

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.No.280/10

Wednesday this, the 26th May, 2010

CORAM:

**HON'BLE MR.JUSTICE K.THANKAPPAN, JUDICIAL MEMBER
HON'BLE MR.K.GEORGE JOSEPH, ADMINISTRATIVE MEMBER**

B.Mohanam,
R.D.O.Kollam,
Residing at G.O.Quarters, No.8,
Thevally, Kollam. .. Applicant

By Advocate :Sri P.K.Manoj Kumar

vs.

1. The Union of India represented by the Secretary to Government
Public Grievances and Pension,(Department of Personnel and Training)
Government of India, New Delhi.
2. The State of Kerala represented the Chief Secretary to Government,
Secretariat, Thiruvananthapuram.
3. Dr.Nivedita.P.Haran,
Principal Secretary, Revenue Department,
Secretariat, Thiruvananthapuram.
4. Union Public Service Commission, represented by its
Secretary, Shajahan Road, New Delhi. .. Respondents

By Advocate:Sri M.V.S.Nampoothiry(R1)
Sri N.K.Thankachan,GP(R2-3)
Mr.Thomas Mathew Nellimoottil(R4)

The Application having been heard on 17.05.2010, the Tribunal on
26.05.2010 delivered the following:

ORDER

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

The applicant, a senior Revenue Divisional Officer, approached this Tribunal for the second time for a direction to the first and second respondents to consider the name of the applicant for appointment by promotion to the IAS of Kerala Cadre and for a direction to the second respondent to issue the required integrity certificate in favour of the applicant and forward the same to the UPSC for the purpose of such selection to the IAS, Kerala Cadre. Prior to this O.A., the applicant has filed O.A. No.407/2009 for the same purpose, though for the selection for the period 2007 to 2008. This Tribunal heard the said Original Application and directed the respondents therein, namely, the first respondent, the Union of India represented by the Secretary to Government, Public Grievances and Pension,(Department of Personnel & Training), the 3rd respondent, the Union Public Service Commission, represented by its Secretary and also the second respondent, the State of Kerala represented the Chief Secretary to Government to convene an ad-hoc selection committee and to consider the case of the applicant for selection to the IAS Cadre and the second respondent, the State of Kerala to take necessary steps for issuing an integrity certificate in favour of the applicant and forwarding the same within three months from the date of receipt of a copy of this order. In spite of the above directions, the respondents have not taken any steps for complying with the order passed



by this Tribunal, which was necessitated and forced the applicant to file the present Original Application with the prayers, as stated above, though for the selection for the period 2009. This Original Application has been admitted by this Tribunal and notice has been ordered to the respondents. In pursuance to the receipt of the notice, a reply statement has been filed for and on behalf of the 2nd respondent, namely the State of Kerala, resisting the claim of the applicant.

2. We have heard the counsel appearing for the applicant, Sri P.K.Manoj Kumar, Mr.Thomas Mathew Nellimoottil, standing counsel in respect of respondent No.4 and Sri N.K.Thankachan, Govt. Pleader for the State of Kerala.

3. The brief case of the applicant, as contended by the counsel appearing for the applicant is that the applicant is eligible for consideration to be appointed by promotion to the IAS Cadre as per the Rules and Regulations issued by the Government of India since the applicant has already completed more than 12 years of service as Revenue Divisional Officer, the Kerala Civil Services(Executive) Cadre and at present working as the Revenue Divisional Officer, Kollam. The applicant was found eligible to be included in the zone of consideration of Civil Services employees in the Kerala Civil Services (Executive) and

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was included in the select list of officers prepared by the Govt. of Kerala for appointment by promotion IAS in the year 2003 and 2004. Though his name was included in the list, he was not selected for the reasons that there were some adverse remarks in the Annual Confidential Report (ACR) of the applicant for the period 1.1.2004 to 15.3.2004. However, the said adverse remarks were already expunged by the State Govt. as per the order dated 01.02.2007. But in spite of the expunction order passed by the State Govt., the applicant was not selected on the ground that there was some Vigilance Enquiry pending against the applicant. These facts were already considered by this Tribunal in O.A.No.407/2009 and found that all the adverse remarks against the applicant contained in the ACR for the period 1.1.2004 to 15.03.2004 have been expunged as per the order dated 01.02.2007 and mere pendency of an enquiry by itself is not a ground for exclusion of the applicant from the selection and on that finding, this Tribunal has already directed the respondents to give necessary integrity certificate and also to consider his case. But unfortunately the applicant has not been selected by the Union Public Service Commission. While so, the present selection for the year 2009 is ensued and at present the applicant is entitled for consideration by the selection committee. However, because of the adverse remarks made in the ACR by the third respondent, the Reviewing Officer for the period from 23.03.2006 to 07.06.2006 and 28.06.2006 to 31.12.2006, he apprehends



