

CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH

O.A. 563/97

FRIDAY, THIS THE 19TH DAY OF DECEMBER, 1997.

C O R A M:

HON'BLE MR. A.V. HARIDASAN, VICE CHAIRMAN

HON'BLE MR. S.K. GHOSAL, ADMINISTRATIVE MEMBER

K. Rajasekharan Pillai  
Retired Deputy Commandant,  
Kerala Armed Police  
5th Batallion, Trichur  
residing at Ambadi  
Cheroor, Trichur.

..Applicant

By Advocate Mr. R. Rajasekharan Pillai

Vs.

1. Union of India represented by  
the Secretary to the Government,  
Ministry of Home Affairs,  
New Delhi.
2. The Selection Committee for Appointment by  
Promotion to the Indian Police Service  
represented by the Chairman,  
Union Public Service Commission,  
New Delhi.
3. The Union Public Service Commission,  
represented by its Secretary,  
New Delhi.
4. The State of Kerala represented by  
the Chief Secretary to  
the Government of Kerala,  
Trivandrum.
5. S. Gopinath,  
Commandant,  
Kerala Armed Police,  
Third Batallion,  
Trivandrum.

..Respondents

By Advocate Mr. T.P.M. Ibrahim Khan, SCGSC for R 1-3

Mr. C. A. Joy, GP for R-4

Mr. N.Nandakumara Menon for R-5

The application having been heard on 25.11.97, the  
Tribunal on 19.12.1997 delivered the following:

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O R D E R

HON'BLE MR. S. K. GHOSAL, ADMINISTRATIVE MEMBER

This case was heard along with other two O.As i.e. O.A. 554/97 and 660/97 for the reason that all these three O.As have impugned the common Government order No. 3016/97/GAD dated 16.4.97 issued by the Government of Kerala i.e. the respondent No.4 in this O.A. appointing Shri Sethuraghavan and Shri S. Gopinath, who are members of the State Police Service of Kerala, to the Indian Police Service (IPS) of Kerala cadre by promotion. That order has been challenged in the present O.A. and Shri Gopinath has been impleaded as the respondent No. 5 here. The other reason why all these three O.As were heard together is that some of the averments in these three O.As also relate in common to the Select List which was prepared in terms of the provisions of Regulation 5 and Regulation 7 of the Indian Police Service (Appointment by promotion) Regulations 1955 (Regulations, for brevity).

2. However, the reliefs sought here are somewhat distinct from the reliefs sought in the other two O.As. Besides, the applicant in the present O.A. i.e. Shri K.Rajasekharan Pillai who till his recent retirement was a member of the State Police Service, to be precise the Kerala Armed Police, has challenged the subsequent modification and finalisation of the provisional List which was initially prepared by the Selection Committee constituted for the purpose at its meeting held on 26.12.96. Feeling aggrieved by such modification he has challenged the appointments to IPS of Kerala Cadre in pursuance of that modified and finalised Select List. This



aspect is quite unique to the present O.A. and in the other two O.As no such grievance has been ventilated. Therefore, we have decided to deal with this O.A. separately.

3. The relevant facts of the case which are undisputed are as follows.

4. The applicant was promoted as an Assistant Commandant in the Kerala Armed Police, which post is equated to the post of Deputy Superintendent of Police, on 8.2.1984. He was confirmed in the said post w.e.f. 21.4.88. When the Selection Committee for 1995-96, which was required to consider the anticipated substantive vacancies in the promotional quota in the IPS cadre of Kerala State and which was ordinarily expected to meet by 31.3.96, did not meet even by August, 1996, the applicant apprehended that since he was due for retirement from State Police Service on superannuation on 31.10.96, such delay might adversely affect him. He, therefore, filed O.A. 1070/96 before this Bench. The Tribunal passed an interim order in that O.A. on 9.10.96 recording the statement made on behalf of the Government of Kerala, i.e. the 4th respondent in this application, that they would expedite the convening of the Selection Committee and that they would pass appropriate orders on the request of the applicant for his retention in service beyond 31.10.96. The Tribunal then declared that the retirement of the applicant would not stand in the way of his being considered for appointment to IPS if he was otherwise eligible. However, the second respondent subsequently rejected, through their order dated 30.10.96, the request of the applicant for further retention of his service beyond 31.10.96. The applicant, therefore, retired from service on 31.10.96. The Selection Committee met only



on 26.12.96.

