

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

ORIGINAL APPLICATION No.509/2006

Dated this Friday the 15th day of September, 2006.

CORAM:

HON'BLE MRS.SATHI NAIR, VICE CHAIRMAN

HON'BLE MR.GEORGE PARACKEN, JUDICIAL MEMBER.

Johnson K George,
Deputy Collector,(General)&
Additional District Magistrate,
Collectorate, Ernakulam, Cochin-36. ... Applicant

By Advocate Mr. S.Radhakrishnan

V/s.

1. Union of India represented by
The Secretary,
Ministry of Personnel and Training,
Department of Personnel and Training,
North Block, Central Secretariat,
New Delhi.
2. Union Public Service Commission
represented by
The Secretary, UPSC,
Shajahan Road, New Delhi.
3. The State of Kerala represented by
The Chief Secretary to Government of Kerala,
Government Secretariat, Trivandrum.
4. The Principal Secretary to the Government
of Kerala, General Administration Department,
Government Secretariat, Trivandrum.

By Advocate Mr.TPM I Khan SCGSC represented
by Mr.Rajeev (R 1-2)
Mr.Thavamony K G.P.(R 3-4)

The OA having been heard on 15th day of September, 2006, the Tribunal on the same day delivered the following:

(O R D E R)

Hon'ble Mrs.Sathi Nair, Vice Chairman

The applicant in this OA has sought a direction to the 3rd and 4th respondents to forward the list of eligible candidates prepared in accordance with Regulation 5 of IAS Appointment by Promotion Regulation 1955 to the UPSC for consideration and to proceed in accordance with Regulation 7 and also to direct the UPSC to convene the meeting of the selection committee for the Kerala State Cadre of IAS for the recruitment year 2005 and the publish the select list in accordance with Regulation 7.

2. Reply has been filed both by the State Government as well as the UPSC. The UPSC has submitted that:

"6.1 It is respectfully submitted that the Government of India vide their letter No.14015/12/2005-AIS (1) dated 20/06/2005 determined 04 (Four) vacancies to be fill up during the year 2005 by promotion of SCS officers to the IAS of Kerala Cadre. The State Government vide this office letter dated 04/08/2005 were requested to send a self-contained proposal for convening a meeting of the Selection Committee. This issue was also discussed with the officers of the State Government in the 'Zonal Meeting' held by the Commission on 05/08/2005. The State Government vide their letter No.43344/Spl.A1/2005/GAD dated 11/11/2005 (received in the Commission on 21/11/2005) furnished the requisite proposal. The same was examined and deficient information/documents were called for vide letter dated 28.11.2005.

6.2 In the meantime, a meeting of the Selection Committee for preparation of the Select List of 2005 for promotion to the IAS of Kerala was scheduled for 15/12/2005 and rescheduled for 24/12/2005 and again preponed to 23/12/2005 on the request of the State Government. However, this was subject

to availability of all the deficient documents as called for. This was followed by reminders dated 06/12/2005 and 09/12/2005. In the meantime, the Government of India vide their letter dated 12/12/2005 revised the vacancy position and re-determined 03 vacancies in view of the fact that one vacancy was to be kept reserved for Shri Rajan for the year 2000 as per the direction in OA No.1077/2001. Thereafter the deficient documents were again called for by the UPSC vide letter dated 16/12/2005. Some deficient documents were received from the State Government vide letters dated 19/12/2005 and 20/12/2005 but there were still some ACRs which were not furnished to the UPSC. As the State Government did not furnish the requisite ACRs nor did they furnish any valid reasons for non-availability of those ACRs, the Select List of 2005 could not be prepared by 31/12/2005."

6.3 It is further submitted the the Government of India vide their letter No.1405/12/2006-AIS(1) dated 05/07/2006 have determined 04 vacancies for the year 2006. The State Government have therefore been requested to send the requisite proposal for preparation of year-wise Select Lists of 2005 and 2006 for promotion to the IAS vide letter dated 19/07/2006. This was also explained to the State Government in the 'Zonal Meeting' held by the Commission on 26/05/2006. The requisite proposal for the year 2006 has not been received so far. On receipt of the complete proposals, a meeting of the SCM to prepare the year-wise Select Lists of 2005 and 2006 will be convened by the Commission at the earliest.

