

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

ERNAKULAM

O. A. No.
T. A. No.

486/

1989

DATE OF DECISION 30.10.1990

G.Babu Raj

Applicant (s)

M/s. B.S Krishnan, P.R Raman &
K.Ananthanarayana Iyer
Versus

Advocate for the Applicant (s)

State of Kerala , represented

Respondent (s)

by its Chief Secretary,

Government Secretariat, Trivandrum and 10 others

Mr P.V Mohanan (R1)

Advocate for the Respondent (s)

Mr.P.Sankaran Kutty Nair (R2 & 4)

M/s. Sukumaran & Usha (R8)

Mr.S.Sree Kumar (R9)

Mr P.K Madhusoodhanan (R5 -7)

Mr.S.V Ayyar (R11)

CORAM:

The Hon'ble Mr.

S.P MUKERJI, VICE CHAIRMAN

&

The Hon'ble Mr.

A.V HARIDASAN, JUDICIAL MEMBER

1. Whether Reporters of local papers may be allowed to see the Judgement? *Yes*
2. To be referred to the Reporter or not? *Yes*
3. Whether their Lordships wish to see the fair copy of the Judgement? *No*
4. To be circulated to all Benches of the Tribunal? *No*

JUDGEMENT

(Hon'ble Shri S.P Mukerji, Vice-Chairman)

In this application dated 9th August, 1989 the applicant who belongs to the Kerala Police Service has challenged the select list of officers for promotion to the Kerala Cadre of the I.P.S for the year 1988 and has prayed that the respondents be directed to prepare a fresh select list giving him proper place above the juniors for promotion to the I.P.S in the existing and other vacancies arising in 1989. He has also prayed that the respondents 1 to 4 be directed to place him above respondents 5 to 10 and to desist from making appointment to the I.P.S from the impugned select list. The brief facts of the case are as follows.

2. The applicant is a member of the Scheduled Caste and was directly recruited as Deputy Superintendent of Police in 1976. He was promoted as Superintendent of Police on 10.9.1984. After completing 8 years of service in the State Police Service or in equivalent post

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he became eligible for promotion to the I.P.S. According to him, his performance in the State Police Service had been outstanding that he was awarded ten Good Service Entries, one Meritorious Service Entry, ten Appreciation Letters by the Government, ^{the} Director General of Police, ^{the} Inspector General of Police and ^{the} Deputy Inspector General of Police. His performance as Chief Vigilance Officer in the Kerala University, according to him, was also outstanding. He has also referred to his professional achievements in the investigation of crimes and in literary fields. His grievance is that even though he became eligible for promotion to the I.P.S from 1986 onwards, in spite of his brilliant record and performance, he was overlooked by the Selection Committee in 1987 and 1988. He has alleged that the Director General of Police, Shri M.K. Joseph, who was a member of the Selection Committee of 1986 and 1987 spoiled his case because of his bias and prejudice against the applicant. He has alleged that instead of conforming ^{to} the prescribed ratings as 'outstanding', 'very good', 'good', and 'unfit', Shri Joseph graded him as 'excellant' or 'smart'. His contention is that the Selection Committee which met in December, 1987 graded him as 'good' and thus he was not included in the select list. In 1988 also, the Selection Committee graded him as 'very good' and he was placed 7th in the select list. As a consequence, seven of the applicant's juniors were promoted in 1987 and six other juniors have been placed above him in the 1988 select list. Against two of these juniors, six [✓] vigilance clearance was pending. The applicant has amplified his allegation of bias nursed by Shri Joseph, DG, Police by stating that in 1982 Shri Joseph awarded a punishment of censure for disobedience, but the Government set aside the order of punishment on the ground

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that there was no case of disobedience (Annexure-7). He has also mentioned that for the year 1982 Shri Joseph gave him an adverse entry which was expunged by the Government (Annexure-8). The applicant has argued that as a result of these developments the DGP harboured an ill-feeling against the applicant and got his performance undervalued and blocked his promotion to the I.P.S. He has averred that respondents 5 and 6, who have been placed as No.1 and 2 in the select list of 1988 (Annexure-4(L) had indifferent performance in investigation and prosecution of crimes. Similarly respondent No.7 who was placed as No.3 in the select list, according to the applicant, is not only far junior to him, but has no outstanding performance and a writ petition making allegations against him is pending in the High Court. Similar averments have been made by the applicant against respondent No.8 who has been placed as No.4 in the select list indicating also that a vigilance enquiry is pending against him. Similar is the position regarding the 9th respondent, who was placed as No.5 in the select list above the applicant. So far as the 10th respondent is concerned, he was not only junior to the applicant, but had not been included in the 1987 select list. His last but not the least allegation against the select list of 1988 is that out of 24 officers whose CRS were considered by the Selection Committee, there were eight officers belonging to one community (to which the D.G.P belonged) and out of these eight, six were included in the select list. His allegation is that his being superseded by his juniors in the select lists of 1987 and 1988 in spite of his good record and performance is violative of Articles 14 and 16 of the Constitution. He has also

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referred to the bias of the DGP resulting in the denial of timely promotion to him. His further argument is that if the Chief Secretary and the DGP had placed all the service particulars of the candidates along with the annual confidential reports, the Selection Committee would not have superseded him by his juniors. His suspicion is that there was no proper and fair grading of officers.

