

.1.
**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.NO.428/2008

Thursday this, the *21st* day of January, 2010

CORAM:

HON'BLE DR.K.B.S.RAJAN, MEMBER(J)

HON'BLE SRI K.GEORGE JOSEPH, MEMBER(A)

T.P.Mohandas, S/o Late P.Sankaran Nair,
Aged 54, Superintendent of Police,
(Vigilance & Anti-Corruption Bureau),
Northern Range, Kozhikode,
Residing at "Madurima", Post Thiruvalli P.O.,
Manjeri Via, Malappuram District.

.. Applicant

By Advocate: None for applicant

vs.

1. State of Kerala represented by its Chief Secretary,
Govt.Secretariat, Trivandrum.
2. Union of India, represented by
its Secretary, Ministry of Home Affairs, New Delhi.
3. Union Public Service Commission rep. by its Secretary,
Shajahan Road, New Delhi.
4. The Selection Committee for Selection to Indian Police Service
represented by its Chairman, Union Public Service Commission,
Shajahan Road, New Delhi.
5. The Director General of Police,
Police Head Quarters, Thiruvananthapuram.
6. C.Rajagopal, Superintendent of Police,
(Retired), residing at 'Padma'
TC 9/164-1, 'O' Street, Jawahar Nagar, Kowdiyar,
Thiruvananthapuram.
7. S.Jogesh, Superintendent of Police,
Vigilance(Southern Range),
Plammodu, Pattom, Thiruvananthapuram.
8. George Varghese, Superintendent of Police(Retired),

Residing at Edayile Veedu, Elakollur,
Konni P.O., Pathanamthitta.

9. P.Prabha, Superintendent of Police(Non IPS),
Residing at Quarter No.C-2, Vikas Bhavan Police Quarters,
Vikas Bhavan PO, Trivandrum.

10.B.Babu, Superintendent of Police(Retd.),
Flat No.5-C, Muthoot Residency, N.C.C.Nagar,
Peroorkada P.O., Trivandrum.

11.K.P.Philip, Superintendent of Police, CB CID, Kannur. ..Respondents

By Advocate : Mr. R.Premasanker, Govt. Pleader (R1&5)
Mr.Sunil Jacob Jose, SCGSC(R-2)
Mr.Thomas Mathew Nellimoottil (R3-4)
Mr.CSG Nair for Mr. O.V.Radhakrishnan, Senior with Mrs.Radhamani
Amma (R9)

The application having been heard on 07.01.2010, the Tribunal on
delivered the following:-

ORDER

HON'BLE MR.K.GEORGE JOSEPH, MEMBER(A):

Aggrieved at being left out, the applicant in this O.A. challenges Annexure-A4 notification dated 28.8.2008 Select List of 3 officers towards filling up 3 substantive vacancies in the IPS cadre of Kerala for the year 2007 and seeks the following reliefs:-

- (i) to call for the records leading to the Select List prepared by the 4th respondent Selection Committee at its meeting held on 23.06.2008 under Regulation 5(1) for the vacancies of the year 2007 and to set aside the same;
- (ii) to issue appropriate direction or order directing the 4th respondent to revise the Select List for the vacancies of the year 2007 already prepared under Regulation 5(5) of the Regulations, 1955 and to prepare fresh Select List by making categorisation of officers as 'outstanding', 'very good' and 'good' on the basis of entries in the Service Records of the officers included in the field of choice and giving weightage to inter-se seniority in terms of Regulations 5(4) and (5) of the



Regulations, 1955 and thereafter arrange the officers included in the respective categories based on their inter-se seniority;

(iii) to issue appropriate direction or order directing the 4th respondent to prepare the select list including three names of the State Police Officers unconditionally for the vacancies determined for the year 2007 by the Central Government and to include the name of provisionally selected or deemed to be provisionally selected officers separately without allowing the vacancy/vacancies to get lapsed and without depriving the right of the officers included in the field of choice for appointment by promotion to IPS by reason of the pendency of the criminal cases.

(iv) to issue appropriate direction or order directing the respondents 1 to 4 to appoint the applicant to IPS in case he is included in the Select List of the year 2007 prepared afresh and finally approved by the Commission with effect from the date of his entitlement with all consequential benefits;

(v) to set aside Annexure-A4 notification dated 28.08.2008 issued by the 2nd respondent

(vi) to grant such other reliefs, which this Hon'ble Tribunal may deem fit and proper in the circumstances of the case;

(vii) to award cost to the applicant.

