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OF C.A.T. (PROCEDURE) RULES

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.. 179/2000 & 319/2000

THURSDAY, THIS THE 1st DAY OF AUGUST, 2002.

C O R A M

HON'BLE MR. G. RAMAKRISHNAN, ADMINISTRATIVE MEMBER
HON'BLE MR. K.V. SACHIDANANDAN, JUDICIAL MEMBER

O.A.No. 179/2000

K.Natesan (Deputy Collector)
Dimple House, Ambalapuzha. Applicant

By Advocate M/s. Thampan Thomas & Associates

Vs

1. Union of India represented by
the Secretary
Department of Personnel and Training, Public
Grievances & Pension,
North Block
New Delhi.--110 001.

2. The Selection Committee Constituted
for Appointment by Promotion to
Indian Administrative Service for Kerala Cadre for
the year 1999, rep.by its Convenor
(Chief Secretary), Secretariat
Trivandrum.

3. Union Public Service Commission
rep. by its Secretary
New Delhi.

4. State of Kerala rep. by the
Chief Secretary
Secretariat, Trivandrum.

5. Secreatry to Government of Kerala
Revenue Department
Secretariat, Trivandrum.

6. M.Sivasankar
Deputy Collector,
Administrative Reforms Committee,
Housing Board Building,
Trivandrum. Respondents.

By Advocate Mr. P.M.M. Najeeb Khan, ACGSC for R1
By Advocate Mr. Renjith GP for r 4 & 5
Mr. P. Parameswaran Nair for R-6

O.A. 319/2000

Rani George,Assistant Commissioner (Housing)
Commissionerate of Land Revenue, Trivandrum
residing at Rasmi T.C. 14/1463
Bakeryl;Ljunction
Trivandrum-14 Applicant

By Advocate M/s Thampan Thomas & Associates

Vs

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the Secretary
Department of Personnel and Training, Public
Grievances & Pension,
North Block
New Delhi.--110 001.

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Secretariat, Trivandrum.

5. Secreatry to Government of Kerala
Revenue Department
Secretariat, Trivandrum.

6. M.Sivasankar
Deputy Collector,
Administrative Reforms Committee,
Housing Board Building,
Trivandrum.

7. N.A. Krishnankutty
Deputy Collector (Land acquisition)
Collectorate, Kottayam

8. A.J. Rajan
Revenue Divisional Officer,
Adoor, Pathanamthitta District.

9. Smt. Sumana N.Menon
Assistant Commissioner (Land Acquisition)
Commissionerate of Land Revenue
Trivandrum-33

10. K.R. Rajan
DeputyCollecteor (Land Acquisition)
Kerala State Electricity Board,
Trivandrum.

Respondents

By Advocate Mr.Prasanth Kumar, ACGSC for R1
By Advocate Mr. Renjith GP for r 4 & 5
Mr. P. Parameswaran Nair for R-6

The Applications having been heard on 25.6.2002 this Tribunal delivered the following on **1.8.2002**

O R D E R

HON'BLE MR. G. RAMAKRISHNAN, ADMINISTRATIVE MEMBER

These two Original Applications were heard together as the issue involved in these two OAs for adjudication by this Tribunal is the same. By this common order we are disposing of both these Original Applications.

O.A. 179/2000

The applicant in this O.A. is a Deputy Collector in the Kerala State Government Service. According to him he was promoted as Deputy Collector w.e.f. 4.7.1988 and as his probation was not extended, in terms of A-1 Kerala Civil Services Executive Rules, dated 21.8.1963, he completed his probation on 3.7.1990. For the year 1999 the Govt. of Kerala assessed the number of vacancies to be filled up in the Indian Administrative Service (IAS) cadre by promotion as five. As per A-2 Regulations 5(1) and 5(2) of the IAS (Appointment by Promotion) Regulations 1955, the names of 15 persons in the order of seniority was to be included in the 'List of eligible officers' provided they satisfied the following eligibility conditions as on 1.1.1999:

(i) The officer should not have completed 54 years of age.

(ii) He should have completed 8 years of service in the cadre of Deputy Collectors

(iii) He should hold a substantive post.

The applicant claimed that he was an eligible person to be included in the list of eligible officers as he satisfied the above three necessary conditions. However his name was omitted from the list. According to him, his name was dropped so as to include the 16th candidate's name who was the sixth respondent in this O.A. He submitted that he was under suspension since the year 1998 pending enquiry.

