



CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A. O.A. 777/2002 and 164/2003

.....Monday.....this the ^{16th} day of January, 2006

CORAM:

HON'BLE MRS SATHI NAIR, VICE CHAIRMAN
HON'BLE MR GEORGE PARACKEN JUDICIAL MEMBER

O.A. 777/2003:

R.Ramadas, aged 54 years
S/o K.Itty,
Revenue Divisional Officer,
Chengannoor,Alapuzha District.Applicant

(By Advocate M/s C.P.Sudhakara Prasad (Sr) and PN Santhosh)

V.

- 1 Union of India, represented by its Secretary, Govt. of India, Personnel and Administration Department, Central Secretariat, New Delhi.
- 2 State of Kerala, represented by the Chief Secretary to Government, Government Secretariat, Thiruvananthapuram.
- 3 Union Public Service Commission, represented by its Secretary,Shahajan Road, New Delhi.
- 4 The Selection Committee for selection to the Indian Administrative Service, constituted under Regulation 3 of the IAS (Appointment by Promotion) regulations, 1955, represented by its Chairman Union Public Service Commission, Shahajan Road, New Delhi.
- 5 S.Sathi Amma, Deputy Collector (Housing) Alappuzha.
- 6 T.T.Antony, Revenue Divisional Officer, Chengannoor, Alapuzha District.

7. K.Ajayakumar, Deputy Collector,
Collect orate, Kollam.

8. Suman N.Menon W/o Shri. M.N.Menon,
working as Dy.Land Revenue Commissioner
O/o the Commissioner of Land Revenue,
Trivandrum.Respondents

(By Advocates Mr.TPM Ibrahim Khan, SCGSC for R.1,3&4)

Mr.A.Ranjit Govt. Pleader for R.2

Mr.C.K.Karunakaran for R.7

Mr.OV Radhakrishnan (Sr) for R.8

OA 164/2003:

R.Ramadas, aged 54 years
S/o K.Ity,
under orders of transfer as
Deputy Collector (LA) Kollam
residing at Radheyam, Vettuvanenimuri,
Harippad.Applicant

(By Advocate M/s C.P.Sudhakara Prasad (Sr) and PN Santhosh)

V.

1 Union of India, represented by its
Secretary,
Personnel and Administration Department,
Central Secretariat,
New Delhi.

2 State of Kerala, represented by the
Chief Secretary to Government,
Government Secretariat,
Thiruvananthapuram.

3 Union Public Service Commission, represented
by its Secretary, Shahjahan Road,
New Delhi.

4 The Selection Committee for selection to the
Indian Administrative Service,
constituted under Regulation 3 of the IAS
(Appointment by Promotion) regulations, 1955,
represented by its Chairman,
Union Public Service Commission,
Shahjahan Road, New Delhi.Respondents

(By Advocate Mr.PS Biju ACGSC for R.1,3&4)

Mr.A.Ranjit, Govt. Pleader for R.2.

ORDER**HON'BLE MR GEORGE PARACKEN, JUDICIAL MEMBER**

By this common order we propose to dispose of the two applications, viz, O.A.777/2002 and O.A.164/2003 as the issue involved and the parties concerned are the same.

OA 777/2002:

In OA 777/2002 the applicant has sought the following reliefs:

- i) to call for the records leading to the Select List prepared by the 4th respondent in its meeting held on 3.10.2002 for appointment by promotion to the Indian Administrative Service from among Deputy Collectors and approval, if any, granted by respondents 2 and 3, and set aside the same.
- ii) To declare that on the basis of dropping of disciplinary proceedings against the applicant by A-4 and on the basis of the orders to be passed by the State Government on A-5, A-6 and A-8 the applicant is entitled to have the Integrity Certificate issued by the State Government and a fresh assessment made by the 4th respondent Selection Committee for selection to the IAS Cadre under the Indian Administrative Service (Appointment by Promotion) Regulations, 1955.
- iii) to issue a direction to respondents 1 to 4 that the disciplinary proceedings initiated against the applicant on the basis of A-1 and A-2 should not form the basis for making any entry in the Confidential Reports of the applicant which could be taken into account for assessing the merit of the applicant for appointment by promotion to the IAS cadre from among Deputy Collectors.
- iv) To issue a direction to respondents 1 to 4 to place the applicant above respondents 5 to 7 in the Select List on the basis of the merit shown in the Confidential Reports of the applicant and to give him appointment by promotion to the IAS cadre in preference to respondents 5 to 7.
- v) to issue appropriate direction or order to the 2nd respondent to issue Integrity Certificate in favour of the applicant in view of the dropping of the disciplinary proceedings initiated against him by A-4.

