

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.No.252/2010

Thursday this the 15th day of July, 2010

CORAM:

HON'BLE MR.JUSTICE K.THANKAPPAN, JUDICIAL MEMBER
HON'BLE MRS.K.NOORJEHAN, ADMINISTRATIVE MEMBER

K.B.Balachandran, S/o K.Bhaskaran, Aged 55 years,
Superintendent of Police, NIR Cell, Police Head Quarters,
Trivandrum, Residing at "Devaragam", TC-IV/103(3)Cheshire home
Lane, Kuvuvan Konam,
Kowdian P.O., Trivandrum. .. Applicant

By Advocate: Shri P.V.Mohanam

vs.

1. Union of India, represented by
Secretary, Ministry of Home Affairs,
New Delhi.
2. The Selection Committee for Selection to Indian
Police Service, represented by the Chairman,
Union Public Service Commission,
Shajahan Road, New Delhi.
3. Union Public Service Commission, represented by
Secretary, Shajahan Road, New Delhi.
4. State of Kerala,
Represented by Chief Secretary,
Government Secretariat, Trivandrum.
5. K.P.Philip,
Superintendent of Police,

Commandant, Kerala Armed Police(V)Battalion, Maniyar,
Pathanamthitta District.

6. K.K.Balachandran,
Superintendent of Police & Vigilance Officer,
Kerala State Electricity Board,
Vidyuthi Bhavanam, Pattom, Thiruvananthapuram.

By Advocate : Mr. George Joseph, ACGSC(R1)
Mr. Thomas Mathew Nellimoottil(R2 & R3)
Mr. N.K. Thankachan, GP(R4)
Mr. S. Sreekumar(R5 & R6)

The Application having been heard on 06.07.2010, the Tribunal on 15.07.10
15.07.2010 delivered the following:-

ORDER

HON'BLE MR.JUSTICE K.THANKAPPAN, JUDICIAL MEMBER:

The applicant, a Superintendent of Police(non-IPS), in the State Police Service has filed this Original Application, aggrieved by the notification dated 7.12.2009 selecting the party respondents 5 and 6 to the IPS (Annexure A6) with a prayer to set aside the same and for a declaration that the applicant should be considered as deemed to have been promoted to IPS cadre with effect from the date of publication of the aforesaid select list.

2. The bare facts which are necessary for the consideration of

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the Original Application are that, the applicant was appointed as a Circle Inspector of Police by special recruitment on 5.3.1982 on the advice of the Kerala Public Service Commission. Later the applicant was selected and promoted as Deputy Superintendent of Police in the Kerala Police Service on 20.2.1996. Presently the applicant is working as Superintendent of Police(non-IPS) with effect from 30.10.2003. While the applicant is working as Superintendent of Police his seniority has been refixed in the cadre of Circle Inspector and assigned his due rank with effect from 4.8.2003. However when there occurred 4 vacancies for promotion to the cadre of IPS, Kerala cadre for the period 2008, though there were selection during 2002, 2003 and 2004, the applicant was not considered as his rank was not refixed and hence when the selection has to be made for the period 2008, the name of the applicant was included as rank No.1 in the field of choice based on seniority against the 2 substantive vacancies which occurred for the period. However as per the selection made by the selection committee which met on 10.10.2009 only the respondent Nos. 5 and 6 alone were selected for the 2 vacancies occurred for the period as per Annexure A6 select list. Hence the applicant has filed this Original Application for setting



aside the selection of his juniors namely, party respondent Nos. 5 and 6 and also prayed for a declaration, as stated earlier.

3. When the Original Application came up for admission this Tribunal directed the counsel appearing for the respondents 1 to 4 to get instructions and file their reply statement, if any, before admitting the O.A. In pursuance to the orders given by this Tribunal, reply statements have been filed for and on behalf of the respondents 1 to 4 and on receipt of the reply statements, the applicant has filed a rejoinder adducing some more documents in support of the averments in the O.A.

4. For admitting the O.A. this Tribunal heard the learned counsel appearing for the applicant Mr.P.V.Mohanan, Mr.Thomas Mathew Nellimoottil for respondent Nos. 2 & 3,Mr. N.K.Thankachan, learned Govt. Pleader appearing for respondent No.4. Sri S.Sreekumar also filed vakalat for respondent Nos. 5 and 6.