3. No counter affidavit has been filed by the State Government of Kerala (respondent 1), ^{the} Union of India (respondent 2) or the Selection Committee (respondent 3), though their counsel entered appearance. Replies were submitted by respondents 4, 5, 7, 9 and 11. Shri M.K Joseph who retired from the post of DGP was impleaded as respondent 11 and has filed a reply.

4. Respondent 4, i.e., the Union Public Service Commission has stated that the applicant's name was duly considered by the Selection Committee in their meetings held from 1986 onwards, but he could not be included in the select list of 1986 and 1987 as he had earned a lower grading than those included in the select list. The applicant was included in the select list prepared on 7.12.88. They have denied that any particular member of the Selection Committee was biased against him. They have denied that there was any illegality in the preparation of the select lists of 1987 and 1988 and stated that officers junior to the applicant were included in the select lists superseding the applicant because of the higher grading obtained by them. The applicant, cannot base his claim on his own assessment nor could he make a comparative assessment with other officers whose CRS were not available with him. They have

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cited the ruling of the Supreme Court in R.S Dass vs. the Union of India and others, AIR 1987 SC 593, to say that reasons of supersession need not be given and where there is a process of selection on merit, seniority may get submerged by merit. Since the Selection Committee is constituted by high ranking responsible officers presided over by the Chairman or a Member of the UPSC, there is no reason to hold that they would not act in fair and impartial manner. They have stated that respondents 5, 6 and 7 were given highest grading by the Selection Committee. They have conceded that a departmental enquiry was pending against respondent 8 and thus his name has been included in the select list provisionally. They have conceded similar position in respect of respondent 9 whose name was included provisionally in the select list subject to clearance of the departmental enquiry pending against him. They have explained inclusion of the name of respondent 10 in the 1988 select list when he had not been included in the 1987 select list by stating that his performance must have improved in between. They have denied any communal bias in the preparation of the select list.

5. Respondents 5 and 7 indicated that their performance has been outstanding and have denied that there was any writ petition pending against any one of them.

8. Respondent 8 has indicated that he has obtained 31 rewards and the President's Police Medal in 1988 and earned outstanding reports between 1983 and 1987. He has also argued that it was open for the Selection Committee to include more meritorious juniors and place them above the applicant. He has also denied g having received any notice of vigilance enquiry, but has conceded

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that there was a vigilance enquiry conducted on the basis of an anonymous petition regarding the purchase of an Ambassador Car and that enquiry is closed.

9. Respondent 9 has stated that he has not received any official communication regarding any vigilance enquiry pending against him, but even if such an enquiry was pending that was no ground to disqualify him.

10. Respondent 11, Shri M.K Joseph, the retired DGP in his reply has stated that he was a member of the Selection Committee during his tenure as DGP between 1982 to May, 1988. He was not in the Selection Committee which met in December, 1988. He has denied that the applicant had an outstanding record of service and stated that undue weightage is not given to the remarks entered by the DGP. He has strongly denied the allegation of bias or prejudice against the applicant and has stated that a high ranking Committee could not have been influenced by a single member. During 1985-86 the applicant was on deputation with the University of Kerala and his confidential report during this period was not written by the respondent. He has stated that for the years of 1986 and 1987 he had assessed the applicant as "a very smart officer", "is a very good officer" or as "an excellent officer". He has argued that the classification of grading as "outstanding", "very good", or "good" is given by the Selection Committee and not by the departmental officer. He has stated that during 1987 the applicant deserved to be classified ^{by the Committee} as "good" only and the same cannot be challenged at this stage. ^{Select} The list of 1988 was also prepared in accordance with the Regulations. He has conceded that he had awarded a punishment of censure

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in 1982 as I.G of Police and that it was set aside by the Government; but he denies that ^{fact} ~~to~~ have influenced him ^{not} in assessing the merit of the applicant impartially. He has also conceded that the adverse remarks given by him were got expunged by the Government; but denies this to have prejudiced his mind against the applicant. He has denied that any of the contesting respondents included in the select list influenced him. He has also denied any communal bias. He has also denied any malafide attitude towards the applicant or his undervaluing the achievements of the applicant.

