

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A. NO. 147/2001

Thursday, this the 10th day of April, 2003.

C O R A M

HON'BLE MR. T.N.T. NAYAR, ADMINISTRATIVE MEMBER
HON'BLE MR. K. V. SACHIDANANDAN, JUDICIAL MEMBER

B. Mohanan
Deputy Collector and Appellate Authority (LR)
Maarakkada Road, Chalai,
Thiruvananthapuram-34.

Applicant

By Advocate Mr. Vellayani Sundararaju

Vs.

1. Union of India represented by
Secretary to Government
Ministry of Personnel
Public Grievances and Pensions,
New Delhi.
2. Secretary to Government
Ministry of Home Affairs,
New Delhi.
3. IAS Selection Committee represented by
its Chairman, Lt. Gen. Surinder Nath
Chairman, Union Public Service Commission
New Delhi.
4. State of Kerala represented by its
Chief Secretary, Govt. Secretariat,
Trivandrum.
5. C. Chandran
Commissioner, Land Revenue
Thiruvananthapuram (Member of Selection Committee)
6. Smt. Sumana N. Menon
Assisstant Commissioner,
Land Assignment, Commissionerate of
Land Revenue,
Thiruvananthapuram.
7. K. R.Rajan,
Special Deputy Collector
(LA, KSEB)
Thiruvananthapuram.
8. Smt. S. Sathiyamma
Deputy Collector (RR)
Collectorate,
Kollam.
9. Smt. Rani George,
Assistant Commissioner (Housing)
Commissionerate of Revenue
Trivandrum.

10. A. Shajahan,
Deputy Collector and Mission Coordinator,
Mission Group on Information Technology
Narayana Bhavan, Kurup's Lane.
Sasthamangalam, Trivandrum.
11. K. Ajayakumar
Assistant Commissioner (LR)
Commissionerate of Revenue
Trivandrum
12. M.Mohanakumar
Chief Secretary
Govt. of Kerala
Trivandrum.

By Advocate Mr. R. Madanan Pillai for R 1-3
Advocate Mr. Renjit A. GP for R-4
Advocate Mr. M.M. Hussain for R-10
Advocate Mr.K. Subhas Chandra Bose for R-8
Advocate Mr. Thampan Thomas for R-9

The Application having been heard on 15.1.2003 the Tribunal delivered the following on 10.4.2003.

O R D E R

HON'BLE MR. T.N.T. NAYAR, ADMINISTRATIVE MEMBER

The applicant was the Seniormost Deputy Collector under the Government of Kerala. He is aggrieved that he has been excluded from and his juniors have been included in the Select List of persons to be considered for promotion to the Indian Administrative Service (IAS) made by the Selection Committee which itself, according to him was illegally constituted. The applicant seeks the following reliefs:

(a) To quash Annexure A-1.

(b) To call for the records, including the confidential reports of respondents 6 to 11 and the applicant and declare the select list prepared by the 3rd respondent on 26.12.2000 as illegal and untenable, since the selection of respondents 6 to 11 was done in violation of all statutory requirements and process of selection.

(c) To declare the constitution of the Selection Committee as per Annexure A1 is highly illegal as it was included the 5th Respondent who is ineligible to be a member of the selection committee, and the two Central Govt. nominees names are not mentioned and they were not informed of the date of convening of selection committee by the 4th and 12th respondents and it was done with malafide intention to include ineligible persons in the select list.

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(d) To issue an interim stay of further proceedings on posting of IAS Officers on promotion from among respondents 6 to 11 till the final disposal of the Original Petition.

(e) To grant such other reliefs which may deem fit and necessary in this case by this Hon'ble Tribunal,

(f) To award the cost of this proceedings.

(g) To stay further proceedings on posting of any of the respondents 6 to 11 to IAS on promotion pending disposal of the Original Application.

2. The facts in brief are: The applicant, a Senior Deputy Collector of the Kerala State Civil Service was aspiring for selection to the Indian Administrative Service cadre for Kerala for the year 2000. He was placed at Sl.No. 12 in the eligibility list prepared and furnished by the Govt. of Kerala. There were 6 vacancies to be filled by promotion and 18 persons from the seniority list of Deputy Collectors including the applicant and the respondents 6 to 11 were considered. The seniority position and the names of these persons are reflected in A2. The Indian Administrative Service (Appointment by Promotion) Regulation 1955 governs the process and procedure regarding selection of candidates for appointment to IAS by promotion. A Committee is constituted in accordance with the Regulation 3 which reads as follows:

"3. Constitution of the Committee to make selection--There shall be constituted for a State Cadre or a Joint Cadre specified in column 2 of Schedule a Committee consisting of the Chairman of the commission or where the Chairman is unable to attend any other member of the Commission representing it and other members specified in the corresponding entry of column 3 of the said Schedule:

Provided that

(i) no member of the Committee other than the Chairman or the member of the commission shall be a person who is not a member of the Service

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(ii) the Central Government may after consultation with the State Government concerned, amend the schedule.

