

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

Second Floor,
Commercial Complex,
Indiranagar,
BANGALORE- 560 038.

Dated: 10 JAN 1995

APPLICATION NO: 1351 of 1994

APPLICANTS:- Sri.Manjunath Hegde,Dharwad Dist.

V/S.

RESPONDENTS:- Station Director,All India Radio,Bangalore and
two Others.,

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1.

Sri.K.R.Krishnamurthy,
Advocate,M/o.Lawyers Inc.,
No.512, Fifth Floor,
Manipal Centre,47th,
Dickenson Road,Bangalore-560 042.

2.

The Station Director,
All India Radio,
Bangalore.

3.

Sri.M.Vasudeva Rao,
Addl.Central Govt.Stng.Counsel,
High Court Bldg,Bangalore-1.

Received Copy
on 10/1/95
[Signature]

Subject:- Forwarding of copies of the Orders passed by the
Central Administrative Tribunal,Bangalore.

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Please find enclosed herewith a copy of the ORDER/
STAY ORDER/INTERIM ORDER/ passed by this Tribunal in the above
mentioned application(s) on Third Day of January,1995.

Issued on
10/01/95

O/c

[Signature]
DEPUTY REGISTRAR
JUDICIAL BRANCHES.

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

O.A. No.1351/94

TUESDAY THIS THE THIRD DAY OF JANUARY 1995

Shri V. Ramakrishnan ... Member [A]

Shri A.N.Vujjanaradhya ... Member [J]

Manjunath Hegde,
S/o Narayan Hegde,
Aged 30 years,
R/o S.S. Alur, Shivagiri,
Jayanagar,
Dharwad-580 007.

... Applicant

[By Advocate Shri K.R. Krishnamurthy]

v.

1. Station Director,
All India Radio,
Bangalore.
2. The Administrative Officer,
All India Radio,
Dharwad.
3. Assistant Director,
Government of India,
Staffselection Commission,
Deptt. of Personnel & Training,
21st Floor,
Vissveswaraiiah Tower,
Dr. Ambedkar Road,
Bangalore.

... Respondents

[By Advocate Shri M.Vasudeva Rao ...
Addl. Standing Counsel for Central Govt.]

O R D E R

Shri A.N. Vujjanaradhya, Member [J]:


1. The applicant who was selected to the post of Transmission Executive at All India Radio, Dharwar, is aggrieved by not being appointed to the said post and has challenged the endorsement issued as in Annexure A-5 dated 16.7.1994.

2. In paras 2 and 3 of the reply filed by the respondents the case of the applicant is countered thus:



The applicant has already been selected by Respondent ['R' for short] No.3 but the entry of an employee into civil service is subject to his being found suitable on detailed police verification of character and antecedents as well as medical fitness from the competent authorities. The enquiries made with District Magistrate, Karwar, revealed that the applicant was involved in a criminal case in Siddapur Police Station in 102/87 for offences under Sections 147/341, 504 read with Section 149 of Indian Penal Code, in CC No.3988 and another case No.188/93 under Section 107 of Criminal Procedure Code both of which are pending enquiry in the court. The District Magistrate, Karwar, has reported about the same in his letter dated 1.7.1994. As in Annexure R-1 as the District Magistrate, Karwar, on the basis of verification of character and antecedents of the applicant had not issued certificate for the suitability of the applicant for appointment in Government service, the applicant could not be appointed to the post and his dossier was returned back to R-1 as in Annexure R-2. In other words, the facts are not in dispute. The applicant who has all the necessary qualifications was duly selected for the post of Transmission Executive at All India Radio. The order of appointment was not issued because of the report of the District magistrate, Karwar, about his character and antecedents.

3. We have heard Shri K.R. Krishnamurthy, learned



counsel for the applicant and Shri M. Vasudeva Rao, learned Addl. Standing Counsel for the respondents.

