

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM

O.A. No.
~~TXAxxMK~~ 491/89

199

DATE OF DECISION 31.12.90

Paul Leslie Applicant (s)

Mr. N.Nandakumara Menon Advocate for the Applicant (s)

Versus

Union of India (Secretary, Min. of Home Affairs) & 3 others Respondent (s)

Mr.P.Sankarankutty Nair, ACGSC (for R1, 3 & 4) Advocate for the Respondent (s)

Mr. P.V.Mohanam for R2

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? ✓
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

(Shri S.P.Mukerji, Vice Chairman)

In this application dated 6th August 1989, filed under section 19 of the Administrative Tribunals Act, the applicant who has been working as Superintendent of Police (Telecommunications) under the State Government of Kerala, has challenged the Grading List (Annexure-II) of eligible officers, prepared by the Selection Committee for the year 1987, for promotion to the Kerala Cadre of Indian Police Service. His name has not been included in that List and the applicant has prayed that his name should be included in that List between serial number 5 and 6, with all consequential benefits. The brief facts of the case are as follows:

2. The applicant was appointed as Deputy Superintendent of Police (Telecommunications) on 2.6.76 and has since been confirmed and admittedly he was eligible for being considered by the Selection Committee since 1985, on completion of 8 years of service in the Kerala Police Service, for promotion to the I.P.S. In accordance with the Indian Police Service (Appointment by Promotion) Regulations

1955, the Kerala Police Service is constituted by various categories of posts in the Police Department. Apart from the regular category of the posts of Dy.S.Ps with territorial jurisdictions in Districts and Sub Divisions, there is a category of posts in the Telecommunications Wing of the Police Department in which the applicant had been appointed as Dy.S.P. The applicant, who was respondent No.11 in another O.A. No. 329/89 in which another Kerala Police officer, K.Velayudhan, had challenged the Select List for promotion to the I.P.S. for the year 1988, came across the Grading List prepared by the I.P.S. Board for the year 1987, produced by the applicant in that case. A copy of that List has been produced at Annexure-II in the case before us. In that List, the applicant's name was not included, whereas one Shri Baburaj who was regularised in the post of Dy.S.P. on 23.2.76 has been included at Sl. No.4, though the applicant was regularly appointed as Dy.S.P. on 2.6.76. The applicant's contention is that he should have been included between Sl.Nos. 5 and 6 in that List and his exclusion from that List is illegal, arbitrary and unreasonable. The applicant represented against and his non-inclusion on 29.9.88 (Ann. III) ~~and~~ he got a reply from the Director General of Police (Ann. IV), indicating that his name had been included in the list of eligible officers. The applicant contends that, if his name had been included amongst the eligible officers, it is surprising that, in the Grading List at Ann.II where even those who were found to be unfit had also been included and graded, the applicant's name, which should have been between Sl. Nos. 5 and 6, does not figure at all.

3. The applicant amended the Original Application impleading S/Shri K.T.Michael, B.Nadar, S.Miniyodan, and C.K.Mohammed, who were included at Sl. No. 6 to 9 in the Select List prepared for promotion to the IPS in 1987 at Annexure-V (page 29 of the paper book). He further contended that Shri ~~K.T.Michael~~ who ~~was~~ was included at Sl.No. 6 in the Select List of 1987, was appointed to the IPS cadre in October 1988, even though he was regularised in the cadre of Dy.S.P. on 7.6.76, whereas the applicant had been

regularised in that grade earlier on 2.6.76. His further prayer ^{Uo} that he should be promoted to the IPS with effect from October 1988 when Shri K.T.Michael, his immediate junior, was promoted to the IPS.

4. Counter affidavit has been filed only by the State Government of Kerala (Respondent-2). The UPSC (Respondent-4) drew our attention to the fact that the proceedings of the Selection Committee had been produced before the Tribunal on 4.10.90 in OA 486/89. The learned counsel was good enough to make the proceedings available to us during the course of argument. The State Government of Kerala in their counter affidavit stated that promotion to the IPS is made by selection of State Police Service officers in accordance with the provisions of the I.P.S. (Appointment by Promotion) Regulations, 1955. Selection is done by a Committee with Chairman or a Member of the UPSC as the Chairman of the Committee and they prepare a list of such State Police Service officers as are found suitable for promotion to the IPS. State Police Service officers with not less than 8 years of service in a substantive post are eligible for consideration by the Selection Committee, provided the officer has not completed 54 years of age on the 1st of January of the year in which the Committee meets. The State Government has specifically indicated that "the applicant who was appointed Deputy Superintendent of Police (Telecommunications) on 2.6.76, has confirmation in that post and therefore he was eligible to be considered by the Selection Committee since 1985." They have further indicated that the Selection Committee to make selection of State Police Service officers for promotion to IPS during 1988 met on 18.12.87 and prepared the list of officers for approval as Select List. In accordance with Regulation 5(4) of the Promotion Regulations, the Selection Committee classifies the eligible officers as 'outstanding', 'very good', 'good' and 'unfit' and they are included

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in the Select List by placing the outstanding officers at the top and thereafter 'very good' and 'good' and within each grading the order of names inter se are to be in the order of their seniority in the State Police Service.

