

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.No.56/09

Tuesday, this, **18th day of May, 2010**

CORAM:

HON'BLE MR.JUSTICE K.THANKAPPAN, JUDICIAL MEMBER
HON'BLE MR.K.GEORGE JOSEPH, ADMINISTRATIVE MEMBER

P.Prabha,
aged 55 years, S/o the late V.Padmanabhan,
Superintendent of Police(Non-IPS)(Retired),
residing at 'Sreepadmam', Sreenivasapuram PO,
Varkala, Thiruvananthapuram District -695 145.

..Applicant

By Advocate:Mr.O.V.Radhakrishnan,Sr & Mrs. K.Radhamani Amma

vs.

1. Union of India,
represented by its Secretary,
Ministry of Home Affairs, New Delhi.
2. Union Public Service Commission,
represented by its Secretary,
Shajahan Road, New Delhi.
3. 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, Shajahan Road, New Delhi.
4. State of Kerala,
represented by its Chief Secretary,
Secretariat, Thiruvananthapuram.
5. Director General of Police,
Police Headquarters,
Thiruvananthapuram.
6. S.Sasikumar, S/o K.V. Sukumaran, aged 52,
Bhadra Bhavan,
Karooor, Ambalapuzha,
Superintendent of Police CBCID(Headquarters),
Trivandrum.

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7. P.H.Ashraf, S/o late P.A.Hamza, aged 53,
27/2811 D, Vidya Nagar, Kadavanthra P.O.
Kochi-20, Superintendent of Police CBCID,
SIG-II, Ernakulam.
8. V.C.Mohanan, S/o V.K.Chellappan, aged 52,
T.C.30/860, Karthika, 'Petta', Trivandrum,
24, Superintendent of Police, Marine Enforcement and Vigilance.

...Respondents

By Advocate: Mr.Sunil Jacob Jose, SCGSC (R1)
Mr.Thomas Mathew Nellimoottil (R2&3)
Mr. N.K.Thankachan, GP(R4&5)
Mr.Vaidyanathan for Mr.S.Sreekumar(R6)

The Application having been heard on 30.3.10, the Tribunal on
18.05.2010 delivered the following:

ORDER

HON'BLE MR.JUSTICE K.THANKAPPAN, JUDICIAL MEMBER:

A retired Superintendent of Police(Non-Cadre) has filed this Original Application for a direction to the first respondent to give effect to the Indian Police Service (Fixation of Cadre Strength) Third Amendment Regulations, 2008 from 22.03.2006 and to convene a Review Selection Committee for making selection against the posts enhanced by the quinquennial cadre review held for the year 2006 and that the vacancies shall be filled up by promotion under Rule 9 of the IPS(Recruitment)Rules, 1954 . It is also prayed to include his name in the Select List of the year 2007 and to appoint him by promotion to IPS on that basis with all consequential benefits.



2. The brief facts of the case are as follows. While the applicant was working as Superintendent of Police(Non-Cadre) at the Office of the Commissioner of Excise, Vikas Bhavan, Thiruvananthapuram, retired from the State Police Service on attaining the age of 55 years on 31.12.2008. The applicant originally entered service as Sub Inspector of Police on 15.07.1976 under the Kerala Police Department and subsequently he was promoted as Circle Inspector of Police, Deputy Superintendent of Police and finally to the cadre of Superintendent of Police (Non-Cadre). Though the name of the applicant was entered in the panel with 'Outstanding' grading prepared by the State Government for appointment by promotion to the Indian Police Service, he was not selected due to the vacancy position of the State of Kerala, by the Selection Committee. The non-selection of the applicant by promotion under Regulation 5(1) of the Indian Police Service(Appointment by Promotion)Regulations,1955 was also on the ground that he was below the zone of consideration. The select list of 2007 for promotion of State Police Officers to the IPS was prepared at the Office of the 2nd respondent on 23.06.2008. The Select List prepared by the Selection Committee was approved by the 2nd respondent and published as per Notification dated 28.08.2008. Unfortunately the name of the applicant was not included in the notified list. Hence the applicant filed representations before the respondents 1 and 2 to have the quinquennial review of the cadre strength of the State of Kerala as per Rule 4(1) of the Indian Police Service(Fixation of Cadre Strength) Regulations, 1955. It is incumbent on the part of the Central Government in consultation with the State Government on that behalf to review the cadre strength within the interval of every five years. As the applicant was



included in the panel for the years 2005 and 2006 for selection to the post of Indian Police Service by promotion, the applicant could have been appointed in the vacancy arising on review of the cadre strength, if the cadre review has been carried out in time. The representations sent by the applicant to the respondents have not been answered properly and hence the applicant has filed this Original Application, with the prayers as stated above.

