

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.No.55/2001

Thursday this the 6th of December,2001.

CORAM:

HON'BLE SHRI A.V.HARIDASAN, VICE CHAIRMAN
HON'BLE T.N.T.NAYAR,ADMINISTRATIVE MEMBER

K.K.Vasudeva Menon,
Superintendent of Police(Non-IPS)
Vigilance and Anti Corruption Bureau,
Eastern Range,Kottayam-2. Applicant

(By Advocate Sri O.V.Radhakrishnan)

vs.

1. State of Kerala,
represented by its Chief Secretary
Secretariat, Thiruvananthapuram.
2. Union of India,
represented by its Secretary,
Ministry of Home Affairs, New Delhi.
3. Union Public Service Commission,
represented by its Secretary,
Shahjahan Road, New Delhi.
4. Selection Committee,
for Selection to the Indian Police Service
constituted under Regulation 3
of the IPS(Appointment by Promotion)Regulations,
1955, represented by its Chairman,
Union Public Service Commission,
Shahjahan Road,New Delhi.
5. K.V.Vijayakumar,
Superintendent of Police(Non IPS)(Intelligence)
Vigilance and Anti Corruption Bureau,
Thiruvananthapuram.
6. G.Janardhanan Nair,
Superintendent of Police,
Crima Brach CID,
Kollam.
7. Vijaya Sreekumar,
Superintendent of Police,
Vigilance and Anti Corruption Bureau,
Kozhikode.
8. U.N.Natesan,
Superintendent of Police,
Special Branch, CID,Ernakulam.
9. Sunny Abraham,
Superintendent of Police(Narcotic Cell),
Crime Branch CID,Thiruvananthapuram.

10. V.Sunil Kumar,
Deputy Commandant,
K.A.P.Vth Battalion, Trichur.

11. A.Kunjukunju,
Deputy Commandant,
Kerala Police Housing Construction Corporation,
Thiruvananthapuram.

12. C.Sophy,
Deputy Commandant,
SAP,Thiruvananthapuram. .. Respondents

(By Advocate Sri A.Renjit, Govt.Pleader(R1)
" Sri S.Krishnamoorthy(R2-4)
" S/Shri M.R.Rajendran Nair,Hariraj &
Sreeraj (R5 & 11)
" Sri K.R.B.Kaimal (R8)

The Application having been heard on 18.10.2001, the Tribunal on 6.12.01 delivered the following:-

ORDER

HON'BLE SHRI A.V.HARIDASAN, VICE CHAIRMAN:

The applicant Sri K.K.Vasudeva Menon who was Superintendent of Police(Non-IPS), Vigilance and Anti-Corruption Bureau,Kottayam-2, when he filed this application has sought the following reliefs:-

"i) to call for the records leading to the select list prepared by the 4th respondent in its meeting held on 13.12.2000 for appointment by promotion of Kerala State Police Officers to IPS against the vacancies of the year 2000 as approved by respondents 2 and 3 and Annexures A-22 and A-23 notifications dated 25.01.2001 and to set aside the same;

ii) to declare that the dropping of disciplinary proceedings against the applicant in his favour would wipe out with retrospective effect, the adverse consequences, if any, flowing from the pendency thereof and that the applicant became entitled to be considered for appointment by promotion to IPS alongwith respondents 5 to 12 as if he had not been subjected to any disciplinary enquiry;

iii) to issue appropriate direction or order directing respondents 1 to 4 to review the select

list by reassessing the merit and suitability of respondents 5 to 12 and that of the applicant with respect to their respective service records and to recast the select list by including the name of the applicant and to appoint him to IPS under Regulation 9 of Regulations, 1955 as amended by Annexure A-14 Amendment Regulations, 1997;

v) to issue appropriate direction of order directing the 1st respondent to issue integrity certificate in favour of the applicant in view of the dropping of the disciplinary proceedings against him as per Annexure A-20;

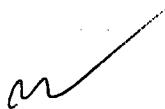
v) to grant such other reliefs which this Hon'ble Tribunal may deem, fit and proper in the circumstances of the case;

And

vi) to award the cost to the applicant."