5. We have heard the learned counsel Sri P.V.Mohanan in the matter of admission of the O.A. The main contentions now raised

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by the learned counsel appearing for the applicant are of threefold, firstly the counsel submits that though during 2002, 2003 and 2004 there were selections and promotions to the cadre of IPS the applicant has been discriminated without including his name in the proposal list sent by the Govt. of Kerala in spite of his ACRs were found 'Outstanding' and 'Good', but his name has been included only during 2008. Secondly, the grading done by the selection committee of the applicant for the year 2008 is irregular and illegal and not in accordance with the guidelines issued and followed by the Govt. of India for the purpose of making selection in all India Services including that of IPS. The grading now made by the selection committee is not based on the guidelines whereas the grading is only based on the ACRs of the years preceding the period of 5 years of the selection/recruitment year. The selection committee should have been guided by the parameters and yardsticks contained in the guidelines issued by the Govt. of India namely the guidelines dated 28.12.2005 and as per the said guidelines it is stated that the selection committee would go through the service records of each of the eligible officers with special reference to the performance of the officer during the last 5 years preceding the year for which

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the select list is prepared and on an overall relative assessment of the service records and other documents kept by the competent authority should have been considered by the selection committee. Only on that basis the selection can be made by the selection committee on classifying eligible officers as 'Outstanding', 'Very Good', 'Good' or 'Unfit' and that too may be on an overall relative assessment of their service records. Thirdly, the counsel for the applicant submits that as per the judgment of the Apex Court reported in 2008(8) SCC 725 in Dev Dutt vs. Union of India & others, 2001(2) SCC 118; S.Ramanathan vs. Union of India & others and 2010 (4) SCC 290; Union of India and another vs. Hemraj Singh Chauhan and others, the assessment of the applicant now made by the selection committee are not acceptable as legal. To substantiate the above contentions, relying on the rejoinder, the counsel for the applicant further submitted that while the reporting officers or the reviewing officers who have written the ACRs of the applicant for the period have not followed the Police Manual, the extant circulars and the judgments rendered by the Apex Court especially Chapter 12 of the Police Manual, circular No.3/80 dated 18.2.80 and circular No.26/1990 and other circulars issued by the Police



Department from time to time. Hence the recording of the ACRs by the reporting or the reviewing officers have violated all the provisions of the said circulars and guidelines issued by the Govt. of Kerala and on this ground itself, this Tribunal may interfere with the select list impugned and to give a declaration in favour of the applicant.

6. Before answering the contentions of the counsel for the applicant, it is advantageous to go through the reply statement filed on behalf of respondent Nos. 2 to 4. It is the stand taken in the reply statement filed on behalf of respondents 2 and 3 that the Govt. of India appoints only those members of the State Police Service to IPS whose name find a place in a particular select list unconditionally. Further it is stated that as the name of the applicant was not included in any of the select list of 2002 to 2004 there was no question of the Govt. of India to make his appointment to IPS by promotion. Further it is the stand of the Union Public Service Commission that the service records of the State Police Service officers are kept and maintained by the respective State Govts. and after assessing the service records, the selection



committee has to grade the candidates or the officials for selection to the post of IPS. The meeting of the selection committee for consideration of the State Police Service officers of Kerala has been held on 30.5.2006 in terms of Regulation 3 of IPS Appointment by Promotion Regulations, 1955. The selection committee for consideration of the State Police Service officers of Kerala were also held on 10.10.2009 and though the name of the applicant figured as No.1 in the zone of consideration, his name was not included in the select list. The select list for the year 2008 was notified. As the applicant was lower graded, more higher graded candidates were selected. It is also the case of the 4th respondent that the applicant was considered in the zone of consideration for the years 2005, 2006, 2007 and 2008 immediately he became eligible to be considered. However the applicant was not selected by the selection committee for the above years and he was superseded by his juniors. Further it is stated that the selection of a candidate based on his service records and ACR gradings and appointment to IPS are matters within the purview of the UPSC and the Ministry of Home Affairs. The State Govt has already included the name of the applicant in the proposal list and the applicant was



