

CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH

ORIGINAL APPLICATION NO. 114 OF 2008  
& O.A. No.228 OF 2009

Dated the 24<sup>th</sup> August, 2009

CORAM:-

HON'BLE Dr. KBS RAJAN, MEMBER (JUDICIAL)  
HON'BLE MR. K GEORGE JOSEPH, MEMBER (ADMINISTRATIVE)

1. OA No.114/08

Biju Prabhakar,  
Assistant Secretary (on Probation)  
Directorate of Survey & Land Records,  
Vazhuthakkad, Trivandrum.

.. Applicant

[By Advocate: Mr. S. Radhakrishnan ]

-Versus-

1. Union of India, represented by the Secretary  
To the Government of India, Department of  
Personnel and Training, Ministry of Personnel,  
Public Grievances and Pension, New Delhi.

2. Union Public Service Commission,  
Represented by the Secretary,  
UPSC, Shajahan Road, New Delhi.

3. The State of Kerala, represented by the Chief  
Secretary to the Government,  
Government of Kerala, Trivandrum.

4. The Principal Secretary,  
General Administration (Special-A) Department,  
Trivandrum.

5. The Principal Secretary (Revenue),  
Department of Revenue, Govt. Secretariat,  
Trivandrum.

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6. Smt. T.M. Sudha, Senior Town Planner,  
Town and Country Planning Department,  
Govt. of Kerala, Residing at SFI, TC 11/486-I,  
Nanthen Nagar, Kowdiar PO, Trivandrum.

7. P. Pushparaj, Deputy Director of Survey,  
Pathanamthitta, residing at 'Vadakkevila  
Veedu, Kuthirakulam PO, Vembayam, Trivandrum.

Respondents

[By Advocates: Ms Asha for Mr TPM Ibrahim Khan, SCGSC-R/1 Mr Varghese John for Mr Thomas Mathew Nellimmoottil-R/2, Mr R Premsankar G.P for R/3-5, Mr P.B. Suresh Kumar for R-6 and Mr R Sreeraj for R/7)]

2. O.A. No.228/09

TM Sudha, Senior Town Planner,  
Town and Country Planning Department,  
Govt. of Kerala,  
Residing at SRI, TC 11/486-1,  
Nanthen Nagar, Kowdiar PO,  
Thiruvananthapuram.

Applicant

[ By Advocates: Mr PB SureshKumar]

-Versus-

1. Union of India, represented by the Secretary  
to the Government of India, Ministry of  
Personnel, Public Grievances and Pension,  
Department of Personnel and Training, New Delhi.

2. Secretary to Government of India,  
Ministry of Personnel,  
Public Grievances and Pension,  
Department of Personnel and Training, New Delhi.

3. Union Public Service Commission,  
Represented by the Secretary,  
UPSC, Shajahan Road, New Delhi.

4. Selection Committee constituted  
Under Regulation 3 of the  
Indian Administrative Service (Appointment by  
Promotion) Regulation, 1955, Represented by its  
President, Union Public Service Commission,  
Shajahan Road, New Delhi.

5. The State of Kerala, represented by the Chief  
Secretary to the Government,  
Government of Kerala, Trivandrum.

6. Biju Prabhakar, Assistant Secretary,  
Directorate of Survey and Land Records,  
Vazhuthacaud, Thiruvananthapuram.

...Respondents

[By Advocates: Ms Asha for Mr TPM Ibrahim Khan, SCGSC-R/1 & 2 Mr Varghese John for Mr Thomas Mathew Nellimmoottil-R/3 & 4, Mr R Premankar G.P for R/5, Mr S Radhakrishnan for R/6]

This Original Application having been heard on 5<sup>th</sup> August, 2009 the Tribunal delivered the following -

O R D E R

[Hon'ble Dr.K.B.S. Rajan, J.M]

This OA preferred by the applicant Shri Biju Prabhakar was initially allowed by this Tribunal vide order dated the 29-08-2008 declaring that he is entitled to be included in the zone of consideration for selection and appointment to the Indian Administrative Service (IAS).

2] Later on, when review applications No. 20 and 21 of 2009 were filed by third parties, after hearing the parties and on observing that certain material points were not addressed elaborately by the Tribunal in the said order, the said Review Applications were allowed by order dated 13<sup>th</sup> March, 2009 and thus, the above order dated 29-08-2008 was recalled. By the time the above order in review could be pronounced, the applicant was considered for I.A.S under the Non-State Civil Services quota and was selected and appointed. When the order in review was challenged by the Applicant before the Hon'ble High Court of Kerala, vide judgment in WP© 9339/09(5) dated 31-03-2009, the High Court allowed the applicant to continue in the IAS cadre provisionally till the OA is finally heard and disposed of by this Tribunal.