2. The material allegations in the application can be briefly stated as follows. The applicant who commenced his service as Sub Inspector of Police on 1.4.68 was promoted as Circle Inspector of Police in the year 1976, as Deputy Superintendent of Police on 18.2.96 and Superintendent of Police (Non-IPS) by order dated 21.4.97. He satisfactorily completed the probation in the post of Superintendent of Police also with effect from 21.5.98. In the combined seniority list of State Police Service Officers for consideration for appointment to Indian Police Service (IPS for short) issued vide letter dated 30.9.97 (Annexure A6), the applicant is senior to respondents 7 to 12, but the 7th respondent has been assigned seniority and rank above the applicant in the final seniority list of Superintendent of Police (Non-IPS), Senior Grade Deputy Superintendent of Police and Deputy Superintendent of Police as on 1.1.1995 issued vide letter dated 13.8.98. The objection of the applicant against assigning higher seniority to the 7th

respondent was to be considered by the Government of Kerala in terms of the directions of the High Court of Kerala. The applicant who is a substantive member of the State Police Service having completed 8 years of service in the category of Deputy Superintendent of Police by 18.2.1994 became eligible for consideration for induction to the IPS by 18.10.97. Respondents 7 to 12 have been included in the field of choice for selection to IPS for these vacancies of the year 2000. As the applicant has outstanding service record and has received many good service entries and appreciation letters, the applicant's service records would display more outstanding merit and suitability compared to that of respondents 5 to 12 and therefore the applicant cannot be superseded by respondents 8 to 12. After the amendment of the Indian Police Service(Appointment by Promotion) Regulations, 1955 with effect from 1.1.98, selection for appointment by promotion to IPS in respect of 3 vacancies for the year 2000 was to be made. There were 3 vacancies as on 1.1.2000 and 9 officers were eligible to be included in the field of choice. The applicant received a teleprinter message requiring him to forward an undertaking for unconditional appointment to IPS if selected and also the consent for termination of his lien in the State Police Service in the event of appointment and subsequent confirmation in IPS. On 28.5.2000 the applicant complied with the requirement. However a disciplinary proceedings initiated against the applicant under Rule 6 of the Kerala Police Punishment and Appeal Rules, 1958 by Govt. order dated 25.4.98 was pending and the same had not been



finalised. The applicant filed O.P.14121/2000 seeking a direction to the State of Kerala to finalise the disciplinary proceedings against him before the meeting of the Selection Committee for preparation of the select list of officers for appointment to the IPS. The O.P. was disposed of by order dated 23.5.2000 directing the State of Kerala to complete the disciplinary proceedings and pass a final order. The final order exonerating the applicant was passed on 14.12.2000, but the Committee had met on 13.12.2000. The Government of Kerala, respondent No.2 had in its letter dated 13.9.96 clarified that even an officer under suspension if he is within the zone of consideration should be considered for selection, subject to the outcome of the proceedings pending against him and therefore the Selection Committee would not have left the applicant out of consideration for inclusion in the Select List. The applicant has learnt that the applicant's name was not forwarded by the first respondent to the Selection Committee on the ground of pendency of disciplinary proceedings against him and that the Committee did not consider his case at all. After the filing of the O.A., the respondents 1 to 4 finalised the selection and by notification dated 25.1.2001 (Annexure-A22) appointed respondents 5,6 and 8 to the IPS and allocated them to the Kerala Cadre of the IPS under sub rule 1 of Rule 5 of IPS (Cadre)Rules,1954 by notification dated 25.1.2001(Annexure A23). Aggrieved by the non-consideration of the applicant, his non-selection, selection of respondents 5,6 and 8 and their appointment to the IPS,Kerala Cadre by the impugned orders Annexures A22

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and 23, the applicant has filed this application. It is alleged that if the service profile of the applicant was properly evaluated, he would have been adjudged to be of better merit than the respondents 5, 6 and 8 and therefore the supersession of the applicant by these respondents, is illegal, arbitrary and violative of Articles 14 and 16 of the Constitution. With the above allegations, the applicant has filed the O.A. for the reliefs, as aforesaid.

