

CENTRAL ADMINISTRATIVE TRIBUNAL,
ERNAKULAM BENCH

Original Application No. 152 of 2012
Original Application No. 179 of 2012

Thursday, this the 1st day of August, 2013

CORAM:

Hon'ble Dr. K.B.S. Rajan, Judicial Member
Hon'ble Mr. K. George Joseph, Administrative Member

1. Original Application No. 152 of 2012 -

T.M. Jamaludeen, aged 55 years,
S/o the late T.A. Mohammed,
Deputy Commissioner of Police (Administration & Crimes),
Kochi, residing at Thejus, Shobha Theatre Road,
Toll Junction, Edappally PO, Kochi-682 024. **Applicant**

**(By Advocates – M/s. O.V. Radhakrishnan, Sr.
Ms. K. Radhamani Amma)**

V e r s u s

1. State of Kerala, represented by its Chief Secretary,
Secretariat, Thiruvananthapuram-695 001.
2. Union of India, represented by its Secretary,
Ministry of Home Affairs, New Delhi – 110 001.
3. Union Public Service Commission, represented by its Secretary,
Shajahan Road, New Delhi – 110 069.
4. The Selection Committee for Selection to the Indian Police Service,
constituted under Regulation 3 of the IPS (Appointment by Promotion)
Regulations, 1955, represented by its Chairman, Union Public Service
Commission, Shajahan Road, New Delhi – 110 069.
5. D. Madhu, Commandant, Rapid Rescue Response Force,
Pandikkad, Malappuram – 676 521.
6. P.H. Asharaf, Superintendent of Police,
Thrissur Rural – 680 001.
7. V.C. Mohanan, Deputy Commissioner of Police,
Law and Order and Traffic, Thiruvananthapuram City-695 001.

8. Shaik Anvaruddin Sahib, Superintendent of Police,
Intelligence, Intelligence Head Quarters, Pattom,
Thiruvananthapuram – 695 004.

9. A.J. Thomaskutty, Superintendent of Police,
Thiruvananthapuram Rural-695 001. **Respondents**

[By Advocates – **Mr. M. Rajeev, GP (R1),**
Mr. Sunil Jacob Jose, SCGSC (R2)
Mr. Thomas Mathew Nellimoottil (R3-4)
Mr. S. Sreekumar, Sr.
Mr. Saju Wahab (R6-9)]

2. Original Application No. 179 of 2012 -

T.M. Jamaludeen, aged 55 years, S/o. the late T.A. Mohammed,
Deputy Commissioner of Police (Administration & Crimes),
Kochi, residing at 'Thejus', Shobha Teatre Road, Toll Junction,
Edappally PO, Kochi-682 024. **Applicant**

(By Advocates – **M/s. O.V. Radhakrishnan, Sr.**
Ms. K. Radhamani Amma)

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Regulations, 1955, represented by its Chairman, Union Public Service
Commission, Shajahan Road, New Delhi – 110 069.
5. K.B. Balachandran, Superintendent of Police,
Kollam Rural – 691 001.
6. S. Surendran, Assistant Director, Kerala Police Academy
(Police Science), Thrissur – 680 631.
7. A.V. George, Superintendent of Police, Wayanad-670 645.
8. S. Sasikumar, Superintendent of Police, CBCID, ISIT,

Thiruvananthapuram – 695 001.

9. T.K. Rajmohan, Superintendent of Police,
Kozhikode Rural – 673 001. **Respondents**

[By Advocates – **Mr. M. Rajeev, GP (R1),**
Mr. Sunil Jacob Jose, SCGSC (R2)
Mr. Thomas Mathew Nellimoottil (R3-4)
Mr. P.V. Mohanan (R5)
Mr. S. Sreekumar, Sr.
Mr. Saju Wahab (R6, 8 & 9)
Mr. Martin G. Thottan (R7)]

These applications having been heard on 22.07.2013, the Tribunal on 01.08.2013 delivered the following:

ORDER

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

These OAs filed by the same applicant involve similar facts and the same legal issue. Hence, they are heard together and are being disposed of by this common order.

