

CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH

Original Application No. 507 of 2007

Friday...., this the 7<sup>th</sup> day of November, 2008

K.R. Rajan,  
S/o. Raman,  
Residing at T.C. 27/47,  
Red Cross Road, Vanchiyoor,  
Trivandrum

... Applicant.

(By Advocate Mr. P.V. Mohanan)

v e r s u s

1. The State of Kerala,  
Represented by its Chief Secretary,  
Government Secretariat,  
Thiruvananthapuram.
2. Union of India, Represented by its  
Secretary, Ministry of Personnel, Public  
Grievances & Pensions, Department of  
Personnel & Training, Government of India,  
North Block, New Delhi : 1 ... Respondents.

(By Advocates Mr. T.P.M. Ibrahim Khan, SCGSC for R2 and  
Mr. R. Prem Shanker, G.P. For R1)

The Original Application having been heard on 23.10.08, this Tribunal  
on 7-11-08 delivered the following :

O R D E R  
HON'BLE DR. K B S RAJAN, JUDICIAL MEMBER

The grievance of the applicant is that he has not been appointed to the  
Indian Administrative Service despite inclusion in the select list of 2000.

2. According to the applicant he entered the Kerala State Civil Service as Deputy Collector in the year 1987 and became eligible to be considered for appointment by promotion to the Indian Administrative Service on 31.12.1995. In the select list approved by the UPSC in the year 1997 for appointment to IAS

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by promotion, applicant's name was included at Sl. No. 8 as "provisional" subject to issuance of integrity certificate by the State Government. However, he was not appointed. Again in the select list prepared in the year 1999 his name was included at Sl. No. 2 as "provisional" but he was again not appointed. The applicant's name was included in the select list for the year 2000, once again as "provisional" due to non issuance of integrity certificate in his favour. The Government of Kerala decided to issue integrity certificate to the applicant only on 22.6.2001. The UPSC declined to declare his inclusion in the select list as "unconditional" and final so as to enable the Central Government to appoint the applicant to the IAS since the integrity certificate was not forwarded by the State Government within the stipulated time. Finding that the unconditional inclusion of his name in the Select List was not approved by the UPSC and he was not given appointment, the applicant submitted a representation to the Government of India. Since there was no response he filed O.P.No. 28240/2001 before the Hon'ble High Court of Kerala. The Hon'ble High Court by its judgment dated 25.9.2001 directed the Union of India to consider the representation and pass appropriate orders within one month. The Union of India passed an order on 11.10.2001 holding that as the period of validity of the select list had expired on 3.7.2001 before the receipt of integrity certificate of the applicant from the Government of Kerala, approval of the UPSC for inclusion of the name of the applicant unconditionally could not be made. Aggrieved, the applicant filed O.A. 1077/2001 before this Tribunal. The Tribunal directed the second respondent UPSC to consider the proposal of the 3rd respondent sent on 24.7.01 to declare the provisional inclusion of the applicant in the select list approved on 3.5.01 as "unconditional" and valid and to take a decision in terms of Regulations S-7(4) of the IAS (appointment by promotion)

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regulations. Pursuant to the Tribunals order the UPSC considered the case of the applicant on 6.5.2002, included the applicant's name as "unconditional" in the select list. However, as the 1st respondent did not take the necessary steps within the time limit granted by the Tribunal, the applicant filed CPC 67/2002 for initiation of contempt action against the 1st respondent. The above contempt proceedings were closed by the Tribunal accepting the affidavit of the Secretary, Department of Personnel and Training, New Delhi. Subsequently, the Govt. of Kerala by order dated 13.7.2004 revoked the suspension and reinstated the applicant in service. Thereafter the State Govt. dropped the proceedings. Pointing out the aforesaid developments the applicant submitted another representation to the 2nd respondent praying for issuance of appointment order. As no action was forthcoming, the applicant filed M.A. 321/2005 in O.A. 1077/2001. By order dated 26.5.2005 this Tribunal disposed of the same with a direction to the 2<sup>nd</sup> respondent to consider Annexure -V representation and pass appropriate orders within one month. Though on 30.5.2005 the applicant was again suspended from service pending enquiry, he was reinstated on 21.3.2007. It is submitted that the 2<sup>nd</sup> respondent in obedience of Annexure -VI order of this Tribunal selected the applicant to IAS and included him in the list as on 1.1.2006 at Sl. No. 166 mentioning "on training, Kerala 31.12.2005". The applicant submitted yet another representation on 5.7.2007 bringing to notice of the same before the first respondent and requested to issue formal order assigning him IAS and for posting order. The first respondent has not so far issued any order. Pending the above O.A. the second respondent has issued Annexure -IX order on 11.2.2008 purported to have been passed in terms of Annexure A-6 order. The applicant is challenging the above order through this O.A. He also prays for a direction to implement Annexure-VII Civil List by

