

CENTRAL ADMINISTRATIVE TRIBUNAL

ERNAKULAM BENCH

O.A.No.471/1995

Tuesday, this the 17th day of October, 1995.

CORAM :

HON'BLE MR.JUSTICE CHETTUR SANKARAN NAIR, VICE CHAIRMAN

HON'BLE MR.P.V.VENKATAKRISHNAN, ADMINISTRATIVE MEMBER

K.Raghavan,
Additional Secretary to the
Govt. of Kerala on deputation
as Administrator,
Guruvayur Devaswom,
Guruvayur.

..Applicant

(By Advocate M/s.M.Ramesh Chander &
A.Kumar)

vs.

1. State of Kerala represented
by the Chief Secretary,
Thiruvananthapuram.
 2. The Union Public Service Commission,
represented by its Secretary,
Dholpur House,
Shah Jahan Road, New Delhi.
 3. Additional Chief Secretary,
State of Kerala,
Thiruvananthapuram.
 4. Sri M.Mohankumar, 1st member
Board of Revenue,
Thiruvananthapuram.
 5. Union of India represented by
its Secretary,
Ministry of Personnel, Public Grievances & Pension,
New Delhi.
- ..Respondents

(By Advocate Mr.T.P.M.Ibrahim Khan, SCGSC (R2 & 5)
Mr.D.Sreekumar, Govt.Pleader(R1,3 & 4)

The Application having been heard on 17th October, 1995, the Tribunal
on the same day delivered the following:

ORDER

CHETTUR SANKARAN NAIR(J), VICE CHAIRMAN:

Applicant, an Additional Secretary to the Government on
deputation as Administrator Guruvayur Devaswom, challenges the refusal
of the State Government to place his case before the Select Committee
for making appointments to the Indian Administrative Service under the
Indian Administrative Service (Appointment by Selection)

Regulations, 1956. According to him, this is motivated by malafides. Non-application of mind and usurpation of jurisdiction are also alleged. Applicant would submit that he is an officer of outstanding merit, acknowledged even by the High Court. He would also say that the Committee which screened him out had no authority to do so. It is his further case that the "screening" committee was influenced by the 4th respondent and that the other two members of the "screening" committee did not apply their mind.

2. In answer, State Government would submit that the committee was constituted to make an objective assessment, that all the members exercised their mind independently, that the decision of the "screening" committee was unanimous and that the views of the High Court do not form part of the confidential rolls of applicant which alone need be considered.

3. In matters of selection, Courts/Tribunals will not substitute their views for that of the competent agency nor will the Courts/Tribunals make a comparative assessment of the candidates. Their function is limited, and is limited to the extent of examining whether the process of selection was tainted by arbitrariness and malafides and no more. If authority is needed for this proposition, it is found in State Bank of India and others vs. Mohd. Mynuddin AIR 1987 SC 1889 ; Dalpat Abasaheb Solunke etc. vs. Dr. B. B. Mahajan, AIR 1990 SC 434; National Institute of Mental Health and Neuro Science vs. Dr. K. Kalyanaraman and others, AIR 1992 SC 1806 and a catena of other decisions. In this background, we will examine the contentions raised by the authorities.

4. Admittedly the Committee which 'screened' is not a statutory committee. Admittedly the "screening" committee was not appointed by the Government in the exercise of its executive powers.

We have gone through the files relating to selection. The Committee does not owe its existence to any legal source. For all we know, the Committee was constituted by the Chief Secretary with himself, the Additional Chief Secretary and the 4th respondent Member, Board of Revenue. The Committee considered the case of several officers and by short listing prepared a panel of ten. This process eliminated applicant and some others and excluded them from the zone of consideration by the statutory Select Committee. Short listing is part of the process of selection. It has been held so by the Supreme Court. Only those who have the authority to select can short list and eliminate officials from the zone of consideration. Thus the question whether elimination was proper or not, would depend on whether the Committee had any authority in this behalf. As we have noticed, the Committee has no existence in the eye of law as it was not constituted in terms of any statute or in the exercise of the executive power of the State. Therefore short listing by the Committee, which did not have the authority to select, is nothing but rank usurpation of a power, alien to it. This is not an error of jurisdiction, or a curable illegality. This act of the "screening" committee amounts to denial of the right of equality in matters of employment under the Union/State guaranteed under Article 16 of the Constitution. Right of consideration by the competent statutory Select Committee was denied to applicant.