3] A silhouette of the facts of the case with terse sufficiency is as follows:

The applicant was originally employed as Senior Assistant Plant Manager, Hindustan Latex Ltd. wherefrom he was, under order G.O. (Rt) No. 1183/96/LBR dated 02<sup>nd</sup> May 1996, read with Order No. E 1. 14146/95/F&B

dated 6<sup>th</sup> May 1996, appointed as Technical Officer (Chemical) in the department of Factories and Boilers, initially on one year deputation, followed by successive extension of the deputation period and ultimately he was absorbed in that capacity, vide Annexure A-6 order dated 27<sup>th</sup> November 2000. This appointment was prior to framing of the provisions of Kerala Factories and Boilers Service, 1996. In fact, the applicant was an aspirant to the post of Deputy Collector in the State Civil Services, for which he had applied even earlier to his appointment as Technical Officer in the Factories and Boilers Department which resulted in his having been called for preliminary examination in 2000, followed by final examination in August 2004 and interview in December 2004 and culminated into his appointment in that capacity, vide Annexure A-9 G.O. (Ms) No. 221/2006/R.D. Dated 31<sup>st</sup> July 2006, . The said order specified "*Sanction is accorded for the creation of three supernumerary post of Deputy Collectors on 7800 - 12975 for a period of 14 months from the date of joining of the incumbents*". Again, the applicant was afforded payment of Rs 7800, the minimum in the scale of pay of Deputy Collector plus usual allowances to the trainee during the period of that training. Regular pay of Deputy Collector was to be admissible only on successful completion of the prescribed period of training. The applicant underwent the training which came to an end by 20<sup>th</sup> October 2007 and by order dated 22<sup>nd</sup> October 2007 vide Annexure A-11, he was posted as Assistant Secretary, Survey & Land Records, Thiruvananthapuram. The applicant claimed that he should be considered for IAS from the Non-State Civil Service quota, as he fulfilled the requisite conditions attached thereto. Thus, on a direction from the Hon'ble High Court dated the 28<sup>th</sup> November, 2007 in WP(C) No.35127 of 2007, the Chief Secretary to the Government of Kerala considered the request of the petitioner for inclusion of his name in the zone of consideration for selection to the IAS from the quota for non State Civil Service Officers. The Government, however, rejected his request vide letter dated 12.12.2007 on the ground that the applicant had not completed 8 years of continuous regular service in connection with the affairs of the State. This order is challenged before this Tribunal by the applicant in the present OA.

4] The issue to be determined in this case is whether the applicant fulfills all the conditions of Regulation No.4 of the Indian Administrative Service (Appointment by Selection) Regulation 1997, (for short the Regulation 1997) to be in the zone of consideration for selection to the IAS from the category of non State Civil Service.

5] Regulation 4 of the said Regulation 1997 reads as under:

*"4. State Government to send proposals for consideration of the Committee :- (1) The State Government shall consider the case of a person not belonging to the State Civil Service but serving in connection with the affairs of the State who,*

*(i) is of outstanding merit and ability; and*

*(ii) holds a Gazetted post in a substantive capacity, and*

*(iii) has completed not less than 8 years of continuous service under the State Government on the first day of January of the year in which his case is being considered in any post which has been declared equivalent to the post of Deputy Collector in the State Civil Service and propose the person for consideration of the Committee. The number of person proposed for consideration of the Committee shall not exceed five times the number of vacancies proposed to be filled during the year.*

*Provided that the State Government shall not consider the case of a person who has attained the age of 54 years on the first day of January of the year in which the decision is taken to propose the names for the consideration of the Committee;*

*Provided also that the State Government shall not consider the case of person who having been included in an earlier select list, has not been appointed by the Central Government in accordance with the provisions of regulation 9 of these regulations."*

6] The contention of the official respondents has been the same as the one raised on the earlier occasion, that the applicant had not completed 8 years of service as required under the aforesaid Regulation.

7] However, the contention of the party respondents is that none of the requisite conditions as provided for in the Regulations has been fulfilled by the applicant and hence, he cannot be appointed to the IAS cadre under the Non-State Civil Service Quota.

8] After the completion of pleadings, the case was heard at length.

