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CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A No. 451/2011

Wednesday, this the 6th day of July, 2011.

CORAM

HON'BLE Dr K.B.S.RAJAN, JUDICIAL MEMBER
HON'BLE Ms. K NOORJEHAN, ADMINISTRATIVE MEMBER

S.Pulikesy I.P.S.
Additional Director General of Police(Training),
Kerala State.Applicant

(By Advocate Mr P.K.Manoj Kumar with Mr N Nandakumara Menon, Senior Counsel)

v.

1. The Union of India represented by the
Secretary to Government,
Public Grievances & Pension,
(Department of Personnel & Training),
Government of India, New Delhi-110 001.
2. The State of Kerala represented by the
Chief Secretary, Government of Kerala,
Secretariat, Thiruvananthapuram-695 001.
3. The Screening Committee for selection to the
grade of Director General of Police (Kerala Cadre),
represented by its Chairman,
The Chief Secretary, State of Kerala,
Secretariat, Thiruvananthapuram-695 001.
4. The Director General of Police,
Police Headquarters, Vazhuthakad,
Thiruvananthapuram-695 014.Respondents

(By Advocate Mr Sunil Jacob Jose, SCGSC for R.1)

(By Advocate Mr N.K.Thankachan, G.P. for R.2 to 4)

This application having been heard on 27.6.2011, the Tribunal on 6.7.2011 delivered the following:

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ORDER

HON'BLE Dr K.B.S.RAJAN, JUDICIAL MEMBER, JUDICIAL MEMBER

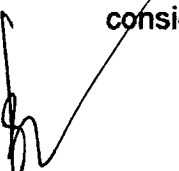
The applicant, a 1977 Batch Indian Police Service Officer was kept under suspension on account of certain criminal case. When his turn for promotion to the post of Director General of Police came, along with other 1977 Batch officers, the applicant's case was also considered but the recommendations were kept in the sealed cover.

2. Two vacancies arose in the grade of DGP in February and March 2011 for which next DPC was to be held. It was at this time that the then Minister of Civil Supplies had sent a note dated 11.2.2011 to the then Chief Minister stating that a person who has received a charge sheet in corruption case filed by the CBI and who is also facing the departmental enquiry in another case, if promoted to the rank of DGP, it would tarnish the image of the Government and hence appropriate steps be taken in this matter. Annexure A-7 refers. Earlier, on 15.6.2010, the applicant was served with some articles of charge. The crux of it as under:

"Shri S.Pulikesi IPS, Additional Director General of Police, Training while holding the post of Chairman & Managing Director, Kerala State Civil Supplies Corporation (Supplyco) for the period from December 2002 to March 2004, have detained Earnest Money deposit in the form of Demand Draft furnished by the Suppliers on the purchase of Pulses & Spice for the Kerala State Civil Supplies Corporation and by non-remitting the said Demand Drafts into bank in contrary to Rules resulting in blocking of funds and consequent loss of Rs.15.53 lakhs by way of interest."

3. Presumably, the aforesaid departmental proceedings were intended in the note addressed by the then Minister of Civil Supplies to the then Chief Minister.

4. The respondents have held a Screening Committee on 28.3.2011 and it considered the suitability of certain IPS officers of 1978 Batch and prepared a



panel for promotion to the grade of DGP. It had recommended the names of those officers who have been considered.

5. The grievance of the applicant in this O.A is that the applicant ought to have been considered for promotion in the next year selection as well and the recommendations of the DPC acted upon. The respondents have completely omitted to consider the name of the applicant when the Screening Committee met on 28.3.2011. Non-consideration is against the various decisions of the Apex Court. The applicant, has, therefore, prayed for the following reliefs:

- (A) To direct the respondents 2 to 4 to convene a Review Screening Committee meeting and to consider the applicant for promotion to the grade of Director General of Police forthwith;
- (B) To set aside Annexure A-8 articles of charges dated 15.6.2010 issued to the applicant and Annexure A-11 order dated 16.4.2011 issued by the State Government appointing the Enquiry Authority and all further proceedings consequent thereto;
- (C) To direct the respondents 2 to 4 to open the sealed cover concerning the consideration of the applicant for promotion to the grade of Director General of Police kept as per the proceedings of the Screening Committee in the meeting held on 6.3.2009 for preparation of penal for promotion to the grade of Director General of Police, and to grant to the applicant the appropriate date and place in the grade of Director General of Police.

