

Central Administrative Tribunal
Principal Bench: New Delhi

OA No. 141 of 1999

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New Delhi, this the 2nd day of November, 1999

Hon'ble Shri S.P. Biswas, Member (A)
Hon'ble Shri Kuldip Singh, Member (J)

Riyasat Ali
S/o Shri Shamsher Ali,
R/o 43- Hauz Khas Village,
New Delhi. Applicant

By Advocate Shri V.K. Rao.

Versus

1. Union of India through:
The Secretary,
Ministry of Defence,
South Block-II,
New Delhi. Respondents
2. The Controller of Defence
Accounts (Head Quarters)
through its Senior Accounts Officer,
(Administration)
G-Block,
New Delhi-110 011 Respondents

By Advocate Shri D.S. Mahendru.

O R D E R

By Hon'ble Kuldip Singh, Member (J)

This OA has been filed against the inaction/non-action of the respondents resulting in refusing to provide the applicant an appointment to the post of Auditor inspite of his having been declared as qualified in the process of selection, but the respondents have not passed any order allowing him to join the post. As such, the applicant has prayed that appropriate directions be issued to the respondents to allow him to join the post of Auditor.

2. Facts in brief are that the applicant had appeared for the post in question for which examination was

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held by the Staff Selection Commission and had qualified the same. Applicant was also informed that he has been selected as an Auditor in the pay scale of Rs. 4000-6000 by the Staff Selection Commission as per Annexure-C. Medical examination was also held and the applicant was declared fit as per Annexure-D.

3. However, the applicant is being denied the appointment on the ground that he in his character verification form has mentioned that he was arrested in two cases and respondents during the police verification also found that the applicant was involved in two criminal cases under Sections 379/341/IPC and 325/34/IPC and challans in both the cases are already pending trial before the criminal court. So only on this basis the applicant is being denied the appointment.

4. We have heard the learned counsel for the parties and have gone through the records.

5. At the outset we may mention that it is not a case that the applicant has concealed any fact regarding his involvement in the two criminal cases. In his attestation from, he has duly informed the department that he was arrested and he is facing trial in those cases and in his rejoinder too he has also stated that he has been involved in criminal cases because of certain litigation over property with the relatives with whom he is contesting those disputes.

[Signature]

6. The learned counsel for the applicant stated that merely because a criminal case had been filed against him, he cannot be denied an appointment. To support the case of the applicant, he relied on a judgment reported in 1989 (4) CAT page 945 - Girish Bhardwaj Vs. Union of India and Others, a decision given by the Principal Bench itself, wherein it was mentioned as follows:-

" Appointment cannot be denied merely because a criminal case was pending".

7. On the same lines, the learned counsel for the applicant has also referred to another judgment reported in (1999) 1 SCC 246 - Commissioner of Police, Delhi and Another Vs. Dhaval Singh. In that case the applicant, who was a candidate for being appointed as a Constable in Delhi Police, had initially in his verification form put a cross-mark in the relevant column where he was required to mention whether any criminal case is pending against him. However, he later on voluntarily informed the authorities that a criminal case is pending against him, but due to inadvertence and lack of knowledge, he put a cross-mark in the verification form. So in that case, the cancellation of appointment was held to be invalid by the Hon'ble Supreme Court.

8. Relying upon these judgments, we are of the considered opinion that the applicant had at the first available opportunity informed the department that two criminal cases are pending against him, so there is no concealment of fact. So, according to us, the applicant should be given the appointment and should be allowed to

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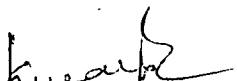
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join. However, in case, if later on, the applicant is convicted in trial by the criminal court where the cases are pending, the department can take action against him in accordance with the law.

9. In view of the above facts and circumstances, the OA is allowed with the following directions:-

The applicant be given appointment and should be allowed to join within 3 months from the date of receipt of a copy of this order.

No order as to costs.


(Kuldip Singh)

Member (J)


(S.P. Biswas)
Member (A)

Rakesh