

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

Original Application No. 209 of 2007

Thursday, this the 11th day of June, 2009

CORAM:

Hon'ble Mr. George Paracken, Judicial Member
Hon'ble Ms. K. Noorjehan, Administrative Member

**K.B. Balachandran, Superintendent of Police,
 Crime Branch CID, SIGI Thiruvananthapuram.** **Applicant**

(By Advocate – Mr. N. Nanda Kumara Menon - Not present)

V e r s u s

1. **The Union of India, represented by the Secretary,
 Ministry of Home Affairs, Krishimathralaya,
 New Delhi - 1100001.**
2. **The Union Public Service Commission (UPSC),
 represented by its Secretary, Shajahan Road, New Delhi.**
3. **The State of Kerala represented by the Chief Secretary to
 Government, General Administration, (Special-A) Department
 Government Secretariat, Thiruvananthapuram - 695 001.**
4. **The Selection Committee for Appointment by Promotion
 to the IPS Kerala Cadre, represented by its Chairman,
 Union Public Service Commission (UPSC), Shajahan Road,
 New Delhi.**
5. **K.K. Joshua IPS, Superintendent of Police, SBCID (Security),
 Thiruvananthapuram.**
6. **P.K. Madhu, IPS, Superintendent of Police, Vigilance and
 Anti-corruption Bureau, Kottayam.** **Respondents**
7. **The Director General of Police, Police Headquarters,
 Vazhuthycaud, Thiruvananthapuram.**

**(By Advocate – Mr. TPM Ibrahim Khan, SCGSC (R1-2&4),
 Mr. R. Premsanker, GP (R3&7) & None for R5-6)**

The application having been heard on 11.6.2009, the Tribunal on the same day delivered the following:

ORDER

By Hon'ble Mr. George Paracken, Judicial Member -

The last occasion on which the applicant's counsel appeared in this case was 29.3.2007 on which date the notices were issued to the respondents. Thereafter, this case was listed on 24.4.2007, 1.6.2007, 10.7.2007, 18.7.2008, 12.8.2008, 15.9.2008, 19.9.2008, 16.10.2008, 25.11.2008, 18.12.2008, 13.1.2009 and lastly on 27.5.2009. On none of the above dates, neither the applicant nor his counsel was present. The counsel was mostly represented by proxy counsel to seek adjournments in the matter.

2. In this view of the above position, we find that the applicant is no more interested in prosecuting the case. Accordingly, we dismiss this case for default. There shall be no order as to costs.


(K. NOORJEHAN)
ADMINISTRATIVE MEMBER


(GEORGE PARACKEN)
JUDICIAL MEMBER

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CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A No. 209 / 2007

Tuesday, this the 13th day of October, 2009.

CORAM

HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER

HON'BLE MR. K NOORJEHAN, ADMINISTRATIVE MEMBER

K.B.Balachandran,
Superintendent of Police,
Crime Branch CID,
S.I.G., Thiruvananthapuram.

....Applicant

(By Advocate Mr N Nandakumara Menon)

v.

1. The Union of India represented by the Secretary,
Ministry of Home Affairs,
North Block, New Delhi-110 001.
2. The Union Public Service Commission (UPSC),
represented by its Secretary,
Shahjahan Road, New Delhi.
3. The State of Kerala represented by the
Chief Secretary to Government,
General Administration (Special -A) Department,
Government Secretariat,
Thiruvananthapuram-695 001.
4. The Selection Committee for Appointment by Promotion,
to the I.P.S., Kerala Cadre,
represented by its Chairman,
Union Public Service Commission (UPSC),
Shahjahan Road, New Delhi.
5. K.K.Joshua, I.P.S.,
Superintendent of Police, SB CID (Security),
Thiruvananthapuram.
6. P.K.Madhu, I.P.S.,
Superintendent of Police,
Vigilance & Anti-corruption Bureau,
Kottayam.

