

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A. 211/2005

MONDAY, THIS THE 12TH DAY OF DECEMBER 2005

C O R A M

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

Ramadasan Pothan S/o Sankaran
superintendent of Police, Crime Branch CID
Kannur, residing at Priyanka, Ashok Nagar,
Mangalore, Karnataka State.

..Applicant

By Advocate Mr. K. Ramakumar

Vs.

- 1 The Union of India represented by the
 Secretary to Ministry of Home Affairs
 New Delhi.
- 2 State of Kerala represented by the
 Chief Secretary, Government Secretariat
 Thiruvananthapuram.
- 3 The Director General of Police
 Kerala, Thiruvananthapuram.
- 4 The Ssecretary
 Union Public Service Commission
 Shahjahan Road, New Delhi.
- 5 P.K. Madhu, Superintendent of Police
 Vigilance & Anti-Corruption Bureau,
 Southern Range, Thiruvananthapuram.

..Respondents

By Advocate Mr. Sunil Jose, ACGSC for R1 & 4
By Advocate Mr. K.G. Bhaskaran, Sr GP for R 2 & 3
By Advocate Mr. Alexander Thomas for R-5

ORDER

HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN

The applicant in this O.A. who is working as Superintendent of Police, Crime Branch CID, Kannur, seeks a declaration that he is due to be granted promotion to the IPS cadre and for a direction to the respondents to promote him to the IPS on the basis of his inclusion in the Select List for promotion. The applicant who was considered for promotion to the IPS cadre on the basis of his seniority in the cadre of Deputy Superintendent of Police (Annexure A-1) in which he was placed

at Sl. No. 52, was selected and placed at No. 3 in the Select List after assessment of the official records. The recommendations of the Screening Committee were approved by the UPSC but his name is being deleted from the list in which the appointments have been made to the IPS cadre as notified at Annexure A2. The applicant submits that it is understood that the appointment has been denied due to a vigilance enquiry pending against him, that to his knowledge the enquiry has been closed. According to him he has been discriminated against and subjected to hostile treatment and the denial of promotion in spite of approval of his name by the Screening Committee and the UPSC is patently violative of Articles 14, 16 and 21 of the Constitution of India.

2 Reply statements have been filed by the respondents 2 & 3 on behalf of the State Government and the fourth respondent the UPSC. The fifth respondent had been impleaded as additional respondent No. 5 as per order in M.A. 631/2005 dated 5.9.2005. In the reply statement filed by the second respondent the State Government, it has been contended that the OA is not maintainable either in law or facts as the entire selection has been done in accordance with the IPS (Appointment by Promotion) Regulations, 1955. The IPS Selection Committee for the year 2004 met at New Delhi on 30.12.2004 in order to prepare a Select List against 6 vacancies available in the State cadre of Kerala as on 1.1.2004. The Selection Committee prepared a select list consisting of six State Police Service personnel and the list has been approved by the UPSC on 2.3.2005. The Government of India notified the appointment of five officers from the Select List as per the notification dated 10.3.2005. The applicant whose name was included provisionally in the Select List and approved by the UPSC has not been appointed as his Integrity Certificate stood withheld by the State Government. A vigilance enquiry was instituted against the applicant on allegation of amassment of wealth disproportionate to his known sources of income. The Director of Vigilance and Anti-Corruption Bureau had forwarded a report to the Government vide his letter dated 28.3.2005, based on which the

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Government of Kerala vide G.O.(Rt.) No. 1042/05/Home dated 27.4.2005 has decided to conduct an enquiry for violation of Rule 24 and 26 of the Kerala Government Servants' Conduct Rules, 1960 (Annexure R-1). Therefore, the State Government could not certify the integrity of the applicant. Under Regulation (5) of the IPS(Appointment by Promotion) Regulation 1955 the name of an officer included in the Select List shall be treated as provisional if the State Government withholds the 'integrity certificate' in respect of the officer or when any departmental or criminal proceedings are pending against him. This renders the officer unsuitable for appointment to the IPS. Further in their additional statement, the State Government submitted that the Deputy Superintendent of Police, Kannur Range has been authorised to conduct an enquiry as per GO(Rt) No. 1342/05/Home dated 31.5.2005 and the Enquiry Officer has been directed to submit the enquiry report and PR minutes within two months. The Enquiry Officer has taken further action to collect the documents from the Superintendent of Police, Vigilance and Anti Corruption Bureau Special Cell, Kozhikode and that some more time will be required to complete the enquiry proceedings.