9] Learned Counsel for the applicant contended that the applicant satisfied all the conditions prescribed in Regulation 4 of the Regulations 1997 to be eligible for inclusion in the zone of consideration. According to the Counsel, the applicant is "*a person not belonging to the State Civil Service*". He does not belong to the State Civil Service as he holds lien in the cadre of Officers in the Department of Factories and Boilers. Lien means title of an officer to hold substantively a permanent post to which he has been permanently appointed. It is a title which enables an Officer to go back to his parent cadre as of right. An officer may be said to 'belong to a service' only when he has a lien in a post in that service. Although the applicant is at present in the State Civil Service, till he is confirmed and is given a substantive appointment when he will have a lien, he cannot be said to 'belong' to the State Civil Service. As per Rules, he retains lien in the Department of Factories and Boilers till he acquires a lien in the State Civil Service. At the time of nomination, the applicant had completed his training as Deputy Collector for 14 months and was holding the post of Assistant Secretary in the Directorate of Survey and Land Records on probation. On successful completion of probation he will be confirmed and given a substantive post by which alone he acquires a lien in the State Civil Service. Till then he does not belong to the State Civil Service and he can be sent back to the Department of Factories and Boilers. On acquiring a lien in the State Civil Service his lien in the Factories and Boilers Department will automatically extinguish. Thus, according to the counsel, the applicant does not belong to Non State Civil Service.

7] To buttress this point the learned counsel relied on a decision of the Apex Court in *Triveni Shankar Saxena-v- State of UP, AIR 1992 Supreme Court 496* where in para 21 reads:

*"21. A learned single Judge of the Allahabad High Court in *MP Tewari-v-Union of India, 1974 All LJ 427* following the dictum laid down in the above *Parsh Chandra's case* in distinguishing the decision of this Court in *PL Dhangra -v- Union of India, AIR 1958 SC 36* has observed that "a person can be said to*

acquire a lien on a post only when he has been confirmed and made permanent on that post and not earlier", with which view we are in agreement. (Emphasis added).

8] The counsel for the applicant further submitted that the applicant was serving in connection with the affairs of the State. Our attention was drawn to Annexure A/6 order dated 27.11.2000 that "in view of the exceptionally efficient services rendered by Shri Biju Prabhakar Government hereby order to regularize permanently Shri Biju Prabhakar, Senior Assistant Plan Manager, Hindustan Latex Limited (a Central Public Sector undertaking) who is now working on deputation in the Factories and Boilers Department as Technical Officer (Chemical), in the scale of pay of Rs.8250-13650/- by overruling the advice of the Public Service Commission." On his appointment as Technical Officer(chemical) in the Department of Factories and Boilers by Annexure-A/5 order, his pay and allowances were as admissible to other officers of the same status in the State Government service. His TA and other allowances, medical facilities, leave Rules were as per Kerala Service Rules. The Gazette Notification dated 28<sup>th</sup> September,1999 empowered the applicant to exercise all statutory functions under sub-section (2) (a) of Section 8 of the Factories Act, 1948. This notification was issued even before his regularization. (Annexure-A/14) This would clearly establish that the applicant was working in connection with the affairs of the State since 1996. The Kerala Public Service Act, 1968 is an enabling Act to make rules and regulations. Any other service like Factories and Boilers not covered by it also is in connection with the affairs of the State.

9] As far as outstanding merit and ability of the applicant are concerned they are not disputed. So is the criterion of attaining the age of 54 years on the first day of January, 2007.

10] The applicant is holding the post of Assistant Secretary on 22.10.2007 which is a gazetted post and he is discharging the duties of that post.

11] The applicant has completed *not less than 8 years of continuous service under the State Government on the first day of January of the year in which his case is being considered in any post which has been made equivalent to the post of Deputy Collector in the State Civil Service*. The post of Technical Officer (Chemical) is equivalent if not more than equivalent to the post of Deputy Collector in the State Civil service. The applicant who had been holding that post since 1996, has got more than 8 years of service in the State Government as on 01-01-2007 as he joined the Department of Factories and Boilers, Government of Kerala on 06-05-1996. What is required in terms of Regulation 4(iii) of Regulation 1997 is 8 years of continuous service and not 8 years of continuous regular service. Continuous service means any kind of service. Therefore the service on deputation basis also qualifies to be counted under continuous service.

12] The learned counsel for the applicant further submitted that Regulation 1997 does not mention year-wise nomination.

13] Earlier, the State Government had only one objection that the applicant had not rendered eight years of Non-State Civil Service and hence he was not considered for selection to the IAS under the Non-State Civil Service quota. However, as per the private respondents, none of the requisites for consideration for IAS under the Non-State Civil Services quota is being fulfilled by the applicant and hence, he cannot be considered for selection to IAS cadre under the said quota. The various contentions as raised by the counsel for the party respondents are itemized as hereunder.

- (a) The applicant is not holding a Gazetted post in a substantive capacity in a Non State Civil Service as on 01-01-2007;
- (b) The applicant is a member of a State Civil Services as on 01-01-2007.
- (c) The applicant had regular service under the State Government only with effect from 27-11-2000 and thus did not complete 8 years of continuous service under the State Government as on 01-01-2007.

