

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.No.512/2006

Friday this the ^{12th day of January 2007.}

CORAM:

**HON'BLE DR. K.B.S. RAJAN, JUDICIAL MEMBER
HON'BLE MR.N. RAMAKRISHNAN, ADMINISTRATIVE MEMBER**

P.C.Muhajir,
Superintendent fo Police,
Special Branch, Trichur,
Residing at Plot No.19,
Till Garden, Ancherry P.O.,
Trissur-680 006.

(By Advocate Shri P.Ramakrishnan)

Vs.

1. Union of India represented by Secretary, Ministry of Home Affairs, New Delhi.
2. State of Kerala represented by Chief Secretary to Government, Government Secretariat, Trivandrum.
3. The Selection Committee to Indian Police Service constituted Under Regulation 3 of Indian Police Service (Appointment by Promotion) Regulation 1955, represented its Secretary, Union Public Service Commission, Shajahan Road, New Delhi.

(By Advocate Shri T. P. M. Ibrahim Khan, SCGSC (R.1-3)
(By Advocate Shri K. Thavamony, GP(R2)

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The Application having been heard on 12.1.2007
the Tribunal on the same day delivered the following

ORDER

HON'BLE Dr. K.B.S. RAJAN, JUDICIAL MEMBER

The applicant is eligible to be considered for selection to Indian Police Service (Kerala Cadre) under the promotion quota against vacancies as on 1.1.2006. According to the applicant, the number of substantive vacancies for the year 2006 is five and as per the seniority list he will be well within the zone of consideration. His anxiety is that since he would be completing 54 years by 31.1.2007, in case the promotion is not finalised by 31.1.2007, he might have to retire. In addition, the applicant understands that the quinquennial cadre review due for 2006 is under finalisation and any increase in the cadre would make his promotional prospects brighter. Accordingly, the applicant has prayed for a direction to the respondents to conduct the quinquennial cadre review so as to add the number of vacancies that might arise due to the cadre review alongwith the existing vacancies and consider the applicant for promotion against such vacancies. He has also sought for a declaration that the attainment of 54 years of age as on 31.1.2007 shall not disentitle the applicant for being considered for selection against the vacancies for the year 2006 if such consideration and appointment happens to be after 31-01-2007.

2. The respondents have filed a counter reply. According to them, 2005 vacancies are considered for being filled up after which selection for 2006 shall be considered. And, selection for 2005 is at the final stage. According to UPSC, vide para 9 of the counter, since the applicant is below 54 years of age as on 1.1.2006, his name will be considered for promotion during

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2006 provided he falls within the zone of consideration furnished by the state government and he is otherwise found eligible.

3. At the time of argument, the respondents were directed to ascertain the stage at which the quinquennial cadre review has progressed. The proposal is stated to be still under consideration by the higher authorities of the State Government only and has not so far been forwarded to the Central Government.

4. It is not exactly known whether the cadre review would be completed before consideration by the UPSC of selection for the year 2006. Apart from the uncertainty in finalization of cadre review before consideration of selection for 2006, normally, any new posts created in the wake of cadre review shall be having only prospective effect. The earlier cadre review finalised as on 22.3.2001 clearly stipulates that the order shall become effective from the date of notification (which would mean prospective). Counsel for the applicant submitted that undue delay of finalising cadre review would dilute the promotion prospects of the applicant and the same should not be allowed. He has relied upon the decision of the Apex Court in the case of *S. Ramanathan v. Union of India*, (2001) 2 SCC 118, wherein the Apex Court has observed as under:-

6. The question, therefore arises for consideration is as to what is the effect of Rule 4(2) of the Cadre Rules as it stood prior to its amendment in the year 1995 and if there has been an infraction in the matter of compliance of the said Rule, what direction could be given to the appropriate authority? The Cadre Rules are statutory in nature, having been framed by the Central Government in exercise of powers under sub-section (1) of Section 3 of the All India Services Act, 1951. The language of sub-rule (2) of Rule 4, as it stood prior to its amendment is rather peremptory in nature and thus it requires that the Central Government has to re-examine the strength and composition of each cadre in consultation with the State Government concerned and make such alteration therein, as it deems fit. It is no doubt true that an infraction of the aforesaid provisions does not confer a vested right with