3 In its detailed reply statement the respondent No.4, namely, the UPSC have explained the procedure for making the selections to the IPS cadre in accordance with the IPS (Appointment by Promotion) Regulations 1955 read with IPS Recruitment Rules 1954. The role of the UPSC falls under the Regulations 3, 5(4) and 5(5) of the aforesaid Promotion Regulations. The provisions regarding validity of the Select List and for provisional inclusion of officers in the Select List are contained in Regulation 7. The factual position has been explained as follows:

7.1 It is respectfully submitted that a Selection Committee Meeting to prepare the select list of 2004 for promotion to the IPS, Kerala Cadre was held on 30.12.2004. The Government of India had determined 06 (six) vacancies in the promotion quota for the year 2004. The zone of consideration was three times the vacancy i.e. 18. The name of the applicant (Shri P. Ramadasan Pothan) was considered in the eligibility list at S.No. 6. At the time of the Selection Committee Meeting, the State Government had withheld the integrity certificate of the Applicant and had

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intimated that a vigilance inquiry was pending against him for amassing wealth disproportionate to his known sources of income. The Selection Committee that met on 30.12.2004 graded the applicant as 'Very Good' on an overall relative assessment of his service records. On the basis of this assessment, his name was included in the Select List at S.No. 3, provisionally subject to grant of integrity certificate by the State Government.

7.2 It is further submitted that the Select List of 2004 was approved by the Union Public Service vide letter dated 2.3.2005 and the same ceased to be in force with effect from 1.5.2005 i.e. after 60 days from the date of approval of the List. No proposal, however, was received from the State Government for making the applicant's inclusion in the Select list as unconditional during the validity of the Select List. Hence the inclusion of applicant in the Select List continued to be provisional and he could not be appointed to IPS during the validity of the Select List."

4 As regards the contention of the applicant that he was selected and approved, the UPSC has confirmed that the applicant was considered and included provisionally at Sl. NO. 3 of the Select List as per Regulation 5(5), since the State Government withheld the integrity certificate of the Applicant and had indicated that a vigilance enquiry was pending against him. As regards the contention of the applicant that the enquiry is understood to have been closed and juniors to him in the State Police Service have been appointed, the UPSC have submitted that these are matters under the purview of the State Government and the reply of the State Government will have to be referred for the purpose. The Select List was approved by the Commission on 2.3.2005 and remained valid till 1.5.2005. In accordance with Regulation 7(4) the applicant's inclusion in the Select List continued to be provisional and hence he could not be appointed to IPS during the validity period.

5 Rejoinder has been filed by the applicant denying that he has been informed of any such vigilance enquiry as pointed out by the State Government and that the entire enquiry was based on a false complaint.

6 We have heard Advocate Shri K. Ramakumar, the learned counsel for the applicant, Shri Sunil Jose, ACGSC for R 1 & 2, Shri Alexander Thomas for the additional 5th respondent and Shri Ranjit, State Govt. Pleader for R2 & 3.

7 Both sides strongly contested the issues. It was argued by the

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learned counsel for the applicant that the vigilance enquiry on the basis of which the integrity certificate has been withheld by the State Government has been closed and the report of the Director, Vigilance shows that there are no charges pending against the applicant and the attempt of the Government is somehow to see that the applicant is not selected to IPS. They have mixed up the earlier proceedings along with the fresh disciplinary proceedings in order to show the applicant in a bad light. The departmental proceedings initiated now is an individual one and till date no memorandum of charges has been received by the applicant, the charges are of minor nature only, there is nothing adverse in the ACRs of the applicant so as to withhold his integrity certificate and in short, there is no disciplinary proceedings pending against the applicant at the time of the selection or during the validity of the Select List so as to invalidate his inclusion in the Select List. The State Government's counsel submitted that they had acted strictly in accordance with the proviso to Sub Regulation (5) of the Regulation 5. The counsel drew our attention to the reply filed by the UPSC in which they have clearly confirmed the fact that the State Government had withheld the integrity certificate of the applicant at the time of Select Committee Meeting itself on the ground that vigilance enquiry is pending against him. The enquiry could not reach any finality before the expiry of the Select List on 1.5.2005.

8 The learned counsel for the additional fifth respondent while agreeing with the stand taken by the Central and State Governments argued that the State Government had considered this issue and on 27.4.2005 decided to institute the departmental disciplinary proceedings against the applicant and were therefore not in a position to grant the integrity certificate to him. Thus, in view of the statutory mandatory provision in Regulation 7(4) and the proviso thereof, the prayer of the applicant for appointment to IPS is not maintainable and is only to be rejected.

