

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A No. 34 / 2008

Thursday, this the 24th day of September, 2009.

CORAM

HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER

HON'BLE Ms. K NOORJEHAN, ADMINISTRATIVE MEMBER


V.S.Raghavan,
Superintendent of Police,
Crime Branch CID,
Ernakulam Kochi-36.

....Applicant

(By Advocate Mr PV Mohanan)

v.

1. State of Kerala,
represented by its Home Secretary,
Govt. Secretariat,
Trivandrum.
2. Union of India represented by
its Secretary, Ministry of Home Affairs,
New Delhi.
3. Union Public Service Commission, rep. By its
Secretary, UPSC,
Shajahan Road, New Delhi.
4. The Selection Committee for Selection to
Indian Police Service, represented by its
Chairman, Union Public Service Commission,
Shahjahan Road, New Delhi.
5. The Director General of Police,
Police Head Quarters, Trivandrum.
6. B.Babu,
Superintendent, of Police,
CBCID Analysis Wing,
Trivandrum.
7. K.P.Philip,
Superintendent of Police,



CBCID, Kannur.

8. K.K.Balachandran,
Superintendent of Police,
KSEB, Vigilance, Trivandrum.
 9. V.Bhuvanendran,
Assistant Director, KEPA,
(Kerala Police Academy),
Ramavarmapuram, Trichur.
 10. S.Surendran,
Vigilance Officer,
Kerala State Civil Supplies Corporation,
Gandhi Nagar, Ernakulam.
 11. V.N.Sasidharan,
Commandant,
State Rapid Action Force (SRAF),
Trivandrum.
 12. A.V.George,
Superintendent of Police,
SBCID, Ernakulam Range.
 13. State of Kerala represented by its
Chief Secretary,
Govt. Secretariat,
Trivandrum.
-Respondents

(By Advocate Mr TR Premshanker, G.P for R.1, 5 & 13)

(By Advocate Mr TPM Ibrahim Khan, SCGSC for R.2)

(By Advocate Mr Thomas Mathew Nellimoottil for R. 3&4)

(By Advocate Mr S Sreekumar for R.6 to 12)

This application having been finally heard on 2.7.2009, the Tribunal on 24.9.2009 delivered the following:

ORDER

HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER

The applicant is presently working as Superintendent of Police under the Government of Kerala. He has completed the qualifying service in the category of Dy.S.P in the State Police. In the Annexure A-3 seniority list, his name is at



Sl.No.17 and he has been included in the zone of consideration for selection and appointment to IPS (Kerala Cadre) against the vacancies as on 1.1.2007. His contention is that the private respondents 6 to 12 viz, S/Shri B Babu, K.P.Philip, KK Balachandran, V.Bhuvanendran, S.Surendran, V.N.Sasidharan and A.V. George whose names are also included in the aforesaid Annexure A-3 list are not qualified to hold the post of Dy.SP. According to him, in order to become eligible for appointment as Dy.SP in Kerala Police Service, the incumbent must pass the examinations in the subjects viz, Indian Penal Act, Code of Criminal Procedure, Indian Evidence Act, Medical Jurisprudence and Toxicology, Police Department Orders, Scientific Aids to Investigation, Special and Local Laws including the Police Act, the Constitution of India, Police Standing Orders, Criminology, Forensic Medicine, Practical Model Police Station etc. As the respondents 6 to 12 have not passed the above examination/test, they are ineligible to hold the post of Dy.SP. Thus, they are not members of the service as defined under Indian Police Service (Appointment by Promotion) Regulations, 1955. He has, therefore, submitted that if their names are deleted from the Annexure A-3 eligibility list, his name would have got pushed up to the 10th position in the eligibility list and he would have been considered for selection and appointment to the IPS cadre against the vacancies as on 1.1.2007.

2. He has also stated that the last cadre review under Regulation 4(2) of Indian Police Service (Cadre) Rules 1954, which is reproduced below, was held in March 2001 and vide notification NO.11052/9/2000.AIS(III) A dated 22.3.2001, the total authorized strength was fixed as 139, comprising of 97 direct recruitment posts and 42 promotion posts.

"4(1) Strength of Cadres: The strength and composition of each of the cadres constituted under rule 3 shall be determined by regulations made



by the Central Government in consultation with the State Governments in this behalf and until such regulations are made, shall be as in force immediately before the commencement of these rules.

4(2) The Central Government shall, [ordinarily] at the interval of every [five] years, re-examine the strength and composition of each such cadre in consultation with the State Government or the State Governments concerned and may make such alterations therein as it deems fit:

Provided that nothing in this sub-rule shall be deemed to affect the power of the Central Government to alter the strength and composition of any cadre at any other time:

Provided further that State Government concerned may add for a period not exceeding two year [and with the approval of the Central Government for a further period not exceeding three years,] to a State or Joint Cadre one or more posts carrying duties or responsibilities of a like nature to cadre posts."

