

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.No.473/2000.

Friday this the 17th day of November, 2000.

CORAM:

HON'BLE MR A.M.SIVADAS, JUDICIAL MEMBER

HON'BLE MR G.RAMAKRISHNAN, ADMINISTRATIVE MEMBER

Jacob.P.Thomas,
Retired S.P.,
Crime Branch CID Ernakulam,
residing at 19 KKP Nagar,
Aluva-683 102.

- Applicant

By Advocate Mr MR Rajendran Nair

Vs

1. The Chief Secretary to Government of Kerala, General Administration(Spl.A) Department, Trivandrum.
2. State of Kerala represented by the Secretary, Ministry of Home Affairs, Secretariat, Trivandrum.
3. Union of India represented by the Secretary to Government of India, Ministry of Home Affairs, New Delhi.

- Respondents

By Advocate Mr S Krishnamoorthy, ACGSC(for R.3)

By Advocate Mr CA Joy, G.P.(for R.1&2)

The application having been heard on 17.11.2000, the Tribunal on the same day delivered the following:

O R D E R

HON'BLE MR A.M.SIVADAS, JUDICIAL MEMBER

Applicant seeks to quash A-1, to direct, the respondents to pass orders appointing him to IPS against one of the vacancies which arose on 12.2.1991 with all

consequential benefits and to declare that he is entitled to get the monetary benefits consequent to the order to be passed with interest at the rate of 18% per annum from the respective dates on which the amount became due.

2. The applicant retired as Superintendent of Police Crime Branch, CID, Ernakulam. While holding the post of Superintendent of Police in the Kerala Police Service he was included for the first time in the Select List for appointment for promotion to IPS cadre in the year 1991. Aggrieved by the delay on the part of the respondents in holding the timely Triennial Cadre Review, he filed O.A.138/91. A-3 is the order in the said O.A. Respondents preferred SLP No.432/93 against the order. SLP was dismissed by the Apex Court as per A-4 dated 14.7.94. Respondents pursuant to the directions contained in the order in O.A.138/91 have not passed any final order so far. He continued to officiate against the IPS cadre on the strength of A-3 order till his retirement on 28.2.94. He says that the pay at the Central rate was authorised to him during the period he was officiating against the IPS cadre as he had not been reverted from the cadre post till the date of his superannuation in the IPS cadre. He is now served with A-1 order after a lapse of six years from his retirement. He says that A-1 order is illegal.

3. The first respondent in the reply statement filed says that the Apex Court has expressed strong doubts against the correctness of the view taken by this Bench of the Tribunal,

that no final order has been issued by the 3rd respondent appointing the applicant to IPS, that he continued to officiate against the IPS cadre till 28.2.94 by virtue of the interim order passed by this Bench of the Tribunal and that A-1 order was issued in conformity with the general order.

4. The third respondent says that the Government of Kerala examined the matter in detail and decided to regularise the overstyal of the applicant in accordance with the instructions as per the impugned order dated 24.10.1988.

5. The directions contained in A-3, the order passed by this Bench of the Tribunal in O.A.138/91 filed by the applicant against the respondents reads as follows:

"(i) that the first and the second respondents, shall consider, in accordance with law, the applicant for appointment to the Indian Police Service from 12.2.91 against one of the two additional senior duty posts in the Indian Police Service Cadre of the State of Kerala which have become available from that date in the promotion quota as a result of the aforesaid notification dated 27.6.91;

(ii) that if the applicant is appointed to the Indian Police Service, the service rendered by him in a senior duty Indian Police Service Cadre post by virtue



of our interim orders shall be deemed to have been rendered by him as a member of the Indian Police Service with effect from the date of his appointment to that service; and

(iii) that the interim orders we have passed shall continue until a final order is passed by the respondents in pursuance of the aforesaid declaration/directions and communicated to the applicant."

6. It is also observed in A-3 that the notification No.11052/3/91-AIS(II) dated 27.6.91 issued by the Government of India, Ministry of Personnel, Public Grievances and Pension(Department of Personnel & Training) amending the Indian Police Service(Fixation of Cadre Strength) Regulations, 1955 by substituting the entries under "Kerala" shall be deemed to have come into force with effect from 12.2.1991.