2. Respondent No.9 in this O.A. was applicant in O.A. No.387/2008, which was dismissed by this Tribunal.

3. The applicant joined the Kerala Police Service as Sub Inspector on 15.7.1976. He was promoted as Deputy Superintendent of Police with effect from 1.1.1997 and further promoted as Superintendent of Police on 24.4.2006. He retired from service on superannuation on 31.7.2008. He was in the zone of consideration for appointment to I.P.S. by promotion for the year 2007.

4. The applicant contends that non-inclusion of his name in the list prepared by the Selection Committee in spite of his being rated as 'Outstanding' consecutively for 5 years preceding the date of selection is illegal, arbitrary and discriminatory. Inclusion of respondent Nos. 6 to 8 in the select list is illegal and arbitrary as it is done against

the norms laid down by the UPSC and Regulation 5(4) and 5(5) of the Regulations, 1955. The service records of respondent Nos. 6 to 8 do not exhibit positive merit and they cannot be categorized as 'Outstanding', 'Very Good' having regard to the entries in their service records, whereas the applicant can be categorized only as 'Outstanding' and therefore he should have been placed above respondent Nos. 6 to 8. The Selection Committee has no discretion to ignore or depart from the rating given in the confidential records of the officers in the zone of consideration. The 6th respondent was facing trial in C.C. No.523/2000 in the Court of Hon'ble Chief Judicial Magistrate, Thiruvananthapuram, on the date of the meeting of the Selection Committee. There is a vigilance case pending against him. He was also placed under suspension. The 7th respondent was also placed under suspension. A vigilance enquiry is pending against the 8th respondent also. The selection of respondent Nos. 6 to 8 for appointment by promotion to I.P.S., overlooking the grading given to the applicant, therefore, should be set aside.


5. The respondents filed their counter. The 1st respondent states that the name of the applicant was included in the zone of consideration in the proposal sent to the UPSC. His name was not included in the select list notified on 25.8.2008. Select list is not a matter coming under the purview of the State Government. This is a matter to be dealt with by the Central Government, the Union Public Service Commission and the Selection Committee.

6. So far as respondent No.3 is concerned, it is stated that the Selection Committee meeting was held on 23.6.08. The service records of the applicant as well as respondent Nos. 6 to 8 were assessed by the Committee. On the basis of the overall assessment of the service records, the Committee could not include his name in the list of selected officers due to statutory limit on the size of the select list. In view of various pronouncements of the Hon'ble Supreme Court of India, the right of consideration of eligible officers is protected by the Constitution, but selection for promotion cannot be claimed as a right. In terms of Promotion Regulations all eligible officers within the zone of consideration are to be considered by the Committee irrespective of their having disciplinary or criminal cases pending against them or their integrity certificate being withheld by the State Government. The right of

consideration of State Government Officers cannot be denied if they are otherwise eligible. If they are included in the select list it is made provisional subject to clearance in the proceedings pending against them. In the case of respondent No.6 the Government of Kerala had forwarded to the UPSC a copy of the judgment of the Chief Judicial Magistrate, Thiruvananthapuram dated 27.8.08 wherein he was acquitted of all the charges. In the case of respondent No.7 the State Government has informed that a joint oral enquiry has been ordered against him, however, no memo of charges had been served. As for respondent No.8 the State Government had not initiated any departmental proceedings. Only the Selection Committee is authorized to grade the eligible officers on the basis of overall assessment of their service records. The power of the Selection Committee to make independent assessment of ACRs has been upheld by the Hon'ble Supreme Court in the case of UPSC vs. K.Rajaiah; (2005)10 SCC 15. As such all contentions made by the applicant are devoid of merit.

7. The 8th respondent stated that there was no departmental proceedings contemplated or pending against him, nor any vigilance case. There is no scope for judicial review interfering the recommendation of the Selection Committee in view of the law declared by the Apex Court in M.V.Timmaiah's case; 2008(20SCC 119). He is demonstrably superior to the applicant. Therefore the O.A. should be dismissed.