(2). The Chairman or the member of the Commission shall preside at all meetings of the committee at which he is present.

(3) The absence of a member, other than the chairman or member of the Commission, shall not invalidate the proceedings of the committee if more than half the members of the committee had attended its meetings.

Note:- All the members of the UPSC need not meet to consider and approve the select List in terms of regulation 7, prepared by the Selection Committee in terms of regulation 5."

3. The other members specified in column 3 of the Schedule as mentioned in Regulation 3(1) in so far as the State of Kerala is concerned are as under:

"8.Kerala	(1) Chief Secretary to Government (2) Seniormost Secretary to Government (3) Member, Board of Revenue, incharge of Land Revenue. (4) Secretary to Government, Revenue Department (5) Two nominees of the Government of India not below the rank of Joint Secretary."
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4. According to the applicant the constitution of the Selection Committee was not in accordance with the procedure and hence the selection process vitiated and the proceedings of such selection committee were untenable. The applicant's case is that the 5th respondent was not appointed as Secretary (Revenue) on the material date namely 26.12.2000. As per the Cabinet decision taken on 20.12.2000 the 5th respondent was to be appointed as Commissioner of Revenue and the additional charge of Secretary Revenue which he was holding was to be given to the Member Secretary (Transport) although formal orders were issued in this regard only on 28.12.2000. The 5th respondent ought not to have been taken as a Member of the Selection Committee in violation of the prescribed rules and procedure, according to the applicant. The 5th respondent's inclusion was with/ ^{the} malafide intention of

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selecting some of the respondent aspirants. The genuineness of the constitution of the Selection Committee was suspect as A1 does not disclose as to who were the two nominees of the Government of India. Further, A1 does not disclose the proposed date of holding of the Selection Committee meeting i.e. 26.12.2000. According to the applicant, 23.12.2000 being Saturday, 24th being Sunday and 25.12.2000 being Christmas were holidays and therefore there was no chance for the first and second respondents knowing about the constitution of the Selection Committee on 23.12.2000 and the proposed date of meeting on 26.12.2000. It is also the case of the applicant that even on 26.12.2000 which was a holiday no Cabinet meeting could have taken place. Thus the issue of the A4 Govt. order was a malafide exercise of power. The applicant also questions the inclusion of the party respondents. It is pointed out that since vigilance cases were pending against respondents 6 and 7 for the years 1998-00 their inclusion in the select list was unjustifiable. The 8th respondent involved in a criminal case was unduly favoured by the 5th respondent. The 9th respondent got herself included only on account of her nexus/^{with} both bureaucratic and social circles. The 10th respondent according to the applicant was a relative of the Revenue Minister. The applicant's Confidential Reports being better than those of R-8, R-10 and R-11 his exclusion was untenable. A-6 news item published in the New Indian Express dated 4.1.2001 regarding the selection of R-6 to R-11 would show that the 4th respondent namely the State of Kerala did act in a malafide manner. Similarly the selection is perverse because of the failure on the part of the 4th respondent to furnish the required integrity certificate in respect of R-6 to R-11 to the Selection Committee. The classification and gradation based on the CRs was also not properly done

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particularly in view of the fact that R-11 had more than one CR for one single year because of his having worked under different reporting officers and the rating as per each of the ACR was taken separately and independently. Thus the constitution of the Selection Committee itself was not legally valid and was procedurally infirm and as the whole process of selection was malafide, the applicant's prayers are to be allowed, it is urged.

5. Respondents 3 & 4 have filed reply statement resisting the O.A. and defending the constitution of the Selection Committee and the procedure that was followed by it.

6. The first and second respondents have not filed any reply statement.

7. Among the party respondents, R-8 and R-9 have filed reply statements justifying their inclusion and contesting the submissions to the contrary made by the applicants.

8. Applicant on his part has filed rejoinder to the various reply statements reiterating his main contention and maintaining that the selection committee was illegally constituted, that the procedure followed by the Selection Committee was illegal/^{and} untenable and that the resultant list was totally vitiated.