3. The first respondent, the State of Kerala, in its reply statement has stated that the applicant's name was at Serial No.4 in the list placed before the Selection Committee and that there is no merit in the contention of the applicant that the applicant was unjustifiably kept out of consideration. The second respondent has contended that the applicant's name was also considered by the Selection Committee and that on account of lower grading assigned to him on an overall assessment of the service records and statutory limit on the size of the select list, his name could not be placed in the select list.

4. On behalf of the respondents 3 and 4 viz. the Union Public Service Commission and the Selection Committee a separate reply statement has been filed. The contention raised in the statement are as follows. The contention of the applicant that his case was not considered properly by the Selection Committee is not true. His name was 4th in the eligibility list. The applicant was assessed as 'good' by the Committee on an overall assessment of his service

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records in a dispassionate manner, and because of the grading his name could not be included in the panel .The pendency of disciplinary proceedings had no effect on the consideration because as per Regulation 5 (4) of the I.P.S.(Promotion)Regulations inclusion of officers against whom disciplinary proceedings in criminal cases are pending would be provisional. The contention of the applicant that reason has to be stated for supersession of senior is not tenable in view of the statutory provision.The selection made by the Committee strictly in accordance with the provisions of the Rule is not liable to be interfered with.Therefore the respondents contend that the O.A. is devoid of any merit .

5. Respondent No.8 has filed a statement seeking to justify his appointment to I.P.S.

6. In obedience to the order of the Bench directing the respondents to clarify whether the pendency of disciplinary proceedings was a factor which was taken into consideration for assessing the merits of the applicant, as also the reason for supersession of the applicant recorded in terms of sub-rule 2 of Rule 6 of the Indian Police Service (Appointment by Promotion)Regulations, the respondents have clarified that the applicant's case was considered on an overall assessment revealed from the service records that the pendency of the disciplinary proceedings was not a

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factor taken into account for assessment of merit and that as per the amended Regulations, there is no requirement of recording reasons for supersession.

7. We have gone through the pleadings and the documents placed on record very carefully.

8. We have also heard the arguments of Sri O.V.Radhakrishnan, the learned counsel of the applicant, Sri Renjit, learned counsel for the first respondent, Sri S.Krishnamoorthy, learned counsel for respondents 2 and 4, Sri M.R.Rajendran Nair appearing for respondents 5 and 11 and Sri K.R.B.Kaimal, learned counsel for respondent No.8.

9. In view of the statement made in the reply statement of respondents 1, 3 and 4 that the applicant's name was placed at Sl.No.4 in the list of officers to be considered by the Selection Committee and that the Selection Committee considered the case of the applicant alongwith other eligible officers, the learned counsel of the applicant confined his argument to two points. (1) The assessment of the applicant's merit vis-a-vis that of respondents 5 to 12 was not proper and, (2) Since the State Government has not while forwarding the select list stated the reason for supersession of the applicant, the proceedings of the selection is vitiated.

10. In support of the first point Sri O.V.Radhakrishnan took us through the copies of the ACR of the applicant for

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the period 1.1.96 to 29.2.96(Annexure A10), 6.6.96 to 31.12.96(Annexure A11), for the period ending 24.4.97(Annexure A12), for the year ending 31.12.98(Annexure A13), for the year ending 31.12.1999(Annexure A26), and for the period from 1.1.2000 to 8.3.2000(Annexure A27) as also a letter dated 16.8.98 congratulating the applicant for the award of Police Medal for meritorious service(Annexure A7), a letter of appreciation issued by the Inspector General of Police dated 8.2.99 for good performance(Annexure A8) and a letter of the Inspector General of Police dated 28.2.2000 appreciating the meticulous arrangements made by the applicant in Sabarimala sannidhanam during December 1999 and argued that in the light of the above records, the Selection Committee could not have graded him 'good' and not at least 'very good' if not 'outstanding' and that therefore the non-inclusion of the name of the applicant in the select list and inclusion of persons with lesser merit, is arbitrary and irrational and therefore it is a fit case where the Tribunal should intervene and grant relief.

