

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A No.454/2004

Monday the 9th October 2006

C O R A M:

HON'BLE MR.K.B.S.RAJAN, JUDICIAL MEMBER
HON'BLE MR.N.RAMAKRISHNAN, ADMINISTRATIVE MEMBER

P.P.John, S/o P.S.Pyli, Asstt.Conservator of Forest
(Retired on 29.2.2000), PuthenKudiyil House,
Iningole P.O, Perumbavoor, Ernakulam.

Applicant

(By Mr.P.V.Mohanan, Advocate)

Vs.

- 1 Union of India represented by Secretary,
Ministry of Environment & Forest
Paryavaran Bhawan, CGO Complex
Lodhi Road, New Delhi - 1100003.
- 2 The State of Kerala represented by Chief Secretary
Govt of Kerala, Govt Secretariat, Thiruvananthapuram

Respondents.

(By Mr.TPM Ibrahim Khan, SCGSC for R1
Mr.Thavamony, GP for R2)

O R D E R

HONBLE MR.K.B.S.RAJAN, JUDICIAL MEMBER

None for the applicant even on the second call. It is observed from the previous orders that the counsel for the applicant has been seeking successive adjournment. After filing the rejoinder there has been no effective representation at all. In all expectation the applicant has lost his interest in prosecuting the O.A hence the O.A is dismissed on default for non-prosecution.



(N.Ramakrishnan)
Administrative Member



(K.B.S.Rajan)
Judicial Member.

kkj

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A. NO. 454/2004

TUESDAY THIS THE 14th DAY OF NOVEMBER 2006

C O R A M

HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN
HO'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER

P.P. John S/o P.S.Pyli
Retired Assistant Conservator of Forests
Puthen Kudiyil House
Iningole PO
Perumbavoor
Ernakulam District.

Applicant

By Advocate Mr. P.V. Mohanan

Vs.

- 1 Union of India represented by Secretary
Ministry of Environment and Forest
Parivaran Bhawan, CGO Complex
Lodhi Road, New Delhi-110 003
- 2 The State of Kerala represented by
the Chief Secretary
Government of Kerala
Government Secretariat
Thiruvananthapuram.

Respondents

By Advocate Mr. T.P.M Ibrahim Khan, for SCGSC for R-1

By Advocate Mr. Thavamony G.P. for R -2

O R D E R

HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN

The applicant has submitted the following facts for consideration of his case for promotion and appointment to the Indian Forest Service.

2. The applicant joined as a Ranger in the Kerala Forest Subordinate Service on 22.3.1969 and completed 8 years of continuous officiating service in the category of Assistant Conservator of Forests in the year 1992 and became eligible to be considered for promotion to the IFS (Promotion Quota) under Rule 5 of the Regulation 1955. But no select committee for filling up the selection quota in Kerala cadre of the IFS was held till 2003 as the final seniority list of Assistant Conservator of Forests could not be finalised due to dispute regarding seniority. The State Forest Service Officers aggrieved by the non-convening of the Select Committee filed Applications before the Tribunal, and O.A.402/1999 filed by the applicant and another, was disposed of on 6.10.1999 directing to consider the claim of the applicants for selection to the IFS in the promotion quota (Annexure A-1). The applicant had also filed OP NO.31803/99 before the Hon'ble High Court aggrieved by his placement in the seniority list of Assistant Conservators of Forests.

¹In the
Miscellaneous Petition filed by the applicant in the said OP, the Hon'ble High Court directed to consider the case of the applicant for selection to the IFS irrespective of the fact that he had retired, if the Review Committee meets for considering the review of selections for the year 1994-95 onwards. The OP itself was allowed by judgment dated 3.11.2000 holding that the applicant was entitled to be considered in the selection to IFS during the year 1999 if he comes within the zone of consideration of three times the number of vacancies and that he shall be considered for the vacancies in the

year 2000 also notwithstanding his retirement. The Writ Appeals filed by the State Government and the directly recruited candidates against the judgment was dismissed by the Hon'ble High Court by judgment dated 10.9.2002-Annexure A-6. For the non-compliance of the judgment, the applicant preferred a Contempt Petition No. 168/2002.