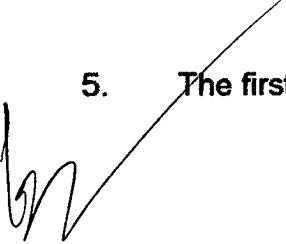


issuing formal order assigning him in IAS cadre (Kerala) and posting him against the vacancy as on 1.1.2000 with appropriate seniority and to grant all consequential benefits.

3. The first and second respondents filed separate reply statements.

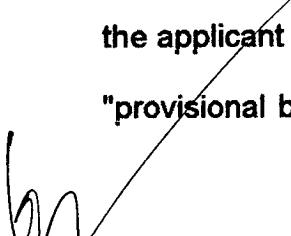
4. The first respondent contested the averments of the applicant and submitted that in obedience with the orders of the Tribunal in O.A. 1077/2001, one vacancy has been reserved for the applicant and that if and when he is exonerated of the charges pending against him he would be appointed to the IAS from the Select List 2000. However, disciplinary case against the applicant has been finalised and punishment imposed on him vide Annexure R-1(a) order dated 24.4.2006. Since penalty was imposed on him, the vacancy reserved for the applicant was released. It is further submitted that the name of the applicant was included in the zone of consideration for promotion to the IAS cadre for the year 2006 also. The State Government withheld the integrity certificate as disciplinary action/vigilance case was pending against him. Hence the name of the applicant was not included in the 2006 select list. They further submitted that had he been appointed to the IAS on the basis of any previous select list, the name of the applicant would not have been included in the zone of consideration for the year 2006. They further submitted that inclusion of his name in the Civil List Annexure-VII is not a matter coming under the purview of the first respondent as it is a matter to be dealt with by Government of India.

5. The first respondent has also filed an additional reply statement.



6. The applicant has filed rejoinder to the reply statement filed by the 1<sup>st</sup> respondent stating that the first respondent has no authority to issue a letter in the nature of Annexure R-1(b) and circumvent the orders of the Tribunal and that the first respondent has sat over the orders of the Tribunal. He further submitted that barring one increment is only a minor punishment which will not affect the promotional prospects. The order does not specify any period and hence the bar can be only for three months as per Rule 47(5) of Manual for Disciplinary Proceedings. Hence the stand taken by the State Government and its action requiring the Central Government to release the vacancy reserved for him is bad in law and fact.

7. In the reply statement filed by the 2<sup>nd</sup> respondent it is submitted that the applicant was not appointed to IAS cadre of Kerala as he was under suspension since January, 2002 and a charge sheet had also been served on him thereby making his inclusion in Select List of 2000 as "deemed provisional" under first proviso to Regulation 7(3) of Promotion Regulations. The applicant cannot be stated to have been exonerated of the charges framed against him. Consequently he cannot be appointed to the IAS cadre of Kerala against the Select List of 2000. The applicant was again suspended on 30.5.2005 and reinstated on 21.3.2007 and given posting only on 9.5.2007. That means the applicant again faced the disciplinary proceedings after the decision of State Government dated 29.12.2004 on earlier disciplinary proceedings. The name of the applicant has erroneously appeared in the Civil List 2006 presumably on the basis of his inclusion in the select list for the years 2003 and 2004. The name of the applicant for both the Select Lists of years 2003 and 2004 was included on "provisional basis" only and such inclusion does not lead to appointment unless



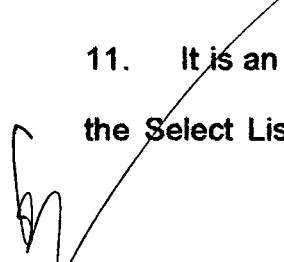
the officer is declared unconditional within the validity period of the Select List concerned. It is further submitted that the scheme of promotion to the IAS is clearly to the effect that tainted officers do not get promoted to the IAS. Under these circumstances, the prayers of the applicant are devoid of any merit and the applicant is not entitled to get any of the relieves sought for.