7. The Director General of Police,
Police Head Quarters,
Vazhuthacaud,
Thiruvananthapuram. - Respondents

(By Advocate Mr T.P.M.Ibrahim Khan, SCGSC for R.1, 2 & 4)

(By Advocate Mr R Premshankar, G.P. for R. 3 & 7)

(By Advocate Mr Alexander Thomas for R. 5 & 6)

This application having been finally heard on 22.9.2009, the Tribunal on 13.10.2009 delivered the following:

ORDER

HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER

The applicant's grievance is against the Annexure A-11 notification dated 18.1.2007 issued by the 1st respondent, viz, Ministry of Home Affairs, Government of India to the extent it relates to the appointment of Shri K.K.Joshua and Shri P.K.Madhu to the Indian Police Service who have been arrayed as respondents 5 and 6 in the O.A. He has submitted that he was senior to them in the cadre of Deputy Superintendent of Police as well as in the cadre of Superintendent of Police and was fully eligible and qualified to be considered for selection and appointment to the IPS Kerala Cadre) for the select list year 2005.

2. The brief facts in the case are that the 3rd respondent, viz, the State of Kerala represented by the Chief Secretary, has forwarded a list of 9 officers including him and the respondents 5 and 6 for selection and appointment to the post of IPS Kerala Cadre for the year 2005 but the applicant was not selected by the selection committee. According to the applicant, the rejection of his candidature was for no valid reasons as he had a clear record of service in the Kerala Police and the respondents 5 and 6 were admittedly junior to him. He has, therefore, contended that the inclusion of their names in the select list was illegal. He further contended that his confidential records were not properly



considered by the selection committee under Regulation 5 of the Indian Police Service (Appointment by Promotion) Regulations 1955 while preparing the select list. According to him, the respondents 5 & 6 were less meritorious than him but they were included by the Selection Committee and they were later appointed to the IPS in the year 2005. In this regard, he has stated that the Commission of Inquiry held by Mr Justice P.P.Mohan Kumar (former Acting Chief Justice of Kerala High Court) on the liquor tragedy at Kalluvathukkal and Pallikkal in Kollam District and Pallippuram, in Thiruvananthapuram District in October 2005 adversely commented on the conduct of the 5th respondent as a Police Officer.

3. The 3rd respondent in his reply has submitted that there were 19 officers including the applicant, 5th and 6th respondents who have fulfilled all the eligibility criteria prescribed for IPS selection. However, as the number of vacancies were only 3, only 9 officers among the 19 were placed in the zone of consideration in the order of their inter se seniority position in the State Police Service. The Selection Committee after evaluation of the performance of the officers as revealed by their confidential records, classified them as "Outstanding", "Very Good" and "Good" as the case may be. Thereafter, the Select List was prepared by including the required number of names from amongst the officers finally classified as "Outstanding", "Very Good" and "Good". The list thus prepared and finally approved by the Union Public Service Commission formed the Select List. The appointments of members of State Police Service included in the Select List was made by the Government of India in the order in which their names appeared in the Select Lists during the validity period of the Select Lists subject to the willingness of the officers for appointment to the service. The Selection Committee prepared the select list of 3 officers wherein the name of the applicant did not find a place. Therefore he has not been appointed.



4. Respondents 2 and 4, viz, U.P.S.C and the Selection Committee respectively in their reply have submitted that promotion of State Police Officers to the IPS is not only first promotion but also induction into the prestigious All India Services. Where selection is made on merit, a senior officer has only a right to be considered for promotion but no legal right to promotion and, if any, officer junior to him is selected for promotion on merit, the senior officer is not legally superseded. In this regard, they have relied upon the judgment of the Apex Court in **R.S.Dass v. Union of India and others** [AIR 1987 SC 593] and the operative part of which is as under:

"18. The amended provisions of Regulation 5 have curtailed and restricted the role of seniority in the process of selection as it has given primacy to merit. Now the Committee is required to categorise the eligible officers in four different categories, namely "Outstanding" "Very Good", "Good" and "Unfit" on overall relative assessment of their service records. After categorisation is made the Committee has to arrange the names of officers in the select list in accordance with the procedure laid down in regulation 5(5). In arranging the names in the select list the Committee has to follow the inter-se seniority of officers within each category. If there are five officers fall within the "Out-standing" category their names shall be arranged in the order having regard to their inter-se seniority in the State Civil Service. The same principle is followed in arranging the list from amongst the officers falling in the category of "Very Good" and "Good". Similarly if a junior officer's name finds place in the category of "Outstanding", he would be placed higher in the list in preference to a senior officer included in the "Very Good" or "Good" category. In this process a junior officer if categorised "Outstanding" or "Very Good" would supersede his seniors. This cannot be helped. Where selection made on merit alone for promotion to a higher service, selection of an officer though junior in service in preference to his senior does not strictly amount to supersession. Where promotion is made on the basis of seniority, the senior has preferential right to promotion against his juniors but where promotion is made on merit alone, senior officer has no legal right to promotion and if juniors to him are selected for promotion on merit the senior officer is not legally superseded. When merit is the criteria for the selection amongst the members of the service, no officer has legal right to be selected for promotion, except that he



