

CENTRAL ADMINISTRATIVE TRIBUNAL,
ERNAKULAM BENCH

Original Application No. 132 of 2012

Tuesday, this the 15th day of May, 2012

CORAM:

Hon'ble Mr. Justice P.R Raman, Judicial Member
Hon'ble Mr. K. George Joseph, Administrative Member

D. Madhu, aged 55 years, S/o. V. Demianose,
Superintendent of Police (Non I.P.S.) and Commandant,
Rapid Response and Resque Force, Malappuram. **Applicant**

(By Advocates – Mr. M.R. Rajendran Nair, Senior
Mr. C. Unnikrishnan)

V e r s u s

1. State of Kerala represented by the Chief Secretary to Government of Kerala, Secretariat, Thiruvananthapuram.
2. The Additional Chief Secretary to Government of Kerala, Home Department, Secretariat, Thiruvananthapuram.
3. Union of India, represented by the Secretary, Ministry of Home Affairs, New Delhi-110001.
4. Union Public Service Commission, represented by its Secretary, Shajahan Road, New Delhi – 110 001.
5. The Selection Committee for selection to IPS, represented by its Chairman, Union Public Service Commission, Shajahan Road, New Delhi 110 001.
6. The Director General of Police Kerala, Police Headquarters, Thiruvananthapuram. **Respondents**

[By Advocates – Mr. P.M. Saneer, Sr. G.P.,
Mr. P.K. Abdul Rahiman, GP (R1,2&6),
Mr. Sunil Jacob Jose, SCGSC (R3) &
Mr. Thomas Mathew Nellimoottil (R4&5)]

This application having been heard on 10.04.2012, the Tribunal on

15/05/2012 day delivered the following:



ORDER

By Hon'ble Mr. K. George Joseph, Administrative Member -

The applicant in this Original Application was provisionally included in the select list for promotion to the Indian Police Service for the year 2009. The State Government had withheld his integrity certificate for the reason that he was under suspension pending disciplinary action on prima facie charge of mis-use of official power and misconduct. Though the proceedings against the applicant were over by 28.01.2012 his integrity certificate was not forwarded to the Union Public Service Commission. Aggrieved the applicant filed this Original Application.

2. During the pendency of this Original Application the Government of Kerala issued G.O. (Rt.) No. 486/2012/Home, dated 18.2.2012 stating that in the light of the interim order of this Tribunal dated 15.2.2012 integrity certificate in respect of the applicant cannot be issued for the reasons stated therein. Challenging the said order this Original Application was amended.

The applicant claims the following reliefs:

“(i) Direct the respondents 1 & 2 to forward the integrity certificate of the applicant along with the required proposal for making the applicant's selection to IPS unconditional to UPSC so as to reach on or before 20.2.2012.

(ii) Declare that the applicant is entitled to be issued with integrity certificate and entitled to be declared his provisional selection to IPS unconditional.

(iii) Direct the respondent's 3 to 5 not to invalidate the selection of the applicant on the ground of non-receipt of integrity certificate and proposal from the State Government before the expiry of the select list of IPS for the year 2009.

(iii-a) Declare that the applicant is liable to be promoted to IPS notwithstanding the expiry of Select List once the Integrity Certificate and proposal from the State Government received the UPSC and



Union of India.

(iii-b) Direct the respondents 3 to 5 to consider the applicant for promotion to IPS notwithstanding the expiry of Select List once the Integrity Certificate and proposal from the State Government received.

(iii-c) Quash Annx. A7 G.O.

(iv) Award costs of and incidental to this application.

(v) Pass such other orders or directions as deemed just fit and necessary in the facts and circumstances of the case."