8. It was submitted by the 6th respondent that he is far senior to the applicant and is having better merit than him. He has been honorably acquitted in all criminal cases filed against him. He has been selected by the Selection Committee on the basis of proper comparison and evaluation of the merit in the ACR and therefore the action of the Selection Committee is perfectly legal and valid.



9. Learned counsels Mr. Sunil Jacob Jose, Sr. Central Govt. Standing Counsel appeared for R2. Mr. Thomas Mathew Nellimoottil appeared for R3-4, Mr. R.Premshanker, Govt. Pleader appeared for R1 & 5 and Mr. CSG Nair for Mr. O.V.Radhakrishnan, Senior with Mrs. Radhamani Amma for R9.

10. Arguments were heard and documents perused.

11. The provisions regarding preparation of a list of suitable officers as laid down in the Promotion Regulations, 1955, are as under:-

"5(1) Each Committee shall ordinarily meet every year and prepare a list of such members of the State Police Service, as are held by them to be suitable for promotion to the service. The number of members of the State Police Service to be included in the list shall be determined by the Central Government in consultation with the State Government concerned, and shall not exceed the number of substantive vacancies as on the first day of January of the year in which the meeting is held, in the posts available for them under rule 9 of the Recruitment Rules. The date and venue of the meeting of the Committee to make the selection shall be determined by the Commission.

5(4) The Selection Committee shall classify the eligible officers as 'Outstanding', 'Very Good', 'Good' and 'Unfit' as the case may be on an overall relative assessment of their service records.

5(5) The list shall be prepared by including the required number of names first from amongst the officers finally classified as 'Outstanding' then from amongst those similarly classified as 'Very Good' and thereafter from amongst those similarly classified as 'Good' and the order of names inter-se within each category shall be in the order of their seniority in the State Police Service.

Provided that the name of an officer so included in the list shall be treated as provisional if the State Government withholds the integrity certificate in respect of such an officer or any proceedings, departmental or criminal are pending against him or anything adverse against him which renders him unsuitable for appointment to the service has come to the notice of the State Government.

Explanation 1: The proceedings shall be treated as pending only if a charge-sheet has actually been issued to the officer or filed in a Court as the case may be.

6. Consultation with the Commission: The list prepared in accordance with Regulation 5 shall then be forwarded to the Commission by the State Government along with;

- i) the records of all members of the State Police Service included in the list;
- ii) the records of all members of the State Police Service who are proposed to be superseded by the recommendations made in the list;

iii) Deleted;

iv) the observations of the State Government on the recommendations of the Committee.

6(A) The State Government shall also forward a copy of the list referred to in Regulation to the Central Government and the Central Government shall send their observations on the recommendations of the Committee to the Commission.

7. SELECT LIST

7(1) The Commission shall consider the list prepared by the Committee along with;


a) the documents received from the State Government under Regulation 6;

b) the observations of the Central Government and unless it considers any change necessary, approve the list.

7(2) If the Commission considers it necessary to make any changes in the list received from the State Government, the Commission shall inform the State Government and the Central Government of the changes proposed and after taking into account these comments, if any, of the State Government and the Central Government, may approve the list finally with such modifications, if any, as may in its opinion be just and proper.

7(3) The list as finally approved by the Commission shall form the Select list of the members of the State Police Service.

7(4) The Select List shall remain in force till the 31st December of the year in which the meeting of the Selection Committee was held with a view to prepare the list under sub-regulation (1) of Regulation 5, or upto 60 days from the date of approval of the Select List by the Commission under sub-regulation (2) whichever is later."



12. Respondent Nos. 3 and 4 have submitted that in the meeting held on 23.6.2008 the Selection Committee, on an overall assessment of the service records, graded the applicant as 'Good'. On the basis of this assessment he could not be included in the list of selected officers due to the statutory limit on the size of the select list. The respondent Nos. 6 to 8 were graded as 'Very Good' on an overall assessment of their service records and they were included in the list of selected officers fit for promotion to the IPS of Kerala Cadre for the year 2007. In terms of Regulation 5(4) only the

Selection Committee is authorized to grade the eligible officers on the basis of overall assessment of their service records. The Hon'ble Supreme Court has upheld the power of the Selection Committee to make independent assessment of ACRs in UPSC vs. K.Rajaiah((2005)10 SCC 15):-

“The power to classify as 'Outstanding', 'Very Good', 'Good' and 'Unfit' is vested with the Selection Committee. That is a function incidental to the selection process. The classification given by the State Government authorities in the ACRs is not binding on the Committee. No doubt, the Committee is by and large guided by the classification adopted by the State Government, but for good reasons, the Selection Committee can evolve its own classification which may be at variance with the gradation given in the ACRs.”