3. The Original Application has been admitted by this Tribunal and notice has been ordered to the respondents. The respondents are resisting the O.A. by filing their respective reply statements, namely for respondent No.2, Union of India, respondent Nos. 2 & 3, Union Public Service Commission and Selection Committee and also respondents No.4 and 5, State of Kerala and Director General of Police, Police Headquarters, Thiruvananthapuram. The impleaded additional respondents 6 to 8 have also filed their respective reply statements in the matter. The stand taken by the first respondent, Union of India, in the reply statement is that in respect of Kerala Cadre of IPS is concerned, the second last Cadre Review Notification was notified in the year 2001. As such as per Regulation 4(2) of the IPS(Cadre)Rules, 1954, as amended in the year 2006, the next Cadre Review was ordinarily due in the year 2006. For the above purpose, the Government of Kerala was requested by issuing letter dated 14.10.2005 and that was further reminded by reminders dated 21.04.2006, 23.05.2006, 21.09.2006, 04.12.2006 and 21.02.2007 and finally the State Government as per their letter No. 7.5.2007 furnished the desired proposal. The same was examined by the first respondent and certain clarifications were sought from the State Government and finally two



more posts were sanctioned to the State of Kerala on reviewing the Cadre Strength. However, after the letters received from the first respondent, the Govt. of Kerala have not taken any steps to follow up the matter. Finally it is stated in the reply statement that only because of the laxity caused on the part of the State Government, no appointment could be made in the reviewed and allotted Cadre Strength for the State. The stand taken by the 3rd and 4th respondents are that the matter regarding review of the cadre posts to be filled up from State Police Service Officers comes under the purview of the Government of India, Ministry of Home Affairs, New Delhi. As such their submissions in this regard may be considered. Further it is stated that vide the Govt. of India, MHA letter No.14011/32/2007-IPS.I dated 13.11.2007 determined three vacancies to be filled up by promotion from SPS officers to the IPS of Kerala cadre during 2007. Accordingly the Selection Committee has to prepare the Select List of 2007 from promotion of SPS officers to the IPS of Kerala cadre has already been held on 23.06.2008. For the three vacancies determined by the Government of India the zone of consideration was determined as 9 and the name of the applicant has been considered at Sl.No.7 in the zone of consideration and on an overall assessment of his service records, the Committee graded the applicant as 'Very Good'. However his name could not be included in the Select List due to the statutory limit on the size of the Select List. Further stand taken in the reply statement of the State Government is that the Select List of 2007 for promotion of SPS officers to the IPS of Kerala cadre has been prepared by the Selection Committee and approved by the UPSC and also notified by the Government of India. Now the



Select Lists of 2008 and 2009 have to be prepared for the IPS of Kerala cadre and hence at present the question of reviewing the matter is not within the purview of the Govt. of Kerala at all.

4. The party respondents also have filed their reply statement in which they have stated that they were selected by the Selection Committee and even if any review of the cadre strength is taken place, their seniority should not be affected, in case the applicant is considered for selection to the allotted cadre on the basis of the review.

5. We have heard the learned Sr. Advocate Mr. O.V. Radhakrishnan, appearing for the applicant, Mr. Sunil Jacob Jose, SCGSC for respondent No.1, Mr. Thomas Mathew Nellimoottil for respondents No.2 and 3, Mr. N.K. Thankachan, Govt. Pleader for Respondent Nos. 4 and 5 and Shri Vaidyanathan for Mr. S. Sreekumar for respondent No.6.