3. The applicant contended that there is no valid reason not to forward his integrity certificate to the Union Public Service Commission by the State Government. The two grounds upon which his integrity certificate was withheld are no more in existence as evident from Annexures A4 and A5 orders by which he was reinstated in service and exonerated from the alleged offences against him, respectively. All the reasons stated in Annexure A7 dated 18.2.2012 are arbitrary and unjust. The criminal cases No. 528/CR/OCW III and 529/CR/OCW III in which the applicant was included subsequently and was exonerated were in respect of transportation of river sand in lorry Nos. KL-07N-5002 and KL-02D-4204 alleged to be in violation of the provisions of Kerala Protection of River Bank and Regulation of Removal of Sand Act, 2001. As per Annexure A9 proceedings of the Sub Divisional Magistrate dated 22.2.2012, the two lorries involved in the above two crimes and the two lorries of sand were released to its proper owner finding that the transportation of the sand in those vehicles were based on valid sand pass. The departmental proceedings initiated against the applicant was also finalized fully exonerating him from the charges of tarnishing the reputation of Police as per Annexure A5




Government order. Therefore, the contention that he was involved in two criminal cases has no legs to stand. Normally, the general reputation and efficiency of an officer is assessed through Annual Confidential Reports. The ACRs of the applicant for the preceding five years were outstanding based on which he was selected and included in the select list for IPS by the selection committee comprising of the Chief Secretary, Home Secretary and the State Police Chief. Therefore, the general reputation of the applicant cannot become unbecoming suddenly. The joint oral inquiry in connection with the missing of a Pistol from the Kerala Police Academy was in respect of the applicant and another SP Mr. Bhuvanendran and one Mr. C.V. Pappachan. Mr. Bhuvanendran who was also in the zone of consideration of IPS along with the applicant was issued with integrity certificate while this joint oral inquiry was pending. Likewise Mr. C.V. Pappachan was also promoted in the meanwhile without any demur. The Kerala State Administrative Tribunal in OA No. 96 of 2012 as per Annexure A10 order has directed the Government to consider whether the applicant should be charge sheeted and his chances to be promoted to the IPS cadre should be marred and also directed to consider his representation after affording an opportunity of being heard to the applicant. Therefore, the reason of joint oral inquiry also has no legs to stand against the applicant alone.

4. The respondents in their reply statement submitted that though the applicant was reinstated in service the integrity certificate could not be issued in favour of the applicant, that the withdrawal of suspension did not alter the situation as there were departmental proceedings and criminal cases




pending against him. The integrity certificate of Shri M. Sheik Anvarudeen Sahib which was withheld along with that of the applicant as the former was the 2nd accused in criminal case No. 245/1996. The said case was filed before the Hon'ble Chief Judicial Magistrate, Alappuzha by a complainant. No authorized investigation agency had conducted investigation about the allegation and arrived at even a prima facie conclusion that he was guilty. Until proved guilty of the offence, any person named as accused in a private complaint could not be treated as a tainted accused and denied his chances for promotion or any service benefits. Shri M. Sheik Anvarudeen Sahib was not involved in any other case and in view of the recommendation of the Police Chief, Government issued his integrity certificate with reference to entries in his annual confidential report. In the case of the applicant the State Police Chief, Additional Director General of Police (Crimes) and the Additional Director General of Police (Intelligence) have reported that he is involved in some criminal cases which had been investigated into. The career of the applicant is marred by repeated allegations of serious misconduct, suspension, disciplinary actions, involvement in criminal cases and his reputation is clouded by such incidents. Therefore, the Government found that the integrity of the officer could not be certified. Final report in respect of crime Nos. 528/CR/OCW III and 529/CR/OCW III could not be filed as the applicant has obtained a stay order from the Hon'ble High Court.

5. We have heard the learned counsel for the parties, perused the records and considered the rival contentions carefully.



