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Central Administrative Tribunal
Principal Bench: New Delhi

...

OA No. 724/97

New Delhi, this the 14th day of August, 1997

Hon'ble Dr. Jose P. Verghese, Vice-Chairman(J)
Hon'ble Shri K.Muthukumar, Member (A)

Sh. Surender Kumar,
s/o Shri Bharat Singh,
aged 36 years, R/o village Kherka,
P.O. Dulhera, Distt. Rohtak(Hr.)

...Applicant

(By Advocate: Shri A.K.Behra)

-versus-

Union of India through

1. Secretary,
Ministry of Home Affairs,
North Block,
New Delhi.

2. Director,
Central Bureau of Investigation,
Govt. of India, CGO Complex,
Block No. 3, 4th Floor,
New Delhi.

....Respondents

(By Advocate: Shri K.C.D. Gangwani)

O R D E R (ORAL)
[Dr. Jose P. Verghese, Vice-Chairman (J)]

The petitioner in this case was selected for the post of Sub Inspector in Central Bureau of Investigation (CBI) but in the circumstances no appointment order was issued for the reason that in the meantime the respondents as usual resorted to verification of character and antecedents of the candidates. Respondents then came to know that there is an FIR pending against the petitioner who have been arrayed as co-accused even though the FIR is against the brother of the petitioner, in the first instance. On the basis of the said criminal case pending, as evidenced by the FIR, the respondents did not issue appointment order to the petitioner.

Aggrieved by this inaction of the respondents, petitioner has approached this court for seeking a direction that the action of the respondents is illegal and they may be directed to pass appropriate orders, appointing the petitioner to the post he was selected. The counsel for the petitioner has relied upon the decision of this court in the matter of Girish Bhardwaj vs. UOI reported in 1990 (13) ATC P. 178 by which the Division Bench of this Tribunal in OA 2213/89 passed an order on December 19, 1989 on an identical matter wherein the same respondents were involved. This court came to the conclusion that the pendency of a criminal case of this nature may not be a sufficient cause to withhold the appointment order in favour of the petitioner. This court in the said case had directed the respondents to consider the suitability of the petitioner therein to the post of Sub Inspector, C.B.I. without taking into account the pendency of the trial, in the court of Metropolitan Magistrate, New Delhi in FIR filed under Section 498-A IPC and the Dowry Prohibition Act. It was also directed that if on such reconsideration, he is found otherwise suitable, he should be given the offer of appointment within a period of two weeks from the date of communication of a copy of that order. It was also stated in the said order that the respondents will be at liberty to take appropriate action against the applicant in the light of the outcome of the pending criminal case after the criminal court delivers its judgement.

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It was also brought to our notice a decision of the Hon'ble Supreme Court in the case of State of Madhya Pradesh vs. Ram Shankar wherein Hon'ble Mr. Justice Chenappa Reddy had observed as follows:

"Should all these young men be debarred from public employment. Is Government service a heaven that only angles should seek entry into it"

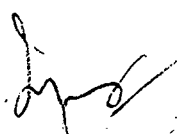
In view of this observation by the Supreme Court, the previous court had come to conclusion that the pendency of a criminal case of this nature cannot stall the appointment to the duly selected person.

By way of reply, it was stated that the respondents have requested the Deputy Commissioner of Police Delhi to inquire the character antecedents of the petitioner and in the said letter it was stated that while inquiring into the character antecedents the points to be borne in mind are, whether the petitioner has been actively engaged in subversive activities, or is he a member of any organisation, the vowed object of which is to change the existing order of society by violent means. It was also stated in the said letter that while verifying the character antecedents they will inquire whether the petitioner has been in association with anybody or association declared to be unlawful or has been associated with any activity aimed at the subversion of the constitution etc.etc. None of these clause includes that while inquiring into the character antecedents, the pendency of criminal case against the petitioner may be notified. In any event in their wisdom Deputy Commissioner of Police has brought this fact to the


knowledge of the respondents. The question is whether, on that ground, the appointment of the applicant can be continued to be withheld or not.

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 case, 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.

With these directions, this OA is allowed to the extent stated above. There shall be no order as to costs.


(K. Muthukumar)
Member (A)

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(Dr. Jose P. Verghese)
Vice-Chairman (J)