8. We have heard the respective counsel for the parties.

9. The main contention of the learned counsel of the applicant is that the applicant was selected against the substantive vacancy as on 1.1.2000, that there was no memorandum of charges issued on 1.1.2000, nor proceedings were initiated, that when the Selection Committee met he was not under cloud. There was no currency of penalty even in the years 2004 and 2005. Annexure A-IX is actuated by error apparent on the face of the records. Therefore the applicant was entitled to be appointed having been included unconditionally in the select list of 2000 in the light of law declared by the Apex Court in Union of India Vs. Megha Singh (AIR 1997 SC 2328).

10. The learned counsel for the 2<sup>nd</sup> respondent submitted that the name of the applicant has erroneously appeared in the Civil List 2006 and that promotion of tainted officers would be against the basic principles of promotion and that the applicant was not appointd to IAS cadre of Kerala as he was under suspension at the relevant time and chargesheet had also been served on him.

11. It is an admitted fact that the applicant has been included at Sl. No. 2 in the Select List of 2000 for appointment by promotion to IAS prepared by the

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Selection Committee on 26.12.2000 and that in compliance of the directions of the Tribunal in O.A 1077/2001 dated 20.3.2001 his inclusion was treated as unconditional and final. While considering the applicant for appointment to IAS on the basis of the aforesaid Select List it was observed that he was under suspension, hence he could not be appointed. The CPC 67/2002 filed by the applicant was discharged by the Tribunal with the following observations:

"From the affidavit It is seen that the applicant had not been given appointment to IAS for the reason that he is placed under suspension and that a post has been reserved for appointment of the applicant to IAS if he is cleared in the disciplinary proceedings. Therefore, we find no reason to proceed with the contempt petition any further and the contempt petition is closed. Notice is discharged."

12. The Government of Kerala through order dated 29.12.04 has decided that in the absence of the relevant documents based on which charges are framed the disciplinary action cannot be proceeded further and accordingly decided to drop further action against the applicant.

13. The short question that arises for consideration is whether the decision of the Govt. of Kerala to drop further action against the applicant has fully exonerated the applicant. The contention of the applicant is that the disciplinary proceedings stated to have been pending against the applicant has ended in favour of the applicant, he has been exonerated from the charges framed against him and he thus became eligible to be appointed. In fact, his name has been correctly included in the civil list. The respondents on the other hand contend that he has not been fully exonerated and he cannot be appointed to the IAS against the Select List of 2000 and his inclusion in the civil list was a mistake.

*[Handwritten signature/initials over the last sentence]*

14. At the very outset it can be stated that inclusion of the name of the applicant in the civil list is indeed not based on any specific authority. Mere inclusion in the civil list cannot confer promotion to the application, when there is no authority for such inclusion. The proper authority is the Notification by the Central Government, which is conspicuously absent. Hence, by virtue of name being figuring in the Civil List, the applicant's case does not get improved. Respondents are right when they have stated that it was by mistake that the name of the applicant figured in the Civil List.

15. Thus, what is to be seen is as to whether the applicant has a strong case by virtue of the fact that the disciplinary proceedings, (on the basis of which inclusion in the select list of his name in the year 2000 was made only provisional and not unconditional) having been dropped due to non availability of records and whether on the basis of the undertaking given by the then Secretary, DOPT, he should now be promoted to the cadre of IAS.

16. To recapitulate, order of this Tribunal dated 20<sup>th</sup> March 2002 read as under:-

*"9. In the light of the legal position, we are of the view that the UPSC was not right in not considering the declaration of unconditional inclusion of the applicant in the select list just for the reason that there had been some delay on the part of the State Government to send up the proposal."*

17. The sworn statement as well as undertaking given by the then Secretary, DOPT before this Tribunal, vide Affidavit dated 15<sup>th</sup> November 2002 inter-alia are as under:-

*"(iii) In pursuance of the orders dated 20<sup>th</sup> March, 2002 passed by this Hon'ble Tribunal, the UPSC have acted*



upon their part of the judgement and Shri Rajan's name was made unconditional in the 2000 Select List prepared for Kerala Cadre of IAS vide their letter dated 8<sup>th</sup> May, 2002. The next part of the judgement was for this respondent to comply with, for considering the appointment of Shri Rajan to the IAS on this basis.