6. The integrity certificate in respect of the applicant has not been forwarded to the Union Public Service Commission with necessary proposal by the Government of Kerala on the ground that the applicant is involved in criminal cases Nos. 528/CR/OCW III and 529/CR/OCW III, a joint oral inquiry in connection with the missing of Pistol from Kerala Police Academy, Thrissur is pending, the general reputation of the officer is unbecoming of an officer in police force and the State Police Chief has not recommended the issuance of the said certificate. In their reply statement the respondents have submitted that until proved guilty of the offence, any person named as accused in a private complaint could not be treated as a tainted accused and denied his chances for promotion or any service benefits. If so it cannot be heard from the mouth of the respondents that until proved guilty of the offences the applicant should be denied his integrity certificate. An allegation whether made by a private party or a state agency remains an allegation until it is proved. Legally there cannot be a distinction between a private party and state party. Transportation of river sand in violation of provisions of Kerala Protection of River Bank and Regulation of Removal of Sand Act, 2001 is the subject matter of the departmental proceedings and the criminal cases Nos. 528/CR/OCW III and 529/CR/OCW III. The suspension of the applicant pending inquiry in the matter was revoked vide order dated 30.5.2011 at Annexure A4. The applicant was exonerated, from the charges based on which departmental proceedings were initiated against him, vide order dated 28.1.2012 at Annexure A5. The proceedings of the Sub Judicial Magistrate, Thrissur dated 22.2.2012 would show that Vehicle No. KL-07N-5002 and KL-02D-



4204 with sand was set free and released to proper owners by the Sub Divisional Magistrate. In the above circumstances, the applicant obtained stay from the Hon'ble High Court of Kerala against filing of the final reports in the criminal cases to protect his chance for selection to the IPS. Seeking legal remedy against heavy odds cannot be a justifiable reason for denying the applicant his integrity certificate. The fact that he has been exonerated from the charges levelled against him in the departmental inquiry has to be taken into account as also the fact that the Sub Divisional Magistrate has found nothing illegal in the transportation of river sand in question. That these happened at the nick of time to nip his chance for selection to the Indian Police Service cannot be ignored. As of now there is no criminal case pending against the applicant as no charge has been framed against him in the court. In the absence of any pending departmental or criminal proceedings against the applicant in the facts and circumstances of the case there is no reason not to sent his integrity certificate to the Union Public Service Commission.

7. As regards the joint oral inquiry in connection of the missing of Pistol from the Kerala Police Academy, Thrissur, the Kerala Administrative Tribunal, Principal Bench, Trivandrum in its order dated 30th January, 2012 in OA No. 96 of 2012 held as follows:-

“6. In this case, storing of weapons which was gone into by the Committee was found to be not done in a proper manner. The irregularities in the matter of handling small weapons was not occasioned as a result of some direct commission or omission from the part of the applicant. The irregular system was in vogue when the applicant joint the Academy and the same remained as such till he left it. For improving the system, the initiative should come from the



Director of the Academy and not from the one of the Assistant Directors like the applicant. We think these are all relevant matters which should be considered by the Government while taking a decision whether the applicant should be charge sheeted and his chances of being promoted to IPS cadre should be marred. Since the matter is pending before the Government, we are not expressing any final opinion. The second respondent shall consider Annexure A6 representation in accordance with law after affording an opportunity of being heard to the applicant. This the said respondent shall done within a period of six weeks from the date of production of a copy of the order."

The reply statement of the respondents which was filed on 9th March, 2012 makes no mention about the above disposal of OA No. 96 of 2012. It is not known what action has been taken by the respondents in compliance of the order of the Kerala State Administrative Tribunal. The said joint oral inquiry involved Mr. Bhuvanendran who was also in the zone of consideration for IPS along with the applicant and Mr. C.V. Pappachan. In spite of the pending oral inquiry, integrity certificate in respect of Mr. Bhuvanendran was forwarded to the Union Public Service Commission. Likewise Mr. C.V. Pappachan was also promoted in the meanwhile. Singling out the applicant in this manner so as not to forward his integrity certificate to the Union Public Service Commission smacks out arbitrariness and discrimination.