According to him names of persons who were undergoing suspension/vigilance enquiry were included in the 'list of eligible officers.' The applicant was issued with a show cause notice to terminate the probation and to revert him to lower cadre. He filed representation before the Government to annul the show cause notice issued to him on the eve of selection to the IAS cadre. He also filed OP No. 3745/2000 before the High Court of Kerala and the Hon'ble High Court directed the State Government to consider the representation within a period of one month. By A7 Notification dated 1.3.2000, Govt. of India appointed the 6th respondent and others to the IAS cadre for 1999 in exercise of powers conferred by sub rule (1) of Rule 8 of the IAS (Recruitment) Rules 1954. According to him Rule 8(1) of the IAS (Recruitment) Rules 1954 was amended by A3 and the term "substantive members" occurring in the original rule was amended w.e.f. 1.11.1956 by deleting the term "substantive" as per notification No. 13/21/56-AIS (iii) dated 28.2.56 of the Govt. of India. So he claimed that the term "Substantive" could not remain in the Regulations w.e.f. 1.11.1956 the date from which this term was deleted from the rule and even if it remained it had become inoperative from 1.11.1956. On the basis of the above he submitted that the field of consideration should include the names of the seniormost Deputy Collectors equal to three times the number of anticipated vacancies. These seniormost members need not be substantive as per the Rules and Regulations. Only criteria for including the Deputy Collectors in the 'List of eligible Officers' were that they should be below the age of 54 years and they should have completed 8 years of service as Deputy Collector. For the year 1999 there were 5 vacancies in the IAS cadre to be filled up from amongst the Deputy Collectors of Kerala Sate Civil Service (Executive). Amongst

the names of 15 Kerala State Civil Service Officers as on 1.1.99 the applicant claimed that he would be the 6th seniormost Deputy Collector. According to him whether he has substantive service or not was not material for inclusion of his name. In any case he had filed OP No. 18592 of 2000 in the High Court of Kerala for declaration of probation and confirmation inter alia. He submitted that it was his right to be considered by the Select Committee. By not considering his name the State Government and the Selection Committee had denied his right . Hence he filed this O.A. seeking the following reliefs.

> (i) to call for the records in this case and declare that the applicant is entitled to get his name included in the list of eligible officers for promotion to the IAS cadre of Kerala State in the year 1999
>
> (ii) To declare that the inclusion of the name of Sri Sivasankar in the list of eligible officers is illegal and against the provisions of the regulations in Annexure A-2.
>
> (iii) to quash Annexure A7 and to give directions to the 1st respondent to cancel the appointment of respondent No. 6, as his appointment is illegal and is in violation of rules and regulations.
>
> (iv) Grant such other reliefs which may deem fit and necessary by this Hon'ble Tribunal.
>
> (v) To award the cost of the applicant.

3. In the reply statement was filed by the 5th respondent it was submitted that the OA was not maintainable either in law or in facts and the applicant was not entitled for any of the reliefs claimed in the O.A. It was submitted that as per the final seniority list of Deputy Collectors the applicant occupied rank No. 452 in between Sri V. Vijayakrishnan and Sri T.C. Thankappan. It was submitted that the applicant's suitability for declaration of promotion in Deputy Collector cadre was considered by Government along with his immediate junior and senior during the year 1998 and found that he was not suitable to be declared as an approved

probationer in Deputy Collector cadre in view of various reasons and in view of the disciplinary action/vigilance cases pending against him. It was submitted that the applicant was under suspension since 4.3.98 based on various cases registered against him in various Courts in Kannur District. He was a wanted accused in C.C. No. 273/95 pending before the Judicial First Class Magistrate, Kannur in which the Court issued arrest warrant against him. He was also an accused in C.C. No. 285/95 before Kannur Court in which he had accepted Rs. 86,500/from one Sri Narendran on 15.10.94 by giving false cheque promising to pay Rs. 1 lakh. He was respondent in M.C. 130/77 pending before the Judicial first Class Magistrate Court Thalassery. Various Disciplinary action/vigilance cases were pending against him. Since many of the charges based on which disciplinary action had been finalised/pending had been committed by him during the period of his probation and as the Secretary of the erstwhile Board of Revenue had not recommended to declare his probation as not satisfactory, Govt. had decided to terminate his probation in the cadre of Deputy Collector and revert him to the lower post of Tahsildar. Formal action was being taken under Rule in the matter. It was further submitted that under Rule 24 of General Rules of Kerala State and Subordinate Service rules only an approved probationer in a cadre alone could be appointed as a full member of the service in the class or category for which he was selected. Since the applicant was not an approved probationer he could not be considered as "substantive" member of the Kerala Civil Service (Executive). In the circumstances the applicant was not eligible to be included in the list of eligible Deputy Collectors for consideration for promotion to IAS for the