an employee for requiring the court to issue any mandamus. But it cannot be denied that if there has been an infraction of the provisions and no explanation is forthcoming from the Central Government, indicating the circumstances under which the exercise could not be undertaken, the aggrieved party may well approach a court and a court in its turn would be well within its jurisdiction to issue appropriate directions, depending upon the circumstances of the case. When certain power has been conferred upon the Central Government for examining the cadre strength, necessarily the same is coupled with a duty to comply with the requirements of the law and any infraction on that score cannot be whittled down on the hypothesis that no vested right of any employee is being jeopardised. The learned Additional Solicitor General is not in a position to refute the fact that in the event, the cadre strength, which has in fact increased in the year 1991 is taken into account, then in the matter of determination on the question of promotion, some additional advantage could be available to the employees in the erstwhile State cadre, who have been considered for promotion to the Indian Police Service. That apart when rules and regulations provide for certain things to be done at a certain period, the same should normally be observed and if there has been a failure, the Court should compel the performance of that duty. In the case of *Syed Khalid Rizvi v. Union of India* 4893 (Supp) 575 a three-Judge Bench of this Court had examined the provisions of the IPS (Regulations of Seniority) Rules, 1994 and other provisions of the Recruitment Rules, Cadre Rules and appointment by Promotion Regulations and it was observed: (SCC p. 590, para 14)

The leeway and liberty given to the State Government under Regulation 8 of Promotion Regulations read with Rule 9 of the Cadre Rules is only to cope with administrative exigencies but it became a breeding ground to distort the operation of the Rules which should scrupulously be eschewed and avoided.

The Court examined in the aforesaid case the question whether the failure to prepare the select list would give rise to an inference that rules have been collapsed and the State Governments local arrangement shall be given legitimacy as regular appointments. After giving anxious consideration to the end resultants, the Court had found it hard to accept the same. The Court observed that the State Government and the Central Government should strictly comply with the provisions in making recruitment by promotion from the State services to the all-India services and if laxity has to be given legitimacy and deemed relaxation is extended, it would not only upset the smooth working of the rules but also undo the prescribed ratio between promotee officers and direct recruits.



5. In addition the applicant relied upon the decision of the Apex Court in the case of Syed Khalid ~~Re: 201~~ vs. UOI 1993 (supp) 3 SCC 575 especially para 9 and 34 which reads as under:

9. It would, thus, be clear that the Selection Committee shall consider the eligibility and suitability of the members of the State Police Service on the basis of merit, ability and suitability. Seniority will be considered only where merit, ability and suitability are approximately equal and it should prepare the select-list of such suitable officers in the order of merit in each category such as outstanding, etc. and send the select-list in order of seniority to the State Government who with its comments would forward the same to the UPSC for approval. The UPSC again would review the list, if necessary, with prior notice to the State Government and revise the order of names (seniority) in the list which should be final and operative for a period of 12 months. The list should consist of such number plus 20 per cent or two officers whichever is more and of three times the anticipated substantive vacancies in the cadre posts. The appointment to the cadre posts should be made by the Central Government in the order in the list on the recommendation of the State Government. The word *may* in Regulation 5 indicates that the Committee ordinarily meets at intervals not exceeding one year. Though the word *may* indicates that it is not mandatory to meet at regular intervals, since preparation of the select-list is the foundation for promotion and its omission impinges upon the legitimate expectation of promotee officers for consideration of their claim for promotion as IPS officers, the preparation of the select-list must be construed to be mandatory. The Committee should, therefore, meet every year and prepare the select-list and be reviewed and revised from time to time as exigencies demand. No officer whose name has been entered in the list has a vested right to remain in the list till date of appointment. The list would be liable to shuffle and the name may be excluded from the list on the comparative assessment of merit, ability and suitability based on the anticipated or expected availability of the vacancies within quota etc. The junior may supersede the senior and may be ranked top.

34. It is next contended that by non-preparation of the select-list, the promotees had lost their chances of promotion to get into super time-scales of pay and so on. Preparation of the annual seniority list is, therefore, mandatory and that by its non-preparation the rules have been collapsed. The argument *ex facie* is alluring but lost validity on close scrutiny. The contention bears two facets: firstly preparation of the seniority list and secondly the consequences flowing from the omission to prepare the seniority list. It is already held that the Committee shall prepare the seniority list every year and it shall be reviewed and revised