8. The very fact that the applicant was included in the select list for I.P.S. by a committee consisting of Chief Secretary, Home Secretary and the State Police Chief would show that he was fit to be selected for induction into the I.P.S. as he was meritorious and had a good reputation. The applicant has to his credit one meritorious service entry, 27 good service entries, commendation letters for meritorious, good and outstanding service



and 1 UN medal for UN peacekeeping service. All these prove that the applicant had an outstanding career. As late as on 11.03.2010 the Government of Kerala had certified the integrity of the applicant as under:

“Government of Kerala

Home (A) Department
Thiruvananthapuram, Dt. 11.03.2010

Integrity Certificate

The State Government certifies the integrity of Sri. D. Madhu, Superintendent of Police with reference to the entries in his Annual Confidential Reports.

Sd/-
Additional Chief Secretary to
Government
Home & Vigilance Department”

9. In the light of the above, no sufficient and just reason has been shown by the State Police Chief or the Government for not issuing integrity certificate certifying the integrity of the applicant with reference to the entries in his annual confidential reports. In the reply statement the respondents have admitted that integrity certificate of M. Sheik Anvarudeen Sahib has been issued with reference to the entries in his annual confidential reports. The respondents have not cited even one remark from the annual confidential reports of the applicant which justifies withholding of his integrity certificate. The submission of the respondents that the career of the applicant is marred by repeated allegations or serious misconducts, suspension, disciplinary action, involvement in criminal cases and that his reputation is clouded by such incidence is not substantiated at all.



10. In the light of the above discussion we are of the considered view that the interest of justice and fair play demands forwarding of the integrity certificate of the applicant along with the required proposal for making the applicant's selection to I.P.S. unconditional to the Union Public Service Commission forthwith. It is not justifiable to withhold the integrity certificate in anticipation of pendency of criminal cases. A criminal case can be said to be pending only if charges are framed by the Court against the accused. In this instant case, there is no criminal case pending against the applicant. If charges are proved against the applicant in future the law will take its own course at that time. The fact that he has been exonerated in the departmental proceedings and that the Sub Divisional Magistrate has released the river sand and the trucks have not been properly appreciated by the respondents. They also conveniently forgot that even as late as on 11.03.2010 they have certified the integrity of the applicant.

11. This Original Application has been filed on 15.2.2012. As per Section 19(4) of the Administrative Tribunals Act, 1985 any action that is taken after filing of the OA abates. Therefore, respondent No. 4, the Union Public Service Commission is required to consider the case of the applicant upon receipt of the integrity certificate from the Government of Kerala.

12. In the result, the OA is allowed as under:-

Annexure A7 dated 18.02.2012 is quashed. The respondents 1 & 2 are directed to forward the integrity certificate of the applicant along with the required proposal for making the applicant's selection to the



I.P.S. unconditional to the Union Public Service Commission forthwith at any rate within a period of two weeks from the date of receipt of a copy of this order. The Union Public Service Commission is directed to consider the case of the applicant upon receipt of the integrity certificate as if it is received within the stipulated period. No order as to costs.



(K. GEORGE JOSEPH)
ADMINISTRATIVE MEMBER



(JUSTICE P.R. RAMAN)
JUDICIAL MEMBER

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**CENTRAL ADMINISTRATIVE TRIBUNAL,
ERNAKULAM BENCH**

Contempt Petition (C) No. 01 of 2013

i n

Original Application No. 132 of 2012

Wednesday, this the 03rd day of April, 2013

CORAM:

HON'BLE MR. JUSTICE P.R RAMAN, JUDICIAL MEMBER

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

D. Madhu, aged 56 years, S/o. V. Demianose,
Retd. Superintendent of Police (Non I.P.S.) and
Commandant, Rapid Response and Rescue Force,
Malappuram.