14] According to the counsel for the party respondents, the applicant having been appointed on substantive basis by direct recruitment on the basis of the advice given by the Public Service Commission as Deputy Collector which is a post borne in the Kerala Civil Service (Executive), he has acquired a lien on that post and on acquiring the lien on that post, the lien he had to the post of Technical Officer (Chemical) in the Factories and Boilers Department got terminated. Even assuming without accepting that the applicant has retained his lien in the said post of Technical Officer (Chemical), all that he can claim is a right conferred under Rule 8 of the Kerala State and Subordinate Services Rules which enables him to seek repatriation to the post of Technical Officer (Chemical) in the Factories and Boilers Department. That far and no further! The lien in that department is not sufficient for treating him as holding the post of Technical Officer (Chemical) in the Factories and Boilers Department.

15] The Counsel for private respondent further argued that on his appointment as Deputy Collector in the State Civil Service as per the provisions in the Kerala State and Subordinate Service Rules, the applicant became a Member of that service. Contention that the applicant is only on probation and hence he cannot be said to be a member of the State Civil Service is unsustainable in law in view of the clear definition of the term 'member' vide Rule 2(9) of the Kerala State & Subordinate Services Rules, 1958.

16] Contention that the period of deputation in the post of Technical Officer (Chemical) should count to reckon the period of eight years of service cannot also be sustained in law as the applicant's appointment on deputation to the said post is not as per the attendant Rules.

17] Continuous service provided for in the Regulation is service rendered in connection with the affairs of the State and the service rendered in connection with the affairs of the State is governed by the Kerala Public Services Act. As such, only the service rendered in accordance with the Act can be construed as service rendered in connection with the affairs of the

State. The post of Technical Officer (Chemical) is covered by the Special Rules for the Kerala Factories and Boilers Service 1996. The said rules do not contemplate any appointment by deputation. Thus, the service rendered on deputation cannot count for continuous service.

18] The learned counsel for the 6<sup>th</sup> respondent further contended that this Tribunal had declared that the applicant was eligible to be included in the zone of consideration for the vacancies identified for the year 2006, therefore, he cannot be considered for the vacancies identified for the year 2007 i.e. for inclusion in the zone of consideration in the year 2008. There was no nomination of the applicant for the year 2008 from the Secretary or Principal Secretary of any Department. The DPC is expected to meet every year in respect of the vacancies identified for the previous year and, therefore, every year there has to be nomination for consideration. In the absence of nomination as contemplated in Regulation 1997, there is no question of inclusion of the name of the applicant in the zone of consideration.

19] Elaborating the above contentions, the counsel for the private respondent argued that as per Rule 2(2) and 2(9) of KSSR the applicant had become a member of the Kerala Civil Service on 21.08.2006, therefore, he was ineligible to be in the zone of consideration for selection to IAS from the category of non State Civil Service for the year 2007. Again, on the 1<sup>st</sup> day of January 2007 the applicant was not holding a gazetted post outside the Kerala State Civil Service. He was the Deputy Collector in the State Government on that day. The special Rule for Kerala Factories and Boilers Rule, 1996 does not provide for deputation of a member of that service, therefore, his deputation to the Kerala Factories and Boilers Department is not the service in the affairs of the State. Moreover, the Kerala Public Service Commission did not recommend his appointment to the post of Technical Officer in the Factories and Boilers Department. As the State Government had overruled the recommendation of the Public Service Commission his regularization in the cadre of the Department of Factories

and Boilers is unconstitutional. He had further added that serving under the State Government would mean that an officer is under the disciplinary control of the State Government. For that, he needs to be a member of service in the Government of Kerala. While on deputation the applicant is not under the control of the State Government. While he was on deputation he had a lien on his previous post in a Central Government Undertaking. Therefore, his service on deputation is not eligible as service under the State Government as required under the Regulations 1997. In the original application, the applicant did not mention the year for which he should be considered to be eligible for inclusion in the zone of consideration. For the above reasons, the learned counsel for the 6<sup>th</sup> respondent contended that the OA should be dismissed.

20] The learned counsel for 7<sup>th</sup> respondent submitted that his contentions are exactly identical to those made by the learned counsel for the 6<sup>th</sup> respondent and hence he adopts the very same arguments as advanced by the learned counsel for the sixth respondent. .