5. The respondents have stated that Annexure-II in this O.A. which is the grading made by the IPS Board in 1987 and is stated to be the copy of Annexure-IIIA in OA 329/89 filed by Shri R.Velayudhan, is incorrect. The State Government however conceded that the applicant before us was included at Sl.No.34 in the list of eligible State Police Service officers considered by the Selection Committee which met in December 1987. They have argued that names of all the officers included in the field of choice cannot be included in the Select List due to the statutory limitation of the size of the Select List. Their further argument is that, according to the provisions of the IPS (Appointment by Promotion) Regulations a State Police Service means the Principal Police Service of a State Government, a member of which normally holds charge of a subdivision of a district for purpose of Police administration and includes any other duly constituted Police Service in the State and declared by the State Government to be equivalent thereto. The Kerala Government had declared Services in posts of DYSPs and above in the MSP, SAP, Armed Reserves and Police Telecommunication Units as Services equivalent to the Principal Police Service in the State, for purpose of appointment to the IPS by promotion. The applicant is a directly recruited Dy.SP in the Telecommunication wing of the Police Department. The officers of the rank equivalent to Dy.S.P.in the Armed Police Batalions and Telecommunications are also eligible for promotion to IPS. They form separate wings and no principles have been laid down for preparation of a common seniority list. Hence a seniority list of officers in the General Executive, Armed Police Battalions and Telecommunication Unit was furnished (in that order) for consideration for selection to

IPS during 1987. Therefore there is no substance in the contention that the applicant who belonged to the Telecommunication Unit of the Police Department was senior to the 5th respondent Shri K.T.Michael who belonged to a different unit."

6. In the rejoinder, the applicant has reiterated that the 5th respondent is junior to the applicant and if the applicant and the 5th respondent are both given the same grading of being 'outstanding' or 'very good' or 'good', then the applicant should have been promoted to the IPS cadre before promoting the 5th respondent. He has argued that there cannot be any differential treatment between an officer in the General Branch and an officer in the Special Branch like Telecommunication, if both of them are given the same grading.

7. We have heard the arguments of the learned counsel for both the parties and gone through the documents carefully. The learned counsel for the State Government, Shri Mohanan, was good enough to produce the file in which the list of eligible State Police Service officers was prepared and sent to the UPSC. In that list, respondent-5, Shri K.T.Michael has been shown at Sl.No.6 having been confirmed as Dy.SP on 7.9.79 and date of continuous officiation as Dy.SP or equivalent post has been shown as 7.6.76. All officers in that list below him from Sl.No.7 to 35 started officiation as Dy.SP from dates subsequent to 7.6.76. The 35th officer's officiation started from 19.6.78. The applicant has been shown as confirmed as Dy.SP on 1.7.81 and his date of officiation has been shown as 2.6.76. From the list it is clear that names of all eligible State Police Service officers have been listed neither in accordance with the date of confirmation nor on the basis of the date of commencement of continuous officiation in the grade of Dy.S.P. For instance, Shri D.Chandrababu who was confirmed

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at Sl.No.34

in the State Police Service as Dy.S.P. on 1.4.81⁷ has been shown below all regular Police Service officers who were confirmed between 1.5.81 at Sl.No.24 and 1.5.82 at Sl.No. 33. So far as the date of officiation is concerned, Dy.S.Ps. in the regular grade between Shri K.T. Michael at Sl.No.6, who started officiating from 7.6.76, and shri P.V.Thomas at Sl.No.35, who started officiating from 19.6.78, ^{all} have been placed above the applicant at Sl. No. 36, who started officiating from 2.6.76. This has been explained by the respondents by stating as follows:

"The officers of the rank equivalent to Dy.S.P. in the Armed Police Batalions and Telecommunication are also eligible for promotion to IPS. They form separate wing and no principles have been laid down for preparation of a common seniority list. Hence a seniority list of officers in the General Executive, Armed Police Batalions and Telecommunication Unit was furnished (in that order) for consideration for selection to IPS during 1987."