(iv) The respondent has accordingly considered the matter of appointment of the applicant to the IAS. It has, however, been found that he is under suspension since 11<sup>th</sup> January, 2002, in a fresh case initiated against him by the State Government and a charge sheet also been served on him on 24.02.2002. The name of the applicant was again considered by the Selection Committee in their meeting held on 4<sup>th</sup> October, 2002 when it met to prepare the Select List for the year 2001 for filling up of promotion quota vacancies in Kerala cadre of the IAS during this year. Though he was found fit for promotion by the Selection Committee, yet his name has been included on provisional basis in the list recommended by the Selection Committee, precisely for the reason that he was under suspension and a charge sheet has been served upon him. This respondent submits that in such a situation, his case falls under proviso to Regulation 7(3) of the Promotion Regulations as mentioned in sub-para (i) above and his inclusion in the 2000 Select List is to be treated as "deemed provisional". Accordingly, it would not be possible to appoint him to the IAS till the conclusion of the disciplinary proceedings, despite the fact that his name has been made unconditional by the UPSC as per direction of the Hon'ble Tribunal. This respondent would of course reserve a vacancy for him till conclusion of the said disciplinary proceedings and in case he is exonerated of the charges made against him, he would be appointed to the service from the 2000 Select List itself.

(v) .... There is, of course, no reluctance on the part of this respondent to implement the Hon'ble Tribunal's directions in regard to the appointment of the applicant to the IAS as submitted above. As and when he is exonerated of the charges in the disciplinary case presently going on against him, this respondent would at once take further necessary action to implement this Hon'ble Tribunal's Order dated 20-03-02 in regard to his appointment to the IAS in letter and spirit.

18. It was on the basis of the above undertaking that the CP filed by the applicant in the earlier OA was closed.

19. Inquiry Proceedings initiated against the applicant, which was the sole ground for his selection being stamped as provisional in the select list of 2000,

resulted in the following order, vide GO (RT) No. 5372/04/RD dated 29-12-2004:-

*"The inquiry Office submitted Report as per 5<sup>th</sup> paper above. Inquiry Officer could not prove or disprove the charges as the relevant records were not produced. In the letter 6<sup>th</sup> cited the District Collector, Idukki has reported that the file dealing with the charges framed against Shri K.R. Rajan was not forthcoming in his office.*

*In the absence of the relevant documents based on which charges are framed the disciplinary action cannot be proceeded further. Government have examined the matter in detail and decided to drop further action against Shri K.R. Rajan and Government order accordingly."*

20. With the above decision, it was imperative for the respondents to link the same with the terms of undertaking given before this Tribunal as narrated in para 4 above and act accordingly. On the premises that there has been a further suspension followed by reinstatement, and further proceedings against the applicant resulting in some penalty. the respondents now try to justify that the applicant cannot be considered for appointment to the IAS, being a 'tainted officer'.

21. The argument of the Counsel for the applicant is that once the case against the applicant has been dropped, the logical sequence is to appoint him against a vacancy reserved for him in the 2000 list. That there has been a separate set of proceedings against the applicant cannot in any way affect his being appointed in 2000 since as on that date there is no proceedings pending. Counsel for the applicant has, in support of his arguments as above, relied upon the following judgments of the Apex Court:-

- (a) AIR 1997 SC 2329
- (b) AIR 1975 SC 2277
- (c) 2000(8) SCC
- (d) 2000(7) SCC 210



22. In *Union of India v. Mohan Singh Rathore*, (1996) 10 SCC 469 (=AIR 1997 SC 2329), the Apex Court dealt with a case where there was unnecessary detention of 'no deterioration certificate' which was a pre-requisite for promoting an officer to the I.A.S. The Apex Court in that case has held as under:-