year 1999. His name was not considered or recommended for consideration to IAS during the year 1998 also. Hence the O.A. was liable to be dismissed.

4. In the separate reply statement filed by the respondent No.6 it was submitted that the applicant should have first moved the appropriate authorities seeking confirmation in the post of Deputy Collector and for making him a substantive member of the State Civil Service when a person junior to him was confirmed as Deputy Collector as per Rule 24 of the Kerala State & Subordinate Services Rules. It was submitted that the allegation in the OA that the name of the applicant was deleted to accommodate the 6th respondent in the list was a total distortion of facts. The applicant's name was not deleted to accommodate the 6th respondent in the list. The 6th respondent had completed satisfactorily his probation as Deputy Collector on 27.2.94 and had been confirmed as Deputy Collector w.e.f. 28.2.94. Twenty nine persons junior to the applicant including the 6th respondent were promoted as Higher Grade Deputy Collector overlooking the applicant's seniority on 15.10.98. The applicant was not promoted only because of the fact that he had not completed his probation period in the Deputy Collector cadre. Hence the 28 persons had thus become seniors to the applicant

5. Applicant filed rejoinder to the 5th and 6th respondents' reply statements.

6. In the separate reply statement filed by the first respondent it was submitted that in terms of the All India Services Act, 1951 the Recruitment Rules were framed. The Promotion Regulations were framed pursuant to sub rule (1) of Rule 8 of the Recruitment Rules. Referring to Rule 4(1)(b)

and Rule 8(1) of the Indian Administrative Service (Recruitment) Rules, 1954 it was submitted that the term "substantive" was added in both in Rule 4(1) and 8(1) of the Recruitment Rules vide Annexure R-1 GOI Notification No. 13/10/57-AIS-III dated 29.7.58 published as GSR NOs 662 to 665 in the Gazette of India (Extraordinary) dated 9.8.58. The provisions of the Promotion Regulations were in conformity and in accordance with the provisions of the Recruitment Rules.

O.A. 319/2000

7. The applicant in this O.A is a directly recruited Deputy Collector on the advice of the Kerala Public Service Commission as per Memo No. R1 A(4)15674/89/GW dated 10.8.90. She was in the 12th position as per the revised Seniority List issued by the Revenue Department. She, aggrieved by A-3 notification dated 1.3.2000, for the reasons that the same did not contain her name, filed this O.A. seeking the following reliefs:

> (i) to call for the records relating to the selection and appointment to the IAS cadre from the Deputy Collectors of Kerala State for the year 1999 and quash Annexure A3.
>
> (ii) to declare that the appointment of respondent NO. 6 who is beyond the zone of consideration to the IAS cadre is illegal and, therefore, to cancel his appointment.
>
> (iii) To give direction to Respondents Nos. 1 to 5 to review the selection for 1999 excluding the name of Respondent No.6 and to fill up all the 5 vacancies by suitable officers as per rules.
>
> (iv) To call for the files relating to the disciplinary proceedings against Smt. Sumana and the files relating to the withholding of the integrity certificate in the cases of Sri K.R. Rajan and to give directions to respondents NO. 1 to 5 to delete the names of respondents NO. 6, 9 and 10 from the select list and to include the name of the applicant in the select list.

(v) To grant such other reliefs which may deem fit and necessary by this Hon'ble Tribunal.

and

(vi) To award the costs of these proceedings.

