

CENTRAL ADMINISTRATIVE TRIBUNAL

ERNAKULAM BENCH

O.A.No. 206/1999

Thursday this the 4th day of March, 1999.

CORAM:

HON'BLE SHRI A.V.HARIDASAN, VICE CHAIRMAN

HON'BLE SHRI R.K.AHOOJA, MEMBER(A)

Jose Issac,
Deputy Collector(L.A.),
Collectorate,
Ayyanthole,
Trichur-3.

..Applicant

(By Advocate Mr. Shefik M.A.)

vs.

1. Union of India,
Represented by the Secretary,
Department of Personnel & Training,
New Delhi.
2. Union Public Service Commission,
Represented by its Secretary,
New Delhi.
3. The Selection Committee for
Appointment by promotion to IAS 1998,
Kerala Cadre, represented by its
Chairman, New Delhi.
4. State of Kerala,
Represented by the Chief Secretary to
the Government of Kerala,
Secretariat, Trivandrum.
5. Shri A.Ajith Kumar,
Deputy Collector,
Managing Director,
Poultry Development Corporation,
Trivandrum.
6. Shri V.M.Gopala Menon,
Deputy Collector,
Administrator,
Guruvayoor Devaswom,
Guruvayoor.
7. Shri M.N.Gunavardhanan,
Deputy Collector,
Managing Director,
Oushadhi, Trichur.
8. Shri X.Anil,
Deputy Collector(Vigilance),
South Zone, Baans Compound,
Trivandrum.

9. Shri V.Vijayakrishnan,
Deputy Collector,
Assistant Cardamon Settlement Officer,
Idukki.
 10. Shri T.C.Thankappan,
Deputy Collector,
Additional District Magistrate,
Idukki.
 11. Shri A.J.Rajan,
Deputy Collector,
Additional District Magistrate,
Pathanamthitta.
 12. Shri P.K.Raghunandan,
Deputy Collector(L.A.),
Collectorate, Kakkanand, Ernakulam.
 13. Shri P.S.Prabhakaran,
Deputy Collector,
Appellate Authority(L.R.),
Alleppey.
- ..Respondents
- (By Advocate Sri Govindh K.Bharathan (R1-3)
Sri C.A.Joy, Govt.Pleader (R4)

The Application having been heard on 22.2.99 the Tribunal on 4.3.99 delivered the following:

O R D E R

HON'BLE SHRI A.V.HARIDASAN, VICE CHAIRMAN:

The applicant belonging to a Scheduled Tribe community was directly recruited as a Tahsildar in the Kerala State Revenue Service in the year 1980. The applicant who was a student in the Govt. Medical College, Trivandrum could join only later and by proceedings dated 10.8.1981 of the Government it was ordered that he would get rank and seniority in the cadre of Tahsildar with reference to his date of joining in the Department. He joined in the Department on 23.9.1981. Finding that even after promotion of several of his juniors, the applicant was not promoted as Deputy Collector, he approached the High Court of Kerala filing O.P.424/90. The High Court

directed the Government to give the applicant promotion with effect from the date of which his immediate junior in the cadre of Tahsildar was promoted as Deputy Collector. However, the applicant was by order dated 9.5.1991 promoted on provisional basis. Thereafter by order dated 2.7.98 (Annexure A-3) the applicant was promoted notionally as Deputy Collector with effect from 17.10.1989. The applicant alleges that in the seniority list of Tahsildars revised subsequently on the basis of a direction from the High Court of Kerala one Sri A.P.Viswanath was shown as the immediate junior of the applicant and that he was promoted as Deputy Collector with effect from 25.1.1985. The grievance of the applicant is that while according to him he is very much senior to respondents 5 to 13, the 3rd respondent -Selection Committee which met on 31.8.1998 included respondents 5 to 13 in the select list for appointment by promotion to the Indian Administrative Service on the basis of the placement in the revised seniority list of Deputy Collectors published on 21.10.97 wherein the respondents 9 to 13 have been placed at Sl. Nos. 451 to 456 while the applicant was placed at Sl. No.502. The assignment of seniority to respondents 5 to 8 who were directly recruited as Deputy Collectors and appointed on regular basis with effect from 18.10.90 above the applicant giving them seniority with effect from date of advice by the Public Service Commission, namely 25.5.89, according to the applicant, is patently illegal. The action of the Selection Committee in treating the respondents 5 to 13 as senior to the applicant on the basis of Annexure-A6 seniority list which is under challenge in O.P. 418/94 is not justified and is against the rules, alleges the applicant. The