*"The question is what would be the relief that could be granted to the respondent. It is seen that the State Government did not forward the "no deterioration certificate" in relation to the respondent and after the retirement of the respondent the State Government had written a letter to the Union of India on 21-2-1989 stating therein that the respondent was entitled to appointment as he was a "well-deserving" candidate. Nothing had prevented the State Government from sending the "no deterioration certificate" of the respondent along with certificates in relation to other candidates when he was due to retire. It is seen that they forwarded the select list on 11-4-1988 to the Government of India and the respondent was due to retire on 31-5-1988. When such was the incumbency nothing would have prevented the State Government from forwarding the letter. Consequently, the respondent had to lose the chance for being appointed to the IPS Cadre though he was found suitable and approved by the UPSC. Under these circumstances, we think that appropriate direction would be that the Union of India may include his name in the appointment notification dated 4-10-1988 as a select list candidate and give him the order of appointment letter. Consequently, the respondent would be entitled to all the retiral benefits on that basis."*

23. The next case relied upon by the applicant's counsel is *State of Assam v. J.N. Roy Biswas*, (1976) 1 SCC 234, (=AIR 1975 SC 2277), which, of course, does not fit in this case. That was a case of , of a veterinary doctor, in whose case first the inquiry was closed and the individual reinstated but no further action taken and in the meanwhile the doctor retired but his terminal benefits were not granted as it was proposed to proceed afresh against the said doctor. The Apex Court has in that case held,



" A small veterinary official, a long enquiry for misconduct, a final direction cancelling suspension and reinstating him, the likelihood of the man having retired (15 years have gone by) and nothing on record to substantiate any fatal infirmity in the earlier enquiry or dereliction of duty by the disciplinary authority except that a reasoned record of findings was to be forthcoming, but did not, because he had retired in the meanwhile ! No action against the retired Director for this alleged omission was felt justified and perhaps was not warranted but with persistent litigative zeal Government has come in appeal to this Court (Apex Court) against the petty official. Had he misappropriated government money he should have been punished expeditiously. But having been exculpated after enquiry, the State could go at him by reopening the proceedings only if the rules vested some such revisory power. None such has been shown to exist although one wonders why a rule vesting such a residuary power of a supervisory nature to be exercised in the event of a subordinate disciplinary authority not having handled a delinquent adequately or rightly is brought to the attention of Government has not been made. No rule of double jeopardy bars but absence of power under a rule inhibits a second inquiry by the disciplinary authority after the delinquent had once been absolved. The appeal must fail and is dismissed with costs.

4. We may, however, make it clear that no government servant can urge that if for some technical or other good ground, procedural or other, the first enquiry or punishment or exoneration is found bad in law that a second enquiry cannot be launched. It can be; but once a disciplinary case has closed and the official reinstated, presumably on full exoneration, a chagrined Government cannot restart the exercise in the absence of specific power to review or revise, vested by rules in some authority. The basics of the rule of law cannot be breached without legal provision or other vitiating factor invalidating the earlier enquiry. For the present, this is theoretical because no such deadly defect is apparent on the record."

24. The next case is of *Badrinath v. Govt. of T. N.*, (2000) 8 SCC 395, wherein the crux of the matter was that the Government had wrongly treated a case against the appellant before the Apex Court as 'pending' and relied upon the "censure" Order passed in a non-pending matter for denying the appellant his promotion. This was criticized by the Apex Court.

25. In *Delhi Jail Board v. Mahinder Singh*, (2000) 7 SCC 210, when the authorities had been reluctant in opening the sealed cover on the exoneration of

the charges on the ground that by that time another charge sheet was framed against the individual, the Apex Court has held as under:-

*"5. The right to be considered by the Departmental Promotion Committee is a fundamental right guaranteed under Article 16 of the Constitution of India, provided a person is eligible and is in the zone of consideration. The sealed cover procedure permits the question of his promotion to be kept in abeyance till the result of any pending disciplinary inquiry. But the findings of the disciplinary inquiry exonerating the officer would have to be given effect to as they obviously relate back to the date on which the charges are framed. If the disciplinary inquiry ended in his favour, it is as if the officer had not been subjected to any disciplinary inquiry. The sealed cover procedure was envisaged under the rules to give benefit of any assessment made by the Departmental Promotion Committee in favour of such an officer, if he had been found fit for promotion and if he was later exonerated in the disciplinary inquiry which was pending at the time when DPC met. The mere fact that by the time the disciplinary proceedings in the first inquiry ended in his favour and by the time the sealed cover was opened to give effect to it, another departmental enquiry was started by the Department, would not, in our view, come in the way of giving him the benefit of the assessment by the first Departmental Promotion Committee in his favour in the anterior selection.*