9. She referred to Indian Administrative Service (Recruitment Rules) 1954 and Indian Administrative Services (Appointment on Promotion) Regulations 1954 and submitted that the Selection Committee for Kerala for 1999 for selection of 5 candidates from the Dy. Collectors met on 27.12.99. She submitted giving names of the seniormost 15 Dy. Collectors who were eligible to be included in the field of consideration as per the seniority list issued by the Revenue Department, that she ranked NO. 12 and her name was considered by the Selection Committee but the name of Shri Natesan rank No. 6 was not considered by the Committee and instead the name of the 6th respondent who was rank No. 16 as per the seniority list was considered by the Committee. Aggrieved by this the applicant approached the Tribunal by O.A. NO. 44/2000. The Tribunal dismissed the O.A. on 13.1.2000 on the ground that if Shri Natesan had been illegally left out of consideration, the person aggrieved should be Natesan and not the applicant. The applicant therefore approached the High Court through OP No. 6187/2000 and is pending before the High Court. Shri Natesan approached this Tribunal through O.A. 179/2000 and was now pending before this Tribunal. The Government of India, Department of Personnel & Training issued A-3 notification appointing Respondents No. 6, 7 and 8 to the IAS on probation with immediate effect. She was aggrieved by the said order as she was not given appointment. She submitted that if the 6th respondent who was out of the field of consideration was not considered by the Committee she would have got selection and appointment to the IAS cadre. Giving

details of service particulars of Sri Natesan Rank No. 6 she submitted that if he had been included in the zone of consideration she would have been appointed. It was further submitted that as per notification only 3 persons were given appointment to the IAS cadre even though the vacancies were five. If the two vacancies were also filled up she would have got appointment to the IAS cadre. Her right to get promotion to IAS cadre was seriously prejudiced by the Govt. of India notification giving appointment to three persons for the year 1999. Further she submitted that the Govt. of India, Department of Personnel & Training had published the Select List containing the names selected by the Selection Committee for appointment to the IAS cadre during 1999 and in the said notification it was stated that the names at Sl. NO. 2 had been included in the list provisionally subject to clearance of disciplinary proceedings pending against her and grant of integrity certificate by the State Govt. and that the name of Sl. No. 4 had been included in the list provisionally subject to grant of integrity certificate by the State Government. According to her, consideration of the name of Sri N. Sivasankar, sixth respondent by the Selection Committee was illegal and was in gross violation of Regulation 5(2) of the Indian Administrative Service (Appointment by probation) Regulations, 1955 and consequently his selection and appointment to IAS Cadre was also illegal. The exclusion of the name of Sri K. Natesan who was rank NO. 6 as per the seniority list was highly irregular as he satisfied all the three eligibility conditions to get included in the zone of consideration. The term "substantive" occurring in the original rule had been deleted w.e.f. 1.11. 1956 vide MHA Notification NO. 13/21/56AIS(III) dated 28.2.58. Hence any person who was a member of the State Civil Service was eligible for getting

included in the zone of consideration. He need not be a 'substantive' member and confirmation was not a pre-condition to include one's name in the zone of consideration. In the case of Sl. NO. 2 Smt Sumana N. Menon disciplinary proceedings were pending. The State Govt. had not granted integrity certificate. Moreover, confidential reports for nearly three years out of the required 5 years immediately proceeding the year of selection were not available before the Selection Committee for relative assessment of merit. She was not on leave or training or suspension. Her name had been included in the select list for the year 1998 also in the absence of Confidential Reports for nearly three years. So in 1998 itself, the State Govt. was fully aware that her Confidential Reports for nearly three years were not available. In the case of Sri K.R. Rajan Sl. NO. 4 in the Select List also the State Govt. had not granted integrity certificate. There was some vigilance investigation against him and it would take a long time to finalise it. His name had also been included in the select list for 1998. The applicant's case was that she had an unblemished service and her service records were all along very good. If the notification was implemented as such it would be an injustice to the applicant. If the selection was made strictly adhering to the rules and regulations she would have got selection.

9. The 4th respondent filed reply statement resisting the claim of the applicant. It was submitted that Sri Natesan was not an approved probationer in the Deputy Collector Cadre. They advanced same pleas as given in O.A. 179/2000 as regards non-inclusion of Mr. Natesan. Further it was submitted that the select list approved by the UPSC containing the names of 5 State Civil Service Officers of the

State of Kerala prepared by the Selection Committee was published by the Government of India as per notification No. 14015/39/99-AIS dated 28.2.2000 and the applicant was not included in the select list. The inclusion of respondents No. 6, 7 and 8 was unconditional. Two others were included in the list provisionally subject to clearance of disciplinary proceedings pending and grant of integrity certificate by the State Government. The respondents 6, 7 and 8 were appointed to the IAS on the basis of the select list. The O.A. was devoid of any merit and the same was liable to be dismissed with costs to the respondents.