9. We have heard the learned counsel for the applicant and the respondents. We have considered the pleadings and other material on record.

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10. According to Shri Vellayanai Sundararaju, learned counsel for the applicant, the constitution of the Selection Committee by the 4th respondent as per Annexure A1 is legally untenable in as much as the same is not in conformity with column 3 of the Schedule to Regulation 3 of the Indian Administrative Service (Appointment and Promotion) Regulations 1955. According to him the inclusion of the 5th respondent as member of the Selection Committee was wrong since he had not been appointed as Secretary Land Revenue. It was only an additional charge ordered to be held by him. Even that additional charge was decided to be taken away from him as per Cabinet decision on 20.12.2000, the learned counsel for the applicant would urge. The implementation of the Cabinet decision was deliberately delayed by the 12th respondent, the Chief Secretary to Government of Kerala, and with the result that the 5th respondent was shifted to the post of Commissioner Land Revenue only on 28.12.2000 after permitting him to be the member of the Selection Committee which was stated to have met on 26.12.2000. The learned counsel also pointed out that the constitution of the Selection Committee was also vitiated on account of the fact that A1 order did not disclose as to who were the nominees of the Government of India, ^{as per} the provisions of Regulation 3(1) of A3 Regulations xxxxxxxxxxxxxxxxxxxxxxxxxx and the omission to mention names of the two nominees of the Government of India vitiated the constitution of the Selection Committee. The learned counsel would point out that after the Board of Revenue was abolished no steps were taken to nominate another member in lieu of Member, Revenue Board. This also would vitiate the constitution of the Selection Committee because as per the Regulations one of the members of the Selection Committee was the Member of Board of Revenue holding the charge of Land Revenue. The learned counsel would forcefully

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argue that the assessment of the eligibility and suitability of the officers for promotion to Indian Administrative Service by the legally untenable Selection Committee led to the selection of undesirable persons. According to him the inclusion of persons in the select list without proper integrity certificate and when vigilance case was still pending against them was highly irregular. In this connection the learned counsel would reiterate the grounds in the O.A. with regard to the inclusion of Respondents 6 to 11 and would maintain that their inclusion was the result of deliberate violation of the procedure intended to help some of the respondents among Respondents 6 to 11 and the result was that the applicant was excluded.

11. Shri Ranjit, learned Govt. Pleader resisted the arguments of the learned counsel for the applicant by stating that the appointment of the 5th respondent as member of the Selection Committee was proper since he was Secretary Revenue as on the relevant date. It did not matter whether he was holding additional charge. The fact remained that the 5th respondent was full fledged Secretary to the Govt. of Kerala and that it was he who was holding the charge of Revenue Secretary and none else. Therefore he could exercise the powers and functions of Secretary Revenue and by virtue of that position he could be nominated as the member of the Selection Committee. Whatever be the date of the Cabinet decision its implementation was on 28.12.2000 and that by itself did not vitiate either his selection as member selection Committee or his appointment as Commissioner Land Revenue on a subsequent date. In that view of the matter the inclusion of the 5th respondent as a member of the Selection Committee was perfectly in order, the learned counsel would maintain. The Selection Committee/^{was} chaired by the Chairman,

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Union Public Service Commission and out of seven members altogether four members participated in the Selection Committee meeting including the Chief Secretary to the Government of Kerala, the seniormost Secretary to the Government being the Additional Chief Secretary and the Secretary, Revenue. The procedure as laid down under the relevant Regulations was satisfied as adequate quorum was there. The allegation that the 4th respondent didnot inform the nominees of the Union Government is also baseless as a copy of the A1 order had been forwarded to all concerned including the Secretary, UPSC who would coordinate with others and convenue the meeting. The learned Govt. Pleader would also point out that the reply statement filed by the 3rd respondent would make it amply clear that the Government of India was duly informed of the date of convening of the Selection Committee meeting and also the need to nominate two members. As far as the 4th respondent was concerned, therefore, all the formalities were fullfilled. The allegations against the 5th and 12th respondents were also refuted on the ground that that there was no material to support that in any respect the applicant's interest was prejudicially affected by any decision of the said respondents or he has been discriminated against by showing any favoritism or bias.