11. Sri Krishnamoorthy, the learned counsel of respondents 3 and 4 argued that the selection committee chaired by the Chairman or a Member of the Union Public Service Commission would classify the officers as 'outstanding', 'very good' and 'good' etc. on an overall assessment of the service records of the candidates for a period of 5 years considering and deliberating the quality of the officers as indicated in the various columns of the ACR recorded by Reporting/Reviewing/Accepting Authority as

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also other relevant matters like letter of meritorious awards setc. and after a complete analysis and deliberation and not merely on the classification made in the ACR and that as this exercise has been done in the case of the applicant vis-a-vis other candidates by considering them properly and dispassionately and as the applicant who obtained only the grading 'good' could not be placed in the select list because those who were adjudged above 'good' had to be placed.

12. He further argued that as the selection committee consisted of Chief Secretary to the Government of Kerala, Secretary incharge, Home Department, Govt. of Kerala, D.G. & I.G., Govt. of Kerala, a member of the Service not below the rank of D.I.G, one nominee of the Central Government not below the rank of the Joint Secretary and chaired by the Chairman or a Member of the Union Public Service Commission, unless there is strong reason to suspect that the selection has been vitiated by malafides or extreme arbitrariness, the Tribunal should not interfere in the matter. He argued that as no allegation of malafides has been made in the application and as there is nothing to show that the selection was arbitrary, the Tribunal may not interfere in the matter.

13. On a careful consideration of the facts and circumstances brought out in the pleadings and the documents placed on record and emerging from the arguments advanced at the Bar, we do not find that this is a fit case where the

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Tribunal should interfere in the selection made by the Committee. The ACR of the applicant, copies of which have been produced, do not disclose an 'outstanding' or 'very good' performance consistently. In Annexure A10, the ACR for the period from 1.1.96 to 29.2.96, entries against various queries are mostly 'good' and 'satisfactory', although against General Remarks it has been mentioned that his performance was 'very good'. In Annexure A12, the ACR for the period 1.1.97 to 24.4.97, the D.I.G. of Police has classified the applicant as a 'very good' officer, but as against several columns the remarks given are 'good'. For the period 29.7.98 to 31.12.98 the applicant has been classified as 'very good' officer and in the ACR for the period ending 31.12.1999 the applicant has been adjudged as an 'outstanding' officer though in various columns, the remark is 'good'. Similarly for the period 1.1.2000 to 8.3.2000 although the entries on various columns are 'good' he has been classified as an 'outstanding' officer. The assessment by the Committee is made on an overall assessment of the merit reflected in the ACRs. The classification is made by the Committee after complete deliberation of the profile of the officer on the sum total of his service records and not merely going by the classification made by the Reporting Officer or the Reviewing Officer. There is no allegation of malafides against the Members of the Selection Committee. It has not been alleged that any rules or binding instructions have been violated in assessing the merit of the applicant. Therefore there is nothing in record which would justify an inference that the Committee

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did not make an impartial and correct assessment of the merit of the applicant. It has been held in a catena of decisions that in the guise of judicial review, the Courts and Tribunals should not act as an appellate body over the selection made by the Selection Committees or Departmental Promotion Committees. In Nutan Arvind vs. Union of India and others, (1996)2 Supreme Court Cases 488, the Apex Court observed as follows:-

"When a high level committee had considered the respective merits of the candidates, assessed the grading and considered their cases for promotion, this Court cannot sit over the assessment made by the DPC as an appellate authority".