9 We find that though extensive arguments were placed by both sides the issue raised in this OA falls within the narrow compass of the

namely, the Indian Police Service (Appointment By Promotion) Regulation, 1955 which have been made in pursuance of Indian Police Service (Recruitment) Rules, 1954 and are statutory in nature. The various players in the act viz. the Central and State Governments and the UPSC have to act within the ambit of the role defined for them in the Regulations. The task before us is only to see whether these functionaries have adhered to their roles. It would be profitable therefore to extract the relevant provisions of the above Regulations governing the issue:-

Regulation 5. Preparation of a list of suitable officers:-

(1) Each Committee shall ordinarily meet every year and prepare a list of such members of the State Police Services as are held by them to be suitable for promotion to the Service. The number of members of the State Police Service to be included in the list shall be determined by the Central Government in consultation with the State Government concerned, and shall not exceed the number of substantive vacancies as on the first day of January of the year in which the meeting is held, in the posts available for them under Rule 9 of the recruitment rules. The date and venue of the meeting of the Committee to make the Selection shall be determined by the Commission:

Provided that no meeting of the Committee shall be held and no list for the year in question shall be prepared when:

(a) there are no substantive vacancies as on the first day of January of the year in the posts available for the members of the State Police Service under Rule 9 of the recruitment rules; or

(b) the Central Government in consultation with the State Government decides that no recruitment shall be made during the year to the substantive vacancies as on the first day of January of the year in the posts available for the members of the State Police Service under Rule 9 of the recruitment rules; or

(c) the Commission, on its own or on a proposal made by either the Central Government or the State Government, after considering the facts and circumstances of each case, decides that it is not practicable to hold a meeting of the Committee to make the selection to prepare a Select List.

Explanation:- In the case of Joint Cadres, a separate Select List shall be prepared in respect of each State Police Services

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(2) The Committee shall consider for inclusion in the said list, the cases of members of the State Police Service in the order of seniority in that service of a number which is equal to three times the number referred to in Sub regulation (1)

Provided that such restriction shall not apply in respect of a State where the total number of eligible officers is less than three times the maximum permissible size of the Select List and in such a case the Committee shall consider all the eligible officers:

Provided further that in computing the number for inclusion in the field of consideration, the number of officers referred to in Sub regulation (3) shall be excluded.

Provided also that the committee shall not consider the case of a member of the State Police Service unless on the (first day of January of the year in which it meets he is substantive in the State Police Service and has completed not less than eight years of continuous service (whether officiating or substantive) in the post of Deputy Superintendent of Police or in any other post or posts declared equivalent thereto by the State Government.

Explanation- The powers of the State Government under the third proviso to this Sub-regulation shall be exercised in relation to the members of the State Civil Service of a Constituent State, by the Government of the State.

The Committees shall not consider the cases of the Members of the State Police Service who have attained the age of (54 years) on the (the first day of January) of the year in which it meets:

Provided that a member of the State Police Service whose name appears in the Select List in force immediately before the date of the meeting of the Committee and who has not been appointed to the Service only because he was included provisionally in the Select List shall be considered for inclusion in the fresh list to be prepared by the Committee, even if he has in the meanwhile attained the age of fifty four years.

Provided further that a member of the State Police Service who has attained the age of fifty-four years on the first day of January of the year in which the Committee meets shall be considered by the Committee if he was eligible for consideration on the (first day of January) of the year or of any of the years immediately preceding the year in which such meeting is held but could not be considered as no meeting of the Committee was held during such preceding year of years)

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(5) The list shall be prepared by including the required number of names, first from among the

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officers finally classified as 'outstanding' then from among 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 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 of any proceedings are contemplated or pending against him or anything adverse against him has come to the notice of the State Government.

10 The provisions of the Regulation relating to the validity period of the Select List and for making "unconditional" the names of provisionally included officers in the select list ^{are} also extracted:

Regulation 7-Select List (1) The Commission shall consider the list prepared by the Committee along with-

(a) the documents received from the State Government under Regulation 6

(b) the observations of the Central Government and unless it considers any change necessary approve the list.

(2) If the Commission considers it necessary to make any change in the list received from the State Government, the Commission shall inform the State Government and the Central Government of the changes proposed and after taking into account the comment, if any, of the State Government and the Central Government, may approve the list finally with such modification, if any, as any, in its opinion, be just and proper.

(3) The list as finally approved by the Commission shall form the Select List of; the members of the State Police Service.

(4) The Select List shall remain in force till the 31st day of December of the year in which the meeting of the Selection Committee was held with a view to prepare the list under Sub-regulation (1) of Regulation 5 or up to sixty days from the date of approval of the Select List by the Commission under Sub regulation (1) or, as the case may be finally approved under Sub-regulation (2), whichever is later:

Provided that where the State Government has forwarded the proposal to declare a provisionally included officer in the Select List as 'unconditional' to the Commission during the period when the Select List was in force, the Commission shall decide the matter within a period of ninety days or before the date of meeting of the next Selection Committee, whichever is earlier and if the Commission declares the inclusion of the provisionally included officer in the Select List as unconditional and final, the appointment of the

concerned officer shall be considered by the Central Government under Regulation 9 and such appointment shall not be invalid merely for the reason that it was made after the select list ceased to be in force.