The evaluation of the ACRs by the Selection Committee is not solely dependent on the gradings given by the authorities. The Selection Committee can make its own independent assessment which may vary from the gradation given in the ACRs because sometimes overall gradings in the ACRs may be inconsistent with the gradings under various parameters. The applicant misses this crucial point in the assessment of ACRs by the Selection Committee. The applicant's assessment of his superior merit over other officers in the select list remains his own self assessment only.

13. The Hon'ble Supreme Court has held in the case of R.S.Das (AIR 1987 SC 593):-

“When merit is the criterion for the selection amongst the members of the service, no officer has legal right to be selected on promotion, except that he has only right to be considered along with others. In Gurdial Singh vs. State of Punjab & Ors., this Court has held that a member of State Civil Service has no legal right for promotion, instead he has only right to be considered along with others

.....The Selection Committee is constituted by high ranking responsible officers presided over by Chairman or a Member of the Union Public

Service Commission. There is no reason to hold that they would not act in fair and impartial manner in making selection. The recommendations of the Selection Committee are scrutinized by the State Government and if it finds any discrimination in the selection it has the power to refer the matter to the Commission with its recommendations. The Commission is under a legal obligation to consider the views expressed by the State Government along with the records of officers, before approving the select list. The Selection Committee and the Commission both include persons having requisite knowledge; experience and expertise to assess the service records and ability to adjudge the suitability of officers. In this view we find no good reason to hold that in the absence of reasons the selection would be made arbitrarily.....

.....Article 16 ensures equality in matters relating to appointment and promotion to an officer or post under the State. It enjoins state not to practice discrimination in matters relating to appointment and promotion. A member of the State Civil Service eligible for selection for promotion to the IAS has a right to be considered along with others for selection for promotion. If eligible officers are considered on merit, in an objective manner, no Government Servant has any right to insist for promotion nor any such right is protected by Article 16."

When merit is the criterion for selection, no officer has a legal right to be selected for promotion; his right is limited to consideration along with others.

14. This Tribunal is not expected to act as an appellate authority over the selection made by the Selection Committee unless it is vitiated by malafides or arbitrariness. In the case of Dalpat Abasaheb Solunke vs. B.S.Mahajan, the Apex Court held :-

"It is needless to emphasize that it is not the function of the Court to hear appeals over the decisions of the Selection Committees and to scrutinize the relative merits of the candidates. Whether a candidate is fit for a particular post or not has to be decided by them duly constituted Selection

Committee which has the expertise on the subject.”

15. In *Nutan Arvind vs. Union of India & Others*, (1996) 2 SCC 488, the Apex Court held:-

“When a high level Committee had considered the respective merits of the candidates, assessed the grading and considered their cases for promotion, this Court cannot sit over the assessment made by the DPC as an appellate authority.”

16. In terms of the Promotion Regulations 5(5) the right of consideration of officers who are facing departmental action or judicial proceedings cannot be denied if they are otherwise eligible for consideration. However, the name of such an officer will be treated as provisional. He will have to be cleared for the purpose of appointment during the currency of the select list which is till the 31st December of the year in which the meeting of the Selection Committee was held or up to 60 days from the date of approval of the select list by the Commission whichever is later. In the instant case, respondent No.6 was honorably acquitted of all charges. In the case of respondent No.7 no charge sheet was served upon him. No departmental proceedings have been initiated or pending against respondent No.8. Therefore their inclusion in the select list is in accordance with the Promotion Regulations.

17. We do not find any malafides, arbitrariness or discrimination in the selection made, which is strictly in accordance with the Regulations. The applicant has been given fair consideration for promotion. His right for consideration has been fully protected. His contentions are factually wrong and legally untenable.

18. Devoid of merit, the application is dismissed. No costs.


(K. GEORGE JOSEPH)
MEMBER(A)


(Dr. K. B. S. RAJAN)
MEMBER(J)