21] In his rejoinder, the counsel for the applicant submitted that Regulation 4(i) of Regulation 1997 contemplates that the State Government shall consider the case of 'a person not belonging to State Civil Service' that is to say, not holding lien on a post in the State Civil Service, The term 'belonging' means that an officer should have a right to hold the post in the service and in case he is serving elsewhere, he should have a vested right to come back to hold the post. As to the contention that applicant has made some misrepresentation to the effect that the order of the Tribunal is to consider him for 2008, the counsel asserted that the applicant did not make any misrepresentation for inclusion of his name in the zone of consideration for the year 2008. He did not displace anybody from the list of 10 in the zone of consideration. The Government had, of its own, verified and included the applicant's name in the zone of consideration in the year 2008.

22] This Original Application is linked with OA No.228/2009. The applicant herein is No.3 in the select list for IAS (Selection). Had the

applicant in No.114/08 been not selected then she would have got selection as contended by the learned counsel for the applicant in that OA. Both the OAs, viz. No.114/08 and 228/2009, were heard together as they were closely linked.

23] Arguments were heard and documents perused. A number of authorities cited by both the sides have also been taken into account:-

24] For the purpose of adjudication of this O.A. interpretation of certain related provisions of the following statutes is required to be considered:-

- (a) The Kerala Civil Service (Executive) Rules (Rules 5(b), 6(b) and 7).
- (b) The Kerala Service Rules (Rule 2(18), 16, 18 and 19)
- (c) The Kerala State & Subordinate Services Rules 1958 (Rule 2, 3 19, 20, 24 and 26).
- (d) The Kerala Public Services Act, 1968 (Sec 3).
- (e) Kerala Factories and Boilers Service 1996 (Rule 3).

25] The following questions are apt to be considered with reference to the above provisions:-

- (a) As the applicant's claim is for promotion under the quota prescribed for non-state civil service, whether he belongs to that service.
- (b) If he belongs to that service, whether he fulfills the requisite experience of 8 years of service in a grade equivalent to Deputy Collector.

26] The Kerala Public Services Act, 1968 vests with the Government of Kerala, power to make rules either prospectively or retrospectively to regulate the recruitment and conditions of service of persons appointed, to public services and posts in connection with the affairs of the State of Kerala. The Kerala Factories and Boilers Service, 1996 has been framed in exercise of the powers conferred by sub section (1) of section 2 of the Kerala Public Services Act 1968 (19 of 1968). As per Rule 3 thereof, the method specified for appointment to the post of Technical Officer

(Chemical) is by promotion or in the absence of candidate for promotion, by transfer from other Department Service of the State or in the absence of both, by direct recruitment. A combined reading of the above two would go to show that the applicant has been appointed in accordance with the provisions of relevant rules as Technical Officer (Chemical) in the Factories and Boilers Department. The pay scale attached to the applicant's post was Rs 8250 - 13650, at a time when the pay scale of Deputy Collectors in the State Civil Service was Rs 7800- 12975. Thus, the applicant, in the Factories and Boilers Department was functioning in a post higher than that of Deputy Collector in the State Civil Services.

27] The next question to be addressed is 'as of 21<sup>st</sup> August 2006 when the applicant was sent on 14 months' training as Deputy Collector, and thereafter, what is the status of the Officer? ( Is he said to 'belong' to State Civil Service or non State Civil Service?)' It is at this juncture that various provisions of different statutes, as referred to above would spring into play. It is thus appropriate to extract the relevant rules which are as hereunder:-

**(a) The Kerala Civil Service (Executive) Rules**

Rule 5(b): Every person appointed as Deputy Collector by direct recruitment shall, from the date on which he completes the training prescribed in sub rule (b) of Rule 6, be on probation for a total period of 2 years on duty within a continuous period of 3 years.

Rules 6(b): Training: Every person recruited direct shall also undergo such training as may be prescribed by the State Government from time to time. Such person shall, during the period of training, draw allowances as may be prescribed by the Government from time to time. The period of training shall not count for increments in the time-scale of pay.

Rule 7: Suspension of probation - (a) Without prejudice to the above provision of General Rule 19(a), the Government may, at any time before the expiry of the prescribed period of probation, suspend the probation of a probationer, otherwise than for want of a vacancy and revert him to his permanent post.

**(b) The Kerala Service Rules (Rule 2(18), 16, 18 and 19)**

Rule 2(18): Lien: means the title of an officer to hold substantively either immediately or on termination of a period or periods of

absence, a permanent post to which he has been appointed substantively.

Rule 16: Unless in any case it be otherwise provided in these rules, an officer on substantive appointment to any permanent post acquired a lien on that post and ceases to hold any lien previously acquired on any other post.

Rule 18(a): The Government shall suspend the lien of an officer on a permanent post which he holds substantively, if he is appointed in a substantive capacity -

(1) to a permanent post outside the cadre on which he is borne; or  
 (2) provisionally to post on which another officer would hold a lien had his lien not been suspended under this rules.

