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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 2213/89
~~T.A. No.~~

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DATE OF DECISION 19-12-1989.

Shri Girish Bhardwaj Applicant (s)

Miss Meenakshi Advocate for the Applicant (s)

Union of India ^{Versus} and Others Respondent (s)

Shri M.L. Verma Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. P.K. Kartha, Vice-Chairman (Judl.)

The Hon'ble Mr. D.K. Chakravorty, Administrative Member.

1. Whether Reporters of local papers may be allowed to see the Judgement ? *yes*
2. To be referred to the Reporter or not ? *yes*
3. Whether their Lordships wish to see the fair copy of the Judgement ? *No*
4. To be circulated to all Benches of the Tribunal ? *NO*

JUDGEMENT

(delivered by Hon'ble Shri P.K. Kartha, V.C.)

An interesting question has arisen in this case whether a candidate who has been duly selected for appointment as Sub-Inspector in the Central Bureau of Investigation, could be deprived of a chance to serve the Government on the ground that it came to light during the verification of his character and antecedents before appointment that he was involved in a criminal case concerning demand of dowry by his brother and other members of his family from his sister-in-law and her family. The issue is important as there is no authoritative judicial pronouncement on the subject.

2. The facts of the case are not in dispute.

The applicant, who is a youngman of 26 years of age,

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applied for the post of Sub-Inspector (Delhi Police) and Central Bureau of Investigation pursuant to an advertisement which appeared in the Employment News dated 30.1.1988. He appeared and qualified in the tests and interview and secured 14th position in the merit list of 53 candidates who were selected. There were 60 posts in Delhi Police and 30 in C.B.I. to be filled up on the basis of the results of the tests and interview. While the other persons borne on the Select List have been offered appointment, the applicant was denied the same. His representations to the competent authorities did not bear fruit. The training programme is stated to have commenced on 1st November, 1989. He moved the Delhi High Court with a writ petition. In the counter-affidavit filed by the respondents in the said writ petition, it was disclosed that during the course of Police verification, it transpired that his name also figured in the F.I.R. No.87 dated 20.2.1986, filed by his brother's wife, on which a case under Section 498-A I.P.C. and the Dowry Prohibition Act, 1961, ^Q has been registered. It was also contended that this amounted to suppression of material facts. The Delhi High Court, however, directed that the petitioner may seek his redress through this Tribunal.

3. The contention of the applicant is that having been selected for the post of Sub-Inspector, he has a fundamental right under Article 14 of the Constitution to be appointed to the said post, that mere pendency of trial for the alleged offence of demand of dowry will not render him ineligible for appointment, that his non-appointment is not in accordance with the guidelines issued by the Government, that the reasons for his non-

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appointment are wholly extraneous, and that in case he is denied appointment now, he will suffer irreparable loss and injury as he will become age-barred for taking any chance in future for a similar appointment.

4. The stand of the respondents is that the mere selection of a person to a particular post does not automatically confer on him the right to appointment, that the non-appointment of the applicant is in accordance with the guiding principles laid down by the Government, that having regard to the criminal case launched against the applicant and others, he has not been found to be suitable for appointment, and that he has suppressed material information in this regard.

5. We have carefully gone through the records of the case and have heard the learned counsel for both the parties.

6. The applicant has stated in his rejoinder affidavit that till now four prosecution witnesses have been examined who are close friends of the complainant family and the name of the applicant does not figure in any of the statements of these witnesses. It is not known as to when the criminal case will conclude. We cannot also say with any amount of certainty as to what would be the verdict of the criminal court. We cannot also rule out the possibility of the losing party preferring appeal, etc., before higher courts and this may be a time-consuming process. In the event of the applicant being found not guilty ultimately, he cannot be put back to the same position as he was at the time he was selected for the post of Sub-Inspector since he would become over-age by then.