..... **Applicant**

**(By Advocates – Mr. M.R. Rajendran Nair, Senior
Mr. C. Unnikrishnan)**

V e r s u s

1. Mr. Jose Cyriac IAS,
Chief Secretary to Government of Kerala,
Secretariat, Thiruvananthapuram.

2. Mr. A. Bhattacharya IAS,
Secretary,
Union Public Service Commission,
Shajahan Road, New Delhi – 110 001.

..... **Respondents.**

**(By Advocates Mr. Renjith, Sr. G.P for R1
Mr. Thomas Mathew Nellimoottil for R-2)**

This C.P. having been heard on 12.03.2013, the Tribunal on
03-04-13 delivered the following:

ORDER

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

O.A. No. 132/2012 filed by the applicant in this C.P was allowed as
under:

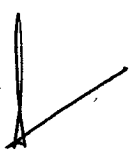


"12. In the result, the OA is allowed as under:-

Annexure A7 dated 18.02.2012 is quashed. The respondents 1 & 2 are directed to forward the integrity certificate of the applicant along with the required proposal for making the applicant's selection to the I.P.S. unconditional to the Union Public Service Commission forthwith at any rate within a period of two weeks from the date of receipt of a copy of this order. The Union Public Service Commission is directed to consider the case of the applicant upon receipt of the integrity certificate as if it is received within the stipulated period. No order as to costs. "

2. The C.P.(C) No. 100/2012 filed by the applicant was closed reserving the right of the applicant to agitate the result of the selection pursuant to Annexure A-3 by which the current status of the disciplinary proceedings and criminal proceedings pending against the applicant was forwarded to take a decision regarding his inclusion in the Select List of 2009 as unconditional and final. The 2nd respondent vide Annexure A-5 communication dated 23.08.2012 has conveyed to the 1st respondent herein that the name of the applicant could not be made unconditional in the Select List of 2009 as 02 separate charge sheets dated 13.04.2012 and 30.05.2012 have been filed by the respondent before the Judicial First Class Magistrate, Wadakkancherry.

3. The applicant submitted that the 2nd respondent has committed contempt of the order of this Tribunal in taking the above stand because he did not consider the case of the applicant upon receipt of the integrity certificate as if it was received within the stipulated period. He had considered the events that happened beyond the stipulated period thereby committing contempt of this Tribunal which is punishable under Section 12 of the Administrative Tribunals Act. The respondent No.1 also committed contempt in forwarding the current status of the disciplinary proceedings and criminal proceedings pending against the applicant which events happened

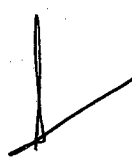


beyond the stipulated period.

4. The stand of the 1st respondent is that the State Government had forwarded the complete proposal alongwith the current status of disciplinary proceedings and criminal proceedings pending against the applicant as per the direction of the UPSC vide letter dated 02.07.2012. The State Government had informed the details of criminal cases CC No. 393/12 and 633/12 and doing so, it has not violated the order of this Tribunal dated 15.05.2012. The 2nd respondent submitted that though the integrity certificate of the applicant had been issued by the State Government, his name could not be made unconditional in the Select List of 2009 as he continues to have criminal cases pending against him. In terms of the provisions of Regulation 7(3) of the IPS (Appointment by Promotion) Regulations, 1955, if the name of an officer included in the Select List is issued with a charge sheet or a charge sheet is filed against him in a Court of law, his name in the Select List shall be deemed to be provisional. The same was conveyed to the Government of India vide letter dated 23.08.2012. It was further submitted that the 2nd respondent never acted in any way contrary to law / order of the competent Court of law or of this Tribunal.