(iv) Rule 19(a): An officer's lien on a post may in no circumstances be terminated even with his consent, if the result will leave him without a lien or a suspended lien upon a permanent post.

(c) The Kerala State & Subordinate Services Rules 1958 (Rule 2, 3, 19, 20, 24 and 26).

Rule 2(1): A person is said to be appointed to a service when in accordance with the rules or in accordance with the rules applicable at the time as the case may be, he discharges for the first time the duties of a post borne on the cadre of such service or commences the probation instruction or training prescribed for members thereof.

Rule 2(3) "Approved probationer" in a service, class or category means a member of that service, class or category who has satisfactorily completed his probation and awaits appointment as a full member of such service, class or category.

Rule 2(7): "Full member" of a service means a member of that service who has been appointed substantively to a permanent post borne on the cadre thereof.

Rule 2(9): "Member of a service" means a person who has been appointed to that service and who has not retired or resigned, been removed or dismissed, been substantively transferred or reduced to another service or been discharged otherwise than for want of a vacancy. He may be a probationer, an approved probationer or a full member of that service.

Rule 2(10): "Probationer" in a service means a member of that service who has not completed his probation.

Rule 19: Suspension, termination or extension of probation: (a) Where the Special Rules of any service prescribe a period of

probation for appointment as a full member of the service, or where such period of probation has been extended under General Rule 21, the Appointing Authority may, at any time before the expiry of the prescribed period of probation or the extended period of probation, as the case may be -

suspend the probation of a probationer and discharge him for want of vacancy; or at its discretion, by order, either, terminate the probation of a probationer and discharge him, or in case the probation has not been extended under General Rule 21, extend the period of his probation after giving him a reasonable opportunity of showing cause against the action proposed to be taken in regard to him.

(vii) Rule 20: *Probationer' suitability for full membership*- (a) At the end of the prescribed or extended period of probation, as the case may be, the Appointing Authority shall consider the probationer's suitability for full membership of the service, class or category for which he was selected.

(viii) Rule 24: *Appointment of full members*: (a) Subject to the provisions of rule 8, an approved probationer shall be appointed to be a full member of the service in the class or category for which he was selected, at the earliest possible opportunity, in any substantive vacancy which may exist or arise in the permanent cadre of such class or category and if such vacancy existed from a date previous to the issue of the order of appointment, he may be so appointed with retrospective effect from the date or, as the case may be, from any subsequent date from which he was continuously on duty as a member of the service in such class or category or in a higher class or category:

(ix) Rule 26. *Membership of more than one service*: No person shall at the same time be full member of more than one service. A probationer, approved probationer or full member of one service who is appointed to be a full member of another service shall cease to be a member of the former service.

28] It is in the light of the above provisions, that a look at Clause 4 of the 1997 Regulations, should be made. The said clause states as under:-

"The State Government shall consider the cases of a person not belonging to the State Civil Service but serving in connection with the affairs of the State or States in the case of joint Cadres who - is of outstanding merit and ability; and has completed not less than 8 years of continuous service under the State Government on the first day of January of the year in which his case is being considered in any post which has been declared

*equivalent to the post of Deputy Collector in the State Civil Service and propose the person for consideration of the Committee". ....*

29] The above clause thus warrants fulfillment of the following conditions:-

- (a) *The person should not belong to the State Civil Service;*
- (b) *The person should be serving in connection with the affairs of the State;*
- (c) *He should have completed not less than 8 years of continuous service under the State Government on the first day of January of the year in which his case is being considered;*
- (d) *the post so held shall be equivalent to the post of Deputy Collector in the State Civil Service.*

30] According to the counsel for the party respondent, the applicant does not fulfill any of the above conditions, for, he having been appointed under the Factories and Boilers Act, his appointment cannot be said to be covered under the Kerala Public Services Act; he was not holding the post under non state Civil service, as admittedly he had, as on 01-01-2007 been functioning under the State Civil Service, for, the rules clearly provide that a trainee or probationer is also a member of the State Civil Service; that he has not completed eight years of service in the non state civil service.