10. We have heard the arguments of the learned counsel for all the parties and gone through the documents carefully. Even though we have been handicapped by the non-submission of any counter affidavit by the State Government of Kerala and the Union of India, much light has been thrown by the U.P.S.C, (respondent No.4). The learned counsel representing the State Government of Kerala also has produced the CRs of the applicant as also of respondents 6 to 10. Respondent No.4, i.e., the U.P.S.C has also produced in a sealed cover the proceedings of the Selection Committee which met on 29.12.86 and 18.12.87 and has promised to procure and produce the proceedings of the Selection Committee which met on 7.12.88. The Chairman, U.P.S.C, however, has claimed privilege under Section 123 of the Indian Evidence Act, though he has no objection to the proceedings to be perused by the Hon'ble Members of the Tribunal for satisfying the bonafides and genuineness of the privilege claim. The claim of privilege has been disallowed by us by a detailed dated 15.10.90 separate order ^{as} it was felt that in the interest of justice and public interest it will be necessary for us to peruse the proceedings ^{of the Committee} and that neither security

of the State nor any friendly relations with other countries nor any public interest will be prejudiced by the production of the proceedings of the Selection Committee. In order to avoid further delay we have not waited for the production of the Selection Committee proceedings which met on 7.12.88 because the material points relevant for adjudication of this case are already available or deducible from the documents and pleadings available with us. The Select List is copied at Annexure 4(L).

11. The grievance of the applicant before us is simple. He is a member of the Scheduled Caste and there is a built in feeling amongst the members of the Scheduled Caste that they may not ^{always} get a fair deal. In recognition of this general feeling the Government of India as a matter of policy has been enjoining that Selection Committees should have a member of the Scheduled Caste ^{for Central Services} as far as possible. The form of the confidential rolls ^{also} also include a column to indicate whether the officer reported upon has been treating the members of the Scheduled Castes/Scheduled Tribes fairly. The reviewing officer is also called upon to indicate whether the reporting officer's assessment of the officer reported upon, if the ^{latter} happens to be a member of the Scheduled Castes/Scheduled Tribes, is fair. In the context of this general psychological ambience we have felt that this case before us needs some special attention, even though we are conscious of the fact that assessment of performance of candidates for appointment or promotion should not ordinarily be subjected to judicial intervention and that no Court or Tribunal should assume the role of the Selection Committee or Promotion Committee and give their verdict about the suitability or merit of a candidate for promotion or appointment. It is, however, established law that judicial review in the matter of appointment or promotion on merit would be justified in the narrow

field where there is allegation of malafides, prejudice or bias or perversity in the assessment and it would be reasonable to presume the existence of such bias or prejudice in the circumstances of such a case.

12. So far as this case is concerned, the applicant has alleged that the Director General of Police, Shri M.K. Joseph (respondent 11) sat on the Selection Committee as a Member in 1986 and 1987 and because of his bias against him, had been able to sway the Selection Committee to underevaluate his performance so that he was not included in the select list of 1986 and 1987, while his juniors were included. His further allegation is that in the Select list prepared in 1988 when Shri Joseph had retired, even though he was included in the Select list, because of the adverse and indifferent and ambivalent ('very smart') entries given to him by Shri Joseph, his position in the Select list was fixed at No.7 while six officers junior to him were placed above him. He has, therefore, sought ⁶ review of the select lists of 1987 and 1988.

13. We have gone through the documents as also the CR dossier of the applicant and we are convinced that this is a case in which a judicial ⁶ probe to exclude the reasonable possibility of bias on the part of the Director General of Police, Shri Joseph against the applicant, is necessary. It is not a bald allegation of malafides being harboured by Shri Joseph. From the CR/⁶it is clear that in 1982 Shri Joseph awarded a punishment of censure on the applicant; but the Government vide the order at Annexure-7 set aside the order of punishment. ⁶ For the same year Shri Joseph had given an adverse entry to the applicant which was also expunged by the Government at Annexure-8.

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The adverse entry was as follows:-

"His performance as A.C. Traffic was not upto the mark - lacks enterprise."

These remarks did not tally with the remarks of the Reporting Officer; according to whom, inter-alia, the applicant was reported to be "Prompt, enthusiastic and takes initiative", that he was "self-reliant, confident and receptive to ideas", that "he has taken interest and shown initiative during the various Traffic Safety Weeks and Seminars organised by various Organisations in Trivandrum", that "he has discharged his duties well during the period under review" and that generally he is "a hard-working, sincere and well-behaved officer. He has discharged his duties well". The remarks of the DIG who is the next superior officer are only partially legible as the edge of the CR sheet is somewhat damaged. The DIG also has remarked that the applicant has been doing whatever was possible to minimise the chaotic traffic conditions in the city. Even during 1981, while the Commissioner of Police, Trivandrum City, found him "a young, sincere officer who has shown initiative in improving things in his area of work, hard-working and well-behaved, his relations with the public, his staff and his superiors have been cordial" and the next superior officer, the DIG also endorsed the same, Shri Joseph, as the then Inspector General of Police, remarked that "he has not put forth his best as A.C. Traffic. He is young and has to work harder".

though not accept

14. It is reasonable to presume that Shri Joseph unjustifiably as the I.G, Police and later as the D.G, Police had given adverse remarks to the applicant against the good remarks

given by the applicant's immediate superior officers.