has only right to be considered along with others. In *Gurdhayal Singh Fiji v. State of Punjab & Ors.*, [1982] 1 SCR 904. This court held that a member of State Civil Service has no legal right to promotion, instead he has only right to be considered along, with others. But assuming that appellants/petitioners stood superseded by the reason that junior officers to them were included in the select list, no reasons were necessary to be recorded in view of the amended statutory provisions."

5. They have also submitted that while assessing the suitability of officers for promotion as per the uniform and consistent practice followed in the matter of induction into IPS, the Selection Committee examines the service records of officers with special reference to their performance during the years preceding the years for which the Select List was being prepared. The committee deliberates on the quality of the officer as indicated in the various columns recorded in the ACRs for different years and after detailed deliberation and discussion arrives at a grading. While doing so, the Selection Committee also reviews the overall grading recorded in the CRs to ensure that it is not inconsistent with the grading/remarks under various specific attributes. On an overall assessment of the performance as reflected under various columns of his ACRs of preceding five years, the Selection Committee assessed the applicant as "Good". According to them, the applicant cannot substitute his own judgment regarding assessment of ACRs. They have further submitted that there was no disciplinary proceedings pending against respondents 5 and 6. Rather, vide letter dated 6.5.2006, the Government of Kerala intimated that no criminal proceedings were pending against any of the officers included in the zone of consideration. They have, therefore, submitted that the selections were made strictly in accordance with the provisions of Regulations 5(4) and 5(5) of the IPS Promotion Regulation which are 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 amongst 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 Police 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.

Provided further that while preparing yearwise select lists for more than one year pursuant to the 2nd proviso to sub regulation (1), the officer included provisionally in any of the Select List so prepared shall be considered for inclusion in the Select List of subsequent year in addition to the normal consideration zone and in case he is found fit for inclusion in the suitability list for that year on a provisional basis such inclusion shall be in addition to the normal size of the select list determined by the Central Government for such year.

EXPLANATION I: The proceedings shall be treated as pending only if a charge-sheet has actually been issued to the officer or filed in a Court as the case may be.

EXPLANATION II: The adverse thing which came to the notice of the State Government rendering him unsuitable for appointment to the service shall be treated as having come to the notice of the State only if the details of the same have been communicated to the Central Government and the Central Government is satisfied that the details furnished by the State Government have a bearing on the suitability of the officer and investigation thereof is essential."

6. The first respondent, Union of India in their reply has also submitted that though the applicant was senior to respondents 5 & 6 in the State Police Service, the Selection Committee prepared the 2005 Select List on the basis of merit-cum-seniority. They have also submitted that due to lower grading and statutory limit on the size of the select list, the applicant could not be included in the select list.



7. Respondents 5 & 6 have also filed their reply denying the same contentions raised by the applicant in the O.A.

8. We have considered the averments made by the applicant and the respondents. The selection of a State Police Officer is governed by the Regulation 5(4) and 5(5) of the Indian Police Service (Appointment by Promotion) Regulations 1955. The selection Committee is the final authority in classifying the eligible officers as "Outstanding", "Very Good" and "Good", as the case may be, on an overall assessment of the service records. In the case of the applicant, the selection committee assessed him as only "Good" whereas the respondents 5 & 6 who were junior to him were classified as "Outstanding". Obviously, since the selection is on merit, the selection committee has recommended the name of the 5th & 6th respondents and the said recommendations were accepted by the competent authority and appointed them to the IPS. The applicant's allegation that the selection committee has not considered his ACR and evaluated in the proper manner is without any basis and it is nothing but his imagination.

9. In the result, the O.A is dismissed. There shall be no order as to costs.


K NOORJEHAN
ADMINISTRATIVE MEMBER


GEORGE PARACKEN
JUDICIAL MEMBER

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