12. Shri Madanan Pillai representing R 1 to 3 would state that the first and second respondent did not wish to make any reply statement in as much as a reply statement filed by the 3rd respondent covered the entire matter. Relying on the reply statement filed by the 3rd respondent Shri Madanan Pillai maintained that the constitution of the Selection Committee and the meeting held by it on the 26.12.2000 was in accordance with the provisions contained in A3 Regulations

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and therefore none of the allegations raised against the constitution of the Selection Committee and holding of the meeting ~~xxxxxxxxxxxx~~ had any factual or legal basis. The counsel representing the various party respondents also have pointed out that the allegations raised against them were baseless, that they too like the applicant aspired to be inducted into the IAS and that they were not parties to any manipulations or questionable use of official or personal influence for the purpose of getting their due promotion. If they got selected, it was only on account of objective assessment of the comparative merits and there was no evidence to suggest that they violated or caused any violation of the rules and regulations governing the constitution of the Selection Committee and the meeting thereof, according to counsel.

13. On a careful consideration of the pleadings and supporting material on record and the arguments advanced by the learned counsel for the applicant and the respondents we find that the grounds raised by the applicant are not strong enough to warrant this Tribunal's interference. By A1 order dated 23.12.2000 the 4th respondent, namely, the Government of Kerala constituted the Committee for selection of the State Civil Service Officers for appointment to the Indian Administrative Service Cadre of Kerala for the year 2000. A1 order dated 23.12.2000 reads as under:

" IAS (Appointment by Promotion) Regulations,
1955-Constitution of a Committee under Regulation
3(1)- Orders issued:

GENERAL ADMINISTRATION (SPECIAL A) DEPARTMENT

G.O.(MS)NO 652/2000/GAD Dated Thiruvananthapuram.
23.12.2000

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O R D E R

Under Regulation 3(1) of the IAS (Appointment by Promotion) Regulations, 1955, the government hereby constitute a Committee with Lt. Gen (Retd) Surinder Nath, Chairman, Union Public Service Commission as President and the following officers as members to prepare a select list of State Civil Service Officers for appointment to the IAS Cadre of Kerala during the year 2000.

1. Sri M. Mohankumar
Chief Secretary
Government of Kerala.
2. Sri V. Krishnamurthy
Addl. Chief Secretary
Government of Kerala
3. Sri C. Chandran
Secretary (Revenue)
Government of Kerala.
4. Two nominees of the Govt. of India.

By order of the Governor.

Sd/-K. Mukunmdan
Deputy Secretary

To

The Secretary, Union Public Service
Commission, Dholpur House, Shahjahan
Road, New Delhi-110 011 etc. etc.

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14. Sl.No. 3 in A1 mentions the name of Shri C. Chandran, Secretary, Revenue who is the 5th respondent-whose inclusion is vehemently challenged by the applicant. But we do not really find any substance in the objection. The 5th respondent was a full fledged Secretary to the Government of Kerala at the material time. He was the Secretary Revenue. The mere fact that he was holding additional charge of Secretary Revenue would make no difference. If he could carry out all other duties and functions of the Secretary, Revenue with all the attendant administrative and legal implications, he was also competent to carry out the assigned duty of the Member of the Selection Committee for the purpose of promotion of the State Civil Service officers to Indian

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Administrative Service Cadre. We find no personal or other disqualification rendering the 5th respondent's membership questionable. The argument that the Cabinet had taken a decision on 20.12.2000 to shift the 5th respondent and that he was actually shifted only on 28.12.2000 does not persuade us to think that because of that very reason, even if taken as factually correct, the 5th respondent's inclusion was invalid or the 4th respondent's action malafide. Similarly, the contention that after the abolition of the Board of Revenue, steps ought to have been taken to nominate another suitable member cannot be pressed into service to invalidate the constitution of the Selection Committee.

15. It is quite apparent from A1 that the names of the two nominees of the Government of India are not mentioned in the above order. However it was forwarded to all concerned including the nominees of the Government of India without, however, mentioning the names of the latter. We are not too sure as to how 4th respondent could ensure the service of the intimation without ascertaining their names. However, it would appear that the Secretary, Department of Personnel & Training ~~xxxxxxxxxxxx~~ and the Secretary, Union Public Service Commission were notified about it and as such, it could be presumed that the nominees of the Government of India would have been informed by the DOPT and/or the Union Public Service Commission. In our considered opinion, the omission or absence to mention the names of the Government of India nominees in the A1 order does not, ipso facto, invalidate the order. The third respondent, namely the UPSC, has stated that the Government of India was informed of the need to nominate two members as per Rules and that instead of two members Government of India the first respondent, nominated only one member namely Shri O.P. Aggarwal, Joint Secretary (Training)