It is also reasonable to presume that one of the adverse remarks and the punishment of censure, awarded by Shri Joseph, having been set aside by the Government, Shri Joseph must have felt his ego to have been hurt and his attitude towards the applicant could have been adverse, if not hostile.

15. It is also admitted that Shri Joseph sat on the Selection Committee which met in 1986 and 1987 as the Head of the State Police Organisation. In the matter of promotion in the Police Service, the Members of the Selection Committee are ^{likely to} have been very much influenced ^{as the head of the Police force} by the opinion expressed by Shri Joseph ^{orally} and through subtle ^{nuances} ~~the nuances~~ of expression. The contention of the respondents that a high-power committee chaired by the Member of the U.P.S.C would not be influenced by the alleged bias held by one of the Members cannot be accepted without a pinch of salt against the back-drop mentioned above. In a recent case of Delhi Transport Corporation vs. D.T.C. Mazdoor Congress & Ors., Judgment Today 1990(3) S.C 725(at page 796) while concurring with the majority judgment, His Lordship Mr. Justice P.B.Sawant, expressed himself in following terms:-

"230. There is need to minimise the scope of the arbitrary use of power in all walks of life. It is inadvisable to depend on the good sense of the individuals, however high-placed they may be. It is all the more improper and undesirable to expose the precious rights like the rights of life, liberty and property to the vagaries of the individual whims and fancies. It is trite to say that individuals are not and do not become wise because they occupy high seats of power, and good sense, circumspection and fairness does not go with the posts, however high they may be. There is only a complaisant presumption that those who occupy high posts have a high sense of responsibility. The presumption is neither legal nor rational. History does not support it and reality does not warrant it. In particular, in a society pledged to uphold the rule of law, it

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would be both unwise and impolitic to leave any aspect of its life to be governed by discretion when it can conveniently and easily be covered by the rule of law."

Another Hon'ble Judge of the Supreme Court Mr. Justice K. Ramaswamy in the aforesaid case observed in similar terms that conferment of power on a high rank officer is not always an assurance, in particular when the moral standards are generally degenerated, that the power would be exercised objectively, reasonably, conscientiously, fairly and justly without inbuilt protection to an employee. Even officers who do their duty honestly and conscientiously are subject to great pressures and pulls".

16. In the above circumstances we feel that Shri Joseph who both as a Member of the Selection Committee which met in 1987 and as one who had recorded adverse entries against the applicant and which had been expunged and had otherwise also been recording entries about the performance of the applicant during the relevant period had a key role to play in the inclusion or exclusion of the applicant's name in the select list prepared in 1987 and 1988. The circumstances of the case are such that it would be reasonable on the part of the applicant to presume ^{to} rightly or wrongly that Shri Joseph was not favourably disposed towards him both as the Director General of the Police commenting on his performance in the CR as also as a Member of the Selection Committee. Keeping in view Lord Hewart's dictum that "it is of fundamental importance that justice should both be done and be manifestly seen to be done", we feel it our duty to assure ourselves that the applicant has not suffered ^{at the hands of Shri Joseph} by prejudice/by being excluded completely from the

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select list of 1987 when his juniors were included and by being placed at the 8th position in the select list of 1988 while the first 6 positions were given to his juniors respondents 5 to 10. It was necessary for us to take into evidence the proceedings of the D.P.C which met in 1987 and 1988. The Chairman of the U.P.S.C claimed privilege under Section 123 of the Indian Evidence Act; which was rejected by us in our detailed order dated 15.10.1990. The U.P.S.C produced in original the minutes of the Selection Committee which met in 1986 and 1987 and assured to produce the minutes of the Selection Committee which met in 1988 which they were tracing. In order to avoid further delay we proceeded with deciding the case without waiting for the select list of 1988; a copy of which has already been produced by the applicant at Annexure-4(L), the authenticity of which has not been denied by the respondents.

17. From the proceedings of the Selection Committee which met on 18.12.87 it is revealed that 34 State Police Service Officers of Kerala were considered; in which the applicant was at Sl.No.5. The applicant was adjudged as 'Good' and was not included in the select list of 14 officers. These 14 officers including respondent No.5, respondent No.6, respondent No.7 and respondent No.8 had been assessed by the Selection Committee as either 'Outstanding' or 'Very Good'. The applicant having been assessed merely as 'Good' had to yield places to his juniors in spite of his seniority.

18. So far as the 1988 Select list is concerned, the names of the persons included in the Select list, as stated earlier are at Annexure -4(L) (page 19 of the paper-book). The applicant is at the 8th position while the first 6 positions have been occupied by respondents 5 to 10 who are junior to him. They had been assessed as 'Very Good' during 1987 while the applicant had been

assessed merely as 'Good'. In their counter affidavit the U.P.S.C has stated that as compared to 1987, in 1988 the applicant has improved over his previous performance and was assigned a higher grading and his name was included in the Select list. The six officers who were placed above him were assigned a higher grading. This only means nothing else but that the applicant who was graded as 'Good' during 1987 must have been graded as 'Very Good' during 1988 and respondents 5 to 10 who were junior to him but placed above him in the Select list of 1988 must have been graded as 'Outstanding'.

