the appointment of the applicant. They have also stated that the applicant will not suffer any loss and once he is appointed in service by the competent authority on being satisfied about the applicant's character and antecedents, he would be entitled to retain his seniority in accordance with the merit list prepared by the UPSC on the basis of the result of the Engineering Services Examination, 1999.

4. We have heard the learned counsel on both sides and considered the material on record. The learned counsel for the applicant stated that mere pendency of a criminal case against the applicant in a matter in which he is not immediately connected as it relates to the matrimony of his brother, cannot be instrumental towards denial of appointment to the applicant. He drew our attention to the counter reply of the respondents in which instructions contained in the "Brochure on Verification of Character and Antecedents" have been referred to wherein it is stated that it is the responsibility of the appointing authority to satisfy itself about the identity and suitability of the candidate before making the offer of appointment by verifying his character and antecedents. The respondents have stated that there are certain categories of persons like those dismissed from service of the government or those convicted of offences involving moral turpitude who are regarded as ineligible for government service. The learned counsel for the applicant stated that although a challan has been issued against the applicant in respect of the complaint made by his sister-in-law, he has not



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been convicted of any offence till date. He further stated that in the absence of any conviction for an offence involving moral turpitude the applicant's appointment, on the basis of his success in the examination, cannot be withheld. The learned counsel placed reliance on order dated 14.8.1997 in OA No.724/1997 : *Surender Kumar v. Union of India* in support of the claim made by the applicant.

5. The learned counsel for the respondents stated that unless the appointing authority is satisfied as to the character and antecedents of a candidate, offer of appointment cannot be issued. Referring to Annexure R-1 dated 20.4.2001 which is a report of the District Magistrate, Patiala on the complaint against the applicant to the Ministry of Communications, he stated that on the basis of the FIR lodged by the sister-in-law of the applicant, a criminal case is pending against the applicant in a Patiala Court and the applicant has filed a writ petition No.46498-M/2000 in the Punjab & Haryana High Court and the hearing had been fixed on 30.4.2001. The District Magistrate on the basis of the report of the SSP has stated, "it is upto the concerned department to see whether Sh. Arun Marwah is fit for Govt. service or not according to Govt. instructions/rules."

6. Despite a specific query as to government instructions relating to withholding of offer of appointment during the pendency of a criminal case against a candidate, we have not been shown any such instructions. In the matter of *Surender Kumar* (supra),

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in a similar case the Tribunal passed the following order:

"In the circumstances, we are of the view that the directions given by this court in the previous decision namely in the matter of Girish Bhardwaj vs. UOI and Ors. are also to be granted to the petitioner herein and the respondents are directed to pass appropriate orders appointing him as Sub Inspector of CBI provisionally and subject to the outcome of the criminal case which is pending against him. Respondents are also at liberty to take appropriate action against the applicant in the light of the outcome of pending criminal cases, after criminal court pronounces its judgement. The respondents shall comply with this order within three weeks from the date of receipt of a copy of this order and communicate the same to the petitioner by registered post forthwith."

7. From the respondents' own counter reply based on the brochure on verification of character and antecedents, it is clear that among other categories, candidates who have been convicted of an offence involving moral turpitude are regarded as ineligible for government service. The criminal case pending against the applicant is still pending and the applicant has not been convicted of an offence involving moral turpitude. The facts and ratio of *Surender Kumar* (supra) are squarely applicable to the present case.


8. In our considered view, therefore, if the applicant is provisionally appointed subject to the outcome of the criminal case which is pending against him, ends of justice would be adequately met, and the respondents will not be at any loss at all. The applicant is already, by virtue of our interim order of 11.4.2001, undergoing training on provisional basis. We

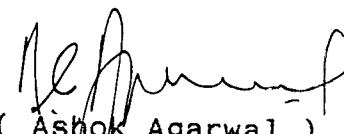
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are of the view that directions given by this Tribunal in the matter of Surender Kumar (supra) can be granted in favour of the applicant herein as well. Thus the respondents are directed to pass appropriate orders appointing the applicant in the Electronics and Telecommunications branch on the basis of the Engineering Services Examination, 1999 held by the UPSC, provisionally and subject to the outcome of the criminal case which is pending against him. Applicant will be entitled to draw pay and allowances with effect from the date he joined the training. Respondents will be at liberty to take appropriate action against the applicant in the light of the outcome of the criminal case pending against him. The respondents shall comply with these orders within three weeks from the date of receipt thereof and communicate the same to the applicant by registered post forthwith. The respondents would be free to ask the applicant to complete all the relevant formalities, if not already completed.

9. With these directions, this OA is allowed to the extent indicated above. No costs.

10. In view of the disposal of the OA, MA No.1732/2001 moved by the respondents seeking vacation of the interim order dated 11.4.2001 also stands disposed of.


(V.K.Majotra) 5.9.2001
Member(A)


(Ashok Agarwal)
Chairman

/as/