2. Stated briefly, the reliefs sought by the applicant are as under:-

- a) Set aside the select list of the year 2009 (in OA No. 152/2012) and select list of 2008 A (in OA No. 179/2012) for promotion to the IPS (Kerala) Cadre and appointment of party respondents on the basis of the select lists;
- b) Direct the respondents to hold a review selection committee meeting and direct the 1st respondent to forward the full service records of the applicant containing good service entries, rewards received by him and the letters of appreciation for the meritorious work done by him and to forward the ACR beyond the period of five years so as to cover up the periods which are to be ignored of for the reason of non-communication of the same and also to forward full service records of the party respondents;

c) Direct the respondent No. 4 to make a fair and proper selection strictly adhering to the guidelines for preparation of list of suitable officials by the selection committee for promotion to the Indian Police Service dated 13.10.2010;

d) Appoint him to the IPS in case he is included in the fresh select list of 2009 or 2008(a).

3. The applicant contended that non-inclusion of his name in the select list of 2009 and 2008 A superseding the applicant by respondents Nos. 6 to 9 in OA No. 152 of 2012 and respondent No. 9 in OA No. 179 of 2012 is illegal, arbitrary and discriminatory. The 1st respondent did not forward the good service entries, the rewards and the letters of appreciation earned by him for consideration of the selection committee as required under paragraph 4(1) of the guidelines for preparation of select list. The ACRs of the applicant for the period from 14.6.1999 to 31.12.2008 were prepared at one go in the month of January, 2010. The adverse remarks were not communicated to him within a reasonable time. He was not given an opportunity to file representation for expunging adverse remarks or for upgrading the assessment of his work which is in clear violation of the principles of natural justice declared by the Hon'ble Apex Court in Dev Dutt Vs. Union of India – 2008 (8) SCC 725. Therefore, the entries which were adverse to the applicant in the relevant confidential reports ought to have been ignored for the purpose of evaluating comparative merit and suitability. The merit of the applicant has not been assessed properly while making the selection which resulted in his supersession. The party respondents' tainted service records do not exhibit positive merit. If the

selection committee meeting was held at the right time the respondents Nos. 5 to 9 in OA No. 152 of 2012 would not have been included in the select list and would not have been appointed to the IPS. Due to the inordinate delay in holding the selection committee meetings the party respondents got themselves exonerated from the criminal cases and got the penalties set aside and got adverse remarks expunged by 3.10.2011, the date of the meeting of the selection committee. The party respondents are less meritorious than the applicant and their selection is made on extraneous considerations.

4. The 1st respondent, the State of Kerala, submitted that it has forwarded necessary proposal for convening the meeting of selection committee for promotion. The applicant has not submitted any petition raising grievance against lowering of grading in his ACRs. The State Government prepares the list of persons in the zone of consideration strictly based on seniority, integrity and unblemished service records.

5. The 2nd respondent (Union of India) submitted that these OAs are primarily concerned with the State Government and the Union Public Service Commission. The grievance of the applicant relates to alleged non-placement of his complete service records before the selection committee by the State Government as well as error in assessing his service records by the selection committee.

6. In the reply statement filed on behalf of the U.P.S.C. and the Selection Committee it was submitted that the meeting of the selection committee for

promotion of the State Police Service officers to the IPS (Kerala) cadre for the vacancies of 2008 A and 2009 was held on 3.10.2011. The selection committee on an overall relevant assessment of the service records of the applicant assessed him as 'good' for both the years. As there were enough officers having grading higher than him available for promotion and also due to statutory limit in the size of the select list he could not be included in the select list. The case of the applicant has been considered by the selection committee strictly in accordance with the provisions of promotion regulation and the confidential procedure which has been upheld by the Hon'ble Supreme Court. In the matter of selection merit comes first and seniority comes in to play only while arranging the officers with same grading in the list. There was no delay in holding the meeting of the selection committee as far as Union Public Service Commission is concerned. As the meeting is convened only after receipt and examination of complete proposal, including ACRs of different officers, integrity certificates and communication of adverse remarks from the State Government etc.

7. The party respondents in their reply statements submitted that based on the merit and unblemished service through out in the State police service they were selected by the selection committee.