19. It, therefore, falls for our consideration to see whether in being assessed only as 'Good' by the Selection Committee of 1987 when Shri Joseph (respondent No.11) was also a Member of the Selection Committee and in being assessed as 'Very Good' by the Selection Committee of 1988 when Shri Joseph had already retired, but the entries made by him had been taken into account, the applicant has been prejudicially affected as compared to his juniors (respondents 5 to 10) who were assessed as 'Very Good' by the Selection Committee of 1987 and as 'Outstanding' by the Selection Committee of 1988. We have carefully and repeatedly gone through the confidential reports earned by the applicant and respondents 5 to 10 for the period of ten years from 1979 to 1988. We have to satisfy ourselves, also examined how their assessments during 1987 and 1988 will emerge on the basis of the confidential reports (a) by including the entries made amongst others by Shri Joseph and (b) by excluding altogether the entries made by Shri Joseph not only with regard to the applicant but with regard to respondents 5 to 10 so that the alleged prejudice against the applicant and the alleged favouritism to respondents 5 to 10 especially to those belonging to a particular community can be completely eliminated. The results irrespective of the method adopted by the Selection Committee are as follows. (Abbreviations used are 'O' for 'Outstanding', 'VG' for 'Very Good', 'G' for 'Good' and 'Ad' for 'Adverse')

(a) Including the entries made by Shri Joseph (respondent 11)

	1979	80	81	82	83	84	85	86	87	88
Applicant	VG	VG	Ad	G	G	VG	VG	VG	O	O
Respondent 5	O	O	VG	O	O	O	O	O	O	VG
Respondent 6	G	G	G	O	O	O	O	O	O	O
Respondent 7	G	G	G	VG	O	O	O	O	O	O
Respondent 8	G	VG	G	G	O	O	O	O	O	O
Respondent 9	O	VG	G	VG	O	O	O	O	O	O
Respondent 10	O	VG/	O	O	O	G	O	O	O	O

(b) Excluding the entries made by Shri Joseph

	1979	80	81	82	83	84	85	86	87	88
Applicant	VG	VG	G	G	G	VG	VG	O	O	O
Respondent 5	O	O	VG	VG	VG	O	O	O	O	VG
Respondent 6	G	G	G	O	O	VG	VG	O	VG	O
Respondent 7	G	G	G	VG	VG	O	O	VG	O	O
Respondent 8	G	VG	G	G	G	O	O	O	VG	O
Respondent 9	O	VG	G	VG	O	O	O	O	O	O
Respondent 10	O	VG/	O	O	O	G	O	O	O	O

From the above it will be seen that during the nine year period between 1979 and 1987 the applicant was adjudged as 'Outstanding' in two years, 'Very Good' in four years and 'Good' in three years if we ignore the adverse entry made by Shri Joseph in 1981 and the censure and the adverse entry awarded by Shri Joseph during 1982 which were expunged and overlook the downgrading of assessment from 'Outstanding' to 'Very Good' made by Shri Joseph in 1986. Respondent 5 during this period earned six 'Outstanding' and three 'Very Good' entries if we overlook the upgradation of assessment made by Shri Joseph. Respondent 6 earned three 'Outstanding', three 'Very Good' and three 'Good' entries if we ignore the entries made by respondent 11. Respondent 7 earned three 'Outstanding'

three 'Very Good' and three 'Good' entries if we ignore the assessment made by respondent 11. Respondent 8 earned three 'Outstanding', two 'Very Good' and four 'Good' entries if we ignore the assessment made by Shri Joseph. Respondent 9 earned six 'Outstanding', two 'Very Good' and one 'Good' entries if we ignore the assessment of Shri Joseph. Respondent 10 earned seven 'Outstanding', one 'Very Good' and one 'Good' entries if we ignore the entries made by Shri Joseph. From the above analysis it is clear that respondents 5 to 10 had definitely better records than the applicant even if we ignore the entries made by Shri Joseph both for the applicant as well as for the respondents. The relative grading of the applicant will not change vis a vis Respondents 5 to 10, if the period of assessment is taken as 1979-1986. Even if the period of assessment is taken for five years immediately prior to 1986 or 1987, the comparative position between the applicant and the aforesaid respondents will remain unchanged. The position will substantially improve in respect of respondents 5 to 10 and go down for the applicant in case the entries made by Shri Joseph are also taken into account during these periods.