4. Annexure R-5 is the copy of the letter addressed by the applicant himself to the Superintending Engineer, All India Radio, Dharwar, informing about the criminal case pending against him because of some family dispute between his father, uncles and other members of the family. The applicant has not suppressed this fact. But the offences alleged or levelled against the persons including the applicant are those punishable under Sections 147, 341 and 504 of Indian Penal Code read with Section 149 Indian Penal Code and also proceeding under Section 107 of Criminal Procedure Code. These offences levelled against the applicant and others are mainly due to a civil dispute between the members of the same family and the applicant had pleaded innocence of the offences levelled against him. The main offences complained of are ones punishable under Sections 341 and 504 Indian Penal Code viz., offences of wrongful restraint and offences of intentional insult with intent to provoke breach of the peace which normally do not involve any moral turpitude so as to disqualify the applicant for the employment for which he was selected. Just because the District magistrate has reported about the two cases pending against the applicant and others, it does not mean that the offences levelled against



the applicant are such that they are sufficient to hold that the applicant is not suitable for appointment even if he is found guilty. Anyhow it is always open for the department to take action against the applicant if and when he was convicted by the competent court and the pendency of the criminal case cannot come in the way of his being appointed to the post to which he was duly selected.

5. The respondents have sought to rely on the instructions of the Government of India, Ministry of Home Affairs in O.M. No.18011/9[S]/78-Estt.[B] dated 2.7.1982 [Annexure R-7] to support their stand. Para [D] of the said OM to which our attention was drawn mentions that normally a person convicted of an offence involving moral turpitude should be regarded as ineligible for Government service. But there is a proviso to this clause which states that in case where the appointing authority feels that there are redeeming factors and reasons to believe that such a person has cured himself of the weakness, specific approval of Government may be obtained for his employment. In other words if a person convicted for the offences not involving moral turpitude should be regarded as eligible for Government service. Para [C] of the said O.M. reads thus:

"[C] Those against whom there is substantial evidence of participation in or association with, any subversive or criminal activity or such activities as may render them unsuitable for public employment, or are considered likely to affect their integrity and efficiency in service."

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If a person who is convicted for an offence which does not involve moral turpitude can be appointed to Government service, it is reasonable to hold that the intention of para [C] of the O.M. is that a person against whom a criminal case is pending relating to offences which do not involve moral turpitude is also not ineligible for such appointment.

6. As discussed earlier, the offences alleged against the applicant and others are the ones which had resulted out of family civil dispute and no moral turpitude appears to have been involved in such cases. Therefore, just because there is some offence levelled against the applicant, the same does not render the applicant unsuitable for the post to which he was duly selected.

7. The learned counsel for the applicant referred us to three decisions on the point to support his contention that the applicant is entitled to the appointment to the post for which he was selected.

In GIRISH BHARDWAJ V. UNION OF INDIA AND OTHERS reported in 1989[4] SJJ [CAT] 945 Principal Bench of this tribunal has held that merely because a case was pending, the appointment could not be denied and that, however, if the applicant therein was found guilty subsequently action could be taken against him.

In JAGTAR SINGH V. THE DIRECTOR, CENTRAL BUREAU



OF INVESTIGATION AND OTHERS reported in JT 1993[2] SC 703 the Supreme Court has held that denial of appointment to the post of Senior Public Prosecutor on the ground of unsuitability in view of the antecedents and character without application of mind was bad.

In STATE OF M.P. V. RAMASHANKAR RAGHUVANSHI reported in AIR 1983 SC 374 it was held that the whole business of seeking police report about the political faith, belief and association and the past political activity of the candidate for public employment is repugnant to the basic right guaranteed by the Constitution and entirely misplaced in a democratic republic dedicated to the ideals set forth in the preamble of the Constitution of India.

It is unnecessary for us to go into the details of the facts of these cases on which the learned counsel has relied upon.

8. Our discussion above would indicate that the offences levelled against the applicant and others are not of any serious nature but relate to the family dispute and the same do not tend to show involvement of moral turpitude of the applicant. Consequently we have to come to the conclusion that the denial of appointment to the applicant on the ground of such pendency of criminal case is wholly unjustified. If and when the applicant is found guilty and convicted

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it is always open to the department to take such departmental action as is deemed necessary.

9. In the circumstances we allow this application, quash the endorsement dated 16.7.1994 as at Annexure A-25 and direct the respondents to take steps to appoint the applicant to the post to which he is selected within a period of three months from the date of receipt of a copy of this order.

Sd-

Sd-

31/1/95

3/1/1995

MEMBER [J]

MEMBER [A]

bsv



TRUE COPY

Section Officer
Central Administrative Tribunal
Bangalore Bench
Bangalore