3 The State Government then forwarded the proposal for convening the select committee for IFS for the year 1995-96 to 2002. The Select Committee met on 11.8.2003. Four vacancies were identified in the year 1999 and the applicant was included as Sl. No. 4 in the zone of consideration for the year 1999 and the applicant was selected and included at rank No. 2 in the select list (Annexure A-7). In Annexure A-7 below the entry in respect of the applicant it was noted as follows:

"The name at Sl.No. 2 has been included in the list provisionally subject to clearance of disciplinary proceedings and grant of integrity certificate by the State Government."

4 The applicant submits that the Chief Conservator of Forests (Protection) by memorandum dated 25.4.1995 framed a charge memo contemplating departmental proceedings against the applicant under KCS(CCA) Rule 1960. The allegation was that there was a delay in re-auction of Forest Articles in the year 1983 thereby occasioning a loss of Rs.82044/- to the State. The applicant had submitted a detailed explanation refuting the charges and explaining the position that the DFO, Munnar is the authority to conduct the re-

auction in Adimaly Range and the applicant had taken all steps from his side. Meanwhile he had been transferred from the post and had handed over the charge to the new incumbent. Nothing was heard about the case thereafter and the applicant came to know that the Principal Chief Conservator of Forests has submitted a detailed report to the Secretary, Government Special Cell, GAD exonerating the applicant from the charges levelled against him and it is understood that the Government had dropped all further proceedings against the applicant. According to the applicant, the Principal Chief Conservator of Forests has also forwarded the integrity certificate of the applicant to the Government but no action was taken for appointing the applicant to the IFS and his representation to the Chief Secretary and the Minister had not yielded any result. The person ranked NO. 1 in the select list 1999 and rank NO. 3 have been issued with appointment orders and the applicant has not been considered for appointment though one year has lapsed since the preparation of the select list. Thus, the respondents have failed to discharge their statutory duty and responsibility and the applicant has been arbitrarily discriminated.

5 The following reliefs are sought:

(i) To direct the respondents to appoint the applicant to Indian Forest Service Cadre (Promotion Quota) forth with, with all consequential benefits including the pay and allowances

(ii) To direct the 2nd respondent to forward the integrity certificate and other necessary details to the 1st respondent forthwith enabling the 1st respondent to issue statutory notification appointing the applicant to Indian Forest Service.

(iii) Any other appropriate order or direction as this Hon'ble Tribunal deem fit in the interest of justice.

6 The allegations and averments of the applicant have been denied by the respondents in the reply statement. According to them, the applicant is not eligible for any of the reliefs prayed for. The case of the applicant was placed before the 1999 Selection Committee. While placing an officer before the Selection Committee the State Governments are required to send the details of Disciplinary/Judicial Proceedings if any pending against each of the officers included in the zone of consideration and they are also required to furnish a certificate on the Integrity of the officers. As per Ministry of Home Affairs letter No. 14/2365-AIS(III) dated 8.6.1965, integrity has to be certified by the Chief Secretary. In the case of officers against whom Departmental/Judicial proceedings are pending or whose Integrity Certificate is withheld, they are also considered by the Selection Committee and included in the list if they are otherwise eligible for such inclusion, but their inclusion in the list will be provisional subject to the clearance of departmental action or furnishing of Integrity Certificate as the case may be. At the time of convening of the Selection Committee Meeting, orders were issued reducing the applicant's pension by 1% as provided under Rule 59(b) of Part-I KSRs by declaring his service not thoroughly satisfactory vide Annexure R-1 order dated 24.7.2003. Another disciplinary proceeding initiated against the applicant by the then Divisional Forest Officer on the issue of construction of Tribal Houses in

Cheeyemban Coffee Plantation during 1994-95 was concluded by ordering to recover an amount of Rs. 7,497/- from the DCRG due to him vide order dated 16.1.2003. In the above circumstances, it was decided to withhold his Integrity Certificate and his name was included in the Select list for 1999 as Sl.No. 2 only provisionally. An appeal filed by the applicant against the order revising his pension is now pending with the Government. In terms of sub regulation 4 of Regulation 7 of the IFS (Appointment by Promotion) Regulation 1966, in case the names of those who are included in the list provisionally are to be made unconditional by the UPSC based on the recommendations of the State Government, such recommendation is to be made during the validity period of the Select List. In view of the State Forest and Wild Life Department declaring that his past services are not satisfactory thereby reducing his pension, the State Government did not propose to recommend his inclusion in the Selection List as unconditional. The State Government have also taken a decision that retired persons need not be recommended for appointment to the IFS as they have ceased to be the members of the State Forest Service. They also pointed out that in the cases of Shri Patric Gomez and A. Sharafudeenkutty mentioned by the applicant, they had been appointed to the IFS based on Court directions and subject to the outcome of the SLP if any filed by the Union Government.