that his name may not be considered for selection. However the counsel for the applicant submits that the downgradation of the applicant by the Reviewing Officer for the period from 28.06.2006 to 31.12.2006, is without any basis and the applicant has filed W.P.(C) No.20002/08 before the Hon'ble High Court of Kerala. The Hon'ble High Court of Kerala has already stayed the orders passed by the Reviewing Officer entering the adverse remarks in the ACR of the applicant for the period from 28.6.2006 to 31.12.2006. Hence, according to the counsel for the applicant, the applicant is free and his downgrading as drastic reduction in the grading given by the third respondent is without any basis and the Hon'ble High Court have considered it in extenso and stayed the consequential order passed by the third respondent. Further the counsel for the applicant submits that as the third respondent is personally biased against the applicant as the applicant had filed some petition before the Govt. which was the reason for the downgrading and the adverse remarks entered in the ACR for the period from 28.6.2006 to 31.12.2006. However, the counsel for the applicant further submits that the said adverse remarks made by the third respondent has been considered by the Chief Secretary of the Govt. and as per the order dated 21.2.09, the Chief Secretary of the Govt. found that the adverse remarks recorded by the Reviewing Officer, the third respondent, is without any finding of irregularity which would justify an adverse observation and therefore,



the Chief Secretary has expunged all the adverse remarks now made by the third respondent. In the light of the above facts, the applicant is entitled for consideration for selection to the IAS Cadre and also entitled for the integrity certificate. Further the counsel submits that as per the principles laid down by the Apex Court in the judgment reported in AIR 1991 SC 2010 in Union of India vs. K.V.Jankiraman, pending enquiry is not a ground for exclusion of an officer from the selection. In the case on hand, according to the counsel for the applicant, the only objectionable stand taken against the applicant by the State Govt. is that some Vigilance Enquiry is pending against the applicant. The counsel for the applicant submits that the same plea was being taken for the last two years and that too was the same ground urged in O.A.No.407/2009. Further the counsel submits that as per the guidelines bearing F.No.4/3/2005-AIS issued by the Government of India for the purpose of selection, as per clause 6, integrity certificate would be withheld by the State Govt. of an officer against whom departmental or criminal proceedings are pending and name of such officer may be included in the select list by the selection committee provisionally subject to grant of integrity certificate or clearance in the departmental or criminal proceedings, if the selection committee finds the officer as otherwise suitable for promotion on the basis of an overall assessment of his ACRs. As far as the applicant is concerned, there is no charge-sheet filed or any criminal case charged or pending or any



disciplinary case is pending, whereas the allegation is that some Vigilance Enquiry is pending against him. In the light of the principles laid down by the Apex Court, as stated above, the counsel for the applicant submits that it is imperative on the part of the respondents to consider the name of the applicant for selection to the IAS Cadre on issuing the required integrity certificate.

4. To the above contentions of the counsel for the applicant, relying on the reply statement filed on behalf of the second respondent, the State of Kerala, it is contended by the counsel for the State of Kerala that as there are Vigilance Enquiries pending against the applicant as per the letter dated 22.5.08 of the Director of Vigilance and Anti Corruption Bureau, the Government has not issued the integrity certificate. It is the further case of the counsel for the respondents is that while the applicant was working as Additional District Magistrate, Kollam, there were some allegations against the applicant for accepting bribe and also for issuing gun license to some of the applicants for which the enquiry has been initiated against the applicant. But no final outcome is coming from the enquiry. Further the counsel for the respondents submits that as the name of the applicant has been included in the proposed list prepared by the Govt. for IAS (Appointment by Promotion) for the year 2009, the third respondent decided to withhold the integrity certificate on the reason of



the pendency of the enquiry, as stated above.