It is also contended by UPSC in para-8 of the affidavit that as regards the contention of the applicant that his retirement on 31/10/2006 shall not disentitle him for being considered for selection for promotion to the IAS, that an officer will be considered for promotion if he is less than 54 years as on the 1st of January of the year for which the Select List is being prepared and is available for promotion as on the notional date of the SCM which is 31st of December of the year of Select List. Thus even if the officer stands retired on the date on which the SCM is convened, he will still be considered for the Select List of a particular year if he was less than

54 years as on 1st January of that year and was a member of the State Service as on 31st December of that year.

4. On behalf of the State Government, it has been submitted that they had forwarded to the UPSC the names of the Officers included in the zone of consideration together with all documents required to convene the Selection Committee Meeting for 2005. The UPSC had decided to convene the SCM on 23/12/2005 provided the State Government furnished the deficient documents. The proposed SCM did not materialise as the State Government could not furnish the documents called for by the UPSC. But, subsequently in June 2006, the State Government have forwarded the deficient documents to the UPSC with a request to convene the SCM for the year 2005. The name of the applicant finds a place in the zone of consideration.

5. It is seen from the averment that the Government of India had vide its D.O. Letter No.14015/26/2005-AIS.1. Dated 5th/11th May, 2005 the Additional Secretary, Government of India, Department of Personnel & Training, New Delhi had requested the State Government to communicate to them the exact number of vacancies in promotion quota as on 1/1/2005 for being filled up during the year 2005. Accordingly they had sent proposals to the Government of India vide letter dated 7th June 2005 for determination of vacancies for the year 2005. The Government of India as per letter dated 20th June 2006 had determined the vacancies for the year 2005 as four in respect of State Civil Service. The State Government forwarded the names of 12 officers with documents to the UPSC. Vide

letter dated 21st December, 2005 the UPSC had intimated the State Government that the Selection Committee Meeting for IAS 2005 was scheduled to be held on 23rd December, 2005 and intimated that ACRs/Part ACRs in respect of certain State Civil Service Officers had not been received and requested to furnish valid reasons regarding their non availability. Accordingly vide letter dated 15th June, 2006 after rectifying the deficiencies pointed out by the UPSC has forwarded the CR dossiers in respect of 10 State Civil Service Officers including that of the applicant with the request to take immediate action for convening the Selection Committee Meeting for IAS for the Kerala Cadre 2005 at an early date.

6. It is quite clear from the replies of both the respondents on record that the preparation and documentation in connection with preparation of the Select List for the year 2005 to the IAS for the Kerala Cadre has been completed at the level of the State Government as well as Central Government. Infact, the UPSC reply clearly indicates that they had fixed the dates on three occasions. But they could not hold the meeting before 31/12/2006 as the State Government had not completed the documentation which process as can be seen from the reply has been finally completed only in June 2006. Since the matter is delayed by more than six months, the UPSC has taken a stand that they will hold the meeting for the year 2006 & 2005 also together and there appears to be no other reason for taking such a decision other than administrative convenience.

7. Learned counsel for the applicant submitted that the applicant

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is to retire on 31/10/2006 and if the same procedure for documentation is to be adopted for the select list of year 2006, there will be delay and the same is unlikely to be finalised by 31/10/2006 and similar delay may occur for the year 2006 also and the applicant will be prejudiced as he would retire from State Service on 31/10/2006 and he would not be available for promotion even if his case is considered in accordance with Regulation 5 (3) of the IAS Appointment by Promotion Regulation 1955. It would also affect the applicant and those who are similarly placed and already in the zone of consideration. It would not be therefore appropriate to delay the SCM for the year 2005 any longer.

8. We are in agreement with the contention of the applicant and are of the view that it would not be in fairness to the applicant and similarly placed officers to delay the meeting of the Selection Committee for no fault of theirs. In this view of the matter and in the interest of justice, we direct the second respondent to convene the Selection Committee for the Kerala State Cadre of IAS for the year 2005 for which all the preparations are ready with complete documentation well before 31/10/2006, the date of retirement of the applicant in this OA and to publish the Select List in accordance with the Regulations.

9. OA is disposed of with the above direction. No costs.

Copy of the order be given to parties.


GEORGE PARACKEN
JUDICIAL MEMBER
abp


SATHI NAIR
VICE CHAIRMAN