In Durgadevi and another vs. State of Himachal Pradesh and Others, (1997) SCC(L&S)982, the Apex Court observed as follows:-

"In the first instance, as would be seen from the perusal of the impugned order, the selection of the appellants has been quashed by the Tribunal by itself scrutinising the comparative merits of the candidates and fitness for the post as if the Tribunal was sitting as an appellate authority over the Selection Committee. The selection of the candidates was not quashed on any other ground. The Tribunal fell in error in arrogating to itself the power to judge the comparative merits of the candidates and consider the fitness and suitability for appointment. That was the function of the Selection Committee. The observations of this Court in Dalpat Abasaheb Solunke case are squarely attracted to the facts of the present case. The order of the Tribunal under the circumstances cannot be sustained. The appeal succeeds and is allowed. The impugned order dated 10.12.1992 is quashed and the matter is permitted to the Tribunal for fresh disposal on other points in accordance with the law after hearing the parties."

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In a more recent decision reported in (2000) 8 Supreme Court Cases 395 titled Badrinath vs. Government of Tamil Nadu and others, the Apex Court is observed as follows:-

"38. Normally, this Court does not enter into question of the correctness of assessment made by Departmental Promotion Committees (or Joint Screening Committees),

39. But the case before us appears to be a very exceptional one as it has serious overtones of legal bias (to which we shall refer in detail when we come to Points 4 and 5).

40. Unless there is a strong case for applying the Wednesbury doctrine or there are mala fides, courts and Tribunals cannot interfere with assessments made by Departmental Promotion Committees in regard to merit or fitness for promotion. But in rare cases, if the assessment is either proved to be mala fide or is found based on inadmissible or irrelevant or insignificant and trivial material and if an attitude of ignoring or not giving weight to the positive aspects of one's career is strongly displayed, or if the inferences drawn are such that no reasonable person can reach such conclusions, or if there is illegality attached to the decision, then the powers of judicial review under Article 226 of the Constitution are not foreclosed.

41. While the courts are to be extremely careful in exercising the power of judicial review in dealing with assessment made by Departmental Promotion Committees, the executive is also to bear in mind that, in exceptional cases, the assessment of merit made by them is liable to be scrutinised by courts, within the narrow Wednesbury principles or on the ground of mala fides. The judicial power remains but its use is restricted to rare and exceptional situations. We are making these remarks so that courts or Tribunals may not -- by quoting this case as an easy precedent -- interfere with assessment of merit in every case. Courts and Tribunals can neither sit as appellate authorities nor substitute their own views to the views of Departmental Promotion Committees. Undue interference by the courts or Tribunals will result in paralysing recommendations of Departmental Committees and promotions. The case on hand can be a precedent only in rare cases."

Scanning through the entire materials on record, we do not find any reason to suspect that the applicant's merit was

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not properly assessed by the Selection Committee and we do not find any vitiating factor in the process of selection calling for interference. In the absence of any exceptional circumstance, as observed by Their Lordships in Badrinath's case, judicial intervention in the matter of selection by the Committee is not at all justified.

14. The argument of the learned counsel of the applicant that there is a requirement of stating reason for supersession of a senior also is untenable in view of the fact that by Indian Police Service(Appointment by Promotion) Amendment Regulations,1979 published in the Gazette of India dated 16 June 1979, sub-regulation (3) as it stood prior to the amendment requiring the statement of reason for supersession has been deleted. A copy of the Gazette Notification dated 16.6.1979(Annexure A25) clearly shows that sub-regulation (3) has been deleted and sub-regulation (4) has been renumbered as sub-regulation(3), although in the English translation of the notification, there is a mistake, in that instead of sub-regulation(3), sub-regulation(2) was shown to have been omitted.

15. In the light of the above discussion, we find no merit in this application and therefore we dismiss the same, leaving the parties to bear their own costs.