5. Learned Government Pleader appearing for the State was at pains to invest this process with legitimacy. He would submit that all the eligible candidates cannot be sent up before the statutory Select Committee, that the size of the list is curtailed by statutory parameters and that a process of elimination is necessary. We have no doubt about it. But, this can be done only by an agency who has the authority to do it, short listing being part of the selection

process as observed in M.P. Public Service Commission vs. Navnith Kumar Potedar and another, 1994(6) SCC 293. Anything related to selection can be done only by a body authorised to act in that behalf and by no usurper. Perhaps, the executive power of the State can be used in these areas, or the Chief Secretary himself may be in a position to do something in the matter. We are mentioning this only with reference to the difficulty expressed by the Govt. Pleader.

6. Assuming for arguments sake that the committee had authority, the question is whether that authority was exercised reasonably or arbitrarily. We had called for the files, and we have read through the note file and the correspondence file. We find that the committee did not even minute its decisions. A select committee or a departmental promotion committee is not required to put down the reasons for its conclusions in writing. But, there must be material enough to show that the committee exercised its mind in relation to matters lying in the parameters of Article 16. This is a case of recruitment to the Indian Administrative Service, which plays a vital role in public administration. Selection has to be made in full realisation of the importance of the exercise. We do not even find a piece of paper which records that the committee met, considered eligible candidates and then prepared a list. If at least such a recital was available, we would have assumed that the committee discharged its duties. There is only a list of sixteen names with tick marks against ten, and then a letter to the Government of India stating that ten officials are sponsored. In this situation the only reasonable conclusion is that the committee did not apply its mind to the issue. Even when the files are silent, respondents 1 and 3 could have filed reply statements and stated whether they had bestowed proper consideration. They did not do this either. They should have done this, in the light of the decisions in Diru Mahato vs.

District Magistrate, Dhanbad ,AIR 1982 SC 1539 ; Smt.Gracy vs. State of Kerala ,AIR 1991 SC 1090. If responsible officers like the Chief Secretary or the Additional Chief Secretary, respondents 1 and 3 ,had filed an affidavit stating that they had discharged their responsibilities in this matter, we would not have hesitated to accept their word. But, in the absence of anything in the files to suggest application of mind and in the absence of a statement by the concerned authorities,that too in the face of a pointed averment in paragraph 11 of the Original Application to the effect that respondents 1 and 3 were influenced by respondent 4 , we cannot accept a bald statement by a Joint Secretary, who has filed a routine reply statement, that all was well. The Joint Secretary may be competent to file affidavits for the Government, but in a matter where application of mind is in question, only the person or persons whose minds are involved can reveal their mind and not any one else. Clairvoyancy does not belong to these regions. We do not know how the Joint Secretary ventured to file an affidavit asserting application of mind by others. The mind of the two members of the 'screening' committee remain inscrutable. We are constrained to hold that there was no application of mind by the committee - assuming it had authority in the matter.

7. Applicant submits that respondents 1 and 3, the Chief Secretary and the Additional Chief Secretary were influenced by the 4th respondent. He cited the decision in A.K.Kraipak's case, AIR 1970 SC 150(paragraph 16) to contend that when a body of men deliberate, one member is liable to influence the others and that the one with special knowledge is likely to influence the others. The exposition by the Constitution Bench of the Apex Court has great relevance in a context like the one on hand. It is the positive case of applicant that the 4th respondent was ill-disposed towards him and that the 4th respondent had made adverse

confidential reports against him. We would not have taken this allegation seriously. But, there are circumstances which we cannot ignore. Functioning of the 4th respondent and the applicant for three years (which is a decisive period for the matter of selection) came for notice of a Division Bench of the High Court of Kerala. Pursuant to the directions of the Supreme Court and also while considering several writ petitions the High Court had occasion to scrutinise the working of the Guruvayur Devaswom - which itself is a mini Government - warp and woof. Witnesses were examined and several documents were examined. A senior District Judge was appointed as Commissioner and after a very elaborate consideration, a Bench of the High Court found that the work of the applicant was commendable and that the work of 4th respondent was unsatisfactory. For that matter, the High Court referred to applicant as the silver lining in the cloud and referred to 4th respondent as an indifferent onlooker. Applicant has also a case that the 4th respondent was motivated by malafides and to illustrate his point he submits that the special allowance recommended in his case unanimously by the Devaswom Board was not sanctioned by the 4th respondent, while in the case of another employee Ravindran it was sanctioned. We are not prepared to assume malafides. But the question of arbitrariness has to be examined, with reference to relevant circumstances.