6. Learned Sr. Counsel Mr. O.V. Radhakrishnan appearing for the applicant has taken two contentions, mainly in support of the O.A. Firstly, the learned counsel submits that though the applicant was included in the panel for selection to appointment by promotion in IPS for the year 2006, for want of sufficient number of vacancies to accommodate him he was not selected or appointed. When the vacancies for the year 2007 were considered as proposed for five vacancies as per the letter dated 12.10.2006, 17 State Police Officers including the applicant were included in the proposed list dated 31.10.2007. The applicant



was though serialled as No.9 , as he was not coming in the zone of consideration, he was not selected. Actually the Selection Committee meeting for preparation of of the Select List for the year 2007 for promotion of State Police Officers to the IPS Kerala Cadre was held on 23.06.2008 at the Office of the second respondent. Since the applicant has not been selected he challenged the Select List also by filing O.A.No.387/2008 and the same is pending before this Tribunal. However, the counsel further submits that as per the powers conferred by Sub Section 1 of Section 3 of the All India Services Act, 1951, the Central Govt. should have reviewed the Cadre Strength of the Kerala Cadre within the interval of every five years and it is admitted case before the respondents that the last review of the Kerala Cadre has been completed during 2001. If so, the Cadre Review has to be completed during 2006 or 2007. As per Rule 4(1) of the Cadre Rules relates to the constitution of the Cadre Rules gives an obligation on the part of the Central Govt., in consultation with the State Governments in this behalf, shall, immediately before the commencement of the Rules review the Cadre Strength of the Kerala Cadre of the IPS posts and if so, the minimum steps would have been taken by the first respondent to review the Cadre Strength of the Kerala Cadre. If the Cadre Review has been completed within 5 years as fixed by the Rules, there could be more vacancies for which selection could be made from such officers to the IPS cadre, but without taking any steps to review the Cadre Strength of the Kerala Cadre of the IPS posts, the first and second respondents purposely belated the steps for conducting the Cadre Review and to find out the additional vacancies, if any, in the IPS posts of the Kerala Cadre. However, as per the Rules, it is submitted by the counsel



that it is evident from the letters issued and the reply statement filed on behalf of the that the first respondent had taken some steps to alert the fourth respondent, the State of Kerala, to take steps for making the Cadre Review within time and finally it has come out in evidence that two more posts were added by the first respondent to the Kerala Cadre of IPS posts as per the final decision taken by the Central Govt. and these posts should have been included as available to the Kerala Cadre with effect from 1.1.2007 as the due date for the Cadre Review should have been considered as 22.03.2006. If such a decision is taken in time by the first and second respondents, the applicant would have been considered in the additional posts allowed to the Kerala Cadre in the vacancy as existed as on 1.1.2007. The second limb of the argument of the learned counsel for the applicant is that as per Regulation 4(2) of the Indian Police Service (Fixation of Cadre Strength) Regulations, 1955 the Central Govt. shall ordinarily at the interval of every five years re-examine the strength and composition of each such cadre in consultation with the State Govt. or the State Governments concerned and make such alterations therein as it deems fit, which means that within the interval of five years, both the Central Government and the State Government are under the obligation to review the Cadre Strength of the IPS Cadre of the State Police Service But the reply statements given on behalf of the first and second respondents would show that even though the first respondent, the Central Government has alerted the State Government to take steps for completing the Cadre Review, they have not taken any effective steps. Hence the Central Government was not in a position to complete the Cadre Review. It means that the lethargy or the laxity caused on the part of the first