Provided further that in the event of any new service or services being formed by enlarging the existing State Police Service or otherwise being approved by the State Government as the State Police Service under Clause (j) of Sub-regulation (1) of Regulation 2, the Select List in force at the time of such approval shall continue to be in force until a new list prepared under Regulation 5 in respect of the members of the new State Police Service, is approved under Sub-regulation (1), or as the case may be, finally approved under Sub-regulation (2).....■

11 The first contention of the applicant that he was eligible for consideration and his name was included in the Select List at Sl.No. 3 is admitted. However, it is to be noted that his name was included only provisionally as per sub regulation (5) of Regulation 5 since the State Government had taken the stand that a vigilance enquiry was pending against him. The veracity of the submission is borne out by the fact that the enquiry had been instituted by the Director, Vigilance and Anti-Corruption Bureau in pursuance of State Govt. letter dated 14.6.2002. Therefore when the Select Committee met on 20.12.2004 the enquiry was pending. The applicant has contended that vigilance enquiry was closed and the Director Vigilance has submitted a report to the effect that no further action was required. The Director, Vigilance has submitted the report only on 8.4.2005 but as seen from the orders issued by the State Government vide G.O.No. 1042/05/Home dated 27.4.2005 had reported that the applicant had not obtained the sanction of the competent authority for acquisition/disposal of property thereby violating Rule 24 and 26 of the KGSC Rules, 1960. The contention of the applicant that the vigilance enquiry was closed way back and the departmental proceedings now instituted is a fresh proceeding which could not have any nexus with the preparation of the Select List is not found to be correct. The departmental proceedings are an offshoot of the original vigilance enquiry regarding disproportionate assets and the charge of not obtaining

sanction from the competent authority for acquisition/disposal of the properties is a violation of the Conduct Rules ^{and} cannot be said to have no bearing on the integrity of the officer. At this stage, the provisions of Regulation 7 are attracted which further provided that during the period the Select List is in force, the State Government can forward a proposal to declare the inclusion of a provisionally included officer in the Select List as "unconditional" and the Commission shall decide the matter within a period of 90 days and if the Commission declares such officer in the Select List as unconditional the appointment can be considered by the Central Government. Apparently in this case the State Government has not forwarded a proposal or were not in a position to forward such a proposal during the validity of the Select List which ceased to be in force w.e.f. 1.5.2005, as the departmental proceedings could not be concluded by the State Government before that date. The issue of the integrity certificate in respect of an officer working under them is the function of the State Government. It is a very important and crucial function. The selection of State Government Police Officers to the IPS cadre is based entirely on merit and ability. The fact that integrity is also a major fact-or ~~not~~, is evident from the provisions of the Regulations empowering the State Government, to withhold the integrity certificate in respect of any officer if disciplinary proceedings are contemplated or pending against him or anything adverse against him has come to the notice of the State Government. These selections have to follow the highest standards to ensure that only the best are selected. Even the slightest doubt cast on the character and integrity of the selected officers would make the exercise lose its credibility and affect the morale of the services. In the instant case, a vigilance enquiry was pending at the time of selection and a report was received thereafter and was under consideration of the Government leading to a decision to institute a departmental proceeding. The arguments of the learned counsel for the applicant in this regard that no disciplinary proceedings as such was pending or no charges were framed against him are not relevant in the context of the above

Regulations. Denial of promotion on the above grounds and following the sealed cover procedure are relevant only for the proceedings prescribed under the CCS (CCA) Rules. In the IPS (Promotion) Regulations the wording of the proviso to sub regulation 5 of Regulation 5 extracted at para 9 supra is very clear. It is a sweeping provision and encompasses any thing adverse which has come to the notice of the State Government.

12 Therefore viewing the case of the applicant within the totality of the Rules and Regulations, the action of the State Government cannot be faulted and as far as the UPSC is concerned, since there was no intimation from the State Government regarding any proposal for applicant's inclusion unconditionally in accordance with Regulation 7(3) they could not act and therefore in accordance with the proviso to the Regulation 7(4) the applicant's inclusion in the Select List continued to be provisional and hence he could not be promoted to the IPS during the validity period of the said list. The prayer of the applicant has no merit and it is rejected. On 20.4.2005 this Tribunal had passed an interim order that the non-appointment of the applicant solely on the ground of expiry of the Select List will be subject to the outcome of this O.A. In view of our finding as above the interim order stands vacated.

13 The O.A. is dismissed. No costs.

Dated the 12th December, 2005.


GEORGE PARACKEN
 JUDICIAL MEMBER


SATHI NAIR
 VICE CHAIRMAN

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