26. The admitted facts are that inquiry proceedings were dropped without ascertaining as to whether the applicant was guilty of misconduct or not. Non-availability of the relevant records was the reason for dropping the proceedings. In such a case, whether it could be treated that the applicant was not exonerated is the question. Respondents contend that since the applicant was involved in a subsequent misconduct, he was to be treated as a tainted officer and hence, he was not to be considered for IAS. Counsel for the applicant refers to the decision by the Apex Court in the case of *Delhi Jal Board vs Mohinder Singh (supra)* contending that once proceedings are dropped, there is complete exoneration and the clock has to be set back to 2000 and no subsequent proceedings could be taken into consideration.

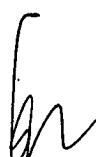
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27. True, if the initial proceedings on the basis of which the name of the applicant was kept on provisional basis in the Select list for 2000 culminated in an exoneration on merit, then the decision in Delhi Jal Board would apply in all the four squares. Here, the case is slightly different. Dropping of the proceedings was not on the basis of merit but on the basis of non-availability of records. Thus, what is to be seen is whether dropping of charge on the ground of non-availability of records could mean complete exoneration. The Apex Court has held in the case of *Union of India v. K.V. Jankiraman, (1991) 4 SCC 109*, as under:

*"In the normal course, on the conclusion of the disciplinary/court proceedings, the sealed cover or covers may be opened, and in case the officer is completely exonerated i.e. no statutory penalty, including that of censure, is imposed, the earliest possible date of his promotion but for the pendency of the disciplinary/court proceedings against him, may be determined with reference to the position(s) assigned to him in the findings in the sealed cover/covers and with reference to the date of promotion of his next junior on the basis of such position. The officer concerned may then be promoted, if necessary by reverting the junior most officiating person, and he may be given a notional promotion from the date he would have been promoted, as determined in the manner indicated above. But no arrears of pay shall be payable to him for the period of notional promotion preceding the date of actual promotion.*

28. Later in para 26 of the above judgment, the Apex Court has held as under:-

*"26. We are, therefore, broadly in agreement with the finding of the Tribunal that when an employee is completely exonerated meaning thereby that he is not found blameworthy in the least and is not visited with the penalty even of censure, he has to be given the benefit of the salary of the higher post along with the other benefits from the date on which he would have normally been promoted but for the disciplinary/ criminal proceedings. However, there may be cases where the proceedings, whether disciplinary or criminal, are, for example, delayed at the instance of the employee or the clearance in the disciplinary proceedings*



or acquittal in the criminal proceedings is with benefit of doubt or on account of non-availability of evidence due to the acts attributable to the employee etc. In such circumstances, the concerned authorities must be vested with the power to decide whether the employee at all deserves any salary for the intervening period and if he does, the extent to which he deserves it. Life being complex, it is not possible to anticipate and enumerate exhaustively all the circumstances under which such consideration may become necessary. To ignore, however, such circumstances when they exist and lay down an inflexible rule that in every case when an employee is exonerated in disciplinary/criminal proceedings he should be entitled to all salary for the intervening period is to undermine discipline in the administration and jeopardise public interests. We are, therefore, unable to agree with the Tribunal that to deny the salary to an employee would in all circumstances be illegal. While, therefore, we do not approve of the said last sentence in the first sub-paragraph after clause (iii) of paragraph 3 of the said Memorandum, viz., "but no arrears of pay shall be payable to him for the period of notional promotion preceding the date of actual promotion", we direct that in place of the said sentence the following sentence be read in the Memorandum:

*"However, whether the officer concerned will be entitled to any arrears of pay for the period of notional promotion preceding the date of actual promotion, and if so to what extent, will be decided by the concerned authority by taking into consideration all the facts and circumstances of the disciplinary proceeding/criminal prosecution. Where the authority denies arrears of salary or part of it, it will record its reasons for doing so."*