2 The relevant facts are that the Applicant was first appointed as Tahsildar on 2.4.1980. He was promoted as Deputy Collector on 9.12.1987 and was confirmed in that post on 31.12.1989. He was granted the Senior Grade on 1.3.91 and since then he was continuing in that grade.

While working as Deputy Collector (LA) S.T.P.S. Alapuzha, allegations of malpractices in the proposal for acquisitions of land was made against the Applicant and the Annexure A2 Memo of Charges dated 6.5.2000 was issued to him by the Revenue Department of the State Government. After considering the Inquiry Report submitted by the Inquiry Officer stating that the Applicant was not guilty of the charges levelled against him, vide Annexure A4 order dated 5.9.2002, the Government decided to drop the disciplinary action initiated against him.

3. The Applicant was eligible to be considered for selection to IAS cadre. The confidential reports of the applicant was called for, for consideration for the year 1999 but he was not selected. Again, the confidential reports up to 31.12.2000 was called for, for consideration for the year 2000. There were 5 vacancies for the year 2000 and the Selection committee met on 3.10.2000 to select the candidates. The applicant submitted that he was not selected for IAS for the year 2000 because the Annexure A4 order dated 5.9.2000 was not brought to the notice of the Selection Committee and necessary integrity certificate was not furnished to the Committee by the State Government. However, the Selection Committee has included the Respondents 5 to 7 in the Select List who are junior to him in the category of Deputy Collectors. The Applicant has submitted that the 6th Respondent was under suspension for the relevant period during which the confidential reports were considered. As far as the Respondents 5 and 7 are concerned, they were placed below the Applicant in the previous selections on their assessment of merit. Hence going by the merit assessed by the Selection Committee, the Applicant was entitled to be placed above Respondents 5 to 7. The

Confidential Reports for the period from 1.1.96 to 31.12.2000 were considered for preparing the Select List for the year 2000. For the period from 5.12.96 to 31.12.96 and from 1.1.97 to 28.2.97, he was given low grading against which he had made the Annexure.A5 representation. Again, against the low grading given to him for the period from 1.3.97 to 15.7.97 he has made the Annexure A6 representation. Due to the pendency of the disciplinary proceedings, low grading as well as adverse remarks were recorded in the confidential reports for the period from 21.7.97 to 31.10.1997 against which also the Applicant had made the Annexure.A8 representation. According to the applicant, if the aforesaid representations against the low grading and adverse remarks were considered by the government in view of the Annexure.A4 order dropping the charges, he would have been entitled to get better grading and the adverse remarks would have been expunged.

4. In this OA, the Applicant had also sought the following interim reliefs:

" (i) This Hon'ble Tribunal may be pleased to issue an Interim Order directing the 2nd respondent to consider and pass ordered on Annexures.A5,A6 and A8 representations forthwith and till the Confidential Reports of the applicant on the basis of the orders to be passed by the Government on those representations are considered, not to finalize the Select List of Deputy Collectors for promotion to the IAS Cadre for the year 2000.

(ii) Direct the 4th respondent to produce the select list prepared by them in the meeting held on 3.10.2002 for appointment by promotion to the Indian Administrative Service."

While considering the aforesaid interim relief, vide order dated 15.1.2003, this Tribunal directed the respondents to consider the aforesaid representations and pass a speaking order and to take necessary follow up

action in relation to the list already sent to the Government of India taking into account the development reflected in A-4 order. It was also ordered that the finalization of the relevant select list by respondents 1 and 3 will be subject to the outcome of the O.A.