5. According to the applicant, in the List prepared by the Selection Committee, at its meeting on 26.12.96, which was based on consideration of three substantive vacancies arising in the year 1996-97, he was placed at rank No. 2. However, the applicant has alleged, that List was not promptly approved by the Union Public Service Commission (UPSC for short), the respondent No. 3 here, as required under Regulation 7 of the Regulations. The applicant then came to know that in the light of the direction issued by this Tribunal in O.A. 1045/96, one of the three posts which the Selection Committee had taken into account while preparing the list at their meeting held on 26.12.96, was filled up by promoting one Shri N.P.Balakrishnan another member of the State Police Service who was the applicant in that O.A. The applicant received information that in the light of this development, a revised Select List was being prepared, shortening the zone of consideration i.e. the list of eligible officers, and treating the vacancies available for the year 1996-97 as reduced to two from three. Feeling aggrieved by such a move on the part of the official respondents, he filed O.A. 393/97 before this Bench with the prayer that the list which was initially prepared by the Selection Committee at the meeting held on 26.12.96 should not be revised and appointment by promotion to the IPS cadre of Kerala should be made in accordance only with that list. That O.A. was disposed of along with O.A. 296/97 filed by one Shri M.T. Philip, another Kerala State Police Service Officer who had made the contrary prayer of revising and finalising the List initially prepared by the Selection Committee on 26.12.96 by



restricting the zone of consideration and treating the number of substantive vacancies as having been reduced to two. Incidentally, the applicant in O.A. 296/97 Shri M.T. Philip, was also an aspirant for promotion to IPS of Kerala cadre. The common judgment passed in these two O.As by this Bench directed the official respondents to finalise the List prepared on 26.12.96 within a period of 10 days and to make appointments from the said List. However, the right of the parties to challenge the final outcome of selection was specifically reserved.

6. According to the applicant, after the above order was passed in the common judgment dated 25.3.97 in these two O.As, he expected that he would be appointed on promotion to the IPS cadre of Kerala State, since he had understood that he was ranked No. 2 in the List drawn up by the Selection Committee at their meeting held on 26.12.96. However, the 4th respondent, i.e., the Government of Kerala appointed one Shri Sethuraghavan<sup>and 49</sup> the 5th respondent on promotion to IPS under the impugned order at Annexure A4. Parallely, there has been no order appointing the applicant on promotion to IPS of Kerala State cadre. The applicant feels aggrieved by these actions on the part of the official respondents. He has therefore filed the present O.A.

7. The case of the applicant is that in the wake of the decision of the Tribunal in O.A. 1045/96, filed by one Shri N.P. Balakrishnan, directing that the said Shri Balakrishnan should be appointed on promotion to IPS, the official respondents particularly, the respondent No. 3 i.e. the Union Public Service Commission (UPSC) and the respondent No. 4 i.e. the Government of Kerala, should not

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have treated the number of substantive vacancies available for the year 1996-97 as having been reduced from 3 to 2. According to him that judgment dated 5.2.97, which conferred the benefit of promotion on Shri Balakrishnan to the IPS cadre of Kerala specifically related to a substantive vacancy which had arisen much earlier than 1996-97. Therefore, he has contended, the List prepared by the Selection Committee in its meeting held on 26.12.96, which took into reckoning three substantive vacancies arising in the year 1996-97, should have been retained and approved as such by the third respondent i.e. the UPSC without any revision and without affecting his position at rank No. 2 therein.