not selected by the selection committee on the basis of his grading done by the selection committee. Even if the applicant had any grievance regarding the gradings in his ACR in contrary to any of the circular or rule he could have approached the authorities and if there were any adverse entries he should have represented before the competent authority accordingly for redressal of his grievance at the appropriate time. ACR rules also provide such opportunity for the applicant. Even if any adverse remarks were there, on communication, it would have been brought to the notice of the authorities by the applicant. The case set up by the counsel for the applicant is that though there were selections for the years 2002, 2003 and 2004, the name of the applicant was not included in the proposal list. In this context we have noted that his seniority position in the cadres of Circle Inspector has been set right later and as and when his seniority has been revised namely for the period 2005, 2006, 2007 and 2008, the name of the applicant was included in the zone of consideration. But he was not selected on the basis of the vacancy allotted for the concerned years and as the applicant was shown below the zone of consideration, the non-selection of the applicant for these years cannot be agitated in the present O.A.

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With regard to the selection for the period 2008 it is the case of the applicant that the selection committee has graded him either 'Good', 'Average' and 'Satisfactory', whereas other officials who were graded above the applicant namely 'Outstanding' and 'Very Good' were selected and this grading was on the basis of the ACRs and other records of the applicant. The contention of the counsel of the applicant that if apart from the ACRs, other records or documents relating to the service of the applicant, have been considered by the selection committee, he would have been selected. But the above reason alone cannot be considered as a basis for interference in the selection now made by the selection committee. As per the guidelines issued by the DOP&T, the Govt. of India, it is the duty of the selection committee to grade an officer as 'Outstanding', 'Very Good', 'Good' or Unfit. These gradings are on the basis of overall assessment of the outstanding merit, exceptional attributes and abilities and on consideration of the highly meticulous work and possession of positive attributes and based on performance as reflected from the service records. The case of the applicant has been considered by the selection committee and by assessing the relative assessment of his service records and



other documents kept by the competent authority and on an overall assessment of his service records, such as ACRs, documents thereunder by the competent authority. Hence we are not inclined to accept the contention of the counsel appearing for the applicant that the selection committee has not followed the guidelines issued by the Govt. of India for assessing the relative merit and it is left to the selection committee to assess each candidate and the Court of Law or a Tribunal could not have given any guidelines for the above purpose. If so, the first and second contentions of the counsel for the applicant are rejected. With regard to the third contention the counsel for the applicant submits that the reporting officers and reviewing officers have not followed the Police Manual or the circulars issued by the Police Department from time to time with regard to the writing of the ACRs. In this context the applicant's counsel submitted that some of the reporting officers have graded the applicant in some years as 'Good' officer, 'Satisfactory' and 'Good' and other reporting officers have not graded him on higher rank, but it is to be noted that even as per the Police Manual or the circulars issued by the Department, there are sufficient opportunity afforded in such cases where adverse remarks were entered in the

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ACRs which could be corrected or to be expunged or to be modified for which official should have taken steps for that purpose. The judgment of the Apex Court in Dev Dutt's case(cited supra) it is stated that whether any graded as 'Very Good' and 'Good' can be considered as adverse or not, will depend on the bench mark to be taken at the time of selection and even if a 'Good' entry in ACR which adversely affect the official it ought to have been communicated to him so as to afford him opportunity of making representation against it. In the case in hand even if any entries were found as 'Good' or 'Average' or 'Satisfactory' and if it affects adversely and if it is communicated to the applicant then it could have been corrected. In the case in hand we have noted that such an opportunity has not been given or availed. Hence the lower grading given to the applicant for the last selection shall not stand in the way of considering his name in future. As per the guidelines issued by the Govt. of India, the selection committee has to assess the relative merits of the candidates and grade them as 'Outstanding', 'Very Good', 'Good' or 'Unfit'. In the case in hand we have only considered the position that the juniors of the applicant namely respondent Nos. 5 and 6 were graded as 'Outstanding' and were



above the applicant. If so, the selection made by the selection committee and the notification issued by the Govt. of India on the basis of the selection require no inference by this Tribunal. Accordingly the O.A. is dismissed with the above observation that the lower grading of the applicant during the previous selections may not be a bar for considering him in the next selection or any other future selections. No order as to costs.

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(K.NOORJEHAN)
MEMBER(A)

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(JUSTICE K.THANKAPPAN)
MEMBER(J)

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