5 The second respondent viz, the State of Kerala submitted that the applicant was not eligible for any of the relief in the O.A. It has further submitted that the State Government has forwarded the proposal to UPSC for consideration of the Applicant against five vacancies for the year 2001, and Applicant's name was included in the zone of consideration at Sl.No.3. The selection committee met on 3.10.2002 and considered the list of officers included in the zone of consideration. In accordance with the provisions of Regulation 5(4) of the Indian Administrative Service (Appointment by Promotion) Regulations, 1955, the selection committee duly classified the eligible State civil service officers included in the zone of consideration, as 'outstanding', 'very good', 'good' and 'unfit' as the case may be on an over all assessment of their service records. Thereafter, as per Regulation 5(5) (ibid) the selection committee prepared a list by including the required number of names first from the list of officers finally classified as 'outstanding', then as 'very good' and then as 'good' and the order of names within each category is maintained in the order of their respective inter-se seniority in the State Civil service. The ACRs of the eligible officers were the basic inputs on the basis of which eligible officers are categorized as 'Outstanding' 'Very good' 'good' and 'Unfit'. The selection committee was not guided merely by the overall grading that was recorded in the ACRs but in order to ensure justice, equity and fair play, it has made its own assessment on the basis of indepth examination of

service records of eligible officers, deliberating on the quality of the officers on the basis of performance as reflected under the various columns recorded by the Reporting/Reviewing Officer/Accepting authority in ACRs for different years and then finally arrived at the classifications which were assigned to each eligible officers in accordance with provisions of Promotion Regulations. While making the overall assessment, the selection committee also kept in view the orders awarding penalties or any adverse remarks communicated to the officer, which even after due consideration of his representation have not been completely expunged. At the time of sending the proposal, the State Government was not in a position to certify the integrity of the applicant considering the disciplinary case pending against him. Therefore, the name of the applicant was included in the list of officers whose integrity has been withheld. However, non-issuance of the integrity certificate was not a factor which disqualifies a person for inclusion in the zone of consideration for appointment to the IAS. However, the name of any officer so included in the list shall be treated as provisional if the State Government withholds the integrity certificate in respect of such officer as any proceedings are contemplated or pending against him or anything adverse against him has come to the notice of the State Government. The UPSC has approved the select list of 2001 for Kerala containing the names of five State Civil Service officers of Kerala prepared by the Selection Committee in its meeting held on 3.10.2002 towards filling up of the vacancies in the Kerala Cadre for the year 2001, vide notification dated 28.2.2003 issued by the DOPT. The name of the applicant was not included in the above select list prepared by the Selection Committee. According to the State Government, even

though the disciplinary action initiated against the applicant vide memo dated 5.9.2002 was dropped, another vigilance enquiry was pending against him in respect of another case i.e., facilitating the encroachment of puramboke land in Arattupuzha Grama Panchayat. The enquiry revealed that there was serious lapse on the part of the applicant, the then RDO. Draft memo of charges and statement of allegation were forwarded to the Commissioner, Land Revenue on 13.12.2002 for service to the applicant but no written statement of defence has been received from him.

6 The State Government have also submitted that they have examined the request of the applicant to expunge the adverse entries in his ACRs based on the aforementioned interim order dated 15.1.2003 of this Tribunal. The Reporting Officer and the Reviewing Officer reported that the adverse remarks were based on the performance of the officer during the period under reference and there was no reason to change the grading already given. Accordingly, the requests of the applicant to expunge the adverse remarks in the ACRs have been declined and rejected.

7 The third respondent, the UPSC in its reply has submitted that the proposal forwarded by the State Government for promotion of SCS Officers to the IAS cadre of the Kerala for the year 2001 was considered and the name of the applicant was at Sl.No.3 in the eligibility list. On an overall assessment of the officer's service records, the committee graded the applicant as 'good'. On the basis of this assessment, the name of the applicant could not be included in the select list due to the statutory limit on the size of the select list.

8 Out of the private respondents 5 to 8, only respondent No.7 has filed a reply statement. The contention of respondent No.7 was that the

applicant was considered not merely on the basis of solitary charge levelled against him, but upon an overall appraisal of his confidential records and other relevant matters. He has, therefore, submitted that the O.A filed by the applicant is without any merit and the same has to be dismissed.