*(emphasis supplied)*

29. Here, in the instant case, the dropping of the proceedings was by the State Government. In the counter affidavit filed by the Respondent No.2, the Central Government has stated, "in view of the facts and circumstances explained above and the technical reasons given by the Government of Kerala for dropping the charges against Sri KR. Rajan, in Order No. G.O. (RT) No. 5372/04/RD dated 29-12-2004, of the Government of Kerala to drop charges against Sri K.R. Rajan, this Department came to the logical



*conclusion that Sri Rajan had not been fully exonerated of the charges framed against him and thus he cannot be appointed to the IAS Cadre of Kerala against the Select List of 2000 wherein his name was provisionally included."*

30. The dropping of the proceedings was neither at an advanced stage nor on the basis of any benefit of doubt. Benefit of doubt could be pressed into service where there is a strong case against the applicant but the same could not be proved due to lack of some evidence or some related technical deficiencies. Here that stage has not been arrived at all. Nothing can thus be said as to whether the applicant would have or would not have been found guilty of the alleged misconduct as no records are available. As long as the order in a proceedings is not one of punitive in nature, the same has to be treated as exoneration of the delinquent official.

31. The Apex Court has occasion to refer to different type of cases where a departmental inquiry was started, then dropped. Whether such an order was punitive in nature was also discussed. In *A.G. Benjamin vs Union of India (1967 (1) LLJ718*, a charge-memo was issued, explanation was received and an enquiry officer was also appointed but before the enquiry could be completed, the proceedings were dropped stating that "departmental proceedings will take a much longer time and we are *not sure* whether after going through all the formalities, we will be able to deal with the accused in the way he deserves". There also, the order was held not to be punitive. Following the above case, the Apex Court in *State of Punjab vs Sukh Raj Bahadur, (AIR 1968 SC 1089)*,



stated that the position before them was similar to what happened in *Benjamin* case and concluded as follows:

"[T]he departmental enquiry did not proceed beyond the stage of submission of a charge-sheet followed by the respondent's explanation thereto. The enquiry was not proceeded with, *there were no sittings of any enquiry officer, no evidence recorded and no conclusion arrived at in the enquiry.*" (emphasis supplied)

{See *Radhey Shyam Gupta v. U.P. State Agro Industries Corpn. Ltd.*, (1999) 2 SCC 21}.

32. Thus, the view held by the Union of India that the logical conclusion that *Sri Rajan had not been fully exonerated of the charges framed against him and thus he cannot be appointed to the IAS Cadre of Kerala against the Select List of 2000 wherein his name was provisionally included* is thoroughly a misconceived one and cannot pass judicial scrutiny.

33. Thus, it has to be held that by dropping the proceedings without conducting the inquiry, no stigma could be fastened upon the applicant which would disqualify him from being selected for encadrement in the I.A.S. He cannot be branded as a 'tainted officer' at the time of selection in 2000. Again, that there has been a subsequent development in that the applicant was visited with penalty in 2006 cannot stand in the way of promotion of the applicant as per the select list of 2000 in view of the decision of the Apex Court in the case of *Delhi Jal Board vs Mohinder Singh (supra)*.

34. There is thus full exoneration in the dropping of the proceedings conducted in 2002 and further proceedings cannot come in the way of the

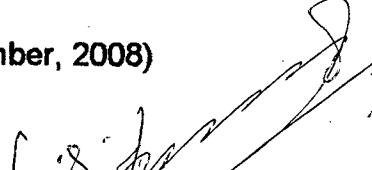
applicant being promoted as per the 2000 select list and hence, the undertaking given to the Tribunal by respondent No. 2 through the Affidavit of the then Secretary, Department of Personnel has to be duly honoured.

35. In view of the above, the OA succeeds. Respondents are directed to appoint the applicant to the Indian Administrative (Kerala) Cadre against the vacancy as on 01-01-2000 and the applicant is entitled to reckon the seniority from 2000 in accordance with the merit position for that year fixation of pay but only on notional basis. Actual pay would be admissible to the applicant only when he performs the duties. Respondents are directed to issue suitable orders in this regard. As the matter has to be considered by various authorities, i.e. the Central Government, the UPSC, the State Government etc., a time schedule of six months is calendared for implementation of this order in full.

36. No costs.

(Dated, the 7<sup>th</sup> November, 2008)

  
(K. NOORJEHAN)  
ADMINISTRATIVE MEMBER

  
(Dr. K B S RAJAN)  
JUDICIAL MEMBER

cvr.