

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

Original Application No. 274 of 2007

Thursday, this the 23rd day of July, 2009

CORAM:

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

K.V. Muraleedharan, Aged 43 years,
 S/o. P.K. Velayudhan, Deputy Collector
 (Revenue Recovery), KSFE, Trissur Residing at
 Poornasree, Mullakkara, Mannuthy P.O.,
 Thrissur.

Applicant

(By Advocate – M/s. Marar & Iyer – Not present)

V e r s u s

1. Union of represented by Secretary,
 Ministry of Personnel and Training,
 Department of Personnel and Training,
 North Block, Central Secretariat, New Delhi.
2. The State of Kerala represented by Chief
 Secretary to Government, Secretariat,
 Thiruvananthapuram.
3. The Selection Committee to Indian Administrative
 Service, Constituted under Regulation 3 of IAS
 (Appointment by promotion) Regulation 1955,
 Represented by the Secretary, Union Public Service
 Commission, Shajahan Road, New Delhi.
4. Ramanandan K.M., Director, SSA, Secretariat, Trivandrum.
5. T.O. Suraj, Director, Industries, Vikas Bhavan, Trivandrum.
6. M.N. Gunavardhan, Director, Agriculture, Vikas Bhavan,
 Trivandrum.
7. Anil X, Managing Director, KAPEX, Kollam.
8. Jose Issac, Director, Nirmithi Kendra, Trivandrum.
9. Sathiyamma. S, Director, CPMU, Secretariat, Trivandrum.

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10. Rani George, Managing Director, State Co-operative Bank, Trivandrum.
11. Sasidharan. K., Director, Jalanidhi, Secretariat, Trivandrum.
12. T.T. Antony, Director of lotteries, Trivandrum.
13. M. Sivasankaran, Director of Public Instruction, Trivandrum.
14. K. Ajayakumar, District Collector, Kollam.
15. A. Shajahan, Director of Urban Affairs, Public Office Building, Trivandrum.
16. M.C. Mohandas, Sub Collector, Idukki.
17. V.K. Balakrishnan, Secretary, State Land Board, Trivandrum.
18. V.K. Baby, Deputy Secretary, Revenue Department, Secretariat, Trivandrum.
19. S. Ravindran, Deputy Commissioner, Excise, Trivandrum.
20. C. Reghu, Deputy Secretary, Revenue Department, Secretariat, Trivandrum.
21. Mini Antony, Secretary, Cochin Corporation, Ernakulam.
22. A.T. James, General Manager, Civil Supplies Corporation, Ernakulam.
23. Sumana N. Menon, Director, Social Welfare Department, Vikas Bhavan, Trivandrum.
24. N.a. Krishnan Kutty, District Collector, Kasargode.
25. A.J. Rajan, District Collector, Idukki.

Respondents

[By Advocate – Mr. TPM Ibrahim Khan, SCGSC (R1)
 Mr. R. Premsanker, GP (R2)
 Mr. Thomas Mathew Nellimoottil (R3)
 Mr. C.S.G. Nair (R8)
 Mr. S. Radhakrishnan (R19) - Not present
 None for other respondents]

The application having been heard on 23.7.2009, the Tribunal on the same day delivered the following:



ORDER

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

The applicant has filed this OA under Section 19 of the Central Administrative Tribunal Act, 1985 seeking a direction to the respondents to conduct a review of selection and appointment to Indian Administrative Service (for short IAS) (Kerala) cadre on promotion quota for the year 1998 onwards and to consider his claim for selection by considering the three years service records preceding the year of selection and to appoint him to the IAS (Kerala) cadre from the date on which his immediate junior, Shri K.M. Ramanandan, the 4th respondent was appointed with consequential benefits including the year of allotment, seniority in the cadre and fixation of pay. The other relief sought for by the applicant are consequential to the aforesaid main relief.

2. The respondent No. 1 in their reply has stated that sponsoring the names of eligible SCS/Non-SCS officers for consideration for promotion to IAS is the concern of the State Government and to consider such eligible officers is the concern of the Union Public Service Commission. They have also submitted that in terms of first proviso to sub-Regulation (5) of Regulation 5 of the IAS (Appointment by Promotion) Regulations, 1955 it is for the concerned State Government to take a view on whether to issue or withhold the 'Integrity Certificate' in respect of an SCS officer falling within the zone of consideration.

