

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

OA No.126/2003

Dated Thursday this the 22nd day of January, 2004.

C O R A M

HON'BLE MR.A.V.HARIDASAN, VICE CHAIRMAN
HON'BLE MR.H.P.DAS, ADMINISTRATIVE MEMBER

V.V.Snehadevan
S/o Vasudevan
Advocate
Residing at 'Meghalaya'
C.C.XXIX/2395
Poonithura P.O.
Kochi.

Applicant

(By advocate Mr.Asif)

Versus

1. Union Public Service Commission
Dholpur House
Shajahan Road
New Delhi represented
by its Secretary.
2. Central Bureau of Investigation
Government of India
Block No.3
CGO Complex, Lodhi Road
New Delhi represented by
its Director.
3. Government of India
represented by its Secretary
Ministry of Home Affairs
New Delhi.

Respondents.

(By advocate Mrs.S.Chithra, ACGSC)

The application having been heard on 22nd January, 2004, the Tribunal on the same day delivered the following:

O R D E R

HON'BLE MR.A.V.HARIDASAN, VICE CHAIRMAN

The applicant qualified to be appointed as Assistant Public Prosecutor was selected and recommended for appointment as Assistant Public Prosecutor in the Central Bureau of Investigation by the first respondent, UPSC, as is seen from Annexure A-1. The second respondent by A-2 letter dated 13th March 2001 directed the applicant to appear for medical examination. Although the medical examination was held, the

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offer of appointment was not issued. The applicant submitted A-4 representation to the second respondent for which he was given A-5 reply asking him to contact the first respondent. The applicant thereafter submitted A-6 request dated 3.9.2002 to UPSC but he did not get any reply. The applicant submitted a reminder dated 7.11.02 (Annexure A-7) but without any result. Finding that he did not get the offer of appointment, the applicant filed an O.P.No.2608/03 before the Hon'ble High Court of Kerala. The High Court closed the petition without prejudice to the applicant's right to move the Central Administrative Tribunal finding that the jurisdiction vested with the Tribunal. Therefore, the applicant has filed this application seeking a direction to the respondents to appoint the applicant to the post of Assistant Public Prosecutor forthwith and in the alternative for a direction to respondents 1 & 2 to pass orders on A-4 & A-6 representations.

2. Respondents 1 & 2 have filed reply statements. It has been contended by the respondents that the applicant could not be offered appointment because the District Collector, Ernakulam in his report stated that the applicant was not a suitable person to be appointed as Assistant Public Prosecutor in view of his involvement in a criminal case, that on the request of the second respondent, the character and antecedents of another candidate were got verified and an offer of appointment had been issued to the said candidate who had already joined as Assistant Public Prosecutor on 15.4.02 and that, therefore, the claim of the applicant for appointment cannot be maintained.


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3. The applicant filed a rejoinder contending that mere pendency of a criminal charge was not a sufficient reason to deny him employment and that the charge against the applicant having been ultimately quashed by the Hon'ble High Court of Kerala in CrI.M.P.No.1215/2000 by judgement dated 5.2.2003 and as there has been a stay of the proceedings right from the inception of the charge by order dated 13.3.2000, the action on the part of the respondents in denying appointment to the applicant is wholly unjustified.

4. When the application came up for hearing, Mr.Shafik M.A., Advocate represented Mrs.S.Chithra, ACGSC for the respondents.

5. We have heard Mr.Asif, the learned counsel of the applicant and Mr.Shafik M.A. and have carefully gone through the materials brought on record. That the applicant was selected and recommended by the UPSC for appointment as Assistant Public Prosecutor, that this fact was intimated to the applicant, that the applicant had undergone medical examination etc. are not disputed. The applicant was not appointed because the District Collector of Ernakulam, after verification of the character and antecedents of the applicant, stated that the applicant was not a fit person to be appointed as Assistant Public Prosecutor. The gist of the report of the District Collector is contained in Annexure R-2(a) which is a letter written by the second respondent to the first respondent, which reads as follows:

"The collector, Distt. Ernakulam who was requested to send verification report, has informed vide letter No.K.Dis.14632/2001/E7 dated 7.7.2001 (copy enclosed) that Shri V.V.Snehadevan reportedly interfered with the investigation of a sensational sex racket registered at Vanitha Police Station, Ernakulam and misbehaved with the



Police Station staff. Therefore, on the complaint of Shri Peter Babu, C.I. of Police, a criminal case No.352/96 u/s 353 and 294(b) was registered against Shri V.V.Snehadevan at Central Police Station. This case is pending trial before the Judicial First Class Magistrate-II, Ernakulam as CC 539/98. Shri Snehadevan has obtained an interim stay for 2 months from the Hon'ble High Court of Kerala in CrI.MC 1315/2000 from 13.11.2000. The Collector, Ernakulam, has recommended that Shri V.V.Snehadevan is not suitable for appointment to the post of APP in the CBI."

6. Under these circumstances, the second respondent could not appoint the applicant and after verification of character and antecedents of another candidate nominated from the reserved list, appointed him who joined the post on 15.3.2002. It is true that the criminal charge against the applicant had been subsequently quashed by the Hon'ble High Court of Kerala. The learned counsel of the applicant, inviting our attention to a ruling of the Division Bench of the Kerala High Court reported in 1994 1 KLT 603 Naziruddin Vs.KSEB wherein it has been held that mere pendency of a criminal case should not be a valid reason for denying appointment, argued that in the case on hand, as there was only a charge which was ultimately quashed by the Hon'ble High Court of Kerala, the action on the part of the respondents in denying appointment to the applicant was wholly unjustified.

7. Learned counsel for the respondents, on the other hand, argued that the post of Assistant Public Prosecutor in the CBI being a very sensitive post, where a person with impeccable character and honesty alone has to be appointed, when the District Collector in his report stated that the applicant was not a suitable candidate for such appointment, the respondents cannot be faulted for not appointing the applicant. We find considerable force in the argument of the counsel for the respondents. Further it is a case where the post for which the applicant was recommended had already been filled as early as on

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15.4.02 by appointing a person placed in the reserve list and the interest of a third person has got involved. Since more than a year has passed after that person was appointed and the applicant has not challenged his appointment so far, he cannot seek to challenge his (the third person's) appointment now in view of Section 19 of the Administrative Tribunals Act, 1985.

8. Learned counsel of the applicant argued that the applicant was kept in the dark regarding the appointment of a third person to the post and, therefore, his (applicant's) interest has got to be safeguarded. Whether the applicant was kept in the dark or not, the person who had been appointed on 15.4.02 has acquired a right to hold the post and that right cannot be challenged after expiry of a period of one year. Even after the respondents filed their reply statement contending that the post had already been filled, the applicant did not consider it necessary to challenge the appointment of the candidate in the reserve list. Hence as the post for which the select list was prepared has already been filled no direction can be given to the respondents to appoint the applicant although it was unfortunate that at the crucial period there was cloud in the character of the applicant which made him ^{lose the} ~~look for~~ employment opportunity.

9. In the light of what is stated above, this application is dismissed.

Dated 22nd January, 2004.


H.P.DAS
ADMINISTRATIVE MEMBER


A.V.HARIDASAN
VICE CHAIRMAN

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