5. Though notice has been issued to the other respondents, namely the Govt. of India and the Union Public Service Commission, no counter has been filed on behalf of these respondents. However we feel that the O.A. can be disposed of on hearing the counsel appearing for the above respondents.

6. In the light of the arguments raised by the counsel for the applicant and the contentions raised by the counsel for the respondent, namely the State of Kerala, the question to be decided is that whether the applicant is entitled for the reliefs which he claimed in the O.A. or not. It is an admitted fact that the applicant was found as an eligible candidate for inclusion in the proposed list prepared by the Govt. of Kerala for IAS selection for the period 2006 and 2007 as well as the present period 2009. However because of the pendency of some disciplinary proceedings and the adverse remarks in the service records of the applicant for the period 2003 and 2004, the applicant has not been selected and the integrity certificate has not been issued. However, this Tribunal has considered the reason for not issuing the integrity certificate and also the non-consideration of the name of the applicant for selection and this Tribunal has found that the denial of the claim of the applicant in O.A.No.407/09



was baseless and directed the respondents, namely the State of Kerala as well as the Union of India to take immediate steps to have ad-hoc selection committee and also to issue the integrity certificate. However it is seen that the integrity certificate has not been issued in spite of the finding entered into by this Tribunal on the ground that the subsequent adverse remarks made by the third respondent in the ACR of the applicant for the period 2006 namely from 23.3.06 to 7.6.2006 and 28.6.06 to 31.12.06 while reviewing the ACR of the applicant. The reasons stated for non-issuance of the integrity certificate as per the direction given by this Tribunal in O.A. No.407/09 is actually in violation of the orders given by this Tribunal. However the third respondent tried to justify the non-issuance of the integrity certificate or the non-compliance of the order by making some adverse remarks in the ACR of the applicant for the period 2006 and now the said adverse remarks made by the third respondent having been also expunged by the Chief Secretary of the State as per the order dated 21.2.09 and it is also seen that the Chief Secretary has found that the adverse remarks made by the Reviewing Officer, the third respondent, is without any any basis and not with any reason which means that the third respondent is biased against the applicant. We are not commending anything about the stand taken by the third respondent at this stage. However, we never expect such an attitude and action from a senior officer like the third respondent.

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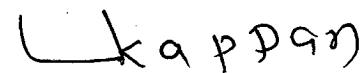
7. When we consider the present claim of the applicant, we see that the Hon'ble High Court of Kerala had also considered the orders passed by the third respondent and stayed the same and if so, the applicant is entitled for the reliefs which he sought. Apart from that as per the principles laid down by the Apex Court in Jankiraman's case (cited supra), the integrity certificate of an officer can be withheld only under the circumstances mentioned or on the reasons stated in the guidelines in para 11.1 of the guidelines issued by the Government of India for making selection by the selection committee. Apart from all these aspects, we have noted that the applicant has been graded as Outstanding in all previous selections made by the State Govt. and thereby his name was included in the proposed list sent by the Govt. For the selection for the period 2009 also the name of the applicant has been included in the zone of consideration. If so, the applicant is entitled for the integrity certificate which he claimed in this O.A. and the selection committee namely the U.P.S.C as well as the Union of India are bound to consider the name of the applicant for selection to the I.A.S. Cadre. In the above circumstances we hereby direct the second respondent, the State of Kerala represented by the Chief Secretary shall take immediate steps to issue the integrity certificate in favour of the applicant and forward the same to the first and third respondents for selection process for the period 2009. We feel that

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even if we direct the third respondent to take steps for compliance of the order, it may cause prejudice to the applicant, we direct the the second respondent,namely the Chief Secretary or an Authority other than the third respondent to expedite the matter .This process should be completed within 15 days from the date of receipt of a copy of this order and further we direct the first and 4th respondents to consider the case of the applicant for appointment by promotion to the IAS, Kerala Cadre for the year 2009, on the basis of the materials placed by the Govt. of Kerala, on receipt of the integrity certificate, as directed above. With the above directions and observations, this O.A. stands allowed without any order as to costs.



(K.GEORGE JOSEPH)
MEMBER (A)



(JUSTICE K.THANKAPPAN)
MEMBER(J)

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