3. The respondent No. 2 submitted that the applicant was facing departmental proceedings on various charges. They have denied his contention that the departmental proceedings instituted against him were on flimsy grounds. They have also submitted that he was punished in the disciplinary proceedings already held against him. They have further denied the contention of the applicant that his name was not placed before the Selection Committee. On the other hand, they submitted that his name was included in the zone of consideration for promotion to IAS cadre for the years 1998, 1999, 2000, 2001, 2003, 2004, 2005 and 2006. There was no

vacancy for 2002. However, he was not selected. Further, they have submitted that the suitability of the officers for promotion is assessed by the Selection Committee for preparation of the select list for the respective years. The inclusion of a particular person in the select list is not a matter coming under their purview.

4. The respondent No. 3 has stated that the Selection Committee meeting (for short SCM) for preparation of the select list of 1998 was held on 20.5.1999 in continuation of its meeting held on 31.8.1998. There were 11 vacancies and the zone of consideration was 33, which is three times the number of vacancies. However, there were only 19 SCS officers eligible for consideration. The name of the applicant which was at serial No. 14 in the list of eligible officers was also duly considered. On an overall assessment of his service records, the Committee graded him as 'Good'. On the basis of said grading, he was not included in the list of selected officers, due to statutory limit on the size of the select list. The respondents Nos. 4 to 8 were graded as 'very good' and they were included at serial Nos. 7 to 11 in the select list of 1998. The SCM for preparation of the select list of 1999 was held on 27.12.1999 and the applicant's name was considered at serial No. 9 in the list of eligible officers. There were 5 vacancies and the zone of consideration was 15. The applicant was graded only as "Good" but the Respondent No. 13 was graded as 'outstanding' and respondents Nos. 23, 24 & 25 were graded as 'very good'. Accordingly, they were included at serial No. 1, 2, 3 & 4 of the select list but the applicant could not find his place there. The SCM for preparation of the select list of 2000 was held on 26.12.2000. There were 6 vacancies and the zone of consideration was 18. The name of the applicant was considered at serial No. 7 in the list of eligible officers. While the applicant was graded as 'good', the respondents 9 to 11 were graded as 'very good' and they were included at serial nos. 4 to 6 in the select list of 2000, but the applicant was not. The SCM for preparation of the select list of 2001 was held on 3.10.2002. There were 5 vacancies and the zone of consideration was 15. The name of the applicant was considered at serial No. 6 in the list of eligible officers. The State

Government informed the SCM that a penalty of stoppage of 3 increments with cumulative effect had been imposed on the applicant. On an overall assessment of his service records and on the basis of the aforesaid penalty imposed on him, the Committee graded him as "unfit" and therefore, he was not included in the list of selected officers. However, the respondents 9, 12 and 14 were graded as 'very good' and they were included at serial Nos. 3 to 5 in the select list of 2001. As the Government of India, DOP&T determined nil vacancy for the year 2002, no select list was prepared for that year. The SCM for preparation of year wise select lists of 2003 & 2004 was held on 30.12.2004. There was only 1 vacancy each for the year 2003 & 2004 and the zone of consideration was 3 for those years. The name of the applicant was considered at serial No. 2 in the list of eligible officers for both years. On an overall assessment of his service records and on the basis of the currency of the penalty imposed on him, the committee again graded him as 'unfit'. As the respondent No. 15 was graded as 'very good', he was included in the select list of 2004. The SCM for preparation of the select list of 2005 was held on 23.10.2006 in compliance with the orders of the Tribunal dated 15.9.2006. There were 3 vacancies and the zone of consideration was 9. The name of the applicant was considered at serial No. 2 in the list of eligible officers. The Committee again graded him as 'unfit' and he was not included in the list of selected officers. As the respondents Nos. 16 & 17 were graded as 'very good', they were included at serial Nos. 1 & 3 in the select list of 2005. For the year 2006 the SCM was held on 24.2.2007 in compliance with the orders of the Tribunal dated 2.2.2007 in OA No. 743 of 2006. There were 5 vacancies and the zone of consideration was 15. The name of the applicant was considered at serial No. 2 in the list of eligible officers. The State Government informed the SCM that a penalty of stoppage of 2 increments without cumulative effect had been imposed on the applicant. On an overall assessment of his service records and on the basis of the aforesaid penalty imposed on him, the Committee graded the applicant as "unfit". Therefore, his name was not included in the list of selected officers. The respondents Nos. 18 to 22 were graded as 'very good' and they were included at serial No. 1 to 5 in the select list of 2006. Thus

the applicant was graded as "good" only for the years from 1998 to 2000 and for the remaining years he was found "unfit" for promotion to the IAS by the selection committee.

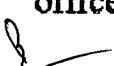
5. One of the private respondent, namely, respondent No. 8 has also filed the reply and stated that he was always having outstanding report and therefore, he was selected in his merit whereas the applicant was unfit for promotion and hence, he was not promoted.