7 The applicant has filed a rejoinder rebutting the facts of the case mentioned by the respondents stating that the applicant cannot

be held responsible for any loss caused to the Government and that he has filed a review petition before the Government on 10.10.2003 contending that the proceeding against him is barred by limitation and that there was no evidence to prove his misconduct and the review application has not been disposed of so far. It is also submitted that in another disciplinary proceedings initiated against the applicant pursuant to Annexure A-8 memorandum, the Chief Conservator of Forests by proceedings dated 16.1.2006 has informed that the applicant is not guilty of the charges levelled against him and sought permission from the Government by proceeding dated 26.5.2005 to exonerate the applicant from the charges levelled against him. He has enclosed a copy of the letter as Annexure A-12. Later by M.A unnumbered dated 8.11.2006 the applicant produced a copy of the Proceedings of the Chief Conservator of Forests dated 17.3.2006 exempting him and others from the charges levelled against them on sympathetic consideration (Annexure A-13). According to the applicant therefore he has to be deemed to be exonerated against all the charges levelled against him and there was no hurdle to forward his Integrity certificate to the Government to facilitate the issue of notification for the appointment to the IFS.

8 We have heard Shri P.V.Mohanan, the learned counsel appearing for the applicant, Shri Thavamony the learned GP for the second respondent, Ms Jisha appearing on behalf of Shri TPM Ibrahim Khan, SCGSC for respondent No. 1.

9 Shri P.V. Mohanan, the learned counsel for the applicant recalled earlier OAs filed by the applicant for consideration of his case for promotion from 1999 onwards and submitted that the applicant was included in the 1999 Select List after directions of this Tribunal and the High Court for consideration of the case of State Forest Service Officers for inclusion in the Select List of 1995. The Hon'ble High Court in OP No. 31803/1999 had declared that the applicant is entitled to be considered for the years 1999 and 2000 despite the fact that he has to retire on 29.2.2000 and it would not be open to the State Government to contend now that the State Forest Service Officers who are retired from the Service cannot be recommended for appointment to IFS as they ceased to be members of the State Forest Service. Moreover, the person who was included in the 2002 Select List has been appointed after retirement on the basis of direction of the Hon'ble High Court in WP.(C) No. 10707 & 11425/2004 Sl.No. 3 Asherafudeen Kutty in the same Select List of 1999 was appointed after retirement from the State Civil Service.

10 According to the submission of the learned counsel for the applicant, the reason for not considering him for appointment was the pendency of the disciplinary proceedings initiated against him by Annexure A-8 charge memo dated 25.4.1995. Apart from arguing that the applicant was not responsible for the allegation of causing a loss of Rs. 82043.65 to the exchequer, it was urged that the Principal Chief Conservator of Forest by letter dated 30.12.2002 to the Secretary, Government Special Cell, GAD, exonerated the

applicant from the charges levelled against him (copy of which has been produced before us). Prior to Annexure A-10 letter addressed to the applicant It was informed that the applicant was not found guilty and the matter has been kept pending at the Government level even though disciplinary authority being the Principal Chief Conservator of Forests, there was no need for disciplinary action against the applicant to be referred to the Government. Hence it was argued that these proceedings cannot be considered to be pending. With regard to the case of reduction of applicant's pension by 1% as per Kerala Service Rules, it was mentioned that the applicant had filed a review petition in 2002 itself and had a decision been taken promptly, the pendency of the proceedings would not have been considered for inclusion of the applicant's case on a provisional basis.

11 The counsel also relied on the following cases:

- (i) S. Sheikh Meenan Rawther Vs. The Principal Secretary to Government and another. (2001 (1) ILR 274)
- (ii) Mahender Singh Vs .UOI and Another (1991 (2) Suppl. SCC 126)
- (iii) Badrinath Vs. Government of Tamil Nadu and Others (2000 (8) SCC 395)

12 Shri Thavamony, Government Pleader appearing on behalf of the State Government drew our attention to paragraphs 2 and 3 of the reply statement particularly setting forth the reasons why the Integrity Certificate of the applicant was not issued. It was also pointed out that Annexure A-12 letter relied upon by the applicant in

the rejoinder is only a proceeding submitted by the Chief Conservator of Forests to the State Government and the Government had not so far issued any orders dropping the disciplinary proceedings against the applicant.