and second respondents, the Cadre Review could not have been completed within time and the additional posts would not have been included or used for appointment by promotion of officers who are eligible for such promotion. Hence this Tribunal may interfere with the matter and give the reliefs which the applicant claims in the O.A. The above arguments has been resisted by the counsel appearing for the first and second respondents. The counsel appearing for the second and third respondents, Union Public Service Commission and Selection Committee submitted that the selection of the State Police Service Officers for promotion to the IPS are governed by the Promotion Regulations. Regulation 3 of the said Regulations provides for a Selection Committee consisting of the Chairman of the Union Public Service Commission or where the Chairman is unable to attend, any other Member of the Union Public Service Commission representing it and in respect of the State of Kerala, the Chief Secretary to Government of Kerala, Secretary to the Government dealing with Home Department, DG & IG of Police, Government of Kerala and two nominees of Central Government not below the rank of Joint Secretary to Govt. of Kerala, are the Selection Committee members constituted for that purpose. As per the Promotion Regulations, the State Government shall send a proposal to Union Public Service Commission for convening a meeting of the Selection Committee to prepare the Select List for promotion to the All India Services after the vacancies have been determined by the Central Government. As per the Promotion Regulations, each Committee shall ordinarily meet every year and prepare a list of such members of the State Police Service suitable for promotion to the IPS service. As far as the applicant is concerned, his name was



included in the proposed list by the State Government but for the year 2006, he was not selected and appointed as he was not coming in the zone of consideration as there was only three vacancies for the year 2006 and the Selection Committee met on 23.06.2008. Further the counsel submits that the list for 2007 of State Police Service Officers of Kerala Cadre has been prepared by the Selection Committee and approved by the UPSC and also notified by the Government of India and as far as the applicant is concerned, he was not selected. Now the State Government is preparing the Select Lists of 2008 and 2009 for promotion as per the Regulations. Hence the question of any panel being made for selection for the additional posts sanctioned by the Central Government on review of the Cadre does not arise and that apart the prayer of the applicant is that the two additional posts sanctioned has to be considered as existed with effect from 1.1.2007. But the allotment of the additional two posts have been declared by the Central Government only on 30.12.2008 as per the notification issued by the DOP&T, Government of India in the Gazette of India which came into force only with effect from 30.12.2008, though the Cadre Review Committee met under the chairmanship of Hon'ble Home Secretary on 02.09.2008. Hence any notification of the Government of India on any subject takes effect from the date on which it is published in the Official Gazette. If so, the revision of the strength or allotment of two more additional posts on Cadre Review of the Kerala Cadre of the IPS will come into force with effect from the date of its notification, namely, with effect from 30.12.2008. If so, the prayer of the applicant that the vacancies additionally allotted on Cadre Review ought to have been considered as came into existence with effect from 1.1.2007, has no



stand. The counsel further submitted that there was no willful laches or delay caused on the part of the State Government or the Director General of Police in taking steps to make the Cadre Review as per the Regulations, but it is clear that the Central Govt. is the authority to pass the final orders on reviewing the Cadre Strength and such notification came into force only on 30.12.2008.

7. From the arguments advanced by the counsel appearing for the parties and on perusal of the relevant rules and on considering the facts, the short question that is to be decided in this Original Application is that whether the applicant is entitled for the reliefs which he claimed in the O.A. or not. It is an admitted case before this Tribunal both by the counsel appearing for the applicant as well as the counsel appearing for the respondents, especially the counsel appearing for the State Govt., that as per Rule 4(1) of the Indian Police Service (Fixation of Cadre Strength) Regulations, 1955, it is obligatory on the part of the Central Government in consultation with the State Government on that behalf to review the cadre strength within the interval of every five years. It is also admitted before this Tribunal by the counsel appearing for the Central Govt. as well the State Government that the cadre review, as far as the Kerala Cadre for IPS officers ought to have been completed in the year 2006, as the last cadre review had been completed during 2001. If so, this Tribunal has to find out whether the official respondents, namely the Central Government as well as the State Government are justified in not making or completing the cadre review of the IPS Cadre of Kerala within the stipulated time. As per Rule 4 of the Cadre Rules, 1954, the strength and composition of each of the Cadres constituted



under Rule 3 shall be as determined by regulations made by the Central Government in consultation with the State Governments in this behalf and further it is stated in Rule 4(2) that the Central Government shall, ordinarily at the interval of every five years, re-examine the strength and composition of each such cadre in consultation with the State Government or the State Governments concerned. Even though the Rule says that "ordinarily", there are decisions of the Apex Court to the effect that the word used "ordinarily" in Rule 4(2), should be construed as "shall" and this question has already been considered by the Apex Court in 2001)2 SCC 118 in S. Ramanathan vs. Union of India and Others and in that case, the Apex Court held that :-

" 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 jeopardized. 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."



