

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.No.96/11

Wednesday this the 19th day of September 2012

C O R A M :

**HON'BLE Mr.JUSTICE P.R.RAMAN, JUDICIAL MEMBER
HON'BLE Mr.K.GEORGE JOSEPH, ADMINISTRATIVE MEMBER**

P.V.George,
S/o.P.C.Varkey (late),
Superintendent of Police (Non-IPS), (Rtd. On 31.3.2007).
Residing at Pattanikarot House,
Kuravilangad P.O – 686 633, Kottayam District.Applicant

(By Advocate Mr.P.V.Mohanan)

V e r s u s

1. Union of India represented by the Secretary, Ministry of Home Affairs, New Delhi – 110 001.
2. State of Kerala represented by the Chief Secretary to the Government of Kerala, State Secretariat, Trivandrum – 695 001.
3. The Selection Committee for appointment by Promotion to IPS (Kerala) Cadre, represented by its Chairman, Union Public Service Commission, Shahjahan Road, Dholpur House, New Delhi – 110 001.Respondents

(By Advocates Mr.A.D.Raveendraprasad,ACGSC [R1], Mr.M.Rajeev,GP [R2] & Mr. Thomas Mathew Nellimoottil [R3])

This application having been heard on 7th September 2012 this Tribunal on 19th September 2012 delivered the following :-

O R D E R

HON'BLE Mr.K.GEORGE JOSEPH, ADMINISTRATIVE MEMBER

The applicant, born on 15.3.1952, retired as Superintendent of Police (non IPS) on 31.3.2007. He was eligible to be considered for selection to the IPS (Kerala) Cadre in promotion quota against the

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vacancies which had arisen from 2000 onwards. He was included in the zone of consideration against 5 vacancies which arose during the period from 1.1.2005 to 31.12.2005. But he was not selected. He completed 54 years of age on 15.3.2006. He had not been considered for selection against the vacancies for the year 2007 as the vacancies for the period from 1.1.2006 to 31.12.2006 was determined as vacancies of the year 2007. In terms of the judgment of the Hon'ble High Court of Punjab and Haryana in CWP No.15798/09 dated 1.2.2010 and confirmed by the Apex Court in SLP Civil No.14002/10 dated 31.5.2010 he should have been considered against the vacancies which arose during the year 2006 as he had not completed 54 years of age as on 1.1.2006. He has filed this Original Application for a declaration that he is eligible to be considered for selection and appointment to IPS Kerala Cadre in promotion quota against the vacancies which had arisen from 1.1.2006 to 31.12.2006 dehors his completion of 54 years of age as on 1.1.2007 and for a direction to conduct review of selection to consider his claim.

2. The applicant contended as follows : The vacancies for the year 2006 ie. from 1.1.2006 to 31.12.2006 have to be determined as on December 31st of the year. The selected list which has been erroneously styled as "select list of 2007" in fact is the select list of the year 2006. Therefore, the age of the applicant has to be determined as on 1.1.2006. Accordingly, he would be eligible for consideration. He relied on the judgment of the Hon'ble High Court of Punjab and Haryana (supra). The right to be considered for selection/appointment is

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a fundamental right. If he was considered for the vacancies of 2006 by reckoning gradings in the ACR and other attributes he would have been selected and appointed to the IPS (Kerala) Cadre in promotion quota for the year 2006.

3. Per contra, the respondents submitted that as the applicant had crossed the age of 54 years as on 1.1.2007 he was not included in the zone of consideration for the year 2007 as per the prevailing provisions. In pursuance of the judgment of the Hon'ble High Court of Punjab and Haryana (supra) the Department of Personnel and Training has issued OM dated 25.8.2010. Para 4.(i) of the OM reads as under :-

"4(i) The said order would be implemented with effect from 1st February 2010, ie. date of the High Court order."

As the judgment of the Hon'ble High Court of Punjab and Haryana has only prospective effect, the claim of the applicant to consider him for the year 2006 is untenable. The competent authority has meticulously followed all other procedures provided in the rules and regulations in the selection process for the year 2006-2007.

4. We have heard counsel for the parties and perused the records. The claim of the applicant solely rests on the judgment of the Hon'ble High Court of Punjab and Haryana dated 1.2.2010 in CWP No.15798/09. The Hon'ble High Court held as under :-

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We find substantive support to the aforesaid submission in un-numbered proviso to Regulation 5(1). According to the aforesaid proviso if no meeting of the Committee could be held during a year then whenever the Committee meets again, the Select List has to be prepared separately for each year during which the Committee could not meet as on December 31st of each year. The aforesaid proviso is consistent with the definition of expression 'year' in Regulation 2(1)(1). Therefore the vacancies for the year 2006, ie., from 1.1.2006 to 31.12.2006 have to be determined as on December 31st of that year. The Select List, which has been erroneously styled as "Select List of 2007", in fact, is the Select List for the year 2006. Therefore, the age of the petitioner has to be determined as on 1.1.2006. Accordingly, he would be eligible."

5. Further the Hon'ble High Court of Punjab and Haryana ordered as under :-

"27. xxxxxxxxxxxxxxxx. Accordingly, respondent Nos.1 to 3 are directed to re-consider the names of all the eligible candidates by determining the age of 54 years as on 1.1.2006 qua the vacancies occurring from 1.1.2006 to 31.12.2006 by including the name of the petitioner. The needful shall be done within a period of one month from today and the petitioner shall not be debarred from entering Indian Administrative Service merely because he would retire in February 2010, because all the proceedings of the Select Committee up to the issuance of impugned notification, has always remained subject to the result of the OA, which was filled by the petitioner well in time."

6. In the light of the above order select list henceforth is to be styled coinciding with the year of the vacancy. Accordingly, DoPT has issued OM dated 25.8.2010. There was no direction from the Hon'ble High Court to reopen the past cases. The petitioner in the aforesaid CWP was to retire in February 2010 ie. On 28.2.2010. The judgment of the Hon'ble High Court was dated 1.2.2010. Hence the judgment of the Hon'ble High Court has

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only prospective effect. The applicant in the instant Original Application had retired almost 3 years before the judgment of the Hon'ble High Court was pronounced. The applicant is seeking retrospective effect of the judgment of the Hon'ble High Court which is not warranted in the absence of any specific direction to that effect in the judgment. The relevant OM of DoPT makes it clear that it has only prospective effect from 1.2.2012. Befit of merit the Original Application is dismissed with no order as to costs.

(Dated this the 19th day of September 2012)


K.GEORGE JOSEPH
ADMINISTRATIVE MEMBER


JUSTICE P.R.RAMAN
JUDICIAL MEMBER

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