

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No. 118 of 2010
with
Original Application No. 184 of 2010

Monday....., this the 17th day of May, 2010

CORAM:

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

1. O.A. NO. 118 OF 2010 :

K..K.Remani
Additional Secretary to Government
Home Department, Government Secretariat
Thiruvananthapuram
Residing at House No.55
Kawdiar Garden (B Site) Kawdiar
Thiruvananthapuram ... Applicant

(By Advocate Mr. N.N.Sugunapalan, Senior with Mr.S.Sujin)

versus

1. The Chief Secretary
Government of Kerala
Government Secretariat
Thiruvananthapuram
2. The Additional Chief Secretary
In-charge of Devaswom,
Government Secretariat
Thiruvananthapuram
3. Union Public Service Commission
Dholpur House
New Delhi
4. The Secretary
Union Public Service Commission
Dholpur House
New Delhi
5. Union of India represented by the Secretary
Ministry of Personnel, Public Grievances & Pension
Government of India
New Delhi
6. The Chairman
Guruvayoor Devaswom
Guruvayoor, Thrissur District

7. Shri Ratheesan
Administrator
Guruvayoor Devaswom
Guruvayoor, Thrissur District
8. Shri M.Gireesh Kumar
Additional Secretary
Finance Department
Residing at Pranavam, D 86/A, Pullekkonam Lane – 2
Sasthamangalam
Thiruvananthapuram ... Respondents

(By Advocate Mr.N.K.Thankachan, GP & Mr.N.Manoj Kumar, GP (R1-2)
Advocate Mr.Thomas Mathew Nellimoottil (R3&4)
Advocate Mr.M.K.Aboobacker, SCGSC (R-5)
Advocate V.Krishna Menon (R-6)
Advocate Mr.KRB Kaimal, Senior with Mr.B.Unnikrishna Kaimal (R-7)
Advocate Mr.O.V.Radhakrishnan, Senior with Ms.Rekha Vasudevan (R-8))

2. O.A. NO. 184 OF 2010 :

Dr.P.N.Premchandran
Managing Director
Small Farmers Agree Business Consortium (S F A C)
Government of Kerala
Thiruvananthapuram – 1 ... Applicant

(By Advocate Mrs.Sumathi Dandapani, Senior with Ms.Jebi Mather)

versus

1. State of Kerala represented by the Chief Secretary
to Government
Government Secretariat
Thiruvananthapuram
2. Union Public Service Commission
Dholpur House, Shajahan Road
New Delhi
3. The Secretary
Union Public Service Commission
Dholpur House, Shajahan Road
New Delhi
4. Union of India represented by the Secretary
Ministry of Personnel, Public Grievances & Pension
Department of Personnel & Training
Government of India, New Delhi
5. Shri M.Gireesh Kumar
Additional Secretary, Government of Kerala
Finance Department
Government Secretariat
Thiruvananthapuram

6. ~~Mr.~~ Ratheesan
Deputy Development Commissioner
Now working as Project Director
District Rural Development Agency (D R D A)
Palakkad

7. Smt.K.K.Ramani
Additional Secretary
Home Department
Government Secretariat
Thiruvananthapuram

... Respondents

(By Advocate Mr.N.K.Thankachan, GP & Mr.N.Manoj Kumar, GP (R1)
Advocate Mr.Thomas Mathew Nellimoottil (R2&3)
Advocate Mr.MVS Nampoothiry, ACGSC (R-4)
Advocate Mr.O.V.Radhakrishnan, Senior with Ms.Rekha vasudevan (R-5)
Advocate Mr.KRB Kaimal, Senior with Mr.B.Unnikrishna Kaimal (R-6)
Advocate Mr.N.N.Sugunapalan, Senior with Mr.S.Sujin (R-7)

The Original Applications having been heard on 09.04.2010, the Tribunal on 17.05.2010 delivered the following:

ORDER

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

The Original Applications No. 118/10 and No.184/10 were heard together as the main and common prayer of the applicants therein is for their inclusion in the select list for filling up two vacancies for appointment to the IAS cadre of Kerala by selection of non-SCS officers for the year 2009. While the applicant in OA No. 118/10 challenges the inclusion of Shri Ratheesan (Respondent No.6) only in the zone of consideration and inclusion in the select list for 2009, the applicant in OA No. 184/10 challenges the inclusion of two more over and above Shri Ratheesan in the zone of consideration and inclusion of two of them including Shri Ratheesan in the said select list.

2. The fact that the select list for 2009 yet to be notified, does not contain the names of the applicants is not disputed by the parties and, therefore, it is taken as an admitted fact. An interim stay order dated

09.03.10 for maintaining status quo in regard to the select list operates until further orders.

3. To state the facts of the case briefly, the Government of India notified two vacancies for appointment to the IAS cadre of Kerala by selection of non-SCS officers for the year 2009 vide letter dated 8.5.2009. The Secretaries to the Government of Kerala nominated 24 non-SCS officers out of which 10 officers were shortlisted by the Chief Secretary for inclusion in the zone of consideration for selection to IAS cadre based on the guidelines dated 1.4.2009. The applicants and the party respondents in both of the OAs are in the zone of consideration. The select list under preparation consisting of two officers other than the applicants is cleared by the Government of Kerala and Government of India and is going to be approved by the UPSC shortly. If the party respondents are excluded from the select list for 2009 on the ground of their wrong inclusion in the zone of consideration, then the applicants, can be included in the said select list. Hence the OAs.

4. The OA No. 184/10 is taken up as the main OA as it is having a wider canvass. The applicant herein is an officer of the Agriculture Department of Government of Kerala with 28 years of meritorious service. He stood first in the rank list based on the marks awarded to the nominated officers. He was suspended from service on 26.09.2009 on an alleged frivolous complaint. He was reinstated in service on the direction of Hon'ble High Court of Kerala in W.P.(C) No. 30752/2009 and was posted as Managing Director, Small Farmers Agri. Business Consortium, in the Department of Agriculture, Government of Kerala on 26.11.2009. Meanwhile, the Chief Secretary had sent a list of 10 officers in the zone of consideration, excluding the applicant, to the Union Public Service Commission on 24.11.2009. As per interim order of the Hon'ble High Court dated 30.11.2009, his name was also included as

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additional 11th person. It took about 3 months for the applicant to extract the information about the illegality in preparing the rank list for shortlisting officers in the zone of consideration from a recalcitrant authority. The applicant contended that the non-scrutiny of the data to substantiate his specific contribution in formulating and implementing new initiatives and programmes of the department and non awarding of marks under 5(ii) of Annexure A4 guidelines is highly mala fide. Even then he secured 84.2 marks, the highest awarded to the nominated officers. The applicant further contended that had Shri M. Gireesh Kumar(R5) and Smt. K.K. Ramani (R7) not been wrongly given 10 marks under 'specific contribution', they would have ranked 16 and 18 respectively in the rank list and would have been out of the zone of consideration. The 6th respondent Shri V. Ratheesan is not having 8 years of continuous service under the State Government as on 1.1.2009 as his service as Administrator, Guruvayoor Devaswom from 19.1.2007 to 1.1.2009 / 29.01.2010 and Secretary of District Tourism Promotion Council, Kannur from 1.12.1999 to 31.07.2000 are not coming within the State Government service. If the 10 marks awarded for 'good service entry' in complete derogation of para 5(iii) of Annexure A-4 guidelines is deleted, he would rank No. 17 and thus, would be out of the zone of consideration like R5 and R7. R5 to 7 are liable to lose the chance of being considered for the selection to the IAS cadre of Kerala for the year 2009 and the applicant is liable to be placed at No.1 in the list of candidates in the zone of consideration. For this reason, the OA should be allowed as prayed for.

