

# IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

## NEW DELHI

O.A. No. 527/1990  
T.A. No.

199

DATE OF DECISION 26.7.1990

<u>Shri Rajeev Batra</u>	Petitioner
<u>Shri A.K. Kohli</u>	Advocate for the Petitioner(s)
Versus	
<u>Union of India &amp; Others</u>	Respondent
<u>Shri M.L. Verma</u>	Advocate for the Respondent(s)

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The Hon'ble Mr. P.K. KARTHA, VICE CHAIRMAN(J)

The Hon'ble Mr. P. SRINIVASAN, ADMINISTRATIVE MEMBER

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?

### JUDGMENT(ORAL)

(of the Bench delivered by Hon'ble Mr. P. Srinivasan,  
Administrative Member)

This application has been listed before us for admission. However, after hearing Shri A.K. Kohli, the learned counsel of the applicant and Shri M.L. Verma, the learned counsel of the respondents, we feel that this application can be disposed of at this stage itself. We proceed to do so.

2. The applicant answered an advertisement in the daily news paper calling for applications for the post of Sub-Inspector in the Central Bureau of Investigation (CBI). He appeared in a written test as well as in an interview for selection and by a communication dated 12.9.1989, the Assistant

*P. Srinivasan*

Director, CBI, conveyed to the applicant an offer of appointment for a temporary post of Sub Inspector of Police in the CBI. This was followed by another communication dated 16.10.1989 addressed by the same official to the applicant enclosing a copy of joining instructions for the applicant's guidance. Unfortunately for <sup>M the applicant,</sup> ~~him~~, the offer of appointment was withdrawn by a communication dated 24th October, 1989 addressed to the applicant, again by the same official. Aggrieved by this letter, the applicant has approached this Tribunal.

3. The respondents have resisted the application by filing a reply. Shri A.K. Kohli, Counsel for the applicant and Shri M.L. Verma, the learned counsel for the respondents have been heard at some length.

4. Shortly stated the reason for withdrawing the offer of appointment issued to the applicant is said to be that, in paragraph 12 of <sup>M his</sup> ~~the~~ application for appointment, he (the applicant) had stated that in reply to a divorce case filed by him against his wife, <sup>M his</sup> ~~his~~ wife's relatives had filed a case against him under Section 498-A of the Indian Penal Code. The respondents say that since the applicant was facing a prosecution for an offence under Section 498-A of the Indian Penal Code, involving moral turpitude, he cannot be allowed to join the CBI. On the other hand, the learned counsel for the applicant, relying on a judgment of the Delhi Bench of this Tribunal <sup>M</sup> ~~at~~ <sup>ls</sup> which one of us (P.K. Kartha) was a Party, in Girish Bhardwaj Vs. Union of India (OA 2213/89), submitted that merely because a case against the applicant under Section 498-A of the IPC was

P.K. Kartha

pending, the offer of appointment could not have been

withdrawn. On the other hand, Shri M.L. Verma distinguished

the fact in Shri Bhardwaj's case where the applicant was

only a co-accused with his brother who was alleged to have

demanding dowry, ~~from the facts of the present case, where the~~

applicant himself is alleged to have demanded dowry from his

in-laws. In view of this, Shri Verma submitted, ~~that the~~

decision in Shri Girish Bhardwaj's case was not applicable in

this case. On the other hand, Shri Verma ~~quoted two~~

judgments of this Tribunal: (1) by the Cuttack Bench in

Bishnu Charan Tripathy Vs. Union of India, 1987(4) SLJ CAT

834 and (11) by the Calcutta Bench in Manoranjan Biswas Vs.

Sub-Divisional Inspector & Others, 1989 (10) ATC 427. In

Bishnu Charan Tripathy's case, the Cuttack Bench held that

appointment to a post could be withheld on the ground that

the candidate in question was facing a criminal charge.

The CBI had registered a case against the applicant therein

under Section 420/471 of the IPC. The Cuttack Bench held that

the respondents rightly withheld the appointment of the

applicant even though he had been earlier selected for the

post of Postal Assistant. In Manoranjan Biswas's case, the

petitioner was an Extra Department Delivery Agent of the P.T.