8. If at all the "screening" committee was to be constituted, discretion should have prevailed on the concerned to exclude 4th respondent in the background of the observations by the High Court. Government Pleader would try to justify the inclusion of 4th respondent on the ground that the committee is usually constituted with the seniormost I.A.S. officers. We called for the list of the seniormost I.A.S. officers in the Kerala cadre. 4th respondent is the 5th in the seniority list. If seniority was the criterion, we fail to see why the

third seniormost officer C.P.Nair who according to Government Pleader held an ex-cadre post of Chief Secretary was left out. If seniority is the basis, C.P.Nair should have been on the committee. Then the Government Pleader would say that the 4th respondent had knowledge of all the officials. We are not shown the basis for this wide knowledge, in the 4th respondent. If membership of the Board of Revenue is a determinative factor then perhaps the Member incharge of Land Revenue would have been more appropriate - not by our perception - but by the perception of the Rules. The special knowledge of 4th respondent and the lack of such knowledge on the part of the other two members of the committee (they have not filed a reply statement and stated anything about their knowledge or assessment), we are inclined to think that the rule in Kraipak's case - the possibility of one member influencing the other - applies with full force to the facts of the case.

9. We will notice the only other contention raised. According to applicant his work is 'outstanding' and it is found so by the High Court. As rightly pointed out by the Government Pleader, the views of the High Court do not form part of the A.C.R. We are not preferring the views of the High Court to the A.C.R. in the matter of assessment of merit. But the views of the High Court will be the touch stone, on which the assessment made by the committee can be tested in the circumstances of the case. The Division Bench of the High Court in C.K.Rajan vs. State of Kerala and others, AIR 1994 Kerala 179, speaking through Paripoornan(J), (as he then was) referred to the work of applicant in laudatory terms, and to the work of the 4th respondent - his assessing officer - in not so laudatory terms. Particularly when two members of the committee have chosen to keep silent about application of their mind - perhaps for good reasons - we have to test the assessment made by fourth respondent against the touch-stone of the judgment. A good part

of the period under consideration by the Committee was coeval with the period considered by the High Court. The High Court made an observation only on the basis of material facts gathered on an investigation and enquiry. This is also a pointer to think that the assessment by the committee was not proper or based on valid premises.

10. There is yet another circumstance to which guardedly, we make a reference. That relates to the inclusion of an official who is prima facie ineligible for inclusion in the panel. Since his inclusion in the panel is not the subject matter of this case, and since he is not a party before us, we are not expressing any opinion on the merits. Besides, an act of Court shall not injure a party, and much more so, a non party. We noticed this aspect in the process of ascertaining whether there is some intrinsic evidence to suggest application of mind by respondents 1 and 3, in the matter of drawing up the panel.

11. To sum up the position is :

(a) The committee had no authority in law and it acted illegally in denying the right of consideration to applicant by short listing.

(b) Even assuming it had authority - for argument's sake - there is no evidence of application of mind by the committee. There are no minutes and there are no affidavits by the members of the committee (other than 4th respondent, who was answering malafides). We cannot gloss over an important matter like this where an unauthorised exercise leads to a negation of the right under Article 16.

(c) Even when a specific allegation has been made that the 4th respondent influenced respondent 1 and 3, suggesting that they did not exercise their mind, those respondents have not chosen to file an affidavit or deny the alleged influence of 4th respondent.

(d) The possibility of 4th respondent influencing the other two members is imminent, if not established. The reply statement avers 4th respondent had intimate knowledge of the work of applicant or better knowledge than the other members.

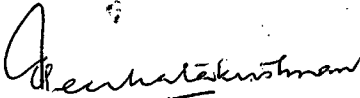
(e) The quality of consideration in the matter of selecting hands for a core area of public administration has been very casual - the minutes being silent, the two members of the select committee being even more silent and the prima facie impropriety in empanelling one official. We will qualify our findings once again and say that we have mentioned it only for the very limited purpose of seeking internal aid to test the style of functioning of the committee.


12. For the foregoing reasons, we are satisfied that the case of applicant was rejected on account of short listing by an incompetent committee, on account of non application of mind by the committee.

13. While moulding relief, we do not propose to quash the panel, for reasons more than one. We would only direct the case of applicant to be considered by the select committee constituted under the relevant Regulations. First respondent will cause the same to be considered. We hasten to add that we have not expressed any opinion on the applicant's merit or merits of other officers as it is not for us to do so.

14. Original Application is allowed. Parties will suffer their costs.

Dated the 17th October, 1995.


P.V.VENKATAKRISHNAN
ADMINISTRATIVE MEMBER


CHETTUR SANKARAN NAIR(J)
VICE CHAIRMAN