8. From the above, therefore, it is clear that the eligibility list of State Police Service officers of Kerala for promotion to the IPS has been prepared by placing the eligible officers in the Principal Police Service in the General Executive en bloc over the eligible officers of Armed Police Batalions and finally, eligible officers of the Telecommunication Unit to which the applicant belongs have been placed below the General Executive and Armed Police Batalion officers. It is because of this that the applicant, who admittedly was inducted directly as a Dy.S.P. and started officiating with effect from 2.6.76, has been placed en bloc below the Dy.S.Ps. in the General Executive and Dy.S.Ps. in the Armed Batalions, even though his date of entry as Dy.S.P. is earlier than that of Shri K.T. Michael. This, to our mind, is against all principles of service jurisprudence. Where promotion to the higher grade is made from more than one feeder cadres which are equivalent to one another, but officers belonging to these cadres figure in independent seniority lists, the seniority lists of the various feeder cadres will have to be integrated in one seniority list. Placing all officers belonging to one feeder cadre en bloc below or above all officers of another feeder cadre for purposes of promotion to the higher grade will be arbitrary and inequitable. When two grades are considered to

be equivalent for the purpose of promotion, as admittedly in this case, where Dy.S.Ps. of General Executive are considered to be equivalent to Dy.S.Ps. in Police Telecommunication Unit, the senior-most eligible Dy.S.P. in the Telecommunication Unit cannot be placed below the juniormost eligible Dy.S.P. in the General Executive or the Armed Batalion cadre, irrespective of his length of service. This exactly what has happened in the instant case, where the applicant who was directly recruited as Dy.S.P. and has been officiating as such with effect from 2.6.76, has been placed below 28 Dy.S.Ps. in the Executive Wing who started continuous officiation as Dy.S.P. after him, and below 2 Dy.S.Ps. in the Armed Batalion whose officiation as Dy.S.P. started more than one and two years after the applicant's.

9. It is now established law as laid down by the Supreme Court in a plethora of cases that where there are no specific rules of seniority, seniority is determined by the length of continuous service in a particular grade, leaving aside fortuitous officiation. Since, in the case of the applicant, continuous service as Dy.S.P. commenced on 2.6.76 as a direct recruit, ~~in the eligibility list~~, he has to come immediately above Shri K.T.Michael (Respondent-5) who is at Sl.No.6 in the eligibility list. We are sure that the UPSC to whom the eligibility list was forwarded by the Government of Kerala, vide their letter No.22787/Spl.A.III/87/GAD dated 26.10.87, would not have accepted the eligibility list enclosed therewith, had the three sets of officers, viz. those in the General Executive from Sl.No. 1 to 33, those in the Armed Batalion at Sl.Nos. 34 and 35 and the applicant belonging to the Telecommunication Wing, been shown separately with independent serial numbers. The list, as was ~~sent~~ ^{running} appeared to be the seniority list of eligible State Police Service officers, which it was not. This has resulted in great inequity and injustice to the applicant and others belonging to the Armed Batalion who are not before us.

10. In the Note prepared for the use of the Members of the Selection Committee to be held on 18th December 1987, the State Government indicated that the Select List is to be prepared for filling up 8 vacancies comprising 3 existing and 5 anticipated vacancies till the end of 1988. It was further indicated that, in accordance with sub-regulation (1) of regulation 5 of the I.P.S. (Appointment by Promotion) Regulations, the number of State Police Service officers included in the Select List shall not be more than twice the number of anticipated vacancies or 5% of the posts shown against items 1 and 2 of the Cadre Schedule, i.e. 5% of 78, whichever was greater. Hence the size of the Select List was indicated to be 16. It was also indicated that "the State Government sponsored 38 such Police Service officers in the order of seniority for consideration of the Selection Committee." However, in the annexure which indicated the names of 36 officers, they placed the name of the applicant at the bottom, as he belongs to the Telecommunication Wing. By wrongly indicating the list of eligible State Police Service officers to have been prepared "in the order of seniority", the State Government not only misdirected themselves but misdirected the UPSC also resulting in an egregious injustice to the applicant. By being placed at the bottom of the eligibility list, which was not the seniority list, the applicant was completely left out of the Select List, because of his wrong placement in the eligibility list which was wrongly projected as the seniority list.