13 We have heard the learned counsels appearing on both sides and perused the various materials produced before us and the judgments relied on by the parties. The facts leading to the non-convening of the Committee for selection to the IFS from the State Forest Service Cadre for the years 1995 to 2000 and the approval of the Select List as recommended by the Selection Committee which met on 11.8.2003 for filling up the promotion quota vacancies from 1995-96 to 2002 are admitted matters. The select list of 1995-96 to 2002 prepared by the Committee had been approved by the UPSC in exercise of the powers contained in sub regulation (3) of Regulation 7 of the IFS (Appointment by Promotion) Regulation and have been published by notification dated 31.10.2003 (Annexure A7). The applicant's name figures at Sl. No. 2 in the select list of 1999 with an asterisk mark against which the following note has been recorded.

"The name at Sl.No. 02 has been included in the list provisionally subject to clearance in disciplinary proceedings and grant of integrity certificate by the State Government."

14 The entire case of the applicant as argued by the learned counsel rests on the contention that only one disciplinary case as initiated by Annexure A-8 charge memorandum was pending against

the applicant at the time of the Selection Committee Meeting and that since it has been disposed of in his favour by the finding of the Chief Conservator of Forest that the applicant is not guilty of the charges levelled against him, there was no further hurdle for considering his case for promotion to IFS. We shall consider this issue in detail later.

15 First we would like to refer to the other arguments advanced by the learned counsel for the applicant that the applicant was entitled for appointment to the IFS even though he had retired from service on 29.2.2000. For this purpose, the applicant had drawn to our notice the judgment of the Hon'ble High Court in the case of the applicant himself as well as the case of Sri Patric Gomez in WP NO. 10707 of 2004. Shri Patric Gomes had approached this Tribunal in O.A. 35/2003 seeking a direction for convening of the Selection Committee for preparation of Select List for the vacancies for the year 2000 onwards prior to his date of superannuation on 31.3.2003. The Tribunal had directed the respondents to expeditiously convene the Selection Committee meeting in any case before 31.3.2002 positively. There was delay in the convening of the Selection Committee and when the applicant approached the Tribunal again, it was directed that if it was impossible to draw the select list before the 31.3.2003 the delay in doing so will not affect the applicant's appointment for the reason that he was retired on superannuation from the State Forest Service on 31.2.2004. The Union of India filed WP(C) before the High Court of Kerala challenging the said order of

the Tribunal stating that the State Government is not forwarding the ACRs of the applicant and the High Court directed State Government to forward the ACRs to the UPSC. Ultimately the meeting of the Committee was held on 11.8.2003, the select list was notified on 31.10.2003. The name of the applicant Sri Patric Gomez was included in the list for the year 2002. In the meanwhile Shri Gomez retired from service on 31.3.2003 on superannuation. The applicant was not given the appointment to the IFS by the State Government and he filed CPC claiming action against the State Government, Central Government and the UPSC. The State Government of Kerala also filed W P before the Hon'ble High Court after undertaking to implement the order of the Tribunal in time. The petitioner sought extension of time till 31.3.2004. It was in this context that the said WPs were dismissed by the Hon'ble High Court holding that the Central and State Governments have not given any satisfactory explanation for challenging the order of the Tribunal and if there would have been any difficulty in appointing a retired person even if he is included in the select list prepared after his retirement it was not pointed out. The delay in the preparation of the select list was not due to any delay or inaction on the part of the applicant and the applicant cannot be made to suffer for the failure of the Governments. It was also held that the applicant was included in the select list for the year 2002 and at that time he was a member of the State Forest Service and that he had been prosecuting the case before attaining the age of superannuation. It was also pointed out

that the applicant had still service of four years in the IFS. On the above mentioned grounds Sri Gomez was directed to be appointed. These views of the Hon'ble High Court will hold good in the case of the applicant in this O.A also to the extent that the applicant in this case had also approached the Tribunal well before his retirement and the direction for consideration of his case was given by the Tribunal by Annexure A-2 order and thereafter in OP NO. 31803 of 1999 before the Hon'ble High Court in which specific direction to consider him notwithstanding his retirement on 18.3.2003 was issued. Under these circumstances, the State Government cannot now necessarily contend that the applicant cannot be appointed as he was no longer a member of the State Forest Service. The case of the applicant has however to be considered against a different set of facts regarding the pendency of the disciplinary proceedings and the lack of Integrity Certificate. In respect of these matters his case has to be distinguished from that of Shri Patric Gomez who was not a "provisionally included" candidate.