10. Applicant filed rejoinder.

11. Separate reply statements were filed by the third and sixth respondents on the same lines as in O.A. 179/2000. Applicant filed rejoinder to the 6th respondent's reply.

12 Heard learned counsel for the parties.

13. We have given careful consideration to the submissions made by the learned counsel for the parties and the pleadings of the parties and have perused the documents brought on record.

14. From the pleadings and submissions we find that the applicant in O.A. 179/2000 is claiming to be included in the 'List of eligible officers' for consideration for appointment by promotion to IAS for the year 1999. The case of the applicant in OA. 319/2000 is that the applicant in O.A. 179/2000 should have been included in the 'List of eligible officers' for consideration for appointment by promotion to IAS and as a result the 6th respondent who is at rank No. 16

would not have been included in the list and in that event she would have been selected. So in both the OAs the common issue to be decided is whether the exclusion of the applicant in O.A 179/2000 from the list of eligible officers is in accordance with law.

15. According to the applicant in O.A. No. 179/2000 as per Regulation No. 5(1) and (2) of the Indian Administrative Service (Appointment by Promotion) Regulations, for five vacancies, 15 Deputy Collectors' names were to be sent for consideration in the order of seniority and he satisfied the following three eligibility conditions necessary for including his name in the 'List of eligible officers' :

(i) officer should not have completed 54 years of age as on 1.1.1999..

(iii) he should have completed 8 years of service in the cadre of Dy. Collectors on 1.1.1999.

(iii) he should hold a substantive post.

16. He further advanced the ground in the rejoinder relying on A-3 that Rule 8(1) of the IAS (Recruitment) Rules 1954 was amended and the term "substantive members" occurring in the original Rule was amended w.e.f. 1.11.1956 by deleting the term "Substantive" as per notification No. 13/21/56-AIS(iii) dated 28.2.1958 of the Govt. of India. According to him when the Rule had been amended, the Regulation would also have been amended and in any case the provision in the Regulations could not be different from the Recruitment Rules. The applicant in O.A. 319/2000 also advanced the same ground.

17. We have given our anxious consideration to the above submissions. We find that regulation 5 as contained in A2 reads as under:

5.Preparation of a list of suitable officers:-(1) Each Committee shall ordinarily meet at intervals not exceeding one year and prepare a list of such not exceeding one year and prepare a list of such them to be suitable for promotion to the Service. The number of members of the State Civil Service included in the list shall not be more than twice the number of substantive vacancies anticipated in the course of the period of twelve months commencing from the date of preparation of the list, in the posts available for them under rule 9 of the Recruitment Rules or 5 percent of the Senior posts shown against items 1 and 2 of the cadre schedule of each State of group of States, whichever is greater.

(2) The Committee shall consider for inclusion in the said list the cases of members of the State Civil Services in the order of a seniority in that service of a number of which is equal to three time the number referred in sub-regulation (1).

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

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

Provided also that in respect of any released Emergency Commissioned or short Service Commissioned Officers appointed to the State Civil Service, eight years of continuous service as required under the preceding proviso shall be counted from the deemed date of their appointment to that service, subject to the condition that such officers shall be eligible for consideration if they have completed not less than four years of actual continuous service, on the first day of the January of the year in which the Committee meets in the post of Deputy Collector or in any other post or post declared equivalent thereto by the State Government.

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

On a reading of the above provisions we find that the applicant's understanding of the provisions that "he should hold a substantive post" is not what is provided for in the above Regulation. According to the Regulation on the first

day of January of the year in which the Committee meets the officer has to be substantive in the State Civil Service. Admittedly, the applicant was not substantive on 1st January, 1999. He has not denied the respondents' statement that he had not been found suitable to be declared as "an approved Probationer" in the Deputy Collectors cadre when the Govt. considered him along with his immediate junior and senior during 1998. The applicant has also challenged the decision taken by the State Government to terminate his probation in the cadre of Deputy Collector and revert him to the lower post of Tahsildar in the Hon'ble High Court of Kerala. The very fact that he had filed an O.P. in the High Court of Kerala No. 18892/2000 for declaration of probation and confirmation inter alia would indicate that there is no dispute that the applicant was not 'substantive' on 1.1.99.