20. So far as the assessment in 1988 is concerned, the applicant would add one 'Outstanding' entry to the tally of entries mentioned above and so will respondents 5 to 10 except respondent 5 who got only 'Very Good' entry during 1988. But since he had already earned six 'Outstanding' entries since 1979 as against only two such entries earned by the applicant till 1987, respondent 5 also would remain way above the applicant. In any case from the above analysis it is clear that the grading of respondents 5 to 10 above the applicant in the Select Lists of 1987 and 1988 cannot be faulted, even if we ignore the adverse or indifferent entries made by Shri Joseph against the applicant and favourable entries given to respondents 5 to 10. Further since Shri Joseph was no more a Member of the Selection

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Committee which met in 1988 the question of his adversely influencing the Selection Committee against the applicant does not arise. From the above analysis we are fully satisfied that irrespective of whatever mode adopted by them the assessment made by the Selection Committee which met in 1987 and in 1988 did not suffer from any element of prejudice or bias either by the presence of Shri Joseph in the Selection Committee of 1987 or by the entries which he had given to the applicant and respondents 5 to 10. We are also fully satisfied that no favouritism was shown in favour of a particular community and that the assessment is truly and faithfully done on merits. The applicant's grading relative to respondents 5 to 10 will not change even if the entries made by Shri Joseph are ignored in toto.

21. The applicant cannot claim any pre-emptive right of promotion to the I.P.S on the basis of his seniority over respondents 5 to 10. As has been held by the Supreme Court in R.S.Dass vs. Union of India, AIR 1987 SC 593, in the preparation of select list merit gets precedence over seniority and the junior being placed above his senior in the Select List does not amount to supersession. In State Bank of India and others vs. Mohd. Mynuddin (Civil Appeal No.1387 of 1987, page 401 of Supreme Court Services Law Judgments 1950-1988 Vol.I) it was held by the Supreme Court that whenever promotion to higher posts is to be made on the basis of merit, no officer can claim promotion as a matter of right on the basis of seniority alone. The contention of the applicant that against two of the six juniors, vigilance clearance was pending, does not to our mind affect their being considered on merits for inclusion or exclusion from the select list. It is established law that unless a chargesheet is served on a candidate, he has to be considered at par with others and even after the chargesheet is served his assessment

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has to be done and placed in a sealed cover. It is not for the applicant to assess whether any other Police Officer in his Cadre competing with him for promotion to the I.P.S has done better or worse than him. His contention that respondent 10 who had not been included in the 1987 select list cannot be placed above him in the select list of 1988 cannot be accepted as the applicant also had not been included in the select list of 1987. The Supreme Court in Union of India v. Mohan Lal Capoor and ors, 1973(2)S.L.R 824 in connection with promotion to the Indian Administrative Service which is at 'pari materia' with promotion to the I.P.S held that ^{the} Select list prepared is revised and reviewed every year and the purpose of a annual revision or review under the rules is to make an assessment of the merit and suitability of all the then eligible candidates from among them. The Court observed that the paramount duty cast upon the committee would be discharged "only if the committee makes the selection from all the eligible candidates every year" and went on to observe as follows:-

"42. Though the words used in Regulation 5(4) are "review" and "revision" , in the process of review and revision, a fresh assessment must be made of the merit and suitability of all the members remaining in the previous list and all other eligible members in the State Civil/Police Service. If the criteria for selection are merit and suitability from among all the eligible members then, the field of selection must comprise of the entire category of eligible members of the service. Otherwise, the selection will not be on the basis of merit and suitability from among all the eligible members of the State service. In other words, the inclusion of the name of a member in the select list for a year will not be an entitlement for inclusion in the select list for the succeeding year. A fortiori a member who has been assigned a rank in the select list for a year can have no claim for the same rank in the next year." (emphasis added)

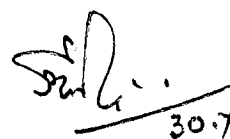
The Supreme Court made it clear that inclusion of name of a candidate in one select list does not entitle him to be

included in the select list of the succeeding year. Likewise exclusion of the name of a particular candidate does not disqualify him from his name being included in the subsequent select list on the basis of seniority and merit. The applicant's contention that the grading of the candidates done on the basis of annual confidential records alone is arbitrary, illegal and malafide, cannot be accepted. The Supreme Court in R.S Dass vs. Union of India and others, cited earlier, relying upon their earlier decision in Parvez Qadir v. Union of India, (1975) 2 SCR 432, found no fault in the assessment of merits of the State Police Service Officers on the basis of the character roll entries even with all ^{the} drawbacks of such entries. We are satisfied that in the service records of the applicant and respondents 5 to 10, there was adequate mention of the various awards, rewards and appreciations earned by them and the applicant's apprehension that these elements had been overlooked by the Selection Committee by basing their assessment solely on the character roll dossiers, is unwarranted. Further since the basis of assessment being the confidential records was uniformly applied to all the candidates, the applicant cannot allege discrimination as compared to others. The applicant's contention that the procedure adopted by the Selection Committee was arbitrary, cannot be accepted. In Union of India vs. Hiranyalal Dev and others, (1988) 7 ATC 72 the Supreme Court held that "how to categorize in the light of relevant records and what norms to apply in making the assessment are exclusively the functions of the Selection Committee". In Sahib Bhamhani v. Union of India, I(1988)ATLT (CAT) 285 another Bench of this Tribunal held that it is for the Selection Committee to

adopt a particular mode or criteria of judging the candidates and this Tribunal cannot question the propriety of the same unless the rules prescribe a particular mode which has not been followed by the Selection Committee. In *Ramgopal v. Union of India*, 1972 SLR 258, the Delhi High Court held that the High Court does not sit as a Court of appeal on the deliberation and recommendation of the Departmental Promotion Committee and in the absence of any malafide or violation of the rules, the decision of the Departmental Promotion Committee in recommending the appointment in the order in which they have been graded is not open to scrutiny by the High Court.