8. The applicant in his rejoinder statement submitted that the selection committee has to consider not only the six documents mentioned in paragraph 6 of the guidelines but also has to consider orders regarding

appreciation for the meritorious work done by the concerned officers, orders awarding the penalty or any adverse remarks communicated to the officers which are not expunged. The selection is vitiated by non-observance of mandatory procedures prescribed in the guidelines. In case the selection committee assessed the merit of the officers properly he would have been given the grading of outstanding. The selection made by the committee is vitiated by arbitrariness and legal malice. The personal file containing the good service entry, rewards and the letters of appreciation received by the applicant were not furnished to the Union Public Service Commission and thus the Union Public Service Commission has not considered the relevant service records of the applicant. The selection committee for the vacancies for the years 2008 A and 2009 have met only on 3.10.2011 after a lapse of nearly three years. This helped the State Police Service officers who were facing departmental proceedings to get the adverse remarks expunged.

9. Heard the learned counsel for the parties and perused the records.
10. The main contention of the applicant is that adverse remarks in his ACRs were not communicated to him within a reasonable time resulting in the denial of an opportunity to file representation for expunging them or for up-grading the assessment of his work. The 2nd respondent took the stand that the requirement stated in Annexure A10 dated 29.6.2007 regarding communication of adverse remarks is fully met with in the case of the applicant. Paragraph 2 of Annexure A10 in OA No. 179 of 2012 is reproduced as under:-

"(2) As soon as the Annual Confidential Reports are reviewed by the higher authorities, they should be shown to the officers concerned, and their written acknowledgment shall be obtained on the ACRs."

(emphasis supplied)

Paragraph 6 of Annexure A10 also speaks of communication of adverse remarks. In service parlance communication normally means written communication. But paragraph 2 quoted above specifically mentions that ACR should be shown to the officials concerned and then their written acknowledgment shall be obtained on them. In view of this provision communication is restricted to showing the ACRs. The applicant represented against the manner of communication of the remarks vide Annexure A12 dated 9.2.2010 and stated that 25 CRs spanning a period of 10 years from 14.6.1999 to 31.12.2008 were shown to him. This submission substantiates the contention of the respondent No. 2 that ACRs are communicated to him as per Annexure A10. The meeting of the selection committee was on 3.10.2011. The applicant had more than one year to get his grievance about writing CRs in a bunch and the manner of communication of the remarks in the ACRs settled or to represent against the grades given to him, if he was aspiring for promotion to the IPS. It appears that no serious efforts were made by the applicant in this regard. Therefore, the stand of the respondent No. 2 that the applicant did not submit any petition against lowering of grades in the ACRs is vindicated.

11. The next contention of the applicant is that his positive merit was not properly assessed by the UPSC as the good service remarks and appreciation letters were not forwarded to the UPSC by the State. The

applicant relied on paragraph 4.1 of the guidelines dated 13.10.2010 for preparation of select list at Annexure A27 in OA No. 179 of 2012 which is extracted as under:-

“4.1 The Selection Committee will go through the records of the eligible officers and make their assessment after deliberating on the quality of the officer as indicated in the various columns recorded by the Reporting/Reviewing officer/Accepting Authority in the ACRs for different years and then finally arrive at the classification to be assigned to each other. The Selection Committee would take into account orders regarding appreciation for the meritorious work done by the concerned officers. Similarly it would also keep in view orders awarding penalties or any adverse remarks communicated to the officer, which, even after due consideration of his representation have not been completely expunged.”

12. In the reply statement filed by the U.P.S.C. it has been stated as follows:

“The proposal of the State Government for convening a Selection Committee is inter-alia accompanied by the following documents:-

- (i) ACR dossiers of the concerned officers, which are maintained in accordance with the relevant rules of the State Government.
- (ii) Seniority List of State Police Service Officers;
- (iii) Eligibility list of State Police Service Officers;
- (iv) Integrity Certificate of the eligible officers, either granting or withholding the same;
- (v) Certificates regarding communication of Adverse Remarks;
- (vi) Certificates regarding pending disciplinary/criminal proceedings/penalties etc.”