(T.N.T.NAYAR)
ADMINISTRATIVE MEMBER



(A.V.HARIDASAN)
VICE CHAIRMAN

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APPENDIX

Applicant's Annexures:

1. Annexure A1 True copy of the GO(Rt)No. 507/86/Home dt. 11.2.1986 of the 1st respondent.
2. Annexure A2 True copy of the GO(Rt)No.1842/89/Home dated 18.4.1989 of the 1st respondent.
3. Annexure A3 True copy of the GO(MS) No.263/97/Home dated 18.10.1997 of the 1st respondent.
4. Annexure A4 True copy of the GO(Rt)No.1799/97/Home dated 21.4.1997 of the 1st respondent.
5. Annexure A5 True copy of the GO(Rt)No.1883/2000/Home dated 25.4.2000 of the 1st respondent.
6. Annexure A6 True extract copy of the combined seniority list of State Police Officers published as per letter dated 30.9.1997 of the Director General of Police.
7. Annexure A7 True copy of the teleprinter message dated 16.8.98.
8. Annexure A8 True copy of the letter of appreciation dated 8.2.99 of the Inspector General of Police,Crimes, Thiruvananthapuram.
- 9[. Annexure A9 True copy of the letter of appreciation dated 23.2.2000 of the Inspector General of Police, Thiruvananthapuram.
10. Annexure A10 True copy of the Annual Confidential Report for the period from 1.1.96 to 29.2.96.
11. Annexure A11 True copy of the Annual Confidential Report for the period from 6.6.96 to 31.12.96.
12. Annexure A12 True copy of the Annual Confidential Report for the period from 1.1.97 to 24.4.97.
13. Annexure A13 True copy of the Annual Confidential Report for the period, from 29.7.98 to 31.12.98.

14. Annexure A14 True copy of the Notification F1.15/52/96-AIS (I)B dated 31.12.1997 of the Union of India.

15. Annexure A15 True copy of the teleprinter message No.A1 37093/2000 dated 28.5.2000 of the Director General of Police.

16. Annexure A16 True copy of the Memo of charge No.A2/24/PR/98 IR dated 8.3.1999 of the Deputy Inspector General of Police,Thrissur.

17. Annexure A17 True copy of the judgment in O.P.No.14171/2000 dated 23.5.2000 of the Hon'ble High Court of Kerala.

18. Annexure A18 True copy of the show cause notice No.3200S/H1/99/Home dated 23.5.2000 of the Hon'ble High Court of Kerala.

19. Annexure A19 True copy of the Order in CMP 47695/2000 in O.P.No.14171/2000 dated 27.10.2000 of the Hon'ble High Court of Kerala.

20. Annexure A20 True copy of the GO(Rt)No. 4920/2000/Home dated 14.12.2000 of the 1st respondent.

21. Annexure A21 True copy of the letter No.F.No. 14015/32/96-AIS(I) dated 13.9.1996 of the Union of India.

22. Annexure A22 True copy of the Notification No.1.14011/11/2000-IPS .1 dated 25.1.2001 of the Director(Police) New Delhi.

23. Annexure A23 True copy of the Notification No. G.O.(Rt) NO.875/2001/GAD dated 1.2.2001 of the Government of Kerala, General Administration (Special-A)Department.

24. Annexure A-24 True copy of the Indian Police Service(Appointment by Promotion) Amendment Regulations,2000 published in the Gazette of India, Extra Ordinary dated 25.7.2000.

25. Annexure A25 True copy of the Indian Police Service(Appointment by Promotion) Amendment Regulations,1979 published in the Gazette of India, dated 16.06.1979.

26. Annexure A26 True copy of the Annual Confidential Record of the applicant for the period from 1.1.1999 to 31.12.1999.

27. Annexure A27 True copy of the Annual Confidential Record of the applicant for the period from 1.1.2000 to 8.3.2000.

Respondent's Annexures:

1. Annexure R3(1) True copy of the amended regulations, 2000 of the Indian Police Service (Appointment by Promotion) Regulations, 1955.

2. Annexure R-8(a) True copy of the Order G.O. (Rt) No. 803/2001/GAD.dt. 30.1.2001 issued by the Govt. of India.