5. In the reply statement for and on behalf of respondent No.1, State of Kerala represented by the Chief Secretary, it was submitted that it had meticulously followed Annexure A4 guidelines in shortlisting the officers to be included in the zone of consideration. Initially, the applicant was in the short list. Subsequently, he was placed under suspension on 26.09.2009. An

officer under suspension cannot be included in the zone of consideration. Therefore, his name was excluded from the short list. However, as per direction of Hon'ble High Court in W.P.(C) No. 33375/2009, the applicant's name was included as 11th candidate. It was further submitted that respondents No. 5 to 7 were given 10 marks under the category of 'specific contribution' and 11 applicants including the applicant were given 10 marks for good service entry respectively under 5(ii) and 5(iii) of the Annexure A4 guidelines. It is claimed that it is the prerogative of the 1st respondent to interpret and award marks to the various items as specified in the guidelines. Whether a nominee is to be awarded marks to the item 'specific contribution' based on the evaluation and finding made by the Minister of the Department is a matter coming within its purview. If the applicant had any dispute as to the inclusion of the respondents No. 5 to 7 in the zone of consideration, he ought to have moved the appropriate forum prior to the interview conducted by the Selection Committee. In respect of Shri Gireesh Kumar, it is the nomination dated 29.06.2009 that was considered. The nomination dated 11.5.2009 received not in response to the letter dated 15.06.2009 has not been considered. It was submitted that the State Government does not observe any priority/ranking in sending the list of eligible candidates once they are short listed. It had never prepared any rank list as contended by the applicant but only a zone of consideration in which the applicant was also included later. Shri Ratheesan while working as Administrator, Guruvayoor Devaswom on deputation was included in the zone of consideration in 2008 and 2009. The Administrator of Guruvayoor Devaswom is a State Government Officer not below the rank of Deputy Collector appointed by the Government and controlled by Guruvayoor Devaswom Commissioner who is in the rank of Secretary to Government of Kerala. The Additional Chief Secretary (Home and Vigilance) in charge of Devaswom is fully competent to nominate Shri Ratheesan.

6. In the reply filed on behalf of the respondents 2 and 3, it was submitted that shortlisting of non-SCS officers for inclusion in the list of eligible officers for consideration by the Selection Committee and preparation of suitable guidelines for nomination of non-SCS officers by the respective departments come under the purview of the State Government. The select list is made in accordance with the provisions of the selection regulations and on the basis of the marks awarded to each of the officers on the basis of the assessment of their service records and interview as per the guidelines of the UPSC. The marks obtained by the eligible officers on the basis of the guidelines of the Government of Kerala have no relevance as far as the Selection Committee is concerned. The State Government has clarified that the 6th respondent then holding the post of Administrator, Guruvayoor Devaswom, was holding the post of Deputy Development Commissioner which is the promotion post of Assistant Development Commissioner which is equivalent in status and responsibility to the post of Deputy Collector in Kerala State Civil Service vide letter dated 21.11.2009. Accordingly, his name was considered in the list of eligible officers for induction into the IAS of Kerala cadre for the select list year 2009 from non-SCS quota.

7. In the reply statement filed by the respondent No.5, it was stated that in Annexure A3 there is a clear stipulation that an officer who is facing departmental enquiry and who is having adverse remarks or doubtful integrity cannot unequivocally said to be of outstanding merit and ability. The Selection Committee determines the suitability of the persons to be included in the select list for appointment to the service by scrutiny of service records and personal interview in accordance with the IAS (Appointment by Selection) Regulations, 1997, and the guidelines issued by the UPSC. The

applicant has not mentioned about the enquiry proceedings commenced against him by service of memo of charges dated 12.01.2010 in the OA No. 184/10 filed on 08.03.2010. What is relevant for making comparative evaluation of merit and suitability for appointment to the IAS is the service records reflected in the individual annual confidential reports and not the credentials, testimonials and good service entry. The Annexure A4 revised guidelines are relevant and operative for inclusion in the zone of consideration. It cannot in any manner influence the selection to be made independently by the selection committee. It is settled legal position that the recommendation of the selection committee cannot be challenged except on the ground of malafides or serious violation of statutory rules. It is equally well settled that a court cannot sit as an appellate authority to examine the recommendations of the selection committee like a court of appeal. The respondent relied on the decision of the Apex Court in *M.V. Thimmayya vs. UPSC* in this regard. The names of the officers in the zone of consideration are not arranged in the order of merit or suitability. The applicant is estopped to question the inclusion of the respondents No. 5 to 7 in the zone of consideration after having subjected himself to the selection process. It was submitted that the marks secured in terms of Annexure A4 while preparing the proposal list is irrelevant, immaterial and inconsequential after the persons are included in the zone of consideration. Therefore, even if the applicant is awarded 10 marks under the head 'specific contribution', he would not stand to gain as he has already been placed in the zone of consideration. The 5th respondent was nominated as per the note dated 27.06.2009 of the Principal Secretary (Finance) after 15.06.2009 (the date of calling of nominations by the Chief Secretary). The Hon'ble Minister for Finance has issued a letter of appreciation dated 17.05.2009 mainly referring to the specific contributions made by the 5th respondent. Therefore, awarding of 10 marks to him under the head 'specific contribution' is totally



justified. It was submitted that the applicant cannot sit in appeal over the selection made by the Selection Committee and claim that he is entitled to get the first position in the select list. The contention raised by the applicant that in the case of 5th respondent there were no new initiatives and programmes on his side and no comments were recorded by the reporting/reviewing officers on his self assessment, is without any basis as can be seen from his annual confidential reports for the preceding 5 years of the year of selection.