16 The note with regard to the applicant's provisional inclusion in the Select List of 1999 shows that his inclusion was considered on a "provisional" basis subject to clearance in the disciplinary proceedings and grant of Integrity Certificate by the State Government. Therefore both these conditions are relevant for consideration of his case. The learned counsel for the applicant has dealt with the first aspect about the disciplinary proceedings and

sought to argue that there was only one disciplinary proceeding initiated by Annexure A-8 charge memo and once that has been concluded, the grant of Integrity Certificate by the State Government was consequential and automatic. In fact this is not the position at all. As regards the disciplinary proceedings, the rules provide that the Committee can take into account and include such persons in the list if they are otherwise eligible. The inclusion will however be provisional subject to clearance of departmental action. No doubt the proceedings initiated by Annexure A-8 charge memo was pending as far as the State Government was considered, at the time of the Selection Committee meeting on 11.8.2003. Though the learned counsel for the applicant submitted that the disciplinary proceedings has been closed on 24.5.2003 and therefore the applicant was not under cloud, we are unable to see any such record till 17.3.2006 the date of issue of Annexure A-13 proceedings dropping the charge against the applicant. Even though the applicant has averred that he should be deemed to be exonerated from all charges levelled against him purportedly on the ground that a reference was made by the Principal Chief Conservator of Forest to the Chief Secretary in November, 2003, it has not found any response from the State Government. Even if this is taken as a final order exonerating him though the State Government denied that any such order has been issued by them it has taken place only in the year 2006 and it cannot have any retrospective application. Apart from this, the State Government have enclosed to their reply the

proceedings at Annexure R-1 dated 24.7.2003 by which the applicant's pension was reduced provisionally by 1% as his services were not found to be thoroughly satisfactory. These proceedings are definitely prior to the date of the selection committee meeting. Another order of recovery of the monetary loss dated 16.1.2003, also prior to the meeting of the Selection Committee, has been passed against the applicant. Therefore the State Government has categorically stated that they were not in a position to furnish the Integrity Certificate as far as the applicant was concerned. It is therefore very much evident that even if the case initiated at Annexure A-8 charge on which the applicant has placed his entire reliance was not in existence there are other factors which have weighed with the State Government in not issuing the Integrity Certificate. It is true that the applicant had filed a Review Application against the punishment of reduction in pension proposed on 24.2.2003, on which a decision has not been taken. The averment at this stage that the delay in finalisation of the Review Application has resulted in withholding of non consideration of his appointment cannot be tenable. He had not taken any action on these orders to see that the review was disposed of or contested the matter before this Tribunal or the High Court. There is still another order of recovery against him for which the applicant has no explanation to offer.

17 It is also relevant to point out that the provisions relating to inclusion in the select list in the IFS (Appointment by Promotion)

Regulation 1966 are different from the proceedings of DPCs normally held for consideration for promotion. The proceedings are not to be equated with the Sealed Cover Procedure which is applicable normally to promotions. The Sealed Cover procedure envisages that an officer under the cloud of disciplinary or judicial proceedings can be considered as fit or unfit for promotion, and the findings are to be kept in a sealed cover which can be opened after conclusion of the disciplinary proceedings. If he is exonerated he is entitled to the benefit of promotion either notionally or with full back wages with retrospective effect from which date his juniors were promoted. The selection by the Selection Committee to an All India Service under the All India Service (Promotion) Regulation have the character of an appointment to a higher service and is not in the nature of a continued consideration as in the case of a normal promotion within the hierarchy in the same Department. It is more in the nature of a direct appointment with emphasis on merit of the highest order. It is in this context that the grant of Integrity Certificate by the Chief Secretary of the State Government has significance. The provision of the Regulation-7 as applicable at various levels is extracted below:

Select Lists

(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 observation of the Central Government and unless it considers any change necessary, approve the list.

(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 the comments, if any, of the State Government and the Central Government, may approve the list finally with such modification, if any, as may, in its opinion, be just and proper.

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

(4) The Select List shall remain in force till the 31st day of 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 sixty days from the date of approval of the Select List by the Commission under sub-regulation (1) or, as the case may be, finally approved under sub-regulation (2), whichever is later.