The most important documents on which the UPSC relies for assessment of merit and suitability of officers for promotion to the IPS are stated above. Whether the good service entries, rewards and letters of appreciation in respect of the applicant or in respect of other candidates have been

forwarded to the UPSC or not, is not clear from the submission of the respondent No. 2. If they were sent then they would have been considered by the UPSC. As per the reply statement filed by the UPSC the proposal sent by the State Government is examined by it for completeness before meeting of the selection committee is convened and it makes selection strictly in accordance with the rules and regulations. Prejudice to the applicant arises if only his good service entries/rewards and appreciation letters were not sent and not considered by the UPSC while those in respect of other officers in the zone of consideration were sent and considered by the UPSC. The applicant has no such case. He has not assailed the procedure for preparation of select list either. The assessment of the positive merit of the applicant by the UPSC is not vitiated by the non-adherence of paragraph 4.1 of the guidelines, if it has happened in the instant cases, for guidelines, after all are guidelines, not mandatory. The applicant's contention that because his good service entries, rewards and appreciation letters were not forwarded to the UPSC the select list prepared by the selection committee is vitiated is not legally tenable. The applicant has not proved that only his good service records, rewards and appreciation letters were not sent for consideration of UPSC while these records/documents in respect of others were sent.

13. As to the contention of the applicant that he was superseded, it goes without saying that when merit is the criterion for selection as per promotion regulation, supersession cannot be ruled out. As stated by the UPSC seniority comes into play only while arranging officials with the

same grade in the list. The Hon'ble Supreme Court in R.S. Das Vs. Union of India & Ors. - AIR 1987 SC 583 held as under:-

".....Where selection is made on merit alone for promotion to a higher service selection of an officer though junior in service in preference to senior does not strictly amount to supersession."

14. The applicant has alleged that holding of the selection committee meeting for the year 2008 and 2009 were deliberately delayed to favour respondent No. 6 in OA No. 179 of 2012 who was facing criminal investigation/vigilance inquiry during the relevant period. This is a bald allegation. No proof is submitted to substantiate the said allegation. There is nothing in the record or in the pleadings before us to conclude that the delay in holding the meeting in time was deliberate.

15. The applicant has failed to secure and fortify his candidature for promotion to the IPS by choosing not to fight for upgradation of his ACR gradings in time. Only on learning that his name is not included in the select list the applicant started preparing for a battle; by the time, the war was already lost. The applicant should have followed up his representation at Annexure A12 vigorously and sought legal remedy available to him at the appropriate time. The applicant has no case that the selection committee constituted under the regulations for appointment by promotion did not make the selections strictly in accordance with the rules and regulations. Non-compliance of paragraph 4.1 of the guidelines for promotion (ibid) by itself, if at all it took place, cannot be viewed as serious violation of the statutory rules. In Civil Appeal No. 5883-5891 of 2007 (M.V Thimmaiah &

Ors. Vs. Union of India & Ors as observed as under:-

“9. Normally, the recommendations of the Selection Committee cannot be challenged except on the ground of malafides or serious violation of the statutory rules. The courts cannot sit as an appellate authority to examine the recommendations of the Selection Committee like the court of appeal. This discretion has been given to the Selection Committee only and courts rarely sits in court of appeal to examine the selection of the candidate nor is the business of the court to examine each candidate and record its opinion.”

The Selection Committee is an expert body. No ground of malafides or serious violation of the statutory rules by the Selection Committee is made out by the applicant in these OAs warranting interference by this Tribunal in the preparation of the select lists.

16. The applicant had relied on the judgments of the Hon'ble Supreme Court in the case of Sukhdev Singh Vs. Union of India – 2013 (3) KLT 80 (SC) and Dev Dutt Vs. Union of India & Ors. - (2008) 8 SCC 725. In the facts and circumstances of the instant OAs the judgments are not applicable as communication of remarks in the ACRs as required by Annexure A10 guidelines has taken place.

17. In the result, the OAs are dismissed with no order as to costs.

(K. GEORGE JOSEPH)
ADMINISTRATIVE MEMBER

(DR. K.B.S. RAJAN)
JUDICIAL MEMBER

“SA”