The next quinquennial cadre review was due on 22.3.2006 and the notification enhancing cadre post should have been issued on or before the said date in view of the order of this Tribunal in **Jacob P Thomas v Union of India** [1993 (24) ATC 196] and judgment of the Apex Court in **S.Ramanathan v. Union of India** [2001 (2) SCC 118]. The applicant has also submitted that the State Government has already forwarded the proposal for quinquennial cadre review during the year 2006 proposing to enhance the strength of senior posts in the cadre. According to the learned counsel, if the aforesaid proposals of the State Government were considered and appropriate decision was taken by the Central Government in time as mandated under Rule 4(2) referred to above, the number of substantive posts to be filled as on 1.1.2007 would have gone upto 8 i.e. the existing 5 posts plus the proposed 3 posts.

3. He has, therefore, sought the following reliefs in this O.A:

"(i) To direct the respondents 1 to 4 to convene the Selection Committee for appointment to Indian Police Service (Kerala) cadre for the year 2007 and consider the claim of the applicant for selection and inclusion in the select list for the year 2007 as SI.No.10 in Annexure A-3 eligibility list and consequential appointment under the provisions of



Indian Police Service (Appointment by Promotion) Regulation 1955 notwithstanding the impending retirement of the applicant from the State Police Service on 31.10.2008,

(ii) To declare that respondents No.6 to 12 are ineligible and not qualified to be considered for selection to IPS (Kerala) cadre against the vacancies as on 1.1.2007 and thereafter under the provision of Indian Police Service (Appointment by Promotion) Regulation 1955 as they are not qualified member of State Police Service and their name may be deleted from Annexure A-2 Eligibility List (Zone of consideration).

(iii) To declare that the applicant is entitled to be placed as item No.10 just below item No.9, P.Prabha and above Item No.10, B Babu in Annexure A-3 eligibility list for consideration for selection and appointment to Indian Police Service (Kerala) Cadre (Promotion quota) and direct the respondents No.1 to 4 to include the name of the applicant in the field of choice as Item No.10 in the eligibility list.

(iv) To declare that the applicant is eligible to be considered for selection and appointment to IPS (Kerala) Cadre against the vacancy that may arise as on 1.1.2008 in view of the second proviso to Rule 5 (3) of IPS (Appointment by Promotion) Regulations, 1955.

(v) To declare that the retirement of the applicant from the State Police Service on 31.10.2008 shall not disentitle the applicant for consideration for selection and appointment against the vacancies for the year 2007 including the vacancies that may arise consequent on quinquennial cadre review and also against the vacancies that may arise as on 1.1.2008.

(vi) To direct the respondents to complete the quinquennial cadre review due as on 22.3.2006, and finalise the same and issue the statutory notification under Section 3(1) of All India Service Act, 1951, read with Rule 4(2) of Indian Police Service (Cadre) Rule, 1954 amending the Indian Police Service (Fixation of Cadre Strength) Regulation, 1955 with effect from 22.3.2006 enhancing the number of senior duty post in IPS (Kerala) cadre with effect from 22.3.2006 and to consider the claim of the applicant against the post treating it as substantive posts as on 1.1.2007 and include the name of the applicant in the select list for the year 2007."

4. Respondent No.1 i.e. State of Kerala in its reply has submitted that there were only 3 vacancies for the appointment to IPS promotion in the year 2007 and the following 9 personnel in the State Police were included in the zone of consideration and other eligibility criteria:

- i) Shri K.B.Balachandran
- ii) Shri V.R.Raghuvarma



- iii) Shri C Rajagopal
- iv) Shri B Murali
- v) Shri S Jogesh
- vi) Shri T.P.Mohandas
- vii) Shri George Varghese
- viii) Shri P Prabha
- ix) Shri B Babu

They have further submitted that Annexure A-3 dated 31.10.2007 was only an eligibility list of 17 persons to be included in the zone of consideration for selection to IPS promotion for the year 2007 and not the actual list showing the zone of consideration.

5. As regards the eligibility of respondents 6 to 12 for inclusion in the zone of consideration was concerned, they have submitted that the 19 police personnel including them were exempted from passing the prescribed examination in relaxation of the rules as provided in Rule 39 of the General Rule which is reproduced below, vide G.O(Rt) 65/04/Home dated 20.2.2004, and as such they became eligible to get their names included in the cadre of Circle Inspector of Police:

"Notwithstanding anything contained in these rules or in the Special Rules or in any other Rules or Government Orders, the Government shall have power to deal with the case of any person or persons serving in a civil capacity under the government of Kerala or any candidate for appointment to a service in such manner as may appear to the Government to be just and equitable."

6. As regards the cadre quinquennial review was concerned, they have submitted that Rule 4(2) (supra) only provides that the Government shall ordinarily, at the intervals of every 5 years, re-examine the strength and composition of each such cadre in consultation with the State Government the



periodicity of holding the review is not mandatory. They have further submitted that the IPS cadre was reviewed during March 2001 and the next review was due in March 2006 and they have already forwarded the proposal for the same on 7.5.2007 to the Union Government.