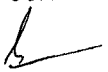
8. In the reply statement filed by the respondent No. 6, it was submitted that what is relevant in making the select list is the relative merit of the candidates assessed by the Selection Committee based on service records and personal interview and not the ranking of the candidate in the list forwarded to the Selection Committee. The applicant has not suffered any disadvantage because he was placed as the last candidate in the panel forwarded by the State Government to the Selection Committee. The 6th respondent was holding the substantive post of Deputy Development Commissioner in the Rural Development Department, but working on deputation as Administrator of Guruvayoor Devaswom, when he was nominated. He had regular continuous service as Assistant Development Commissioner from 09.07.1996 to 26.02.2005 and as Deputy Development Commissioner from 26.02.2005 onwards. The post of Assistant Development Commissioner carries the same pay scale as that of the Deputy Collector. The level of responsibilities and nature of duties attached to these two posts are comparable. Therefore, an officer having continuous service of 8 years as Assistant Development Commissioner is eligible to be considered for selection to the I.A.S. The 6th respondent was sent on deputation by the Government in exercise of its statutory powers under Rule 139 to 159 in Chapter XI Part-I K.S.R. Therefore, the contention that an officer of the



Government holding a post equivalent to, or above the rank of a Deputy Collector while serving as Administrator of Guruvayoor Devaswom cannot be treated as serving in connection with the affairs of the State Government, is legally untenable. Even after excluding his period of deputation, he has more than 8 years continuous service as Assistant Commissioner/Deputy Commissioner. He was appointed by the Government on deputation as Secretary of District Tourism Promotion Council, Kannur, from 1.12.1999 to 31.07.2000. The District Tourism Promotion Council is a Society registered with the District Collector as the Chairman. Therefore, the above deputation is also in connection with the affairs of the State. The contention that the declaration of equivalence of the post of Assistant Development Commissioner to the post of Deputy Collector is having only prospective effect, is without any merit. The declaration of equivalence is nothing but an act to make all know the pre-existing fact of equivalence. The 6th respondent is not claiming any mark for 'good service entry'. But he had claimed marks for 'specific contribution' made by him in formulating and implementing new initiatives.

9. In the reply statement filed by the 7th respondent, it was submitted that she was awarded 10 marks for the 'specific contribution' made by her in different fields like, developmental activities, welfare activities, plan implementation, functioning of statutory institutions, empowerment of women and child, women's development issues, issues relating to physically handicapped persons and so on. In view of the above facts awarding of 10 marks to her for specific contribution is fully justified.

10. In the rejoinder to the reply of the 1st respondent, it was submitted by the applicant that he had been suspended for an alleged fabricated report of finance wing made in 2008. In the certificate issued by the Chief Secretary



dated 22.12.2009, it was stated that no disciplinary case was pending against the applicant. The respondents No. 5 to 7 had not made any self assessment regarding their new initiatives and the same was not considered with specific additional comments by the reporting/reviewing officers. Actually 13 persons were given 10 marks for 'good service entry' and not 11 officers as stated by the respondents. Annexure A23 mark sheet issued to the applicant on 19.02.2010 shows that Shri Ratheesan, 6th respondent, was awarded 10 marks under 'good service entry'. It was not mentioned when this entry of 10 marks was shown under 'specific contribution'. The applicant had applied for all the documents pertaining to the shortlisting under the Right to Information Act on 25.11.2009. but he was supplied the same only on 19.02.2010 after approaching appellate authorities. This deprived the applicant of the chance of challenging the inclusion of the names of the respondents No. 5 to 7 in the zone of consideration in time. The averment that it is the prerogative of the 1st respondent to interpret and award marks to the items in the guidelines is misleading and defeating the very purpose of issuing the guidelines which was meant to overcome the inconsistency noticed in the earlier method of shortlisting. The guidelines do not provide any provision for considering the letter of appreciation of a Minister for award of marks under 'special contribution'. The applicant challenges the statement of the 1st respondent/State Government that it does not observe any priority/ranking in sending the list of eligible candidates once they are short listed. He submits that the caption of Annexure A5 itself is "Ranked list" of 10 persons short listed from 24 nominees solely based on their marks. The short listing was on the basis of the rank list. It was on the basis of the rank list only that the nominees were called for interview by the committee. What is the mode for short listing 10 persons out of 24 persons is not pinpointed.

11. In the rejoinder to the reply filed by the respondents 2 and 3, the

applicant submits that since only 10 persons can be included in the zone of consideration, they were included in the zone of consideration on the basis of the marks obtained by them. The service records as per U.P.S.C. guidelines carry a maximum of 50 marks. 50 marks are distributed to the A.C.R's for the 5 preceding years. As Smt. Remani and Shri Ratheesan could not get full marks for the service records in the selection made last year, granting of 50 marks for the service records this year is illegal.

12. In the rejoinder to the reply of the 5th respondent, it was stated by the applicant that the memo of charges dated 12.01.2009 had been sent to the applicant after the selection procedure. The core issue that has to be settled at the threshold is whether respondents 5 to 7 are eligible to be allowed to enter the arena of zone of consideration. If Annexure A4 guidelines were strictly followed, respondents 5 to 7 would not come within the zone of consideration. It was clarified that the applicant is not challenging the selection conducted by the Selection Committee. The applicant is challenging the shortlisting of the candidates by the State Government only. The question of estoppel does not arise because soon after getting the copies of the relevant records, before the completion of the selection procedure, the applicant has approached this Tribunal.

13. In the rejoinder to the reply filed by the 6th respondent, it was submitted by the applicant that the names of the officers in the shortlist are arranged from 1 to 10 on the basis of the total marks obtained by each candidate as only 10 persons could be proposed for consideration by the Committee. The 10th person namely, Mr. Unnikrishnan, has to be arrayed as 11th person and should have been excluded from the zone of consideration. The applicant had submitted self assessment relating to the contributions he had made for the entire 5 years prior to 1.1.2009. His self assessment was considered by

the reporting/reviewing officers and recorded their specific comments. While the applicant had not been awarded 10 marks under para 5(ii) of the guidelines, he specifically sought details pertaining to the self assessment of the officers in the zone of consideration including the 6th respondent under the Right to Information Act. The same had not been supplied and the applicant believed that as far as the 6th respondent is concerned, he had not made any self assessment and it had not been duly considered by the respective reporting/reviewing officers. Yet he has been awarded 10 marks under para 5(ii) which is unsustainable. In the case of the applicant, the post of Assistant Director (Soil Survey) which he was holding, was equated to the post of Deputy Collector vide letter dated 17.12.2009. In the case of the 6th respondent, no such declaration was done by the Government. Since the post which the 6th respondent was holding had not been equated to the post of Deputy Collector, inclusion of his name in the zone of consideration is patently wrong. The office of the Chief Secretary had processed the files in a very careless and callous manner. It had been very casually stated that the 6th respondent had been awarded 10 marks under 'good service entry' by a typographical error. In order to bring him in the zone of consideration, he had been generously awarded 10 marks under 5 (ii) of Annexure A4 though there were no new initiatives and programmes to his credit.

14. In the rejoinder to the reply filed by the 7th respondent, the applicant submits that Smt. Remani secured 32 marks for the 4 ACRs for the years from 2004 to 2007. Even if for the confidential report in 2008 10 marks are added, the maximum marks she could secure for confidential reports is 42. Whereas it is understood that the U.P.S.C. has given 50 marks in the 2009 selection for the confidential records, which is patently illegal. In the assessment of the applicant, he is entitled to be placed above the

respondents 6 and 7 and to be selected for the IAS cadre of Kerala for the year 2009 if the U.P.S.C. correctly awarded the marks for the confidential reports. Therefore, the O.A. should be allowed.