31] Per contra, the counsel for the applicant asserted that all the conditions stand fulfilled in the case of the applicant. Counsel for the applicant distinguished the term, "not a member of the state civil service" and "not belonging to the State Civil Service"

32] The applicant could be said to belong to Non State Civil Service, if he cannot be said to belong to State Civil Service. From 21<sup>st</sup> August 2006, for the first fourteen months, he was sent on training, and to accommodate him supernumerary post was created. Supernumerary post cannot be said to be a substantive post. Thus, during the period the applicant was accommodated against a supernumerary post, he cannot be said to belong to State Civil Service. Support could be had from the decision in the case of *O.P. Singla v.*

*Union of India, (1984) 4 SCC 450*, wherein the Apex Court has held as under:-

27. *Thus, persons belonging to the Delhi Judicial Service who are appointed to temporary posts of Additional District and Sessions Judges on an ad hoc basis or for fortuitous reasons or by way of a stopgap arrangement, constitute a class which is separate and distinct from those who are appointed to posts in the Service in strict conformity with the rules of recruitment. In view of this, the former class of promotees cannot be included in the list of seniority of officers belonging to the Service. (emphasis supplied)*

33] From the time the training period was completed in October 2007, the applicant had been appointed as Assistant Secretary, Survey and Land Records, Thiruvananthapuram. While holding this post, he was under probation. The status of a person on probation has been explained in the case of *LIC of India v. Raghavendra Seshagiri Rao Kulkarni, (1997) 8 SCC 461*, as under:

6. *The period of probation is a period of test during which the work and conduct of an employee is under scrutiny. If on an assessment of his work and conduct during this period it is found that he was not suitable for the post it would be open to the employer to terminate his services. His services cannot be equated with that of a permanent employee who, on account of his status, is entitled to be retained in service and his services cannot be terminated abruptly without any notice or plausible cause. This is based on the principle that a substantive appointment to a permanent post in a public service confers substantive right to the post and the person appointed on that post becomes entitled to hold a lien on the post. He gets the right to continue on the post till he attains the age of superannuation or is dismissed or removed from service for misconduct etc. after disciplinary proceedings in accordance with the rules at which he is given a fair and reasonable opportunity of being heard. He may also come to lose the post on compulsory retirement. (emphasis supplied)*

34] Even viewed from various provisions of the Service Rules referred to above, the basic principle that there cannot concurrently be two liens in two posts has been emphasized in Rule 26 of the Kerala State & Subordinate Service Rule, 1958, which states, *No person shall at the same time be full member of more than one service*. Rule 18(a) of the Kerala Service Rules, states *The Government shall suspend the lien of an officer on a permanent post which he holds substantively, if he is appointed in a substantive capacity to a permanent post outside the cadre on which he is borne*. Thus,

as long as the applicant's lien is in the Factories and Boilers Department, he cannot gain any lien in the State Civil Service and unless he is granted substantive status in the State Civil Service his lien in the Factories and Boilers' Department cannot be terminated. The Apex Court has held in the case of *Jagdish Lal -v- State of Haryana (1997) 6 SCC 538* as under:

*"...a government servant's lien on a post shall stand terminated on his acquiring a lien on a permanent post (whether under the Central Government or a State Government) outside the cadre on which he is borne. A conjoint reading, thus, would establish that a government servant shall always have a lien on the post and, simultaneously, he shall not have right to hold any lien on more than one post. In other words, the articulated major premise is that an employee cannot simultaneously be a member of two posts/service/grade/cadre nor is he eligible to hold lien on two posts.*

35] Though as per Rule 2(9) of the Kerala State & Subordinate Services Rules, "Member of a service" means a person who has been appointed to that service and he may be a probationer, an approved probationer or a full member of that service, nevertheless, for fulfillment of the condition that he 'belongs' to the State Civil Service, he must have a firm root in that service by way of gaining a lien. In other words, a person would belong to a particular service where he has the lien. In the case of the applicant, the same is with the Department of Factories and Boilers and hence, he cannot be said to belong to State Civil Services, but only Non-State Civil Services.

36] The applicant was taken on deputation on 6.5.1996 in the Department of Factories and Boilers, Government of Kerala. Admittedly, the Department of Factories and Boilers is a part and parcel of Government of Kerala and not all services under the State Government have been brought under the purview of the State Public Service Commission. Any one who serves in a service not covered by the Kerala Public Service Commission Act, 1968 also is serving in connection with the affairs of the State. The fact that he was taken on deputation by the Government and was regularized by the Government in the Department of Factories and Boilers confirm that he is serving in connection with the affairs of the State. At this juncture, it is appropriate to meet an objection raised by the private respondent that recruitment rules for appointment to the post of Technical Officer

(Chemical) does not provide for deputation and hence, the appointment of the applicant as Technical Officer (Chemical) is illegal. This objection, in our considered opinion cannot be raised here as the forum to challenge the said appointment lies elsewhere and not before this Tribunal.