18. Coming to the next ground advanced by the applicant that the provisions under the Indian Administrative Service (Appointment by Promotion) Regulations are contrary to the provision Rule 8(1) of the Indian Administrative Services (Recruitment) Rules 1954, in that the term "substantive" had been deleted w.e.f. 1.11.56 as per Notification No. 13/21/56-AIS(iii) dated 28.3.58 of the Government of India, we find that the applicant is mainly relying on 'Note 2'appearing in A-3. We find A-3 is a copy of page 692 of All India Services Manual. But it had not been stated in the OA as to from which publication/Edition this page had been extracted. Further he had also submitted that according to his knowledge an amendment to the Regulations as per the said Notification as appearing in 'Note 2' was also made but he could not get a copy. As against this the first respondent, Union of India had filed R-1 copy of the Gazette of India

dated 9th August, 1958 in which the amendment to the IAS (Recruitment) Rules had been notified. R-1 Gazette notification GSR 662 and 666 read as under:

The Gazette of India
New Delhi, Saturday, August 9, 1958

Ministry of Home Affairs
New Delhi, the 29th July 1958

662:- In exercise of the powers conferred by sub-section (1) of section 3 of All India Services Act, 1951 (61 of 1951) the Central Government, after consultation with the Governments of the States concerned, hereby makes the amendments in the Indian Administrative Service (Recruitment) Rules,

the said Rules-
(i)In sub-rule (1) of rule 4-
in clause (b) for the words

Members of a State Civil Service" the words "substantive members of a State Service " shall be substituted.

(ii) for clause (c) the following shall be substituted, namely:-

"(c) by selection, in special cases from among persons, who hold in a substantive capacity gazetted posts in connection with the affairs of a State and who are not members of a State Civil Service."

II. In rules 8-

(ii) in sub rule (1), for the words "members of a State Civil Service", the words"substantive members of a State Civil Service" shall be substituted

(iii) in sub rule (2), the following words shall be added at the end, namely-"but who holds a gazetted post in a substantive capacity."

GSR 666:- In pursuance of sub-rule (2) of rule 8 of the Indian Administrative Service (Recruitment) Rules, 1954, the Central Government, in consultation with the State Governments and Union Public Service Commission, hereby makes the following amendment in the Indian Administrative Service (Appointment by Selection) Regulations, 1956-

Amendment

In the said Regulations, at the end of clause (ii) of sub-regulation (1) of regulation 3 the following shall be added, namely:-

"and who is holding that post in a substantive capacity"

The applicant has not filed any rejoinder denying the above Gazette Notification. In the light of the above we find no substance in the plea of the applicants in these two OAs that there is no need for being a "substantive member of the State Civil Service" for being included in the list of legible officers. Further, from Sarkar's "The All India Service Manual" (1996 reprint), we find Rule 4(1) of IAS Recruitment Rules 1954 as under:

> (4) Method of Recruitment to the Service.
>
> (1) Recruitment to the Service after commencement of this rules, shall be by the following methods, namely..
>
> (a) by a competitive examination.
>
> (aa)by selection of persons from among the Emergency Commissioned Officers and Short Service Commissioned Officer of the Armed Forces of the Union "who were commissioned on or after the 1st November, 1962 but before the 10th January, 1988 or who had joined any pre-commission training before the later date, but who were commissioned on or after that date."
>
> (b)by promotion of substantive member of a State Civil Service.
>
> (c)by selection in special cases from amongst persons who hold in a substantive capacity gazetted posts connection with the affairs of a State and who are not members of a State Civil Service.

19. In the light of all the above we do not find any substance in the plea of the applicants that even if an officer of the State Civil Service was not substantive, he should be included in the "List of eligible officers" for consideration for appointment by promotion to the IAS as per Regulation 5(1) and (2) of the IAS (Appointment by Promotion) Regulations. Accordingly we are of the view that non-inclusion of the applicant in O.A. 179/2000 by the respondents in the list of eligible officers for consideration for appointment by promotion to the IAS cadre

during 1999 cannot be faulted. We hold that the applicant is not entitled for any of the reliefs sought for by him through O.A. 179/2000 and the said O.A. is liable to be dismissed.