6. We have heard Ms. Jisha for Mr. TPM Ibrahim Khan, SCGSC learned counsel for respondent No. 1, Mr. R. Premsanker, GP learned counsel for respondent No. 2, Mr. Varghese John for Mr. Thomas Mathew Nellimoottil learned counsel for respondent No. 3 and Mr. C.S.G. Nair, learned counsel for respondent No. 8. As the applicant's counsel has not been present during the hearing, we did not have advantage of his assistance. Hence, we have perused the entire pleadings available on record and heard the counsel for the respondents. Learned counsel for the respondents has brought to our notice that the applicant had also filed another OA No. 532 of 2008 before this Tribunal seeking a direction to the respondents Nos. 1 & 2 namely the State of Kerala represented by the Chief Secretary and the Principal Private Secretary, Department of Revenue, Trivandrum respectively to include his name "in the select list for appointment to the Indian Administrative Service to be filled up from among the eligible officers of the State Civil Service and to forward the same to the 5th respondent, namely, the Union Public Service Commission and also to direct the respondents "to reserve a post in the Indian Administrative Service for the applicant to be filled up from among the eligible officers of the State Civil Service proposed to be filled up pursuant to Annexure A-45 till such time the proceedings as directed by A-46 are completed and integrity certificate is forwarded". The Annexure A-45 referred to the said prayer clause was the letter dated 10.4.2008 addressed to the applicant and other eligible officers to ensure that their complete ACRs are available with the Commissioner of Land Revenue and to make sure that the adverse entries, if any, in them are communicated to

them and representations, if any, filed by them are pending before the competent authority. The Annexure A-46 was judgment of the Hon'ble High Court of Kerala in WP(C) 23730 of 2008 filed by the applicant seeking directions to the State Government to complete certain disciplinary proceedings pending against him in which the following orders have been passed:

"10. In the circumstances stated above, I direct the Government to pass final orders on Exts. P25 and P36 Review Petitions within a period of four months from today. the petitioner shall, to enable the Government to comply with the directions issued in this judgment, produce separate certified copies of this judgment along with separate representations. As regards the proceedings initiated against the petitioner by Exts. P39 and P41 memos of charges, the Government shall take a final decision in the matter after complying with the provisions of Kerala Civil Services (Classification, Control & Appeal) Rules, 1960. Needless to say, the petitioner shall also co-operate with the disciplinary authority in the matter of expeditious disposal of the said disciplinary proceedings. The Government shall also finalize the proceedings initiated pursuant to Exts. P39 and P 41 memos of charges within the aforesaid period of four months. I make it clear that I have not pronounced upon the eligibility of the petitioner to be considered for appointment to the Indian Administrative Service. It will be open to the petitioner to separately pursue the remedies if any, available to him in law in respect of the aforesaid claim. His contentions in that regard are left open.

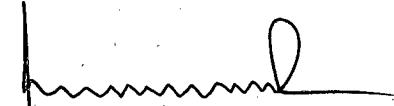
The aforesaid OA was dismissed as withdrawn vide order dated 20.11.2008. The counsel for the applicant in the said OA has requested to withdraw the aforesaid OA, in view of the reply filed by respondent No. 1 there in which it has been stated that his name was included in the zone of consideration for the years 1998, 1999, 2000, 2001, 2003, 2004, 2005, 2006 and 2007 but he was not selected by the Committee. It was further submitted in the reply that his name was included in the zone of consideration for the year 2008 also by virtue of his seniority. However, his integrity certificate was not forwarded as disciplinary proceedings were pending against him. According to the rules governing the appointment to the Indian Administrative Service by promotion, the selection committee shall consider the eligible officers in the zone of consideration and prepare a select list on the basis of their service record. When there is disciplinary proceedings pending against any officer, his selection is provisional.



7. In view of the facts and circumstances, we do not find any merits in this case. Therefore, there is no question of reviewing the selection and appointment of IAS (Kerala) cadre on promotion quota for the year 1998 onwards, as prayed for by the applicant. It is a settled principle of law that an employee has only right for consideration and selection depends upon various other factors. The applicant has been duly considered for selection to Indian Administrative Service from 1998 onwards till 2008. He was not selected because of the lower grading given to him by the SCM and because of the currency of punishments imposed upon him in different disciplinary proceedings initiated against him. Accordingly, this OA is dismissed. There shall be no order as to costs.



(K. GEORGE JOSEPH)
ADMINISTRATIVE MEMBER



(GEORGE PARACKEN)
JUDICIAL MEMBER

"SA"