9 The applicant has filed a rejoinder to the reply submitted by the 2nd respondent. He has contended that as regards the officers against whom enquiries are pending, integrity certificate should not ipso facto be withheld. The State Government should examine each case with reference to the nature/gravity of the charge, the evidence available on the basis of the investigation made up to that time, the known arguments of defence, if any, the view of the Head of Department, the general reputation of the officers etc., and then decide whether they would like to include him in the list of officers whose integrity is certified or in the list of officers in respect of whom the integrity certificate is withheld. That being the rule governing the field, the integrity certificate of the applicant ought to have been issued by the State Government in the light of A-4 order. It is the obligatory duty of the 2nd respondent to issue an integrity certificate of the applicant as there is no pending enquiry or disciplinary action as on the date of selection committee meeting against the applicant. He has also contended that the 6th respondent, whose name figures first in the select list was not entitled to be considered for selection to IAS cadre as per the prevailing rules and regulations. He entered in service as Deputy Collector and his name was at SI.No. 561 in the revised seniority list of Deputy Collectors issued on 21.10.97. After the selection by the PSC, he had undergone 14 months training in the capacity as Deputy Collector and this training could not have

been counted as officiating service. While he was officiating as Deputy Collector he was placed under suspension for involving in a criminal case and his suspension lasted for more than four years. Further, for the training period of 14 months and for the suspension period of 4 years, the 6th respondent have not officiated in service and for that period he did not have any confidential reports for assessing his performance. Even then, his name has been considered by the selection committee and he was included in the select list prepared by the selection committee at serial No.1.

O.A.164/2003.

There are no material differences in the pleadings in this OA from that of OA 777/02. After the interim order dated 15.1.2003 in OA 777/2002 was passed by this Tribunal, the applicant has filed the present OA seeking the following reliefs:

- i) issue a direction to the respondents to consider the applicant for selection to the IAS cadre for the year 2001 under the provisions contained in the Indian Administrative Service (appointment by Promotion) Regulations, 1955 based on A-4 and issued by the 2nd respondent and the orders to be passed on A-5, A-6 and a-8 representations filed by the applicant in accordance with the directions contained in A-10 order issued by this Tribunal.
- iii) To declare that on the basis of dropping of disciplinary proceedings against the applicant by A-4 and on the basis of the orders to be passed by the State Government on A-5, A-6 and A-8 representations the applicant is entitled to have the Integrity Certificate issued by the State Government and based on that assessment has to be made by the Selection Committee for selection to the IAS cadre for the year 2001 under the Indian Administrative Service (appointment by Promotion) Regulations, 1955.
- iv) issue a direction to the 2nd respondent to allow the applicant to continue in service till his claim for selection to the IAS cadre under the Indian Administrative Service (Appointment by Promotion) Regulations, 1955 for the year 2001 is considered by the respondents in a just and reasonable manner taking into account A-

4 order and in accordance with the directions contained in A-10 order of this Tribunal and appointments are made.

10 The State Government has reiterated its position in OA 777/02 that non-issuance of integrity certificate did not disqualify the Applicant for inclusion in the zone of consideration for appointment to the IAS. If the State Government withholds the integrity certificate in respect of any officer, the only consequence is that the names of such officers so included in the Select List will be treated as provisional. The Selection Committee classified the eligible officers included in the zone of consideration on the overall relative assessment of their service records. The Union Public Service Commission has approved the Select List of 2001 for Kerala containing the names of 5 State Civil Service Officers prepared by the Selection Committee in its meeting held on 3.10.2002. The Applicant was not included in the Select List after due consideration of his name which was in the eligibility list at serial No.3. The State Government has also submitted that the request of the Applicant to expunge the adverse entries in his confidential report based on the interim order dated 15.1.2003 by this Tribunal in OA 777/02 was considered but found no reasons to change the grading already given and accordingly his request has been rejected.

11 The submissions of the applicant in his rejoinder were on similar lines as those in OA 777/02. He has submitted that as on 3.10.2002, ie., the date of meeting of the Selecting Committee, there was no disciplinary proceedings pending against the applicant and hence the State Government's action withholding the integrity certificate was absolutely illegal and is against the law laid down by the Hon'ble Supreme Court in Smt.S.R.Venkataraman Vs. Union of India and another, AIR 1979 SC 49. His contention was that the sole reason for excluding his name in the

Select List for promotion to the IAS for the year 2001 was due to withholding of the integrity certificate and reasons stated by the State Government in doing so is untenable as no disciplinary case was pending against the Applicant as on 3.10.2002. The Memo of Charges in another vigilance inquiry has been initiated against the Applicant relating to encroachment in puramboke in Arattupuzha Grama Panchayat was issued to him only on 13.12.2002. He has stated that the adverse entries in the Confidential Reports were absolutely illegal and arbitrary and he is taking steps to challenge the rejection of his requests against low grading and for expunction of the adverse remarks made vide Annexures A5, A6 and A8 representations separately.