20. The case of the applicant in O.A. 319/2000 is that because Mr. Natesan - the applicant in O.A. 179/2000 had been illegally not included in the list of eligible officers for consideration by the Selection Committee for appointment by promotion to the IAS cadre of Kerala, 6th respondent in the said OA was included in the list of eligible officers and hence he could be selected and included in the A3 Notification even though he was junior to the applicant. In the light of our finding that there is no infirmity in the non-inclusion of Mr. Natesan the applicant in O.A. 179/2000 this ground advanced by the applicant has no force.

21. Applicant has further advanced the ground that inclusion of the names of 9th respondent Smt. Sumana N.Menon and 10th Respondent Sri K.R. Rajan whose Confidential Reports were not available and against whom vigilance investigations were in progress respectively in preference to the applicant was not correct. it is well accepted that in judicial review Courts/Tribunal s do not act as an appellate authority over the decisions taken by the Selection Committee. In this case the Selection Committee had considered the cases of the officers who were included in 'the list of eligible officers' and have prepared a Select List of 5 officers including the names of the 9th and 10th respondents. It is specifically averred by the 3rd respondent that the 9th and 10th respondents were included in the Select List provisionally subject to clearance of disciplinary proceedings pending against them and grant of integrity certificate in respect of both of them. It has also been

averred that even though the applicant was assessed as Very Good by the Selection Committeesshe could not be included in the Select List due to the statutory limit on the size of the Select list. Nothing had been placed before us that the assessment made by the Selection Committee headed by the Union Public Service Commission is in any way arbitrary or on irrelevant materials. This Court cannot come to a conclusion that the applicant in O.A. No. 319/2000 deserved to be assessed more meritorious than the 9th and 10th respondents. The Applicant and the said respondents had all been assessed as Very Good and 9th and 10th respondents had been included in the list provisionally as they were senior to the applicant herein. Under the circumstances we hold that the applicant in O.A. No. 319/2000 is not entitled for the reliefs sought for and accordingly the said Original Application is liable to be dismissed.

22. In the light of the above detailed analysis we dismiss the two Original Applications viz. O.A. 179/2000 and OA No. 319/2000. In the circumstances we leave the parties to bear their respective costs.

Dated the 1st Day of August, 2002.

Sd/-
K.V.SACHIDANANDAN
JUDICIAL MEMBER

Sd/-
G.RAMAKRISHNAN
ADMINISTRATIVE MEMBER

APPENDIX

APLPLICANT'S ANNEXURES

O.A.179/2000

A1 True copy of the order GO(MS) NO. 377/63/PD dt. 21.9.63 issued by the 4th respondent.

A2 True copy of extract of the IAS (Appointment by Promotion) Regulations, 1955 (page NO. 514 & 515-Clause-5)

A3 True copy of an extract of Rule 8(1) of the IAS(Recruitment) Rules 1954

A4 True Photocopy of GO(P) 1041/79 (1 & 2) Fin. dated 27.11.79

A5 True Photocopy of Circular No. GOP 343/807(195/Fin. dated 6.6.809)

A6 True copy of Circular No. 58/PRC.B 3/88(216) Fin dt. 19.7.88

A7 True copy of the notifiction NO. 14015/39/99-AIS(1) dt. 1.3.2000 issued by the 1st respondent.

Respondents' Annexures

R1 Copy of the relevant page of the Gazette notification dated 9.8.1958 issued by the Ministry of Home affairs, Delhli.

O.A. No. 319/2000

Applicant's Anexures

A1 True copy of the Rule 8(1) of the IAS (Recruitment Rule 1954) Revelevant portion)

A2 True copy of the Regulation 5(2) of the IAS(Appointment by Promotion) Regulation) 195F (Relevant portion)

A3 A true copy of the Notification No. 14015/398 /99-AIS(I) dated 1.3.2000 issued by 1st respondent.

A4 True copy of the notificaation NO. 14015/39/99 -AIS(1) dt. 28.2.2000 issued by the 1st respondent.

A5 True copy of Government decision 1.1 and 1.2 below regulation 3 of the IAS (Appointment by promotion) regualtions 1955 issued by the 1st respondent.

Respondents' Annexures

Nil--

CERTIFIED TRUE COPY

Date .....

Section Officer (Judl.)