Further the Hon'ble Apex Court also considered the same provision in Civil Appeal No.2651-52 of 2010 (Arising out of SLP(C) No.6758-6759/2009) in Union of India and Another vs. Hemraj Singh Chauhan & Others ;CDJ 2010 SC 278 and held that :-

“Concurring with the aforesaid interpretative exercise, we hold that the statutory duty which is cast on the State Government and the Central Government to undertake the cadre review exercise every five years is ordinarily mandatory subject to exceptions which may be justified in the facts of a given case. Surely, lethargy, inaction, an absence of a sense of responsibility cannot fall within category of just exceptions.”


A reading of the above rulings of the Apex Court will make it clear that the delayed exercise of the power of the Central Government as well as the State Government for reviewing the cadre strength of Indian Police Service, cannot be justified within the meaning of “ordinarily”, in the facts of the case in hand. Further it has come out in evidence, as revealed from the statement on behalf of the official respondents that the Central Government have alerted several times the State Government to take necessary steps to have the cadre review of the Kerala Cadre of IPS officers. The State government had also taken some steps to expedite the completion of the cadre review. Unfortunately it could not be completed within the stipulated time and by that lethargy caused on the part of the Central Government and the State Government, could be considered as a violation of the personal rights of the applicant or not. It is an admitted fact before this Tribunal that the name of the applicant was also included in the list prepared for selection to IPS cadre for the year 2006, though it was completed only on 23.6.2008 and the select list prepared by the selection committee was also approved by the second respondent and the second




respondent published the list as per notification dated 28.8.2008. But unfortunately the name of the applicant was not recommended for inclusion in the notified list as there was only three sanctioned posts for the year 2006 to the Kerala Cadre and the name of the applicant was recorded as Sl.No.7 in the zone of consideration. Even though on an overall assessment of the service records of the applicant the selection committee graded the applicant as "Very Good", he could not be selected as the number of vacancies was less. The next further question to be considered is that whether the applicant can claim the benefit of the sanctioning of two more posts to the IPS Kerala Cadre as per the final review completed by the Authorities and which was declared by the Central Government only on 30.12.2008. In this context we cannot ignore the fact that the State Government has already prepared a list for promotion to IPS Cadre for the year 2008 and 2009 and while preparing such lists for the years 2008 and 2009, whether the additional posts sanctioned on final review of the cadre strength has been considered or not. There is no records produced before us or any material placed before us so as to know whether the present list being prepared for the year 2008 and 2009 is inclusive of the two additional posts sanctioned or not. In the above circumstances, we have to consider the stand taken by the State Government in their counter regarding the sanctioning of the two additional posts on reviewing the cadre strength as per the notification dated 30.12.2008. If the prayer of the applicant is considered in this context, this Tribunal has to direct the respondents to consider the two posts sanctioned by the Central Government, should be considered as deemed sanctioned with effect from 1.1.2007. But from the factual position we have discussed above,



we are not in a position to give such a direction as there is no material before us to find that the sanctioning of the additional posts is with effect from 30.12.2008 and the steps now being taken by the State Government for preparation of the new list is inclusive of the additional posts sanctioned by the Central Government. At the same time we are of the firm view that whatever be the lethargy or the laxity caused on the part of the official respondents to review the cadre strength, that by itself would not give any individual right to the applicant to approach this Tribunal to issue any direction to the State Govt. as prayed for in the O.A. However, we are of the view that on considering all the aspects as we have discussed above, the applicant may approach the State Government with a representation for that purpose, and if such a representation is filed from one month from the date of receipt of a copy of this order, the State Government shall consider the same and take an appropriate decision in the matter within two months from the date of receipt of such a representation from the applicant. It is made clear that as the notification issued by the Central Government commenced only on 30.12.2008, the claim, if any, for the additional sanctioned posts can only be thereafter, as the notification has no retrospective effect. With the above observations, the Original Application stands disposed of. No costs.



(K. GEORGE JOSEPH)
MEMBER(A)



(JUSTICE K. THANKAPPAN)
MEMBER(J)