15. As regards O.A No. 118/10, the applicant in this OA is holding the the post of Additional Secretary, Home Department in the State Government service. She has got 18 years unblemished and meritorious service as Additional Secretary. She has been included in the panel of consideration for selection to the IAS cadre of Kerala for many years on the basis of her outstanding service.

16. The applicant challenges the inclusion of Shri Ratheesan, the 7th respondent herein, in the zone of consideration and in the select list on the following grounds:

(i) The 7th respondent has been awarded 10 marks for 'good service entry'. But he does not have any good service entry in any specific Government order explicitly stating the reasons for awarding the good service entry. Therefore, the wrongly awarded 10 marks should be deleted from his account while considering his candidature for inclusion in the zone of consideration as it is against the condition No. 5 (iii) of the guidelines of the State Government.

(ii) The appointment of the 7th respondent on deputation in Guruvayoor Devaswom cannot be treated as service in connection with the affairs of the Government. As the service rendered by him as the Administrator of Guruvayoor Devaswom cannot be taken as a service in the Government, he should not have been considered for inclusion in the zone of consideration for selection to the IAS cadre. The equalization order dated 21.11.2009 equating the post of Assistant Development Commissioner with the post of Deputy Collector is irrelevant as it has only prospective applicability.

(iii) The 7th respondent was nominated by the Additional Chief Secretary

of the Devaswom Department who is not the concerned Secretary of the his parent department. His nomination ought to have been made by the Secretary in-charge of Rural Development Department. In that Department, there are many officers who are senior to him. Therefore, his nomination is irregular.

- (iv) The applicant being a Scheduled Tribe is entitled to be included in the select list as a reserved candidate because reservation policy is applicable for appointment by selection to the IAS cadre.

17. In the reply filed for and on behalf of the respondent No.1 and 2, it was submitted that the deputation of State Government employees to PSUs/Autonomous bodies and even private bodies is regulated by Rule 144 of the KSRs where specific terms and conditions are formulated. The deputation will not deprive an officer of any of his service benefits like seniority, promotion and so on. Therefore, it cannot be said that an officer on deputation is not serving in the Government in connection with the affairs of the State. Irrespective of his deputation as Administrator, Guruvayoor Devaswom, respondent No. 7 is eligible to be considered for inclusion in the zone of consideration as he has been continuously holding a post equivalent to that of Deputy Collector since 1996 and has completed 8 years service in the post of Assistant Development Commissioner. The equalization order is only a clarification and no fresh declaration has been made by the official respondent prospectively or retrospectively in favour of the 7th respondent. The officers are nominated for selection to the IAS not on the basis of seniority but on the basis of outstanding merit and ability. The 7th respondent was awarded 10 marks for specific contribution on the basis of the following documents :

- (i) Letter of recognition
- (ii) Good service entry awarded by the DC, Kozhikode
- (iii) Letter of commendation issued by the DC, Kozhikode

(iv) Letter of appreciation issued by the DC, Kozhikode

(v) Good service entry awarded by the DC, Kannur

The 10 marks for the 'specific contribution' was wrongly entered in the column under 'good service entry' due to a typographical error which was later rectified. The applicant was also awarded 10 marks under the category of 'specific contribution' on the basis of a letter of appreciation by the Minister (Home and Vigilance). The day-to-day administration of the Guruvayoor temple is carried out by the Administrator who is a State Government Officer not below the rank of a Deputy Collector appointed by the Government and is controlled by Guruvayoor Devaswom Commissioner, who is an officer in the rank of a Government Secretary. Therefore, there is no irregularity in forwarding the nomination of the 7th respondent by the 2nd respondent. Moreover, the 7th respondent alongwith the applicant was included in the zone of consideration for the previous year also. The ACRs of the 7th respondent for the period from 1.1.2007 to 31.12.2007 and from 1.1.2008 to 31.12.2008 is reported by the Commissioner, Guruvayoor Devaswom and reviewed by the Additional Chief Secretary, in charge of Devaswom. Regarding the prayer for consideration on the basis of reservation, it was submitted that for induction to the IAS, there was no provision for reservation in the IAS (Appointment by Selection) Regulations, 1997. As the OA being devoid of any merit deserves dismissal.

18. In the reply statement filed on behalf of the respondent Nos. 2 and 3, it was submitted that shortlisting of non-SCS officers for inclusion in the list of eligible candidates for consideration by the selection committee and preparation of suitable guidelines for nomination of non-SCS officers by the respective departments come under the exclusive purview of the State Government. As the State Government had clarified that the 7th respondent

then holding the post of Administrator, Guruvayoor Devaswom, on deputation was holding the post of Deputy Development Commissioner, which is the promotion post of Assistant Development Commissioner and equated in status and responsibility to the post of Deputy Collector, his name was considered in the list of eligible officers for induction into the IAS of Kerala cadre in the select list year 2009. The applicant was considered for inclusion in the select list of 2004, 2006, 2007 and 2008, but she could not outperform the other candidates on merit for inclusion in the select list. The IAS (Appointment by Selection) Regulations, 1997, do not provide for reservation under any category namely, caste, tribe, creed, community or economic status. The selections are carried out on the basis of overall relative assessment of the service records and the performance of the candidates in the interview. Therefore, the contention of the applicant for reservation for induction into the IAS is baseless and devoid of any merit.

19. In the reply statement filed by the respondent No.7, it was submitted that during the period of deputation he was liable to be treated as belonging to the cadre from which he was deputed and was entitled for promotion in the parent service as if he was continuing in the said service. As per Section 14 of the Guruvayoor Devaswom Act, it is obligatory on the part of the Government to furnish a panel of three government officers not below the rank of Deputy Collector for appointment as Administrator. In view of the factual and legal position, the contention of the applicant that he was not eligible for consideration for selection to the IAS cadre, while on deputation, is unsustainable. The nomination was made because of his service for more than 8 years as Assistant Commissioner/Deputy Commissioner even excluding his period of deputation. As per the guidelines, nominations of the officers fulfilling the conditions for selection, have to be obtained from the concerned Secretaries/Principal Secretaries under whom they are working at

present. The equivalence order is effective from the date of creation of the post of Assistant development Commissioners. It is nothing but an act to make all know the pre-existing fact of equivalence. The U.P.S.C. had sought the clarification vide letter dated 02.12.2009, but the equivalence order was issued on 29.11.2009, earlier to the letter of the U.P.S.C. The appointment by selection to the IAS is not a promotion based on seniority but a selection based on outstanding merit and ability and other criteria. The respondent No.7 had not claimed any marks for 'good service entry'. He had claimed award of marks for 'specific contribution' under para 5(ii) of the guidelines. There is no communal reservation for appointment by selection from non-SCS. As there is no merit in the O.A., it should be dismissed.

20. In his reply statement the 8th respondent who got impleaded himself, as he would be adversely affected in case the OA No.118/10 is allowed submitted that the applicant was not found more meritorious than himself to be included in the select list by the Selection Committee. After having submitted herself to the selection she cannot now turn round and challenge the selection process. The selection was not made on the basis of the parameters of the guidelines but as per the regulations.