6. Respondents have contested the O.A. According to them, the Review Committee which met on 28.3.2011 reviewed the sealed cover procedure adopted in respect of the applicant and found that prosecution sanction against the applicant has been issued in a case No.RC 23(A)07-KER which was registered and conducted by the CBI. Concurrently, departmental proceedings against the

officer have also been initiated by framing articles of charge as directed by the Ministry of Home Affairs on the allegation of irregularity in the purchase of medicines for the Kerala Civil Supplies Corporation. As regards the note from one of the former Ministers to the former Chief Minister, the respondents stated that the said note was received by the Chief Secretary on 17.2.2011. The Screening Committee meeting to consider the case of IPS officers of 1977 Batch for preparing panel for promotion to the DGP grade was held early on 21.12.2009. Again the respondents have also referred to the alleged charges relating to detention of Earnest Money Deposit in the form of Demand Draft and by not remitting DD into the Bank which is contrary to the provisions of relevant Manual and Rules, the same resulted in blocking up of funds and consequent loss of Rs.15.53 lakhs by way of interest to the Corporation. The said case is still pending.

7. The applicant has filed a rejoinder reiterating his stand as contained in the O.A and denying the various contentions of the respondents. Senior Counsel for the applicant has contended that the entire act on the part of the respondents is accentuated by illegality and non-application of mind. When the revocation of the applicant's suspension took place on 26.11.2009, the respondents ought to have considered his name and taken further action according to the recommendation of the DPC. As to further action, two options are open to the respondents, viz, (a) to promote the applicant to the post of DGP pending finalisation of the criminal case/departmental proceedings, and (b) keeping the recommendations of the DPC in a sealed cover. None of them has been followed.

8. As regards the note from the former Minister, it has been argued by the Senior Counsel that the respondents should not have taken into account the same

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since promotions are being based strictly on relevant rules. Again the contention of the respondents that the case of the applicant was considered on 21.12.2009 whereas note from the Minister to the former Chief Minister landed on the table of the Chief Secretary on 17.2.2011, the Senior counsel argued that this is an attempt to confuse the Court inasmuch as the respondents were supposed to consider the case of the applicant in the DPC held on 28.3.2011 and the applicant's complaint is only non-consideration in that meeting presumably as the said letter would have its influence, and not in respect of the one which took place on 21.12.2009 when the recommendations of the DPC relating to the applicant were already kept in sealed cover.

9. As regards the new article of charge vide memo dated 15.6.2010, the Senior counsel argued that the demand draft in question was of the EMI deposits of unsuccessful bidders which are to be returned. Non-deposit cannot amount to misconduct, as the same were to be returned or refunded. Again, since the State Civil Supplies Corporation was having only current account, the question of interest does not arise at all. In any event, even if there be any breach of rule, this being the functional responsibility of some subordinate officers such as Accounts Officers, the applicant cannot be issued with the charge sheet. The Senior counsel vehemently argued that the issue of this articles of charge which has no legal basis to sustain, has been so timed that it was deliberately and purposely meant only to frustrate the applicant's promotion as DGP as the applicant is due for retirement in the first half of 2012.

10. Counsel for respondents had made certain preliminary objections as to the maintainability of the O.A itself. These are as under:

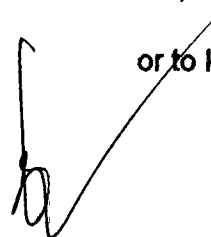
- a) Plural remedy: According to the counsel for the respondents, the

reliefs sought are independent of each other. Thus plural remedy is not permissible.

b) Non-joinder of necessary party: According to the counsel for respondents, since any decision in favour of the applicant in this O.A would affect the promotion of any of the 3 members recommended by the DPC in its meeting dated 28.3.2011, that officer must have been impleaded as one of the respondents and failure to do so non-suits the applicant.

In addition to the above, the counsel for the respondents argued that in so far as sealed cover procedure adopted is concerned, in respect of 1977 Batch, the applicant's case had been reviewed once in three months vide Annexure R-29. The counsel also referred to the decision of the Apex Court reported in AIR 2006 SC 1484 in support of the action of the respondents.

11. Senior Counsel for the applicant in his rejoinder argued that remedy claimed may be independent in so far as relief(c) is concerned and he is not pressing the same. However, remedies (a) and (b) are inter-related inasmuch as quashing of the pending procedure vide articles of charge dated 15.6.2010 would result the applicant being considered for promotion as DGP. In so far as the powers vested with the respondents are concerned, the Senior counsel for the applicant once again reiterated that two options are available to the Government, viz, either to promote the applicant, if found suitable by the Selection Committee or to keep the recommendations in sealed cover.