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7. In the context of verification of character and antecedents at the time of entry into public employment, the following observations made by Chinnappa Reddy J. in State of Madhya Pradesh Vs. Ramshanker Raghuvanshi and Another, 1983(2) S.C.C 145 at 148, is worth pondering over:-

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

If Government service were a world for angels only, elaborate conduct rules and discipline and appeal rules would not have been necessary to regular their conduct after entry into that world. The procedure for verification of character and antecedents of an aspirant to Government service and the procedure for dealing with his misconduct after entry into the service are justified on the cardinal principle of upholding purity in public service. The procedure of verification of the character and antecedents of the applicant in the present case cannot be called in question as arbitrary or unreasonable.

8. The Government of India, Ministry of Personnel, Public Grievances and Pensions have laid down the guidelines for verification of character and antecedents. Though this is stated to be a secret document and "For official use only", the applicant has produced photostat copies of extracts from the said guidelines (Vide Annexure P-6, pages 43 to 46 of the Paper-Book). The respondents have not denied the existence of such guidelines in their counter-affidavit. In our opinion, without such guidelines, the power of the appointing authority in judging the suitability of candidates for entering Government service would have been arbitrary and untrammelled and would have been violative of Articles 14 and 16 of the Constitution. According to these guidelines,

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" 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 ^{or} 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".

In the instant case, the aforesaid guidelines would not apply, as the criminal court has not convicted the applicant.

9. The question before us is whether the applicant could be deprived of a chance to serve the Government solely on the ground of pendency of a criminal case for demanding dowry in which he is a co-accused in the pending trial in the court.

10. The law will take its own course in the pending criminal case. The alleged offence of demanding dowry is reprehensible and is looked upon as a social evil. In case the verdict of the criminal court is against all the accused, the respondents would be justified in taking action against the applicant on the basis of such verdict. Till the criminal court finds him guilty, the presumption of innocence ^{would} ~~apply~~.

11. We see no substance in the contention of the respondents that the applicant is guilty of suppressing ^a ~~Q~~ has been placed before information in this regard. No material ~~us~~ to substantiate this allegation. The fact that he is a co-accused in the pending criminal case came to light only at the time of verification conducted by the respondents. The applicant was not required to volunteer with this information in any attestation form to be signed by him, as is the normal practice in many Govt. departments. Unless there was a duty to disclose, a person cannot be accused of suppressing information.

12. The applicant is a young aspirant to public service. In case he is denied an opportunity to serve the Government now, he will become ineligible for public service later, as he would be overage. In case the criminal case finds him guilty, the respondents would be at liberty to take appropriate action against him on the basis of the verdict of the criminal court. In case the alleged offence had been committed and trial commenced after the applicant or any other person had entered Government service, he could not have been dismissed from service on that score before the criminal court gives its verdict.

13. In the facts and circumstances of the case, we are of the opinion that depriving an opportunity to enter Government service on the ground of pendency of the criminal case against the applicant will cause irreparable injury to him which cannot in any way be compensated later on when the decision of the criminal court is available to the respondents or when it becomes final and binding on the parties after rounds of litigation in higher courts.

14. We, therefore, allow the application and order and direct as follows:-

(i) The respondents shall reconsider the suitability of appointing the applicant 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 No.87 dated 20.2.1986 of Vinay Nagar Police Station, New Delhi under Section 498 A IPC and the Dowry Prohibition Act. 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 this order.


(ii) Subject to what is stated in (i) above, the respondents shall intimate to the applicant in the offer of appointment that the appointment is subject to the outcome of the criminal case pending against him in the criminal court.

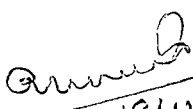
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An entry to this effect shall be made in the service record of the applicant. In case he accepts the offer of appointment, the respondents shall either extend time for his training programme which is stated to have commenced in November, 1989 or condone the shortfall in his training and other requisite formalities.

(iii) 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 judgment.

The parties will bear their own costs.


(D.K. CHAKRAVORTY)
MEMBER (A)
19/12/89


(P.K. KARTHA)
VICE CHAIRMAN(J)
19/12/89