applicant has also stated that he is entitled to get seniority in the cadre of Deputy Collector with effect from 25.1.1985, the date of promotion of his immediate junior Sri A.P.Viswanath. The applicant had made a representation to the Revenue Secretary, Government of Kerala on 5.12.1998 seeking refixation of his seniority. Under these circumstances the applicant has filed this application for a direction to the respondents not to finalise/approve the selection of respondents 5 to 13 for appointment by promotion to IAS(Kerala Cadre) and not to appoint respondents 5 to 13 in IAS, declaring that the applicant is entitled to be considered for inclusion in the Select List for promotion to IAS in the existing vacancies in the Promotion Quota in Kerala Cadre in preference to Respondents 5 to 13 and to appoint him.

2. We have perused the application and the annexures thereto and have heard at length Shri Shafik M.A., the learned counsel appearing for the applicant, Shri Govindh K. Bharathan, SCGSC for respondents 1 to 3 and Shri C.A.Joy, Govt. Pleader for respondent No.4.

3. The ground on which the applicant challenges the inclusion of respondents 5 to 8 in the seniority list is that on 1st January 1998 they have not completed 8 years of continuous service either substantive or officiating as they have been appointed on regular posts of Deputy Collectors only with effect from 18.10.90. Learned counsel of the applicant argued that the period during which respondents 5 to 8 were undergoing service before their appointment on regular basis is not to be counted as service qualifying for consideration for appointment into the Indian Administrative Service. An identical issue was considered by us today in two Original Applications Nos.1298/98 and 1304/98 heard jointly. Taking note


of the fact that there is no indication in the Kerala Civil Service Executive Rules that the period of training prescribed for service as Deputy Collector would not be counted as service and the provisions of Rule 6(a) of the Kerala State and Subordinate Service Rules, which reads as follows:

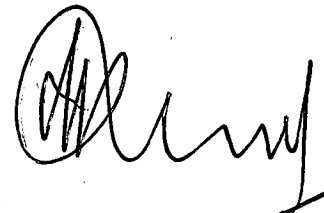
"(6) A person is said to be "on duty" as a member of a Service -

(a) when he is performing the duties of a post borne on the cadre of such service or is undergoing the probation, instruction or training prescribed for such service;"

It was held by us that the contention that the period of training in the case of directly recruited Deputy Collectors would not qualify as service for the purpose of eligibility for consideration for induction into the Indian Administrative Service is without any basis. We find no reason to deviate from that finding. Therefore the contention of the applicant that the respondents 5 to 8 should not have been considered for inclusion in the select list on the ground that they were appointed as Deputy Collectors after the training only on 18.10.90 has only to be rejected. In the case of respondents 9 to 13 the applicant himself has admitted in the application that they are senior to him as per the latest seniority list(Annexure A6. The fact that an Original Petition has been filed before the High Court of Kerala challenging that seniority is no reason that the respondents 9 to 13 should not be considered for inclusion in the select list under Regulation 5 of the Indian Administrative Service(Appointment by Promotion)Regulations if they otherwise satisfy the eligibility criterion. As respondents 9 to 13 are senior to the applicant according to the latest seniority list(Annexure A6) and as they

have been promoted as Deputy Collectors with effect from various dates between 4.7.88 and 13.9.88 going by the seniority as also by the length of service, they are eligible to be considered for inclusion in the select list according to the provision of Regulation 5 of the Indian Administrative Service(Appointment by Promotion)Regulations. Therefore, we do not find even prima facie any legitimate grievance of the applicant which calls for adjudication in this application. The application, therefore, is rejected under Section 19 of the Administrative Tribunals Act.


R.K. AHOOJA
MEMBER(A)


A.V. HARIDASAN
VICE CHAIRMAN

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LIST OF ANNEXURES

1. Annexure A3: True copy of the Order No.G.O.(Rt) No.3083/98/
RD dated 2.7.1998 of the 4th respondent,
2. Annexure A6: True extract of the relevant portion of the
Revised Final Seniority List of Deputy Collectors for the
period from 25.9.1962 to 31.12.1996.

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