12 We have heard Shri C.P.Sudharaka Prasad, the learned Senior Counsel for the Applicants and Shri TPM Ibrahim Khan, SCGSC for Respondents 1,3& 4, Shri A.Renjit for R.2. Shri C.K.Karunakaran for R.7 Shri OV Radhakrishnan, (Senior) in OA 777/02, P.S.Biju for Respondents 1,3 and 4 and Shri A.Renjit, State Government Pleader for Respondent No.2 in OA 164/03. We have also considered the pleadings including the reply filed by the 7th Respondent. The Respondent 5,6, and 8 have not filed any reply or appeared in the matter. The entire issue is non-inclusion of the Applicant in the Select list prepared by the Selection Committee met on 3.10.2002 against the vacancies determined by the Government of India (DOP&T) for promotion of SCS Officers to the IAS cadre of Kerala during the year 2001. According to the Respondents 2 & 3, the name of the applicant was at Sl.No.3 in the eligibility list and his case was duly considered by the Selection Committee. On an overall assessment of the Applicant's service records, the Committee graded him as "good" and

therefore, the name of the Applicant could not be included in the Select List. The pendency of the disciplinary proceedings against the Applicant was not a factor which was considered by the Selection Committee which graded him as "good". The selection committee was not guided merely by the overall grading that was recorded in the ACRs but in order to ensure justice, equity and fair play, it has made its own assessment on the basis of in depth examination of service records of eligible officers, deliberating on the quality of the officers on the basis of performance as reflected under the various columns recorded by the Reporting/Reviewing Officer/Accepting authority in ACRs for different years and then finally arrived at the classifications which were assigned to each eligible officers in accordance with provisions of Promotion Regulations. While making the overall assessment, the selection committee also kept in view the orders awarding penalties or any adverse remarks communicated to the officer, which even after due consideration of his representation have not been completely expunged. His name could not be included in the Select List due to the statutory limit of the select list and due to availability of officers with better grading in accordance with clause 5(4) and 5(5) of the IAS (Appointment by Promotion) Regulations, 1955, which reads as under:

"5(4): The Selection Committee shall classify the eligible officers as 'outstanding' 'very good' 'good' and 'unfit' as the case may be on an overall relative assessment of their service records.

5(5): The list shall be prepared by including the required number of names first from among the officers finally classified as 'outstanding'; then from amongst those similarly classified as 'very good' and thereafter from amongst those similarly classified as 'good' and the order of names inter-se within each category shall be in the order of their seniority in the State Civil Service.

Provided that the name of an officer so included in the list shall be treated as provisional if the State Government withholds the integrity certificate in respect of such an officer or any proceedings, departmental or criminal are pending against him or

anything adverse against him which renders him unsuitable for appointment to the service has come to the notice of the State Government."

The contention of the Applicant that he is senior to the party respondents Nos. 5 to 7 and, therefore, he is entitled to be included in the Select List is also devoid of any merit as the Selection was made on the basis of the merit of the individual officers which had been duly assessed by the Selection Committee. Again, the non-issuance of the Integrity Certificate by the State Government was not a reason for not including the name of the applicant in the Select List as alleged by him. The non-issuance of the Integrity Certificate does not disqualify a person for inclusion in the zone of consideration for appointment and its consequence only is limited to the extent that in such cases the selection will be treated as provisional. The contention of the Applicant that the Selection Committee considered the Confidential Reports of the Applicant as if the disciplinary proceedings are still pending against him is also not valid. On the directions of this Tribunal dated 15.1.2003 in OA 777/2002 to the State Government to consider Annexure A5, A6 and A8 representations and to pass a speaking order and to take necessary follow up action in relation to the list already sent to the Government of India (1st Respondent), the State Government has already considered his representation but rejected the request of expunction of the adverse remarks. The Applicant himself has stated that he is taking necessary steps separately to challenge the rejection of his request against low grading and for expunction of the adverse remarks. It is seen that the Applicant was assessed by the Selection Committees on the basis of his existing service records and graded him only as 'Good' and consequently

he was not included in the Select List as officers with higher grading as "Outstanding" were available.

13. In the above facts and circumstances in this case, we do not find any merit in both the O.As and accordingly they are dismissed. There are no orders as to costs.

Dated this 16th day of January, 2005

GEORGE PARACKEN
JUDICIAL MEMBER

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SATHI NAIR
VICE CHAIRMAN