

CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH

ORIGINAL APPLICATION No. 111 OF 2008

Dated, THE 10TH September, 2009

CORAM:

HON'BLE Dr. KBS RAJAN, JUDICIAL MEMBER  
HON'BLE Mr K GEORGE JOSEPH, ADMINISTRATIVE MEMBER

K.C. Elamma,  
W/o Reghu Raman,  
Superintendent of Police (Retd)  
Arjunalayam, Kelaswaram,  
Kalliyoor-PO, Trivandrum.

Applicant

[ By Advocate : Mr. P.V. Mohanan ]

-Versus-

1. Union of India,  
Represented by Secretary,  
Ministry of Home Affairs,  
New Delhi.
2. Union Public Service Commission,  
Represented by Secretary,  
Shajahan Road, New Delhi.
3. The Selection Committee for Selection to  
Indian Police Service,  
Represented by the Chairman,  
Union Public Service Commission,  
Shajahan Road, New Delhi.
4. State of Kerala,  
Represented by Chief Secretary,  
Government Secretariat, Trivandrum.
5. Madhu P.K., Principal, Police Training College,  
Trivandrum.

Respondents

[By Advocate: Mr. Ms Jisha for Mr TPM Ibrahim Khan, SCGSC for R/1.  
Mr Thomas Mathew Nellimootttil for R/2-3  
Mr Premankar, G.P. for R/4 and Mr PC Sasidharan  
and Mr Vishnu S Chempazhanthiyil for R/5.]

The application having been finally heard on 24<sup>th</sup> August, 2009, the Tribunal delivered the following:

**ORDER**

(Hon'ble Mr. K. George Joseph, AM)

The applicant, born on 19.1.1950, joined Kerala Government Service as Woman Police Constable on 6.11.72. She was promoted as Deputy Superintendent of Police with effect from 1.4.1995 on the basis of the order of the Hon'ble High Court dated 4.7.99. She retired on 31.1.2005 as Superintendent of Police. In compliance with the order of the Hon'ble High Court in WP(C)Nos.32377/2003 & 25414/2004 dated 7.10.2004 she was considered for promotion to the IPS Cadre of Kerala by the Selection Committee for the year 2004 but she was not included in the select list due to the statutory limit on the size of the select list. The Selection Committee did not consider her name for the year 2005 as her name was not included in the zone of consideration, on the ground that she had crossed the age of 54 years as on 1.1.2005. Aggrieved, the applicant has filed this OA and sought the following reliefs:



- "1. To call for the records leading to Annexure-A7 dated 4.8.2007 and set aside the same.
2. To declare that the applicant was eligible to be considered for selection and appointment against substantive vacancies in the IPS (Kerala) Cadre as on 1.1.2005 for promotion quota under the provisions of Indian Police Service (Appointment by Promotion), Regulation 1955.

3. To direct the respondents to consider the claim of the applicant against the unfilled vacancy as on 1.1.2004 in the IPS (Kerala) cadre by convening review Selection Committee and to select and appoint the applicant to IPS (Kerala) Cadre with retrospective effect from the date on which annexure-A3 notification appointing the selected candidates of 2004 had been made and to grant year of allotment and consequential seniority to the applicant.
4. To call for the records leading to Annexure-A6 select list for the year 2005 and set aside the same in so far as it selects and appoints the 5<sup>th</sup> respondent to IPS (Kerala) cadre.
5. Any other order or direction this Hon'ble Tribunal deem fit in the interest of justice.
6. To declare that Rule 5(3) of IPS (Appointment by Promotion) Regulation, 1955, namely "the committee shall not consider the cases of the member of the State Police Service who have attained the age of 54 years on the 1<sup>st</sup> day of January of the year on which it meets" is illegal, unreasonable, violative of Article 14 of the Constitution of India, violates Rule 5(1) of Regulation and may be read down."

2] The learned counsel for the applicant argued that there was no effective consideration of the applicant for 2004 as her name was merely added to the list of names in the zone of consideration. She was not placed in the seniority list of Dy Supdt. of Police and as such she could not get placed in the list of names in the zone of consideration appropriately. Had she been given her rightful place in the seniority list of Dy Supdt. of Police she would have been placed higher in the list of names in the zone of consideration. This would have ensured her selection to the IPS. It was further contended that the Government had reserved one post for women in the IPS. The applicant being the lone woman candidate, she should have been selected against the reserved post. Again the applicant should have been considered for the year 2005 in accordance with the first proviso to Rule 5(3) of the Indian Police Service (Appointment by Promotion), Regulation 1955 as she was considered



but not selected for 2004 and in accordance with the second proviso to the said Rule as the Selection Committee did not meet in time. The learned counsel for the applicant further contended that Rule 5(3) of the Regulation 1955 ought to have been amended deleting the words "54 years of age" as the retirement age of a member of All India Service was raised from 58 years to 60 years by notification dated 13.5.98.