11. As has been cited above, respondent-2 has conceded that the applicant's post as Dy.S.P.(Telecommunication) is equivalent to the State Police Service and that he was eligible having completed 8 years of substantive service in the Telecommunication Wing. Therefore, there is no reason why in the seniority list of Dy.S.Ps. and equivalent grade of eligible State Police Service officers, he should have been placed at the bottom. Regulation 5(2) of the

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IPS (Appointment by Promotion) Regulations, 1955 reads as follows:

"(2) The Committee shall consider for inclusion in the said list, the cases of members of the State Police Service in the order of seniority in that service of a number which is equal to three times the number referred to in sub-regulation (1):

Provided that such restriction shall not apply in respect of a State where the total number of eligible officers is less than three times the maximum permissible size of the select list and in such a case the Committee shall consider all the eligible officers:

Provided further that in computing the number for inclusion in the field of consideration, the number of officers referred to in sub-regulation (3) shall be excluded:

Provided also that the Committee shall not consider the case of a member of the State Police Service unless, on the first date of January of the year in which it meets he is substantive in the State Police Service and has completed not less than eight years of continuous service (whether officiating or substantive) in the post of Deputy Superintendent of Police or in any other post or posts declared equivalent thereto by the State Government: (emphasis supplied)

It is not clear to us how the State Government, without preparing an integrated seniority list of Dy.S.Ps in General Executive, Armed Batalion and Telecommunication Wing, prepared an eligibility list of 36 officers in which they included 33 officers from the General Executive, 2 officers from the Armed Batalion and one officer, i.e. the applicant, from the Telecommunication Wing. The State Government should have prepared an integrated seniority list of all eligible State Police Service officers from all the 3 Wings, on the basis of length of continuous officiation in the grade of Dy.S.P. and prepared a list of 48 eligible officers from the top of that integrated list. If, however, the number of eligible officers was less than 48, say 36, the first 36 officers in the integrated seniority list would have constituted the eligibility list arranged in the order of seniority, as required in the Promotion Regulations. In that integrated list, as has been stated above, the applicant would have been placed immediately above respondent-5, Shri K.T.Michael, who started officiating from 7.6.76, and immediately below Shri G.Baburaj at Sl.No.5, who started officiating from 23.2.76.

12. We had occasion to go through the proceedings of the Selection Committee which met at Trivandrum on 18.12.87. We found that Shri K.T.Michael, respondent-5, who was placed at Sl.No.6 in the seniority list, was graded as 'very good' and the applicant, who was placed at Sl.No.34, was also graded as 'very good'. Thus, in the Select List, the applicant would have come immediately above respondent-5 who was graded equally like him as 'very good', but was junior to the applicant on the basis of his length of service as Dy.S.P. In this connection, sub-regulations (4) and (5) to regulation 5 of the IPS (Appointment by Promotion) Regulation, as quoted below, would be relevant.

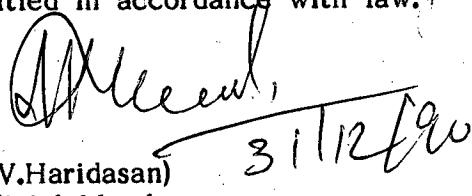
"(4) The Selection Committee shall classify the eligible officers as 'Outstanding', 'Very Good', 'Good' or 'Unfit', as the case may be, on an overall relative assessment of their service records.

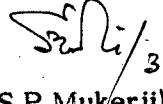
(5) The list shall be prepared by including the required number of names, first from amongst the officers finally classified as 'Outstanding', then from amongst those similarly classified as 'Very Good', and thereafter from amongst those similarly classified as 'Good' and the order of names inter-se within each category shall be in the order of their seniority in the State Police Service."

Since in the Select List of 14 State Police Service officers respondent-5 Shri K.T.Michael was placed at Sl.No.6 in the order of merit and Shri G.Gopinathan at Sl.No.5, the applicant's name should have figured between Sl.No.5 and 6 in the Select List, if the eligibility list had been properly prepared in the order of seniority, as enjoined in sub-regulation (2) of regulation 5 of the IPS (Appointment by Promotion) Regulation.

13. Since all those who are likely to be affected by ^{the} ~~the~~ setting aside of the Select List of 1987 are not before us, and the quashing of the Select List will unsettle the promotions already made, we would not go to the extent of setting aside the Select List, but we will be failing in our duty ^{as} ~~as~~ a judicial body if we deny the applicant his legitimate promotion manifest from records.

14. In the conspectus of facts and circumstances, we allow the application, to the extent of directing the respondents, to promote the applicant to the Kerala cadre of IPS, with effect from the date of promotion of respondent-5, Shri K.T.Michael, with all consequential benefits of seniority, arrears of pay, allowances, etc. from the date of such promotion. We would, however, direct that a copy of this judgement should be sent to the Chief Secretary of the Government of Kerala, Secretary, Department of Personnel and the Secretary, ^{of the Govt. of India} Union Public Service Commission, so that the injustice being perpetuated by listing the eligible State Police Service officers in ^{three} different blocks as if the eligibility list is also the seniority list of State Police Service officers belonging to ^{three} different Wings, is discontinued forthwith and the State Government advised to prepare an integrated seniority list of eligible State Police Service officers belonging to different Wings, on the basis of the length of continuous service as Dy.S.P., keeping the inter-se seniority within the same Wing undisturbed. We leave it to these authorities to decide how the injustice if any, accruing to ^{the} State Police Service officers similarly circumstanced as the applicant before us, should be redressed. This will be without prejudice to the claims of such officers to which they are entitled in accordance with law.