21. We have heard Mr.N.N.Sugunapalan, Senior, learned counsel for applicant and learned counsel Mr.N.K.Thankachan, GP & Mr.N.Manoj Kumar, GP(R1-2), Mr. Thomas Mathew Nellimoottil (R3&4), Mr.M.K.Aboobacker, ACGSC (R-5), Mr. V.Krishna Menon (R-6), Mr. KRB Kaimal, Senior (R-7) and Mr.O.V.Radhakrishnan, Senior (R-8) in OA 118/10 and Mrs.Sumathi Dandapani, Senior, learned counsel for applicant and learned counsel Mr.N.K.Thankachan, GP & Mr.N.Manoj Kumar, GP (R1), Mr.Thomas Mathew Nellimoottil (R2&3), Mr.MVS Nampoothiry, ACGSC (R-4), Mr.O.V. Radhakrishnan, Senior (R-5), Mr.KRB Kaimal, Senior (R-6)

and Mr.N.N.Sugunapalan, Senior (R-7) in OA 184/10 and also perused the documents.

22. The Regulation No.4 regarding preparation of a list of suitable officers as laid down in the IAS (Appointment by Selection) Regulations, 1997 is extracted as under :

"4. State Government to send proposals for consideration of the committee :

(1) The state Government shall consider the case of a person not belonging to the SCS but serving in connection with the affairs of the State who,

i) is of outstanding merit and ability; and

ii) holds a gazetted post in a substantive capacity; and

iii) has completed not less than 8 years of continuous service under the State Government on the 1st day of January of the year in which his case is being considered in any post which has been declared equivalent to the post of Deputy Collector in the SCS and propose the person for consideration of the committee. The number of person proposed for consideration of the Committee shall not exceed five times the number of vacancies proposed to be filled during the year.

Provided that the State Government shall not consider the case of a person who has attained the age of 54 years on the 1st day of the January of the year in which the decision is taken to propose the names for the consideration of the Committee.

Provided also that the State Government shall not consider the case of a person who, having been included in an earlier select list, has not been appointed by the Central Government in accordance with the provisions of Regulation 9 of these Regulations."

23. The officers not belonging to the State Civil Service but serving in connection with the affairs of the State and are of outstanding merit and ability and holding a gazetted post in a substantive capacity having completed not less than 8 years of continuous service under the State Government as on the 1st day of January of the year in which selection is made in any post declared equivalent to the post of Deputy Collector in the

State Civil Service and not having attained the age of 54 years on the 1st day of the January of the year in which the decision is taken to propose their names are eligible to be included in the list sent by the State Government for consideration of the Selection Committee. The number of persons proposed by the State Government for consideration of the Committee should not exceed five times the number of vacancies.

24. The regulations do not direct what the State Government should do in case there are more eligible persons for consideration than five times the number of vacancies. The State Government can devise its own method of shortlisting of officers for inclusion in the proposal or zone of consideration. Shortlisting, as and when necessary, is left to the wisdom or discretion of the State Government. Shortlisting is not a part and parcel of the process of selection under the regulations. It is a device of the State Government to limit the number of eligible persons to be proposed within the maximum limit permissible under the regulations. But the eligibility of the persons is to be determined in accordance with the regulations.

25. In order to shortlist the eligible officers for inclusion in the zone of consideration the Government of Kerala had issued revised guidelines vide Government order dated 01.04.2009. The said guidelines are extracted as under :

"1. Nomination of officers fulfilling the conditions for selection is to be obtained from concerned Secretaries/ Principal Secretaries under whom they are working at present .

2. The performance of the officers nominated is to be assessed based on their completed Confidential Report for the last 5 years.

3. If Confidential Reports are not complete, a certificate stating reasons for the same is to be furnished by the recommending officer.

4. In cases where two officers are of more or less equal

performance, the Confidential Reports for the past periods may also be examined.

5. A total of 100 marks is fixed for the various performances and the marks are distributed covering the following aspects:

(i) Maximum of 70 marks will be set apart for the performance appraisals. Each of the performance appraisals should be examined as to whether the reporting/reviewing officers have carefully considered the performance of the officer and whether the number of "A" Grades have been properly substantiated. For the purpose of computation of marks, "A" Grade will be awarded five marks and "B" Grade will be awarded four marks. In the instances where the reporting officer has not substantiated the reasons for the number "A" Grades there is no justification to consider such "A" Grade as superior to the "B" Grade and hence, in such a performance appraisal report both the "A" and "B" Grades may be given four marks each. This exercise is, to be done for each of the performance appraisal reports for the total period under consideration and the average of the marks in respect of performance appraisals of the nominated officer should be taken for the final reckoning.

(ii) Maximum of 10 marks will be awarded for any specific contribution made by the officer in formulating implementing new initiatives and programmes of the department. For making an assessment on this aspect one has to rely on the objectivity with which the self assessment has been made by the officer under consideration read together with the specific additional comments recorded by the reporting/reviewing officers in their assessment. In the instances where claims made by the nominated officer in the self appraisal has not been substantiated through the. Comments of the reporting/reviewing officer the same need not be considered for the purpose of awarding these marks.

(iii) Maximum of 10 marks will be awarded for any good service entry awarded by the Government. For this purpose, only good service entry awarded by the Government through specific Government order explicitly stating the reasons for the award of good service entry should be considered. Any other commendations given by the Heads of Departments for the officers should not be considered for the purpose of awarding these marks under this category.

(iv) Maximum of 10 marks will be awarded for the awards and other special distinctions earned by the nominated officer at the State Level or at the National Level for excellence in public administration.

6. Punishments, if any awarded in the entire career of the officer will be counted as disqualification.

7. The moderation envisaged in the Government order for



the maintenance of the Confidential Report is dispensed with in the case of consideration for IAS.

8. The reporting officers should strictly adhere to the guidelines while evaluating the performance appraisal reports so as to ensure maximum objectivity in the process.

9. Chief Secretary will select suitable officers based on the above Guidelines for inclusion in the zone of consideration for selection to IAS from among the nominations received from the Secretaries/Principal Secretaries."

26. The nomination is to be made by the Secretary under whom the officer is working at present. The last 5 years' ACRs are to be assessed. 70 marks are assigned for performance appraisal, 10 marks each are assigned for specific contribution of the officer, for good service entry and for awards and other distinctions. The above guidelines were issued to overcome certain inconsistencies noticed in the procedure followed earlier. The challenge raised against the shortlisting is based on paras 5(ii) for 'specific contribution' and 5(iii) for 'good service entry' as far as the guidelines are concerned.

27. As per IAS (Appointment by Selection) Regulations, 1997, for appointment to the IAS cadre of Kerala in the 2 vacancies for 2009, from 24 nominated officers, the State Government has to shortlist maximum 10 eligible officers in the zone of consideration from which the Selection Committee has to prepare a select list of two suitable officers. Shortlisting of eligible officers for inclusion in the zone of consideration falls within the exclusive domain of the State Government.