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from time to time taking into account the expected or anticipated vacancies during the year plus 20 per cent or two vacancies whichever is more. It is already held that a wide distinction exists between appointment by direct recruitment and one under Regulation 9 of Promotion Regulations and Rule 9 of Recruitment Rules on the one hand and under Regulation 8 thereof read with Rule 9 of Cadre Rules on the other hand. Their consequences are also distinct and operate in different areas. Prior approval of the Union Public Service Commission and prior concurrence of the Central Government are mandatory for continuance of temporary appointment under Regulation 8 beyond six months and three months respectively together with prompt report sent by the State Government supported by reasons therefor. In their absence it is not a valid appointment in the eye of law. Unless an officer is brought on the select-list and appointed to a senior cadre post and continuously officiated thereon he does not acquire right to assignment of the year of allotment. Eligibility age for consideration was only up to 52 years and presently 54 years. If the list was not prepared, though for the succeeding year the age-barred officers may be considered but were made to compete with junior officers who may eliminate the senior officer from the zone of consideration. Suppose in 1980 the senior officer was not qualified though the list was made, but in 1981 he could improve and become eligible. Non-preparation of the select-list for 1980 disables the officer to improve the chances. In Sehgal case, this Court held that chances of promotion and the aspiration to reach higher echelons of service would enthuse a member of the service to dedicate himself assiduously to the service with diligence, exhibiting expertise, straightforwardness with missionary zeal, self-confidence, honesty and integrity. The absence of chances of promotion would generate frustration and an officer would tend to become corrupt, sloven and a mediocre. Equal opportunity is a fertile resource to augment efficiency of the service. Equal chances of promotion to the direct recruits and the promotees would produce harmony with accountability to proper implementation of government policies. Unless the select-list is made annually and reviewed and revised from time to time, the promotee officers would stand to lose their chances of consideration for promotion which would be a legitimate expectation. This Court in Mohan Lal Kapoor case held that the Committee shall prepare every year the select-list and the list must be submitted to the UPSC by the State Government for approval and thereafter appointment shall be made in accordance with the rules. We have, therefore, no hesitation to hold that preparation of the select-list every year is mandatory. It would subserve the object of the Act and the rules and afford an equal opportunity to the promotee officers to reach higher echelons of the service. The dereliction of the statutory duty must satisfactorily be accounted for by the State Government concerned and this Court takes serious note of wanton infraction.

6. Arguments have been heard and documents perused. The

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assurance given by the UPSC that the impending retirement of the applicant as on 31.1.2007 shall not come in the way of the applicant in his being considered for promotion for the year 2006 subject to his coming within the consideration zone and also being found otherwise eligible, should give sufficient relief to the applicant in regard to his anxiety. The only question to be considered is whether any new posts created after finalisation of cadre review should also be taken into consideration while working out the total number of vacancies for the year 2006. Since the proposal is still at the early stage and is not likely to be finalized within the very near future, it may not be possible to give any direction to complete the process within a short time schedule. Further, normally, new posts created would have only prospective effect. It may not be possible to include the new posts for the 2006 selection, as such posts, even if related to 2006, would mean, under rule 9 of the Recruitment Rules, that the vacancies of 2006 shall be considered for the next year i.e. 2007 only.

7. In so far as the clear vacancies included for the select list of 2006 are concerned, the respondents may appreciate that if retirements of the prospective promotees take place prior to selection, it may unnecessarily lead to the persons so selected for IPS cadre being without any functions after their retirement till their re-induction. As far as possible such a situation should be avoided. It has been stated that already a few officers



who are within the zone of consideration and whose promotion prospects are bright have already retired and the applicant would join them from 1.2.2007. If not possible to complete the selection process before 31.1.2007 the State Government should at least take expeditious action and ensure that the selection takes place as early as possible. It is reasonable and also expedient to calendar a time frame in regard to the selection to the cadre of IPS for 2006 under promotion quota. It is understood that Civil List for 2006 is already prepared and further steps such as availability of CR Dossiers etc. have also been completed. No objection certificate have also been stated to be ready and as such, it should not take much time for the State government to complete the spade work and forward the proposal for 2006 vacancies within three weeks from the date of communication of this order. Once, the proposal is forwarded to the Central Government/UPSC, the State Government should keep a watch over the same to follow up so that no avoidable waste of time takes place in finalisation. It is hoped that by 31.3.2007, the entire process of selection of 2006 of IPS(By promotion) takes place and if the applicant is found eligible and suitable for the same, he may be appointed accordingly.

8. With the above observations, the O.A. is disposed of. No costs.

Dated the 12 th January, 2007.


N. RAMAKRISHNAN
ADMINISTRATIVE MEMBER


Dr. K.B.S. RAJAN
JUDICIAL MEMBER