3] The learned counsel for the respondents contested the points raised by the learned counsel for the applicant. The service matters like preparation of seniority list and equivalence of officers of different wings within the service etc. pertaining to Kerala Police come under the exclusive purview of the State Government. The Regulation 1955 does not provide for reservation based on gender for induction into the IPS. The first proviso to Regulation 5(3) is not applicable in the case of the applicant because she was not included in the select list for the previous year and the second proviso is not applicable because she was not in the zone of consideration for the committee to consider. Further the merit is the criterion and no officer has a legal right to be selected for promotion on the basis of seniority because merit prevails over seniority. The provisions of Indian Police Service (Appointment by Promotion), Regulation 1955 are amended from time to time and uniformly applied to all State Cadres. The demand to amend the provision to suit a specific requirement of the applicant is unreasonable.

4] The learned counsel were heard and documents perused.

5] Any grievance regarding seniority list pertaining to the Kerala Police Service falls within the exclusive domain of the State Government; as such it cannot be agitated before this Tribunal.

6] The applicant was considered for inclusion in the select list of 2004. The selection was based on merit and her name could not be included in the list due to statutory limit on the size of the list. Inclusion of name for consideration does not automatically lead to selection as there is a process of elimination. The Hon'ble Supreme Court in the case of R.S.Das Vs Union of India & Ors. (AIR 1987 SC 593) have held " If eligible officers are considered on merit, in an objective manner, no government servant has any right to insist for promotion nor any such right is protected by Article 16 of the Constitution of India". Therefore the applicant cannot claim promotion as a matter of right.

7] Rule 5(3) of Indian Police Service (Appointment by Promotion) Regulations, 1955 reads as follows:

5(3) The Committee shall not consider the cases of the members of the State Police Service who have attained the age of 54 years on the first day of January of the year for which the Select List is prepared.

Provided that a member of the State Police Service whose name appears in the Select List prepared for the earlier year before the date of the meeting of the Committee and who has not been appointed to the service only because he was included provisionally in that Select List shall be considered for inclusion in the fresh list to be prepared by the Committee, even if he has in the meanwhile, attained the age of fifty four years.

Provided further that a member of the State Police Service who has attained the age of fifty four years on the first day of January of the year for which the select list is prepared shall be considered by the Committee, if he was eligible for consideration on the first day of "January of the year or any of the years immediately preceding the year in which such meeting is held but could not be considered as no meeting of the Committee was held during such preceding year or years under item (b) of the proviso to sub-regulation(1)".

  
The first proviso to Rule 5(3) of Regulation 1955 does not apply to the applicant because she was not in the select list. The second proviso does

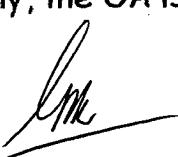
not apply because she had completed the age of 54 as on 01.1.2005. Her name could not have been included in the zone of consideration for the Selection Committee even if it had met in 2005. Therefore whether the selection Committee met in time or not for the year 2005 is not relevant at all.

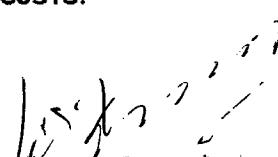
8] There is no provision for reserving a vacancy on the basis of gender for promotion to IPS, as averred by the respondents. The applicant has not challenged these averment nor did submit any proof to support her contention. Therefore the applicant's contention on reservation has no factual basis.

9] Amendment to Recruitment Rules of All India Services is in the exclusive domain of Govt of India and the State Govts are bound to obey the existing rules in this regard. The retirement age of All India Service was raised from 58 years to 60 years long ago. That the Government of India did not revise upwards the cut off age of 54 years for induction into IPS so far shows the intention of the Government to continue with the existing cut off age. This point cannot be a matter for litigation to suit the requirement of a particular person.

10] From the above, it is quite apparent that the grounds urged and the reliefs sought by the applicant are not tenable in law or on facts. The OA is devoid of merit and is liable to be rejected.

11] Accordingly, the OA is dismissed. No order as to costs.

  
(K. George Joseph)  
Administrative Member

  
(K.B.S.Rajan)  
Judicial Member

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