28. It is contended that Shri Ratheesan has not completed 8 years of continuous service under the State Government as on 1.1.2009 in a post declared equivalent to the post of Deputy Collector in Kerala Government Service as per as per 4(1) (iii) of Regulations, 1997 and that he was not serving in connection with the affairs of the State as on 01.01.2009.

29. Shri Ratheesan was promoted on 09.11.1996 as Assistant Development Commissioner, a post which is equated with the post of Deputy Collector by order dated 21.11.2009. Shri Ratheesan was promoted from the post of Assistant Development Commissioner to the post of Deputy Development Commissioner on 10.02.2005. The post of Deputy Development Commissioner being the promotional post of Assistant Development Commissioner definitely ranks higher than the post of Deputy Collector. Thus, from 09.07.1996 to 01.01.2009, Shri Ratheesan has more than 12 years service in a post equivalent to or higher than the post of Deputy Collector. He was on deputation to the post of Secretary, District Tourism Promotion Council, Kannur, from 01.12.1999 to 31.07.2000 and to Guruvayoor Devaswom from 19.01.2007 to 29.01.2009. The total period of deputation as on 01.01.2009 is less than 3 years (2 years and 8 months in two spells). The deputation does not constitute a break in service. Instead, it is incidental to Government service. Rule 143 of Part-1 K.S.R. reads as follows :

"An officer transferred to foreign service shall remain in the cadre in which he was included in a substantive or officiating capacity immediately before his transfer and may be given such substantive or officiating promotions in those cadres as the authority competent to order promotion may decide".

The period of deputation is to be treated as belonging to the cadre from which an officer is deputed. His salary, promotion, continuity in service and other service benefits are protected while on deputation. Moreover, Shri Ratheesan was considered for selection in 2008 when also he was on deputation to Guruvayoor Devaswom. It is sheer common sense that the decision of the State Government, the competent authority, to consider service on deputation as service in connection with the affairs of the State for the purpose of the regulations 97 is conclusive and final. It cannot be challenged because it does not violate any rules in this regard nor the right of

the applicants for consideration for induction into the IAS is adversely affected. Therefore, the argument that Shri Ratheesan has not completed 8 years continuous service in the State Government as on 01.01.2009 does not hold good.

30. Shri Ratheesan was deputed by the State Government in accordance with the rules to serve in connection with the affairs of the State in posts outside his cadre, but under the control, supervision and guidance of the officers of the State Government. Promotion of tourism as well as administration of the temporal matters in Guruvayoor Devaswom under the Guruvayoor Devaswom Act, 1978 are matters pertaining to the affairs of the State. Although the Devaswom committee enjoys considerable autonomy in running the day to day affairs of the Devaswom, the State Government has a big role to play in accordance with the various provisions in the Act like Section 33, 14 and so on.

31. By order dated 21.11.2009, well before the UPSC made a query on the issue of equivalence on 02.12.2009, the post of Assistant Development Commissioner was declared equal or above in status, duties and responsibilities to the post of Deputy Collector in Kerala Government Service. This declaration did not change the duties and responsibilities and status of the post of Assistant Development Commissioner. They remained the same before and after the declaration of equivalence or above. The declaration just shows equivalence of the post of Assistant Development Commissioner with the post of Deputy Collector or its being above the post of Deputy Collector for the purpose of preparing the select list; it does not confer a new status. Therefore, the date of order of equivalence is immaterial in the facts and circumstances of these OAs.

32. At the time of nomination, Shri Ratheesan had a lien on the post of Deputy Development Commissioner and was working under the control of Commissioner of Guruvayoor Devaswom in the Department of Devaswom under Additional Chief Secretary (Home and Vigilance). As per the guidelines, an officer has to be nominated by Additional Chief Secretary/Principal Secretary/Secretary under whom he was working. Therefore, as rightly contended by the respondents, the Additional Chief Secretary (Home and Vigilance) was competent to nominate Shri Ratheesan for consideration for inclusion in the zone of consideration. Who nominates is not important; whether officer eligible in accordance with the regulations is nominated, is what matters. As regards the senior officers in the parent department of Shri Ratheesan, as stated by the respondents, it is merit not seniority that determines the eligibility of an officer for nomination, in accordance with the Regulations, 1997. Therefore, the nomination of Shri Ratheesan was proper on all counts.

33. The contention that the applicant in OA 118/10 should be given the benefit of reservation for a place in the select list is also without the support of any provision in the regulations. The selection to the IAS is strictly based on merit and suitability in accordance with the Regulations, 1997. The policy of reservation is just not applicable to the select list under preparation in the absence of appropriate provision for the same.

34. It is contended that there should not have been 11 officers in the zone of consideration. The relevant portion limiting the size of zone of consideration is extracted from regulation 4(1)(iii) of the Regulations, 1997 as under :

"The number of persons proposed for consideration of the Committee **shall not exceed five times** the number of vacancies proposed to be filled during the year"
(emphasis supplied)

In the instant case, the number of persons in the zone of consideration shall not exceed 10, the number of vacancies being 2. The language of the provision is mandatory as far as the maximum number of persons in the zone of consideration is concerned and is akin to the language of the regulation 5 which determines the number of persons in the select list of the officers as follows :

"The Committee shall and recommend the names of the persons, **not exceeding the number of vacancies** to be filled under regulation 3, for appointment to the service."

(emphasis supplied)

If the number of vacancies is two, then the zone of consideration shall be limited to maximum 10 persons only. In the instant case, 11 persons were included in the zone of consideration. The 11th additional person is the applicant in OA No. 184/10. The official respondents justified the inclusion of the applicant as the 11th person as it is based on the interim order dated 30.11.2009 of the Hon'ble High Court of Kerala in W.P.(C) No. 33375/09.

The operative part of the said order is reproduced below:

"Accordingly, there will be an interim order directing the respondents to include the name of the petitioner at the appropriate place in the list of eligible candidates for selection to IAS (2009-10) and forward the list to the Government of India, on the production of a copy of this order.

It is made clear that this shall be subject to further orders in this Writ Petition."

The Hon'ble High Court has not directed the respondents to increase the number of persons from 10 to 11. The argument advanced by the official respondents during hearing that the 10th person has a right to be included in the zone of consideration, is not tenable because the appropriate position of the applicant in the zone of consideration is at the top in view of the marks awarded to him and because of the limit on the size of the zone of consideration, not all eligible officers have a vested right to be included in the

zone of consideration. Thus, there is a technical infringement of the regulation 4(1)(iii) in regard to limit on the size of the zone of consideration. However, we are of the view that the incorrect increase of the number of persons in the zone of consideration from 10 to 11 has not resulted in any miscarriage of justice to the applicant because his right to be considered is protected. There being no malafide established, in having 11 persons in the zone of consideration, this Tribunal has no sufficient reason to interfere in the selection process. However, we hasten to add that it would have been appropriate had the 10th person been dislodged from the shortlist and the limit on the size of zone of consideration was kept at 10 persons only in the letter and spirit of Regulation 4 (i) (iii) while implementing the order of the High Court.