12. Arguments were heard and documents perused.

13. First as to the preliminary objections raised by the respondents. The reliefs claimed are three in number of which one relates to the opening of the sealed cover. This is not insisted by the Senior Counsel and hence, the same is not considered. Of the remaining two, one relates to the quashing of the articles of charge dated 15th June, 2010 and the other for convening a review meeting to consider the case of the applicant for promotion to the post of DGP. These are certainly interlinked, though the order of the prayer is not properly made [prayer (B) leading to (A) and not vice versa]. Thus, the first objection is overruled. As regards non joinder of the parties, the Selection Committee has only recommended three officers for promotion and these recommendations are subject to acceptance by the Government. The counsel for the respondents has fairly stated that the respondents which considered the case of the applicant in the previous Selection (by adopting the sealed cover procedure) has not done so in the present case and thus, the case of the applicant had not been considered at all. Thus, as held in the case of **A Janardhana vs Union of India (1983) 3 SCC 601** wherein the Apex Court has held as under:-

"The contention is that criteria adopted by the Union Government in drawing up the impugned seniority list are invalid and illegal and the relief is claimed against the Union Government restraining it from upsetting or quashing the already drawn up valid list and for quashing the impugned seniority list. Thus the relief is claimed against the Union Government and not against any particular individual. In this background, we consider it unnecessary to have all direct recruits to be impleaded as respondents."

14. The above decision took the support of the earlier decision of the Apex Court in the case of **GM South Central Railways vs A.V. Siddhanti** wherein too the Apex Court has held that were the constitutional validity of the Railway Board

policy has been questioned, there is no need to implead any parties who may be likely to be adversely affected. They may be proper parties but not necessary parties. The applicant in the instant case questioned only the procedure adopted and had not claimed any relief against any particular individual. If a vested right of an individual has been hampered by the respondents and the same is questioned, suffice it to implead only the respondents. If the decision of the court affects any of the private parties as a matter of consequential act of the respondents, it is for the respondents to adopt the procedure prescribed by the executive in rectifying the mistake committed by them. Thus, the same is also overruled.

15. Now coming to the actual crux of this issue, admittedly when the earlier meeting took place, the applicant was facing a criminal charge and the respondents did consider his case. The situation does not get altered at this time and as such, the Selection Committee ought to have considered the case of the applicant in its meeting held on 28-03-2011. This not having been done, prima facie the vested right of the applicant gets hampered. Thus, the applicant has made out a prima facie case. Coming to the balance of convenience and interest of justice, the applicant is to superannuate in April, 2012. As such, considering his case for promotion now alone would enable him, in the event of his being found suitable by the Selection Committee, and eventually if promoted, to occupy the highest post in the Police Service in the State and as such, balance of convenience is in favour of the applicant. Accordingly, the respondents are directed to hold a Review DPC of the earlier DPC convened on 28-03-2011 and consider the case of the applicant and act as per the recommendations of the Select Committee. This interim order shall be complied with, within a period of two months from the date of communication of this order.

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16. Let a full fledged reply to the main OA be filed within a period of four weeks from today and the applicant may file his rejoinder within a fortnight thereafter.

List on 16-08-2011.


K NOORJEHAN
ADMINISTRATIVE MEMBER


Dr K.B.S. RAJAN
JUDICIAL MEMBER

trs

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.No.451/11

Wednesday this the 4th day of January 2012

C O R A M :

HON'BLE Dr.K.B.S.RAJAN, JUDICIAL MEMBER
HON'BLE Ms.K.NOORJEHAN, ADMINISTRATIVE MEMBER

S.Pulikeshy I.P.S.

Additional Director General of Police (Training),
Kerala State.

....Applicant

(By Advocate Mr.N.Nandakumara Menon,Sr.
with Mr.P.K.Manoj Kumar)

V e r s u s

1. The Union of India represented by the
Secretary to Government,
Public Grievances & Pension,
(Department of Personnel & Training),
Government of India, New Delhi - 110 001.
2. The State of Kerala represented by the
Chief Secretary, Government of Kerala,
Secretariat, Thiruvananthapuram - 695 001.
3. The Screening Committee for selection to the
grade of Director General of Police (Kerala Cadre),
represented by its Chairman,
The Chief Secretary, State of Kerala,
Secretariat, Thiruvananthapuram - 695 001.
4. The Director General of Police,
Police Headquarters, Vazhuthakad,
Thiruvananthapuram - 695 014.

....Respondents

(By Advocate Mr.Sunil Jacob Jose,SCGSC [R1]
& Mr.P.K.Abdul Rahiman [R2-4])

This application having been heard on 4th January 2012 this Tribunal
on the same day delivered the following :-

.2.

ORDER

HON'BLE Dr.K.B.S.RAJAN. JUDICIAL MEMBER

It has been stated by the proxy counsel for the applicant that the Original Application has become infructuous as the grievance of the applicant has been redressed by the Administration. Hence the Original Application is closed as having become infructuous.

(Dated this the 4th day of January 2012)


K.NOORJEHAN
ADMINISTRATIVE MEMBER


Dr.K.B.S.RAJAN
JUDICIAL MEMBER

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