5. We have heard learned counsel appearing for the respective parties and perused the records.

6. The contention of the applicant that the respondents have violated the order of this Tribunal dated 15.05.2012 in O.A. No. 132/12 is without substance. The direction of this Tribunal was to forward the integrity



certificate of the applicant along with the necessary material forms to the Union Public Service Commission for making selection of the applicant to the I.P.S unconditional. Making the selection unconditional is the business of the UPSC. They had considered the inclusion of the applicant in the Select List unconditional on receiving the integrity certificate which was sent to them by the 1st respondent as per the direction of this Tribunal. The 1st respondent was duty bound to inform the 2nd respondent, the details of the criminal cases filed against the applicant on 13.04.2012 and 30.05.2012. There was no direction from this Tribunal not to send such details required by the UPSC. The UPSC could not have ignored the criminal cases pending against the applicant while considering inclusion of his name in the selection of the applicant to the IPS. We do not find any wilful contumacious conduct on the part of the 1st and 2nd respondents inviting contempt proceedings against them. In fact, there is no violation of the direction given by this Tribunal in O.A. No. 132/2012. If the applicant is aggrieved by the decision of the UPSC to deem the inclusion of the applicant in the Select List of 2009 as provisional on the grounds of charge sheets dated 13.04.2012 and 30.05.2012 filed against him before the Judicial First Class Magistrate, Wadakkancherry, in terms of the provisions of Regulation 7(3) of the IPS (Appointment by Promotion) Regulations, 1955, he is at liberty to challenge the same.

7. In the result, the Contempt Petition is dismissed. No costs.

(Dated, the 03rd April, 2013)


(K. GEORGE JOSEPH)
ADMINISTRATIVE MEMBER


(JUSTICE P.R. RAMAN)
JUDICIAL MEMBER

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

Contempt Petition No. 100 of 2012 in
Original Application No. 132 of 2012

Monday, this the 13th day of August, 2012

CORAM:

Hon'ble Mr. Justice P.R. Raman, Judicial Member
Hon'ble Mr. K. George Joseph, Administrative Member

D. Madhu, aged 55 years, S/o. V. Demianose,
 Retd. Superintendent of Police (Non IPS) and
 Commandant, Rapid Response and Rescue Force,
 Malappuram.

Petitioner

(By Advocate – Mr. C. Unnikrishnan)

V e r s u s

1. Mr. K. Jayakumar IAS, Chief Secretary to
 Government of Kerala, Secretariat, Thiruvananthapuram.
2. Mr. Sajan Peter, IAS, Secretary to Government of Kerala,
 Home Department, Secretariat,
 Thiruvananthapuram.

Respondents

(By Advocate – Mr. M. Rajeev, GP)

This petition having been heard on 13.08.2012, the Tribunal on the
 same day delivered the following:

ORDER

By Hon'ble Mr. Justice P.R. Raman, Judicial Member -

Alleging non-compliance of the order in OA No. 132 of 2012 this
 Contempt Petition is filed. As per the penultimate paragraph passed in the
 OA the respondents were directed to forward the integrity certificate of the
 petitioner along with the required proposal for making the petitioner's
 selection to the IPS unconditional to the Union Public Service Commission



forthwith at any rate within a period of two weeks from the date of receipt of a copy of the order. The Union Public Service Commission was also directed to consider the case of the petitioner upon receipt of the integrity certificate as if it is received within the stipulated period. It is stated that the integrity certificate was issued but proposal was not accompanied with integrity certificate. Therefore, Union Public Service Commission has asked for the proposal. The learned counsel for the respondents submitted that the proposal has already been sent in response to the Union Public Service Commission's letter. In other words the Government did not earlier submit the proposal but as requested by the Union Public Service Commission it was sent later. It is further submitted by the learned counsel for the respondents that earlier proposal was sent but that proposal was not accompanied with integrity certificate. Hence, when they issued integrity certificate under the pretext that earlier proposal was sent they have not sent again the proposal. Thus there is no contemptuous action on behalf of the respondents. Whether, the petitioner is to be selected is a matter to be considered finally by the Union Public Service Commission and if any grievance is made out as a result of the selection it is always open to the petitioner to agitate the same in accordance with law.

2. Subject to the said right, the Contempt Petition is closed.



(K. GEORGE JOSEPH)
ADMINISTRATIVE MEMBER



(JUSTICE P.R. RAMAN)
JUDICIAL MEMBER

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