35. It is further contended that it is illegal to give 50 marks each to Mr. Ratheesan and Smt. Remani for the annual confidential records as they were eligible to get a maximum marks of 42 only. They were given 40 marks only for the ACRs when they were considered last year. It is seen that for the year 2008, all the officers were given 40 marks for the ACRs. It does not mean that the officers including those in the zone of consideration in the previous years, should not be given 50 marks in the year 2009. The overall relative assessment of ACRs may vary from year to year even if some of the ACRs are the same as the assessment is made by a new Selection Committee constituted for the particular year only and the members of the Committee may change every year. The new selection Committee constituted is not bound by the assessment made by the previous Selection Committee. Therefore, the contention of illegality in awarding marks for the ACRs is without any basis. The assessment made by the applicant has no legal validity. It cannot replace the assessment by the Selection Committee in accordance with the Regulations, 1997. Moreover, it has been reiterated by

the applicant in his rejoinder to the reply of the 5th respondent that he is attacking only the shortlisting of the candidates by the State Government and not the selection conducted by the Selection Committee and that he has no contention that there is apparent error in the selection warranting interference by this Tribunal.

36. On the basis of the foregoing paras, we hold that Shri Ratheesan satisfied the eligibility conditions of serving in connection with the affairs of the State and having 8 years of continuous service in a post equivalent to the post of Deputy Collector as on 01.01.2009 as per provision 4(1) (i), (ii) and (iii) of Regulations, 1997. We do not find any illegality or malafide in determining the eligibility of the party respondents in these OAs according to the regulations for consideration for induction into the IAS cadre of Kerala for the year 2009.

37. Section 4 of the regulations, 1997, enjoins upon the State Government to propose a list of eligible officers limited to 5 times the number of vacancies. If the number of eligible officers are more than the limit, the required number of the eligible officers should be shortlisted in the zone of consideration. For the purpose of shortlisting, the Government of Kerala had issued revised guidelines as certain inconsistencies were noticed in the procedure followed earlier. The revised guidelines are applied for the first time in the year 2009.

38. It is trite to say that the guidelines should be consistent with and subservient to the regulations. The IAS (Appointment by Selection) Regulations, 1997, is applicable to all the State cadres whereas the revised guidelines of Government of Kerala are applicable to the Kerala cadre only. In our observation, the said guidelines are not consistent with the regulations

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of 1997 on the following counts:

- (i) Shortlisting is done by a single person whereas the selection is made by a committee of experts. It would be better if the shortlisting is done by a small Committee of Secretaries headed by the Chief Secretary.
- (ii) (a) Documents like letter of appreciation, good service entry and awards without a time frame of 5 years in addition to 5 years' ACRs are assessed for granting marks. The documents which arise after the cut off date of 01.01.2009 are also assessed for giving marks.
- (b) Specific contribution, good service entry and the awards are normally reflected in the ACRs. They are already assessed in the ACRs for which marks are given. The repeat assessment of the same attributes for giving 30 marks appears redundant.
- (c) The achievements by way of specific contribution, good service entry and awards outside the time frame of ACRs fall rightly under the head "Achievements in brief" in the bio data of non SCs officers. Bio data is not to be given marks as per guidelines for distribution of marks in letter No.4/14/2003-AIS dated 06.01.2006 issued by the U.P.S.C. Exclusivity of ACRs for the purpose of awarding marks after assessing service records is not maintained.
- (iii) The officers facing the disciplinary and criminal proceedings are also considered by the Selection Committee.

39. However, the challenge against the guidelines is that they are not followed strictly. The applicant in OA No. 184/10 challenges the non-consideration of the data to substantiate his specific contribution and non-awarding of marks under 5(ii) of the guidelines. The official respondents have not specifically contested the submission of the applicant. It was pointed out during hearing that he was given marks under 5 (iii) and 5 (iv). But giving marks under 5 (iii) and 5 (iv) does not justify not giving marks

under 5 (ii) if he is eligible for the same. If the Chief Secretary decided not to give marks under 5(ii) to the applicant, as he had already secured highest marks of 84.2 then, it is not according to the guidelines and it does not appear fair and just.

40. The contention of the applicants that Shri Ratheesan was wrongly awarded 10 marks for 'good service entry' is admitted as a typographical error. The mark meant for his special contribution was wrongly entered in the column for 'good service entry', which was rectified later. During hearing, it was submitted that the rectification was carried out on getting a complaint. This could be after the selection committee meeting on 31.12.2009. But no correction is made in column 8 of the document in which the marks are awarded. As per records, 10 marks were awarded to Shri Ratheesan under column 9 for 'good service entry' and not for 'specific contribution'. But the correction of typographical error said to have been made, is a mental exercise only. Taking into account the admitted typographical error, the contention of the applicant is that the respondents No. 5 to 7 were wrongly awarded 10 marks for 'specific contribution'. Because, they have not made any self assessment regarding their specific contribution and there was no substantiation of their claims by reporting/reviewing officers thereby the procedure stipulated in 5(ii) of the guidelines was not followed. This point also has not been directly answered by the 1st respondent. It was claimed by the 1st respondent that the 1st respondent had the prerogative of interpreting and awarding of marks to the various items as specified in the guidelines. This stand of the 1st respondent is not supported by the guidelines which require her to select suitable officers based on the guidelines. The prerogative of the State Government to propose suitable officers for inclusion in the zone of consideration is to be exercised in accordance with the guidelines. When guidelines are issued by the State


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Government, the prerogative of the State Government is subject to the guidelines. If the State Government had the intention of exercising its prerogative unfettered by the guidelines, it should not have issued the guidelines in the first place.

41. It is stated by the 1st respondent that the respondents No. 5 and 7 are awarded 10 marks for specific contribution on the basis of the letters of appreciation by the Ministers under whom they are working. The letter of appreciation by the Finance Minister is dated 17.05.2009 and the one by the Minister for Home, Vigilance & Tourism is dated 23.03.2009. It would have been appropriate if the cut of date of 01.01.2009 was applied to the documents for the purpose of awarding marks. Indulgent superiors may be willing to oblige officers chasing good service entries and letters of appreciation to score marks for shortlisting. Further, awarding of 10 marks for the letters of appreciation from the concerned Ministers as above is not in accordance with para 5 (ii) of the guidelines as there was no self assessment substantiated by the reporting/reviewing officers.

42. Awarding of 10 marks for 'specific contribution' to respondent No. 6 is based on 5 documents of which 2 are good service entries. 5(iii) of the guidelines is specifically meant for good service entries. The 'good service entries to the credit of respondent No.6 do not qualify for awarding marks as they are not awarded through specific Government order explicitly stating the reasons for awarding 'good service entry'. It does not seem proper to consider those good service entries which are unqualified under 5(iii), towards 'specific contribution' under 5 (ii) of the guidelines.

43. It is quite obvious that the ' Ranked List ' prepared by the respondents for shortlisting officers to be included in the zone of consideration is based on



the marks awarded to the nominated officers. The list of officers is made in the descending order of marks they got, excluding the applicant in OA No. 184/10 as he was under suspension, although he scored the highest marks. The submission by the 1st respondent that it had never prepared any rank list as contended by the applicant is found to be factually incorrect.