Provided that where the State Government has forwarded the proposal to declare a provisionally included officer in the Select List as 'unconditional' to the Commission during the period when the Select list was in force, the Commission shall decide the matter within a period of ninety days or before the date of meeting of the next selection committee whichever is earlier and if the Commission declares the inclusion of the provisionally included officer in the Select List as 'unconditional' and final, the appointment of the concerned officer shall be considered by the Central Government under Regulation 9 and such appointment shall not be invalid merely for the reason that it was made after the select list ceased to be in force.

Provided further that in the event of any new service or service being formed by enlarging the existing State Forest Service or otherwise being approved by the State Government as the State Forest Service under clause (i) of sub rule (g) of Rule 2 of the Indian Forest Service (Recruitment) Rules, 1966, the Select List in force at the time of such approval shall continue to be in force until a new list prepared under Regulation 5 in respect of the members of the new State Forest Service is approved under sub-regulation (1) or, as the case may be, finally approved under sub-regulation (2).

(5) Every person included in the Select List who has not attained the age of 52 years on the date on which Select List is finally approved by the Commission shall undergo such training at the Lal Bahadur Shastri National Academy of Administration, the Forest Research Institute and Colleges, the State Training Institutions and other established training institutions in the

country and for such period as the Central Government may consider necessary."

18 The first proviso to the above Regulation enjoins on the Commission to decide the matter of a provisional appointee within a period of 90 days if the State Government has forwarded a proposal to declare a provisionally included officer in the Select List as "unconditional" to the Commission during the period when the Select list was in force. Sub Regulation (4) of the above Regulation 7 states that the Select list will remain in force till 31st December of the year in which the Select committee meeting was held or till 60 days from the date of approval of the Select List by the Commission whichever is later. It is therefore very clear that the provisionally included officer has no right to be appointed till he is declared "unconditional". It is to be decided by the State Government whether to make the inclusion of the candidate as unconditional or not during the period of validity of the list. If the State Government sends a proposal within the period of validity, the Commission will have another period of ninety days before the next meeting to take a decision and then an appointment can be made. If such a proposal is not sent, the provisional status continues till the lapsing of the list itself and such an officer cannot be given appointment.

19 In this case the select list was approved on 31.10.2003. Hence in accordance with sub clause (4) of Regulation 7 the list remains in force till 31.12.2003. The State Government did not send

any proposal for making the provisional appointment of the applicant unconditional before that date. Hence after expiry of the select list the applicant has no legal right to be appointed in terms of his inclusion in the Select List. The applicant's contention that the State Government's action in not certifying his integrity was arbitrary and discriminatory is not borne out by the facts and circumstances as discussed above. The applicant had already two punishments awarded as on the date of the Selection Committee meeting. In the circumstances, the State Government cannot be faulted for not certifying his Integrity by 31.12.2003. The fact that one of the proceedings is sought to be dropped in the year 2006 was not at all a point for consideration in the light of the statutory provision in the Regulation and the argument of the applicant based on the above proposition that procedure similar to the Sealed Cover procedure has to be adopted, has to be rejected outright.

20 As regards the legal grounds relied upon by the applicant in the case law cited supra, it may be seen that all the three cases referred to are not directly applicable to the case of the applicant. In S. Sheikh Meeran Rawther VS. The Principal Secretary to Government and another (2001(1) ILR 274), the ratio of the decision is that the disciplinary case cannot be initiated after long lapse of time from the arising of the misconduct. This argument should have been raised by the applicant when the disciplinary proceedings had been initiated and not at this point of time. In Badrinath Vs.

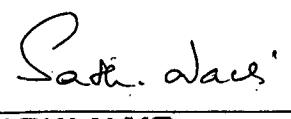
Government of Tamil Nadu and Others (2000(8) SCC 395) the main question under consideration was whether the Courts are justified in interfering with the jurisdiction of the DPC. This issue also has not much relevance here as the applicant is not contesting non-inclusion, on the other hand, he had already been included in the Select List.. The ratio of the decision in Mahender Singh Vs. Union of India and another (1991(2) Suppl. SCC 126) is regarding expunging of adverse remarks on a retrospective basis which is also not relevant in this case. Hence, the applicant has failed to make out a case both on facts and in law.

21 In the result the application fails. The O.A. is dismissed. No costs.

Dated 14.11.2006


GEORGE PARACKEN
JUDICIAL MEMBER

kmm


SATHI NAIR
VICE CHAIRMAN