7. A-4 is the copy of the order passed by the Apex Court in the SLP filed against A-3 order. From the same, it is seen that the SLP was dismissed subject to certain observations.

8. The observations are that, no direction should be given to the appellant directing to pay three increments earned by the respondents therein as a member of the IPS after the decision of the Tribunal as well as pension on the basis of such increments.



9. Learned counsel appearing for respondents 1&2 submitted that this observation of the Apex Court would amount to compliance of the directions contained in A-3. We express our inability to agree with the learned counsel for respondents 1&2.

10. Learned counsel appearing for respondents 1&2 further vehemently argued that the Apex Court in A-4 has observed that the Apex Court has a strong doubt about the correctness of the view taken by the Tribunal in the O.A. It is true that the Apex Court has so observed. But the position is that the SLP was dismissed. So it is crystal clear that the decision in A-3 has not been interfered by the Apex Court. The Apex Court entertained a strong doubt about the correctness of the view taken by the Tribunal cannot be understood or interpreted as having altered or modified A-3 order since the SLP is dismissed.

11. It is the admitted case of respondents 1&2 that no orders have been passed by the 3rd respondent appointing the applicant to IPS pursuant to A-3 order.

12. Respondents 1&2 have issued A-1 order. It says that the period of overstyal in respect of the applicant from 1.3.91 to 28.2.94 will be treated as duty for the limited purpose of claiming pay and allowances, restricted to what he was entitled to as on 28.2.1991, his normal date of

superannuation, that the pensionary claims will be settled reckoning services and emoluments up to normal date of superannuation i.e. 28.2.1991, that pension will be paid only from the day after the final quittance i.e. 1.3.1994, that he will not be eligible for further increments, increase on account of pay revision etc., that he will be eligible for commutation of pension without medical examination provided he applies for it within one year of quitting the service i.e. on or before 28.2.1995 and that in that case commuted value will be calculated with reference to the age at next birth day on the date on which such application becomes absolute.

13. Learned counsel appearing for the applicant argued that respondents 1 and 2 could not have passed A-1 order without complying with the directions contained in A-3. We find force in this argument.

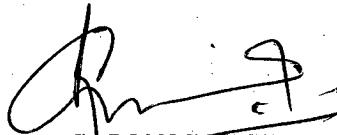
14. Since the directions contained in A-3 have not been complied with, the position is that, the interim orders passed by this Bench of the Tribunal shall continue. So the position is that the interim orders passed still hold good.

15. Since A-1 is issued by respondents 1 and 2 before complying with the directions contained in A-3, the same is not sustainable and is liable to be quashed.

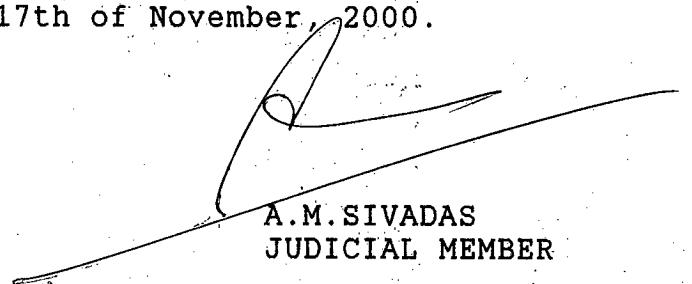
16. Accordingly, A-1 is quashed.

17. O.A. is disposed as above. No costs.

Dated, the 17th of November, 2000.



G. RAMAKRISHNAN
ADMINISTRATIVE MEMBER



A.M. SIVADAS
JUDICIAL MEMBER

rv

LIST OF ANNEXURES REFERRED TO IN THE ORDER:

1. A-1: True copy of the G.O.(Rt.)No.9600/99/GAD, dated 28.12.99 issued by the Deputy Secretary, Govt. of Kerala.
2. A-3: True copy of the final order dated 19.3.92 in O.A.138/91 of the Tribunal.
3. A-4: True copy of the final order dated 14.7.94 in SLP No.432/93 of the Supreme Court of India.