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Department of Personnel and Training for the Selection Committee meeting on 26.12.2000. The third and fourth respondent have confirmed that the first respondent was duly informed of all the formalities regarding the constitution and the meeting of the Selection Committee. It is clear from A1 order that the same was forwarded to the Secretary, Department of Personnel and Training who for all such matters would represent the Government of India. It is true that the first respondent has not filed any reply statement. But the learned counsel for the Respondents 1 & 2 has made it clear that it was not felt necessary to file any reply statement in the light of the detailed reply statement filed by the third respondent, UPSC. We do not consider that either the failure on the part of the first respondent to nominate the two members or the omission on the part of the one nominated member of the Government of India to attend the Selection Committee meeting would render the Selection Committee incompetent or the proceedings invalid. The sub regulation 3 of regulation 3 of the Indian Administrative Service (Appointment and Promotion) Regulation 1955 makes the matter clear. The said sub regulation reads as under:

3(3): "The absence of a member, other than the Chairman or member of the Commission, shall not invalidate the proceedings of the Committee if more than half the members of the Committee had attended its meetings."

There can be no dispute that the Committee would consist of the Chairman (Member of UPSC) as the President, the Chief Secretary of Kerala, the Seniormost Secretary to the Govt. of Kerala, the Revenue Secretary, the Member Board of Revenue and the two nominees of the Government of India. In other

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words the total number of members of the Selection Committee would be seven. It is evident that more than half the number of members participated in the Selection Committee meeting.

16. Thus the quorum having been fulfilled, the meeting of the Selection Committee and the resultant proceedings could not be invalidated. We also find from the records and the pleadings that the inclusion of Respondents 6 to 8 is provisional subject to production of integrity certificate. They are not finally appointed. Formalities as per the rules would have to be completed within the period during which the select list is valid. But that does not mean, however, that their inclusion is legally impermissible. As far as the assessment of the eligibility and suitability of the candidates to be considered for induction to IAS is concerned, we are afraid, the scope for judicial interference is very limited unless a clear case of malafides or arbitrariness is made out. The assessment made by the High Power Selection Committee constituted for the purpose under the extant rules cannot be reviewed in the absence of any well founded imputation of illegality, malafides or arbitrariness. A mere allegation in that regard would not be sufficient.

17. Having regard to the allegation of malafides with reference to the selection of the respondents 6 to 11 we find that apart from the allegations extraneous to the context of the constitution of the Selection Committee and the process of selection, the applicant has not been able to adduce any evidence to show that inclusion of any of the candidates namely R-6 to R-11 was questionable on account of malafides, arbitrariness, discrimination or any other procedural infirmity. As has been mentioned, their inclusion in the

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list is provisional and subject to fulfillment of the formalities as provided under the rules within the validity period of the select list. The allegations raised by the applicant therefore do not merit any serious consideration.

18. In the conspectus of the facts explained above, we are of the view that this case does not warrant interference by this Tribunal. Our view is supported by a large body of case law on the point. The Hon'ble Supreme Court has in the case of Dalpat Abasaheb Sounke, etc. etc. Vs. Dr. B.S. Mahajan etc. etc. (AIR 1990 SC 434) held that the decision of the Selection Committee can be interfered with only on limited grounds such as illegality or patent material irregularity in the constitution of the Committee or its procedure vitiating the selection or proven malafides affecting the selection, etc. The principle laid down by the Apex Court in the above case has been followed in a number of subsequent judgments vide Durga Devi and Another Vs. State of H.P. and Others (1997 SCC (L&S) 982). We are cautioned that the Tribunal should not arrogate to itself the power to adjudicate the comparative merits of the candidates and consider the fitness and suitability for appointment since that was the function of the Selection Committee.

19. On the facts and in the circumstances of the case, we hold that the constitution of the Selection Committee was proper, that the assessment of the Committee in regard to the eligibility and suitability of the candidates including Respondents-6 to 11 does not warrant any review and that the charges of malafides against the respondents 5 and 12 with reference to the inclusion of one or more of the respondents

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6 to 11 are wholly unsupported as material relied on in support of the allegation is not at all germane to the point at issue namely the legality of the constitution of the Selection Committee and the validity of the select list drawn by the Selection Committee. We therefore hold that none of the prayers is admissible. The Original Application is dismissed.

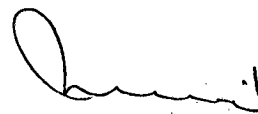
No order as to costs.

Dated, the 10th April, 2003.



K.V. SACHIDANANDAN
JUDICIAL MEMBER

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T.N.T. NAYAR
ADMINISTRATIVE MEMBER