

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A No. 132 / 2006

Thursday, this the 24th day of September, 2009.

CORAM

HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER

HON'BLE Ms. K NOORJEHAN, ADMINISTRATIVE MEMBER

P.M.John,
Housing Commissioner & Secretary,
Kerala State Housing Board (KSHB),
Trivandrum.Applicant

(By Advocate Mr PV Mohanan)

v.

1. Union of India represented by
Secretary,
Ministry of Personnel & Training,
Department of Personnel & Training,
North Block, Central Secretariat,
New Delhi.
2. The State of Kerala represented by
Chief Secretary to Government,
Secretariat,
Thiruvananthapuram.
3. The Selection Committee to
Indian Administrative Services
Constituted under Regulation 3 of IAS
(Appointment by Promotion) Regulation 1955,
represented by the Secretary,
Union Public Service Commission,
Shajahan Road,
New Delhi.
4. The Principal Secretary to Govt. of Kerala,
General Administration Department,
Secretariat,
Thiruvananthapuram.Respondents

(By Advocate Mr TPM Ibrahim Khan, SCGSC for R.1 & 3)



(By Advocate Mr R Prem Sankar, G.P for R.2 & 4)

ORDER

HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER

The applicant, had completed 14 years of continuous service (officiating and substantive) in the equivalent post of Deputy Collector as on 4.12.2005. As he was eligible for selection and appointment to IAS (Kerala) Cadre under Rule 5 of IAS (Appointment by Promotion) Regulation, 1955 (1955 Regulation for short) read with Rule 8 of IAS (Recruitment Rule) 1954 (1954 Rules for short), he was considered for selection and appointment against a substantive vacancy which arose in the IAS cadre as on 1.1.2004 (1.1.2003 to 31.12.2003) as Sl.No.1 in the zone of consideration, against the 15% quota meant for Non State Civil Service Officers. However, he was not included in the select list but one Shri Vijaya Raghavan, Additional Secretary who was due to retire on superannuation from State Service in March 2005 was selected and included as Rank No.1 and appointed to IAS. Again, though he was considered against a substantive vacancy as on 1.1.2005 (1.1.2004 to 31.12.2004), one Shri P.P.Gopi, Additional Secretary who was junior to him was selected by the Select committee which met on 23.12.2005.

2. His grievance is that the respondents failed to carry out the Quinquennial Cadre Review of IAS (Kerala) Cadre which was due on 1.1.2004 with an outer limit on 10.6.2004 and to issue the requisite statutory notification under sub Section (1) of Section 3 of the All India Services Act, 1951 (61 of 1951), read with sub rule (2) of rule 4 of the Indian Administrative Service (Cadre) Rules, 1954, (the Central Government), on time. According to him, though the State



Government has forwarded the proposal of cadre review to the Central Government as early as on 29.10.2005 , the first respondent, viz, Ministry of Personnel & Training, Government of India did not take any further steps in the matter. He has, therefore, filed this O.A seeking the following reliefs/interim reliefs:

- "(i) To direct the respondents to convene the Review Selection Committee under Rule 5 of IAS (Appointment by Promotion) Regulation, 1955 to fill up 10 substantive vacancies as on 1.1.2004 for promotion quota (for members of non State Civil Service) and to consider the claim of the applicant for inclusion in the select list against 10 posts as on 1.1.2004.
- (ii) To declare that the applicant is qualified and eligible for selection and appointment to IAS (Kerala) cadre against one of the 10 vacancies arose consequent on Quinquennial Cadre Review as on 1.1.2004 and to consider his claim for selection under Rule 5 of IAS (Appointment by Promotion) Regulation against those posts.
- (iii) To declare that there are 10 substantial vacancies available for promotion in IAS (Kerala) cadre consequent on Quinquennial cadre review as on 1.1.2004 and to consider the eligible candidates for selection under promotion quota by conducting review selection committee for the vacancies as on 1.1.2004.
- (iv) To direct the respondents to conduct a proper need based quinquennial cadre review in IAS (Kerala) cadre and accordingly enhance senior post from 97 to 166 and to conduct review selection under the provision of IAS (Appointment by Promotion) Regulation 1955 by considering eligible candidates.
- (v) To direct the first respondent Union of India to issue Notification under IAS (Fixation of Cadre Strength) Regulation 1955 enhancing the senior posts in the IAS (Kerala) Cadre from to 130 as proposed by the 2nd respondent consequent on Quinquennial Cadre Review forthwith.
- (vi) Direct the respondents to keep one vacancy in IAS (Kerala) Cadre unfilled enabling the respondents to consider the claim of the applicant.
- (vii) Any other appropriate order or direction as this Tribunal deem fit in the interest of justice.

Interim reliefs:

- "(i) To direct that the completion of 54 year of age of the applicant as on 18.6.2005 and the ensuing retirement from



State Service on 30.6.2006 shall not disentitle the applicant for consideration of selection for the vacancies that arose consequent on quinquennial cadre review due as on 1.1.2004.