44. It is also not open to the respondent to contend that the applicant ought to have moved the appropriate forum prior to the interview conducted by the Selection Committee, if he had any dispute as to the inclusion of the respondents No. 5 to 7 in the zone of consideration, after denying the applicant necessary information under RTI Act thus effectively preventing him from moving the appropriate forum in time. In the facts and circumstances of the case before us, the law of estoppel does not come in the way of the applicant.

45. In the light of the above, we conclude that there is some merit in the contentions that the data for specific contribution submitted by the applicant in OA 184/10 was not considered for awarding marks and that guidelines were not strictly followed in awarding marks for specific contribution to R5 to R7. However, no malafide is established because the applicant in OA 184/10 has been given marks under good service entry and awards. As such without awarding any marks under specific contribution the applicant is having the top score of 84.2 marks. The applicant was not included in the short list for zone of consideration only because he was under suspension. The applicant in OA 118/10 is given marks under specific contribution. The view of the applicants that if the marks are awarded to them, it is fair but if the marks are awarded to the party respondents, it is malafide, is not sustainable. In our view there is lack of transparency and want of due diligence in following the guidelines. The inherent defects of 5 (ii), (iii) & (iv) of


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the guidelines in not having a time frame, cut off date, repeated assessment of some attributes etc. get magnified when the guidelines are implemented with a cavalier attitude. Guidelines for short listing should not be more complex and elaborate than the regulations for selection. No servant is greater than his master. In the instant case, the guidelines are more complex and elaborate than the regulations. They suffer from lack of conceptual clarity and practical time frame leaving the field wide open for the subjectivity of a single person imbued with a sense of prerogative. Persons in authority should conduct themselves in such a way that their actions are above suspicion and beyond reproach. The records do not bear out adherence to the procedures in the guidelines in awarding marks under specific contribution and good service entry. There is no authenticated statement of marks awarded by the Chief Secretary. The correction of typographical error said to have been carried out is not visible in the mark sheet. Transparency is conspicuous by its absence in the application of the guidelines for evaluation of the officers for the purpose of placing them in the zone of consideration. Had there been a committee for shortlisting, the process of short listing would have been properly documented with greater objectivity and transparency minimising the chance for glaring typographical error. To be safe, the State Government should have followed the U.P.S.C; consider only those documents which are considered by the U.P.S.C. for awarding marks and award marks the way it does.

46. Independent of the ACRs, it is impractical to consider the claims of specific contributions made by the officers in their self assessments extending over 2 or 3 decades with substantiation by concerned superior officers within the short time available for awarding marks to the nominated officers. Good service entry given decades ago or an award earned in the distant past may not be directly relevant to the assessment of merit of the

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nominated officers for induction into the IAS. The performance in the distant past may not be a reliable indicator of merit as the performance in the immediate past. Persons who are not so brilliant in the beginning of the career may achieve dazzling success in the latter part of their career. Conversely persons who start with a bang may end up in a whimper. Therefore, a time frame of 5 years immediately preceding the 1st year of January of the year in which selection is made makes eminent sense for a selection based on merit and suitability. The short listing of officers in the zone of consideration has taken a hit or two from the guidelines which are inconsistent with the regulations and are implemented with little transparency. Those who are already in the zone of consideration do not suffer any disadvantage on account of the deficiencies in short listing. All of them satisfy the eligibility conditions prescribed in the regulations. It does not matter whether the applicant in OA 184/10 is included in the zone of consideration on the strength of a High Court order or his name figures at the appropriate position in the short list or not, or he is given more marks or not. The material point is that the right to consideration for induction into the IAS has been protected. The paras 5 (ii) (iii) & (iv) of the guidelines and the marks on the basis of the guidelines are immaterial, inconsequential and irrelevant for selection of suitable officers on the basis of merit in accordance with the regulations. Therefore, in our considered view the deficiencies in the application of the guidelines do not constitute sufficient cause for this Tribunal to interfere with the selection process in favour of the applicants whose right to consideration has not been affected in any material way. If short listing of officers is made purely on the basis of ACRs discarding the marks awarded under 5 (ii), (iii) & (iv) the applicant in OA No. 184/10 (forgetting suspension) as well as respondents No. 5 and 6 will find a place in the zone of consideration. It is reported that respondents 5 and 6 are in the select list. Thanks to the soundness and clarity of the regulations, despite the



guidelines, merit and suitability have been the basis for preparing the select list, which is not challenged in the OAs.

47. Guidelines of Government of Kerala are not based on any law or regulation. They do not have the force of Regulations, 1997. Any infringement of guidelines does not constitute an enforceable right. The overarching supremacy of the Regulations, 1997 in determining the suitability and merit of the persons to be included in the select list cannot be whittled away by the guidelines of a State Government. When it becomes evident that more meritorious persons than the applicants have been selected by the Selection Committee after assessing the relative merits of the persons in the zone of consideration in accordance with the regulations and instructions thereunder, the applicants take the stand that, had the guidelines been strictly followed the more meritorious competitors would have been excluded from the zone of consideration making way for them to enter the select list. This stand is not acceptable because it invests the guidelines, just a device to tackle the eventuality of having more eligible officers than the permissible maximum limit, with supremacy over the regulations and because it defies the logic of selecting the most meritorious and suitable persons in accordance with the regulations. The applicants have not proved any illegality or malafide in the selection made by the Selection Committee. The shortlisting of officers to be placed in the zone of consideration even if it suffers from any lapse or non-transparency has not prejudiced the applicants whose right to consideration is not jeopardized. It is only those eligible persons shortlisted out of zone of consideration who can legitimately question the guidelines or its shoddy implementation. But they have already acquiesced in and are estopped.

48. However, in the instant case, we find as explained earlier that there is

lack of transparency in short listing officers for inclusion in the zone of consideration. It is not enough that short listing is done with fairness and objectivity. It should also be seen to be done so. Justice should not only be done but it should also be seen to be done. So long as the eligibility conditions as per the regulations are satisfied, the deficiencies in shortlisting do not make the selection illegal. When the State Government prescribes guidelines which are inconsistent with the regulations or when it fails to follow the prescribed guidelines meticulously, what is at stake is the credibility of the State Government in shortlisting the required number of eligible officers for inclusion in the zone of consideration for selection to the most prestigious civil service in the country. It is for the State Government to ensure transparency in short listing officers for inclusion in the zone of consideration with or without guidelines so that its credibility is never doubted. Transparency is the hallmark of good governance. It ill-behoves a democratic government to sacrifice transparency in selecting officers through whom only good governance can be provided.

49. In the light of the above, the **OAs are dismissed** for want of sufficient cause for this Tribunal to interfere in the process of selection. The interim stay order dated 09.03.2010 on the finalisation of the select list is hereby vacated. No order as to costs.

(Dated, the ...17th May, 2010)

K. GEORGE JOSEPH
ADMINISTRATIVE MEMBER

JUSTICE K. THANKAPPAN
JUDICIAL MEMBER