(A.V.Haridasan)
Judicial Member


S.P. Mukerji
Vice Chairman

31.12.90

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

THIRD DAY OF APRIL, 1991.

PRESIDENT

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

and

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

RA No: 17/91 In
ORIGINAL APPLICATION NO: 491/89

G Baburaj : Applicant(s)

versus

Paul Leslie, Sr. Supdt. of Police,
Telecam, TVM and 4 others. : Respondents

Mr. Aravindakshan : Counsel for applicant(s)

Mr. N Nandakumara Menon : Counsel for respondent-1

Mr. P Sankaran kutty Nair, ACGSC : Counsel for respondents 2, 4&5

Mr. PV Mehanan, GP : Counsel for respondent-3

O R D E R

The learned counsel for the Review Applicant appeared and stated that he wishes to withdraw the Review Application. Accordingly the Review Application is dismissed as withdrawn.

Sd/-
(AV HARIDASAN)
JUDICIAL MEMBER

Sd/-
(SP MUKERJI)
VICE CHAIRMAN

3-4-1991

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

R.A No.18/91 in O. A. No. 491/89
XXXX No.

159
DATE OF DECISION 27.3.91

K.T.Michel _____ Applicant (s)

Mr.Radhakrishna Menon _____ Advocate for the Applicant (s)

Versus

Paul Leslie and 7 others _____ Respondent (s)

Mr.N.N.Sugunapalan,SCGSC(for R2,4 & 5)

Govt. Pleader(for R3)

Mr.N.Nandakumara Menon(R1)

Advocate for the Respondent (s)

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?
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JUDGEMENT

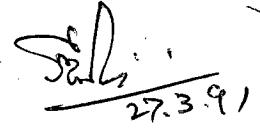
(Hon'ble Shri S.P.Mukerji, Vice Chairman)

In this review application the review applicant who was 5th respondent in O.A. 491/89 has sought review of our order dated 31.12.90 in that case. The review application was filed on 20th February, 1991 with a delay, according to the applicant himself, of 21 days. His plea for the delay is that he did not receive a copy of the judgment.

2. In the review application the plea taken by the review applicant is that even though he was a respondent in the O.A he did not contest the application himself, but left the matter to the State Govt. for arranging ^{his} personal defence. He has further indicated that in para 7 of the judgment there is a mistake in reckoning the date of ^{his} continuous ^{as Dy.S.P.} officiation which does not tally with the date of commencement of continuous officiation in the seniority list of Dy.S.Ps as on 1.6.79, a copy of which he has filed as Annexure-III in his review application.

3. Even if we condone the delay and also condone the laxity on his part in not contesting the Original Application, we find that on merits also the review application has no force. In para 7 of the judgment there is no factual or any other error on the face of record. The review applicant's date of continuous officiation as Dy.S.P. has been shown as 7.6.76. This is exactly the date which is shown in column 7 of the seniority list at Annexure-III produced by the review applicant himself. Column 7 refers to date of regularisation as Dy.Supt. of Police. In column 6 which is the date of continuous appointment as Dy.Supt. of Police, the applicant has been shown to be officiating from 31.5.76 at Sl.No.77 of that list whereas his immediate ^{senior} ~~Shri P.C.Dharmarajan~~ at Sl.No.76 started such officiation on 7.6.1976. It means that the officiation of the review applicant from 31.5.76 to 7.6.76 was ^{deemed to be} fortuitous and out of turn and that is why his officiation has been regularised only from 7.6.76 and ^{he} continued to be junior to Shri Dharmarajan. The review applicant was confirmed as Dy.S.P.on 7.9.79. Thus for the purposes of seniority the review applicant's continuous and regular officiation has been taken to be only from 7.6.76. If the review applicant's officiation from 31.5.76 had ^{to} been taken into account, he should have been shown ^{as} senior to Shri Dharmarajan. ^{This has not been done.} Thus the valid officiation of the review applicant cannot be from a date earlier than 7.6.76. Thus on merit also the review application has no force and is dismissed.


(A.V.Haridasan)
Judicial Member


27.3.91
(S.P.Mukerji)
Vice Chairman