37] It is trite knowledge that the post of Deputy Collector, the post of Technical Officer (Chemical) in the Factories and Boilers Department and the post of Assistant Secretary in the Directorate of Survey and Land Records are gazetted posts. On the first day of January 2008 the applicant was holding a gazetted post of Assistant Secretary in the Directorate of Survey and Land Records, in a substantive capacity. Of course, this post is within the Kerala State Civil Service but this does not come in the way of the applicant because Regulation 4(ii) stipulates a person "who holds a gazetted post in a substantive capacity". The Regulation does not stipulate that the Gazetted post should be outside the Kerala State Civil Service nor does it stipulate that the person should be appointed substantively to it. Again, under such a peculiar circumstances, just because the applicant has been holding such a post in the State, his accrued right to be considered for non-state civil services cannot be wiped out. For, had he not been in that post, he would have been holding the post of Technical Officer (Chemical). Therefore, the applicant satisfies the condition of holding a Gazetted Post as per the plain natural meaning of the language of Regulation 4(ii) of the Regulation 1997.

38] Regulation No.4 (3) of Regulation 1997 stipulates 8 years of *continuous service* under the State Government but it does not stipulate regular service. In the case of **Polestar Electronic (P) Ltd. V- Addl.CST, (1978) 1 SCC 636**, the Apex Court has held as under:

*"7. Now, if there is one principle of interpretation more well-settled than any other, it is that a statutory enactment must ordinarily be construed according to the plain natural meaning of its language and that no words should be added, altered or modified unless it is plainly necessary to do so in order to prevent a provision from being*

unintelligible, absurd, unreasonable, unworkable or totally irreconcilable with the rest of the statute. This rule of literal construction is firmly established and it has received judicial recognition in numerous cases. Crawford in his book on "Construction of Statutes" (1940 Edn.) at p. 269 explains the rule in the following terms:

*"Where the statute's meaning is clear and explicit, words cannot be interpolated. In the first place, in such a case they are not needed. If they should be interpolated, the statute would more than likely fail to express the legislative intent, as the thought intended to be conveyed might be altered by the addition of new words. They should not be interpolated even though the remedy of the statute would thereby be advanced, or a more desirable or just result would occur. Even where the meaning of the statute is clear and sensible, either with or without the omitted word, interpolation is improper, since the primary source of the legislative intent is in the language of the statute."*

39] As held by the Apex Court in *Arun Kumar v. Union of India, (2007) 5 SCC 580*, the period of deputation is to be counted as service rendered in the Organization where one is absorbed. Therefore, the applicant is entitled to count the period of deputation as part of his service in the State Government.

40] As the applicant joined the Department of Factories and Boilers on 6.5.1996 he has completed more than the prescribed 8 years of continuous service under the State Government as on 01.1.2008. The decision of this Tribunal on 29.8.2008 declaring the applicant eligible for consideration for inclusion in the zone of consideration for selection and appointment to IAS (Selection) is not pertaining to a particular year. It will hold good till he is confirmed in the State Civil Service which is possible only on successful completion of probation on 21.10.2009 (if only the applicant continued in the said post). Therefore, the argument that the applicant cannot be considered for the vacancies identified for the year 2007 is not tenable, although nomination from the non Civil Service category is to be made every year as per the scheme of selection. Vacancies are to be counted every year and nominations for consideration should also be made every year. It is the Chief Secretary who is empowered to nominate a person for inclusion in the zone of consideration as per Annexure-A/12. Getting the names from the

Secretaries or Principal Secretaries of the Department is only a manner of collection of names. In the applicant's case no Secretary or Principal Secretary sent his name to the Chief Secretary for the year 2008. The absence of forwarding of the applicant's name by the Secretary presumably due to pendency of challenge before the Tribunal does not vitiate the nomination made by the Chief Secretary accepting the decision of this Tribunal on 8 years of continuous service.

41] The State Government had overruled the Kerala Public Service Commission in regularizing the applicant permanently as the Technical Officer (Chemical) in the Department of Factories and Boilers. As the State Government is the decision making authority and as the advice of the Public Service Commission is recommendatory only, there is nothing unconstitutional in the absorption the applicant in the said Department. As can be seen from the terms and conditions of deputation of the applicant, he was under the disciplinary control of the State Government. Here again, that aspect cannot be challenged before this Tribunal the same being a State Civil Service for which the forum lies elsewhere.

42] Thus it becomes quite clear that the applicant does fulfill all the conditions prescribed in Regulation 4 of the Indian Administrative Service (Appointment by Selections) Regulation, 1997 to get his name included in the zone of consideration for the DPC held in 2008.

43] In view of the above, the OA No.114/08 fully succeeds and the Annexure-A/1 order is quashed and set aside. We hold that the applicant was entitled to be included in the zone of consideration for the DPC held for the year 2008 for appointment to the IAS cadre from the category of non State Civil Service. Consequently, the OA No.228/09 stands dismissed. No order as to costs. //

(K. George Joseph)  
Member (Administrative)

stn

(Dr. K.B.S. Rajan)  
Member (Judicial)