22. In the conspectus of facts and circumstances and law as discussed above, we see no reason to intervene in the impugned Select Lists for promotion to the I.P.S prepared in 1987 and 1988 and dismiss this application without any costs.


(A.V. HARIDASAN)
JUDICIAL MEMBER


(S.P. MUKERJI)
VICE CHAIRMAN

n.j.j

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM

O.A. No. 486/89 199
~~P.A. No.~~

DATE OF DECISION 15.10.90

G.Babu Raj Applicant (s)

M/s. B.S Krishnan Associates Advocate for the Applicant (s)

Versus

State of Kerala, represented Respondent (s)
by its Chief Secretary,
Government Secretariat, Trivandrum & 10 others

Mr P.Sankaran Kutty Nair, A.C.G.S. Advocate for the Respondent (s)

CORAM:

M/s. Sukumaran & Usha

Mr S.Sreekumar

Mr P.K Madhusoodan

The Hon'ble Mr. S.P MUKERJI, VICE CHAIRMAN

&

The Hon'ble Mr. A. V HARIDASAN, JUDICIAL MEMBER

1. Whether Reporters of local papers may be allowed to see the Judgement?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the Judgement?
4. To be circulated to all Benches of the Tribunal?

JUDGEMENT

(Hon'ble Shri S.P Mukerji, Vice Chairman)

AFFIDAVIT FILED BY THE CHAIRMAN, U.P.S.C CLAIMING PRIVILEGE
UNDER SECTION 123 OF THE INDIAN EVIDENCE ACT IN O.A NO.486/89.

By this order we are disposing of the claim of privilege under Section 123 of the Indian Evidence Act advanced by the Chairman, U.P.S.C in his affidavit dated 24th September, 1990 against the production of the minutes of the meeting of the Selection Committee which met on 29.12.86, 18.12.87 and 7.12.88 for selection of State Police Service Officers of Kerala for promotion to the Indian Police Service. The claim is based on the averment that the minutes constitute unpublished official records relating to the affairs of the State and their disclosure will cause injury to public interest and will materially affect the freedom and candour of expression of opinion in the determination and execution of public policy. For our satisfaction we have gone through the minutes of the meeting of the aforesaid Selection Committees

and find that the documents mainly contains comparative assessment of merit of the various State Police Service Officers which cannot constitute such affairs of the State, the disclosure of which will cause injury to public interest and will materially affect the freedom and candour of expression of opinion.

2. A similar matter was considered by the Principal Bench of the Tribunal in Dr. (Mrs.) Anandita Mandal vs. Secretary to the Government of India, Ministry of Health and Family Welfare and others, (1988) 6 ATC 372. In that case the privilege was claimed in respect of the recommendations of the Departmental Promotion Committee presided over by a Member of the U.P.S.C. Relying upon the law laid down by the Supreme Court in S.P Gupta v. Union of India, 1981 Supp SCC 87, the Division Bench of the Tribunal presided over by the then Chairman, held that the disclosure of the documents regarding recommendations of the DPC would not endanger the public interest or jeopardise the public security to justify preventing its disclosure to the applicant. The Tribunal observed as follows:-

"The file merely contains opinion recorded on the recommendations made by the UPSC (DPC). We do not find any sensitive material therein, the disclosure of which would affect the friendly relations between two countries or any material which would affect the security of the State. In fact, it contains only the notings giving reasons as to why the recommendations made by the Departmental Promotion Committee presided over by a Member of the Union Public Service Commission could not be accepted. It also records how some material relevant for the assessment of an officer for appointment to the post of Professor of Micro-biology is not made available in view of the proforma of the ACRs and as to how it should be altered. The matter as already stated relates to the assessment of suitability and merit of the Associate Professor of Micro-biology for appointment to the post of Professor of Micro-biology. The claim of privilege in our opinion is inappropriate and is accordingly rejected."