8. On behalf of the applicant, it has been argued in particular that the power of the UPSC under regulation 7 of the Regulations, cannot be invoked to make these changes in the List which the Selection Committee had prepared at its meeting on 26.12.96. According to the applicant, though the UPSC <sup>43</sup>do have the authority finally to approve the Select List, once the Select List has been prepared provisionally at a meeting of the Selection Committee, which in this case took place on 26.12.96, without another meeting of the Selection Committee and a fresh List being prepared at such a meeting, the UPSC, even in consultation with the Govt. of Kerala, could not legally have made any revision to such a List.

9. On behalf of the applicant it has been urged further that the respondents 3 & 4 should not have reduced the size of the eligible officers coming within the zone of consideration from 15th i.e. based on three substantive

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substantive vacancies arising in 1996-97 to 12, i.e. based on only the reduced number of two for such substantive vacancies.

11. Finally, the reliefs claimed by the applicant are as follows:

- i) An order quashing/setting aside the revision of the select list dated 26.12.96;
- ii) an order directing respondents 1 to 3 to approve the select list drawn up on 26.12.96 and to make appointments to IPS in the promotion quota in the order of ranking in the said list;
- iii) an order quashing/setting aside Annexure A4 in so far as it concerns the 5th respondent.
- iv) direct respondents 1 to 4 to appoint the applicant in Indian Police Service based on his ranking in the select list drawn up on 26.12.96; and
- v) such other order or directions as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case.

The applicant, however, does not deny that if the number of substantive vacancies arising in 1996-97 had to be treated as 2 and not as 3, his name could not have been included in the list of eligible officers coming within the zone of consideration. He has also not denied that in that event respondent No. 5 i.e. Shri S. Gopinath who in the provisionally prepared List was placed at rank No. 3 could then be placed at rank No. 2, as a sequel to the applicant's name not being included in the list of 12 eligible officers coming within the zone of consideration for appointment to the IPS of Kerala cadre by promotion.

12. The claims made by the applicant have been contested by the respondents. On behalf of the official respondents



it has been stated that the number of ~~vacancies~~<sup>vacancies 49</sup> that the Selection Committee took into account at its meeting held on 26.12.96 that would arise in the year 1996-97 were 3 and the ~~vacancy~~<sup>vacancy 49</sup> which was later on filled up by Shri N.P. Balakrishnan in obedience to the order of this Tribunal mentioned above, had been included as one of those 3 vacancies. This was because apart from the 2 vacancies which arose on 1.6.96 and 1.11.96, the unfilled post of the earlier period i.e. prior to 1996-97 had been carried over and the total only then became 3. Therefore, according to the official respondents, when Shri Balakrishnan had to be appointed during the financial year 1996-97, for which period the Select List was to be prepared and finally approved by the UPSC, and when before the Select List was so finally approved by the UPSC, that appointment had taken place, it was necessary to reduce the size of the finally approved Select List to  $(2 + 2)$ , i.e. 4 from  $(3 + 2)$ , i.e., 5 in the provisional List, treating the vacancies available in 1996-97 as reduced from 3 to 2 and adding another two officers for meeting the unanticipated vacancies, as prescribed under the Regulations. Since the applicant did not figure in the list of eligible officers included within the zone of consideration which had to be shortened to  $(2+2) \times 3$  i.e. 12, from  $(3 + 2) \times 3$ , i.e. 15, his rank in the combined seniority list being below 12, he could not be considered for inclusion in the revised and finally approved Select List. Not being included in the finally approved Select List, there was no question of granting the applicant promotion to IPS, the official respondents have argued.

13. On behalf of the respondent No. 3, i.e. the UPSC it

*Ans*



has been urged in particular that the provisions of Regulation 7 of the Regulations empower the UPSC to make changes, if it considers them necessary, even after receiving the provisional List from the State Government. The UPSC is specifically empowered to do so, after informing the State Government of the changes proposed by it and thereafter taking into account the comments, if any, of the State Government. As long as the UPSC follows the procedure prescribed under the Regulation 7 of the Regulations, and as long as such changes are considered just and proper by it, the UPSC need not convene another meeting of the Selection Committee. It has been contended in this behalf that UPSC is fully competent by virtue of these provisions to make these changes and then approve the changed i.e. revised Selection List. It is only that Select List which is approved by the UPSC which becomes the final and valid Selection List. Only that Select List can then be operated for the purpose of making appointment on promotion to IPS cadre of Kerala State, it has been argued.