Department. His services were terminated on the ground that

he had willfully suppressed the fact that he was involved in a

criminal case, while filling up the relevant attestation form

for verification of his character and antecedents. The

Calcutta Bench upheld the action of the respondents. The

applicant in that case had been arrested and a case under

Sections 148, 149, 448, 324, 506 and 307 of the Indian Penal Code had been registered against him. The case against him had started on 1.4.1979 and he had been appointed with effect from 30.12.1980. It appears that the applicant <sup>at first</sup> was <sup>eventually</sup> acquitted of the charges against him but this Tribunal held ~~absolve~~ <sup>fact</sup> that that <sup>in his application</sup> did not absolve the applicant of suppression of a material fact that he had been arrested while filling his attestation and declaration form. Shri Verma submitted that the ratio of the decisions rendered in Bishnu Charan Tripathy's case and Monaranjan Biswas's case was clearly applicable to the facts of ~~the case of~~ <sup>the</sup> the present application and, therefore, the application deserves to be dismissed. CBI being a sensitive department, cannot afford to appoint a person as Sub-Inspector, who is facing a criminal crime.

5. We have given the matter very careful consideration. We have perused the judgments rendered in Girish Bhardwaj's case, Bishnu Charan Tripathy's case and Monaranjan Biswas's case. As would be evident from the narration of facts in Girish Bhardwaj's case, the applicant therein was accused of being an accomplice with his brother <sup>an</sup> in an offence under Section 498-A and a further fact was that he had not disclosed it to the authorities. In the present case, the applicant himself stands accused of demanding dowry and having committed an offence under Section 498-A. We find no material difference between the facts of Girish Bhardwaj's case and the present one. If anything, the present case is better for the applicant since he disclosed the fact of his

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involvement in a case under Section 498-A of the IPC. Not only that, he <sup>contends</sup> ~~complained~~ that it was a "counter blast" against a divorced suit filed by him. It is a matter of speculation whether the applicant's case for divorce <sup>or</sup> ~~of~~ his wife's case against him under Section 498-A of the IPC would succeed. At least, prima facie, the applicant has shown that the criminal case against him was filed out of malice. It was not a case filed by the Police <sup>or the CBI</sup> against him. If he has to wait till that case is disposed of, he could become over aged for Government employment and thereby suffer irreparable loss. If the criminal case against him fails, he cannot thereafter seek employment. The offence with which the applicant has been charged is materially different from the offence with which the petitioners in Bishnu Charan Tripathy's case and Monaranjan Biswas's case were charged. As we have already mentioned, the case against the petitioner in Tripathy's case was <sup>of</sup> ~~against~~ cheating (Section 420) and for using a forged document (Section 471). <sup>He</sup> ~~Tripathy~~ <sup>selected for appointment and</sup> was sent for training but no offer of appointment was issued <sup>to him,</sup> but in the present case, as in Girish Bhardwaj's case, an offer of appointment was issued. In Biswas's <sup>the</sup> ~~case,~~ services of the applicant were terminated on the ground that he withheld vital information and not on the ground that he was <sup>he</sup> ~~charged~~ involved in a criminal case.

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As we have mentioned above, the applicant in that case was exonerated of the charge against him but since <sup>he</sup> had concealed the fact of his arrest, the Tribunal upheld termination of his service<sup>s</sup>. Thus, the facts in Tripathy's and Biswas's case are not in pari materia with those of the present case.

6. In view of the above, we issue the following directions:-

- (i) The respondents will <sup>take</sup> ~~act~~ <sup>action</sup> further in pursuance of the memorandum dated 12.9.1989 (Annexure-A, page 9 of the application) issued to the applicant ignoring the fact that the applicant is facing <sup>a</sup> criminal case under Section 498-A of the IPC filed by <sup>his</sup> in-laws. If after his appointment, the decision in the criminal case goes against him, the respondents will be at liberty to take such action against him as they may deem fit.
- (ii) The application is disposed of with the above directions leaving the parties to bear their own costs.

  
(P. SRINIVASAN)  
ADMINISTRATIVE MEMBER

  
(P.K. KARTHA)  
VICE CHAIRMAN(J)