FL

The Tribunal referred to another decision of the Principal Bench to which one of us (Shri S.P Mukerji, Vice Chairman) was a party, in P. Banerjee v. Union of India, ATR 1986 (1) CAT 16 and quoted from the judgment in that case as follows:-

"When an appointment based on the recommendation made by the DPC and the UPSC, is challenged before the Tribunal, the record containing the assessment and recommendation and the correspondence relating to it is not merely relevant but crucial. While the assessment and recommendation may be confidential at the time when it is made, after the appointment is made, when the same is questioned before a judicial Tribunal that record cannot be treated as 'Confidential'. When the validity of such a recommendation cannot be judged without pursuing the record, such record cannot be treated as one of confidentialities of which should be preserved. The Tribunal cannot withhold such record from the parties likely to be affected by its decision. In disclosing this material to the parties to the litigation, no prejudice would be caused to the State or any of the officers concerned. The Members of the DPC and the UPSC are highly placed authorities who will not be in any way embarrassed by such disclosure; nor is their freedom and candour of expression of opinion affected by such disclosure. In discharge of their official duties day in day out they assess the performance of several officers objectively. When their assessment or recommendations are challenged in appropriate judicial forums any disclosure of that record, in our opinion, will not cause any injury to public interest. In our view, far from causing injury, it would advance public interest and lend assurance to the public in general and the public servants in particular that they are being treated justly and fairly." (Emphasis added)

From the above it is clear that in the interest of justice and without violating any public interest including security of State or freedom and candour of expression of opinion in public service, the proceedings of the Selection Committee cannot be withheld under Section 123 of the Indian Evidence Act. A similar view was taken by the Jodhpur Bench of the Tribunal in Hari Ram Meena vs. State of Rajasthan and others, A.T.R 1989 (1) C.A.T 244 where the privilege was claimed under Section 123 of the Indian Evidence Act against production of minutes of the meeting of the Screening Committee for promotion

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to the Selection and Super Time Grades of the I.A.S. Relying upon the decision of the Supreme Court in the case of S.P Gupta, as cited earlier, the Tribunal observed as follows:-

"10. After bestowing our careful consideration to the matter, we find that the documents in question namely the ACR of the applicant and the minutes of the meetings of the Screening Committee where he had been considered for selection scale as also for supertime scale is necessary to be disclosed to the applicant so that the applicant may be able to present his case properly. In case public servants, particularly, those belonging to such an important service as I.A.S are prevented from properly ventilating their grievances in a judicial forum by the device of executive privilege, this will have a devastating effect on the morale of the members of the Service and would leave them at the mercy of a handful of senior officers charged with the duty of writing ACRs and those involved in the deliberations of the Screening Committee. Furthermore, non-disclosure of such documents would to a considerable extent impede the administration of justice as the Court/judicial forum shall have to decide a certain matter without there being proper assistance from the side of the aggrieved public servant. This would doubtlessly be detrimental to the administration of justice and to just justice. As against the aforesaid, the injury to public interest by disclosure would be, if any minimal. We may say so, if we say that the public interest would rather be subserved by disclosure as this would result ultimately in ensuring a clean and healthy administration as has been observed by Justice Bhagwati in para 65 extracted herein above.

"11. In the premises, we are of the view that on balance and even otherwise public interest in just justice and just administration of justice far outweighs the public interest involved, if any, in the disclosure of the documents for which the privilege has been claimed."

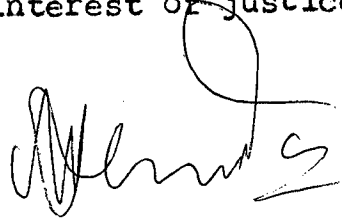
A Full Bench of this Tribunal in B.N.Rangwani vs. Union of India & others, A.T.R 1988(1) C.A.T 633, held that "privilege in respect of official record relating to an order of compulsory retirement should not be claimed as a matter of course. Ordinarily such record does not answer the description of a document covered by sections 123 and 124 of the Evidence Act". The Full Bench quoted the following from the classic

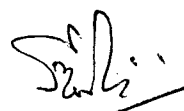
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judgment of the Larger Bench of the Supreme Court in case of S.P Gupta cited earlier:-

"the injury which would be caused to public interest in administration of justice by non-disclosure of the correspondence between the Law Minister, the Chief Justice of Delhi and the Chief Justice of India and the relevant noting made by them in regard to non-appointment of S.N Kumar and the correspondence between the Law Minister and the Government of India and the relevant notings made by them in regard to transfer of Chief Justice of Patna, far outweighs the injury which may, if at all, be caused to the public interest by their disclosure and hence these documents were liable to be disclosed in response to the demand of the learned counsel appearing on behalf of the petitioners and S.N Kumar. These were the reasons for which we directed by our order dated 16 October, 1981 that these documents be disclosed to the petitioners and S.N Kumar".

3. Based on the aforesaid rulings and the circumstances of the case we have no doubt in our mind that the privilege claimed against the production in evidence of the proceedings of the Selection Committee ^{which are far more innocuous than the documents involved in S.P Gupta's case} is wholly unwarranted and we reject the same with the direction that the minutes will be produced in evidence in the interest of justice in this case.


(A.V. HARIDASAN)
JUDICIAL MEMBER


15.10.90
(S.P. MUKERJI)
VICE CHAIRMAN

n.j.j