(ii) To direct the 1st respondent to complete the process of quinquennial cadre review as proposed by the State Government on 19.10.2005 and issue notification within one month enhancing the substantive vacancies effective from 1.1.2004."

3. The learned counsel for the applicant has also submitted that the O.A.876/2005 filed by Shri A.C.Mathew, Deputy Collector (RR) is identical to this O.A and orders passed therein would apply in this case also. The contention of the applicant therein was also that holding the quinquennial cadre review was mandatory on the part of the 1st respondent and therefore, the cadre review which was due on 1.1.2004 with an outer limit as on 10.6.2004 should have been completed by that time. According to him, if the cadre review were conducted in time, the number of senior posts would have been enhanced from 97 to 166 and the applicant would have been selected to the IAS cadre as early as in the year 2004.

4. The reply affidavit filed by the Union Government and the State Government in this O.A are also on identical lines with those in O.A.876/2005 (supra). After detailed discussion of the relevant facts and case laws on the issue it was dismissed and its operative part is as under:

"16. We have heard the learned counsel on both sides. The main thrust of the argument of Shri P.V.Mohanan, learned counsel for the applicant was that the quinquennial cadre review as on the due date of 1.1.2004 was mandatory and the failure on the part of the respondents to notify the revised strength of the cadre before the due date cannot be condoned. According to him, since the quinquennial cadre review was not held on or before the due date of 1.1.2004 or within its outer limit of 10.6.2004 ,the applicant was deprived of his right of consideration for selection and appointment to IAS



(Kerala) cadre against the additional 10 posts which have been notified later on 5.7.2007. In other words, his contention is that the 10 additional posts notified on 5.7.2007 actually belonged to the select list year 2005 and, therefore, a Review Selection Committee Meeting should have been held so that his name which was there in the zone of consideration for that year was considered. He has also relied upon the number of judgments to support his argument. The respondents, on the other hand, argued that after amendment to sub Rule 4(2) of the Indian Administrative Service (Cadre) Rules, 1954 was carried out in the year 1995, holding of the cadre review on due date is no more mandatory. We find merit in the aforesaid submission of the respondents. Of course till the amendment of the aforesaid sub rule, the Central Government was duty bound to re-examine the strength and composition of the cadre at the interval of every three years. It was for the aforesaid reason that this Tribunal in the case of **Jacob P Thomas** (supra) held that the expression used in Rule 4(2) is "*at intervals of every three years*" which means that the interval between one fixation of cadre strength and another shall be 3 years, no more or no less. This is due to the fact that the expression "interval" is defined to mean "intervening time or space" in Concise Oxford Dictionary. If sub rule (2) had stated that "after the expiry of 3 years" or "*at intervals not less than 3 years*" the Central Government shall examine the strength, etc. it would mean that the review can be made at any time after three years. Or, if the expression had been "the Central Government shall ordinarily at an interval of 3 years" or "*at an interval not exceeding three years*", etc., a certain amount of flexibility would have been available to complete it before three years. The expression "*not exceeding three years*" itself gives a flexibility within the three year limit, while the expression "*ordinarily not exceeding three years*" or "*not less than 3 years*" will permit crossing the 3 year limit on occasions. It is only necessary to point out that Regulation 5 of the Promotion Regulations states "each Committee shall ordinarily meet at intervals not exceeding one year" thus giving the intended flexibility while Rule 4 (2) of the Cadre Rules is very precise and rigid and the language used does not give any latitude to the State or Central Government in this regard." The aforesaid order of this Tribunal was followed in the cases of **J.K.Champavat and L.H.Nathani v. Union of India** (supra) also. In the case of **S.Ramanathan** (supra) also, the Apex Court was dealing with the pre-amended provision of sub rule 4(2) of the Indian Police Service (Cadre) Rules, 1954, according to which "the Central Government shall, at the interval of every three years, re-examine the strength and composition of each such cadre in consultation with the State Government or the State Governments concerned and may make such alterations

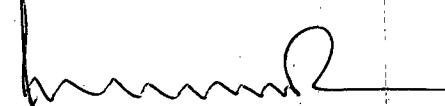


therein as it deems fit." The IAS(Cadre) Rules, 1954 is pari-materia with the aforesaid Rules. Both the Rules were amended in the year 1995 by substituting the word 'ordinarily' in place of "shall" thereby reducing the rigidity of the aforesaid provisions and the periodical cadre became no more mandatory. Therefore, the Apex Court in **T.N. Administrative Service Officers Assn. v. Union of India** (supra) which is a post-amendment case held that "*the State is not bound to fill up such vacancy nor is there any corresponding right vested in an eligible employee to demand that such post be filled up.*"

17. In view of the above position, the OA is dismissed. There shall be no order as to costs."

5. In view of the above position, this O.A is dismissed. There shall be order as to costs.


K NOORJEHAN
ADMINISTRATIVE MEMBER


GEORGE PARACKEN
JUDICIAL MEMBER

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