14. We have carefully considered the pleadings in this case. We have also heard the arguments of the learned counsels appearing for the parties.

15. The <sup>19</sup>crucial questions involved in this case in our opinion are: whether in the <sup>work 40</sup>of the filling up of a substantive vacancy in the promotional quota in the IPS cadre of Kerala State in compliance with the order passed by this Bench in O.A. 1045/96 filed by Shri N.P. Balakrishnan, the official respondents, particularly the respondents 3 & 4 i.e. the UPSC and the Government of Kerala, were justified legally to treat the number of substantive vacancies available for the year 1996-97 as reduced from 3 to <sup>19</sup>2; and further whether if the number was

A. J.

so treated, i.e. as reduced from 3 to 2, the official respondents were legally competent to make changes in the provisional list of the officers which had already been prepared by the Selection Committee at its meeting held earlier on 26.12.96.

16. In order to consider the above issue properly we feel it will be useful to refer to the provisions of the relevant Regulations of the Indian Police Service (Appointment by promotion) Regulations, 1955.

5. Preparation of a list of suitable officers-(1)  
Each Committee shall ordinarily meet at intervals not exceeding one year and prepare a list of such members of the State Police Service, as held by them to be suitable for promotion to the Service. The number of members of the State Police Service to be included in the list shall be calculated as the number of substantive vacancies anticipated in the course of the period of 12 months commencing from the date of preparation of the list, in the posts available for them under Rule 9 of the Recruitment Rules plus twenty per cent of such number or two whichever is greater.

Explanation: In case of Joint Cadres a separate select list shall be prepared in respect of each State Police Service, the size of each Select List being determined in the manner indicated above.

(2) The Committee shall consider for inclusion in the said list, the cases of members of the State Police Service in the order of seniority in that service of a number which is equal to three; times the number referred to in sub-regulation (1)....

7. Select List (1) The Commission shall consider the list prepared by Committee along with the other documents received from the State Government and

*And*

unless it considers any change necessary, approve the list.

(2) If the Commission consider it necessary to make any changes in list received from the State Government, the Commission shall inform the State Government of the changes proposed and after taking into account the comments, if any, of the State Government may approve the list finally with such modification, if any, as may, in its opinion, be just and proper.

(3) The list as finally approved by the Commission shall form the Select List of the members of the State Police Service.

(Emphasis supplied)

17. From the above extracts of the provisions of the Regulations 5 & 7 of the Regulations, it is evident that the Selection Committee can only consider substantial vacancies which would arise in a given period of 12 months. It is not disputed that in the present case, the Selection Committee which met on 26.12.96 specifically took into account only these substantive vacancies that would arise in the year 1996-97, i.e. from 1st April, 1996 to the 31st of March, 1997. One of those vacancies which had been filled up before the provisional List could be finally approved by the UPSC and well before 31.3.97, could no longer be treated as a substantive vacancy still available for the purpose of finalising the Select List for the said period, namely the year 1996-97. If the list as prepared provisionally by the Selection Committee at its meeting held on 26.12.96 was then not revised and was still

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permitted to remain intact in March, 1997 when it was finally approved by the third respondent and therefore became the finalised and valid Select List, it would have been untenable. For, before its finalisation by the UPSC, the substantive vacancies in the year 1996-97 would have already been reduced from 3 to 2 on account of the appointment of Shri Balakrishnan in compliance with the order of this Tribunal. The UPSC and the Government of Kerala can not, in our considered view, be faulted for taking into account and then providing for the latter development as a fait accompli while finalising the Select List. We will, therefore, have to hold that the official respondents particularly, the Government of Kerala and the UPSC were fully justified in making such a revision subsequently in the provisional list prepared earlier at the meeting of the Selection Committee on 26.12.96. According to us, this revision was properly found as warranted in the light of the above development.

18. The other important question which has been raised on behalf of the applicant is also related to the above matter. It is: whether the UPSC and the Govt. of Kerala are competent to make such a revision to the provisional list prepared by the Selection Committee at their meeting held on 26.12.96, without convening a fresh meeting of the Selection Committee.

19. We have quoted the relevant provisions of the Regulations above. A plain reading of the provisions of Regulations 7(1) to 7(3) in particular makes it abundantly clear that the third respondent i.e. UPSC is fully competent to initiate and finalise such changes. In the process, UPSC can approve a provisional list finally with such changes in consultation with the concerned State



Government- here, the Government of Kerala, as it finds appropriate and necessary. It has not been disputed on behalf of the applicant that such consultation has taken place. It is also not rebutted that the circumstance that necessitated a revision in the provisional list arose clearly after the provisional list was prepared by the Selection Committee at its meeting held on 26.12.96. We are, therefore, unable to agree with the learned counsel for the applicant that the UPSC in consultation with the Government of Kerala did not have the necessary legal authority to amend or modify the provisional list prepared at the meeting of the Selection Committee held on 26.9.96 and thereafter finally approve the modified Select List. Regulation 7(2) in our considered opinion empowers specifically the UPSC, in consultation with the State Government, to exercise this power in certain circumstances. Similarly, Regulation 7(3) prescribes that only after such final approval by the UPSC, the Select List acquires the character of a valid Select List which could then be operated for the purpose of making appointments on promotion to IPS cadre of the Kerala State.

20. More specifically on the issue of competence of the UPSC acting in consultation with the Government of Kerala to revise and finalise the Select List without calling for another meeting of the Selection Committee which had met only earlier i.e. on 26.12.96 and had prepared a provisional list, in our opinion, no such fresh meeting of the Selection Committee need to be convened by the Government of Kerala or by UPSC. The reason for our holding this view is that at the earlier meeting of the Selection Committee held on 26.12.96 itself, the list comprising the



larger number of eligible officers i.e. 15 had been considered and their merits on an inter se and comparative basis had been assessed by the Selection Committee and the provisional list was prepared on that basis. It is axiomatic that the smaller list of 12 officers which were part of that larger list of 15 eligible officers is actually a subset of that bigger set of eligible officers. Once the relative merits of these 12 officers had already been assessed inter se and on a comparative basis and the principle of grading them into 'outstanding', 'very good' and 'good' had been followed, there is no need to make that relative assessment once again of all these officers, inter se, only because the three officers who had earlier been included, had to be excluded from smaller number of 12 officers vis-a-vis the higher number of 15 that was considered earlier by the Selection Committee. It is of course equally axiomatic that with the exclusion of the three officers, the final relative ranking of these 12 officers vis-a-vis the final relative ranking when 15 eligible officers were considered earlier was likely to undergo some change, particularly when some of the three officers, who were excluded, may have been interposed in the previous provisionally prepared list among the rankings given to the officers who later on figured in the shorter list of 12 eligible officers. It is obvious that given this situation, no further meeting of the Selection Committee to assess afresh the relative merits of the smaller number of 12 eligible officers inter se can be considered as either necessary or legally required.

21. In the light of the detailed discussions made above, we do not find that the applicant can be considered to have <sup>242</sup>tenable case or has been able to make out a case for <sub>f</sub>

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granting him any of the reliefs prayed for by him in the present Original Application.

22. In the result, the Original Application is dismissed. There will be no order as to costs.

Dated the 19th December, 1997.



S. K. GHOSAL  
ADMINISTRATIVE MEMBER



A.V. HARIDASAN  
VICE CHAIRMAN

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LIST OF ANNEXURE

Annexure A4: Order G.O.(Rt) No.3016/97/GAO  
dated 16-4-1997 issued by  
fourth respondent.

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