7. The respondent No.2 (Union of India) in its reply has submitted that in order to hold the cadre review which was due in the year 2006, they have asked the State Government to furnish them the necessary proposal way back in 2005 itself vide their letter dated 14.10.2005. However, the State Government furnished the proposal only vide its letter dated 7.5.2007, that too, after repeated reminders. After examining the said proposal and clarifications obtained from the State Government, they have determined 3 additional posts for preparation of the select list of 2007. But no meeting of the Selection Committee was convened by the UPSC till 31.10.2007. However, with the advent of the year 2008 and availability of 2 vacancies, in pursuance of the 2nd proviso to Regulation 5(1) of the IPS (Appointment by Promotion) Regulations, 1955, yearwise select lists of 2007 and 2008 were prepared during 2008. Thereafter, the meeting of the Selection Committee to prepare the select list of 2007 was convened by the UPSC on 23.6.2008.

8. They have further submitted that the word 'ordinarily' was inserted in the Regulation 4(2) of the IPS(Cadre) Rules, 1954 by way of amendment dated 10.3.1995 with the intention to give flexibility to the executive as far as time limit the cadre review was concerned and the judgments in the cases of **Jacob P Thomas** and **S.Ramanathan** (supra) were delivered prior to the said amendment. After the aforesaid amendment, it is no more mandatory to complete the exercise of cadre review within any particular time frame.



Therefore, the question of giving retrospective effect to the notification authorizing the revised strength and composition of the cadre does not arise. They have also submitted that so far as the applicant has not challenged the provisions of Rule 4(2) of IPS (Cadre) Rules 1954 as amended, the request of the applicant to review to the cadre strength and refixing it retrospectively, cannot be entertained.

9. The private respondents 6 to 12 in their reply have submitted that the Applicant was actually promoted as Circle Inspector of Police only with effect from 19.8.1988 whereas they were appointed against the 7 direct recruitment quota which have been available from 1985 and their names were included in the Annexure R-10(a) select list dated 3.10.1987 and they reported for training on 1.1.1988. They have further submitted that applicant was considered by the Departmental Promotion Committee (Lower) held on 12.3.1987 and 11.9.1987 for selection and promotion to the post of Circle Inspector of Police but he was rejected and superceded on merit. His request to expunge the adverse remarks in the confidential report during the period 1985 was rejected. His representation dated 21.12.2007 before the 5th respondent to include him in the select list of Sub Inspector of Police fit for promotion as Circle Inspector of Police for the year 1986 was also rejected by the proceedings dated 25.2.2008 (Annexure R-10(b)). He was selected and promoted to the vacancy of Circle Inspector of Police which has arisen on 19.8.1988 and therefore he cannot claim regularization before that date. They have also submitted that Annexure A-1 was published on 28.7.1997 and it was specifically provided therein that promotion will take effect only from the date on which the vacancy of Dy.S.P. arises after 24.8.1996. His claim for inclusion in earlier select list was already rejected and he cannot and is estopped from contending that he ought to have regularized



from 25.9.1987 (Annexure R10-c) after a lapse of 32 years. In the final seniority list of IPS as on 1.1.1988 they are at SI.No.313, 315, 317 to 320 but the applicant was not even included therein as he was not appointed as Circle Inspector of Police as on 1.1.1988. The applicant has never challenged the said Annexure-10(c) seniority list till date. In the Annexure A-2 final seniority list of Dy.SP as on 4.8.2003 also they are at SI. Nos.241, 242 and 244 to 248 whereas the applicant was only has SI. No.259. As regards Annexure A-4 Special Rules, it mandates the Kerala Public Service Commission (KPSC for short) to conduct the test for passing the obligatory tests half yearly but no such tests were held after they have completed their training successfully on 31.12.1988 and posted as probationary Circle Inspector of Police on 1.1.1989. Had the KPSC conducted the test as prescribed in Rule 8(a) of the said Annexure A-4 rules, they would have definitely passed the test. As the KPSC failed to hold the test, the Government invoked Rule 39 of KS & SSR and exempted all personnel who were appointed under the special rule from passing the obligatory test.

10. They have also submitted that the power of the State Government to give exemption from passing the test has already been confirmed by the High Court in its Annexure R-10(d) judgment in **C.Sherafuddin v. State of Kerala and others** W.P.(C) 8498 of 2004 which is as under:

"16. Thus on an overall assessment of the situation, it can be seen that respondents 3 to 6 cannot in any way be put to any prejudice for the only reason of not performing a task impossible of performance. They have been in service for quite long. There is no case that they are otherwise unsuitable or unfit to hold the various posts which they held such as Circle Inspector of Police. Deputy Superintendent of Police and Superintendent of Police. Their only deficiency was that they had not passed the examination which was never held. It is not a situation where respondents 3 and 6 failed to pass the test. Even the failure was made impossible by not conducting the examination. The inaction on the part of the Government shall not prejudice an otherwise eligible incumbent. If Rule 39 of the General Rules is not invoked in such situations, it would certainly lead to unfairness, inequity and injustice."



11. Again, similar exemption granted to ASIs from passing the obligatory test reserved for SC/ST under special rules was the subject matter in **A.P.Showkath Ali v. State of Kerala and others** O.P.31168/2001 and W.P.(C) 35820/2005. The Division Bench of the Hon'ble High Court of Kerala by its Annexure R-10(e) judgment dated 10.8.2007 upheld the power of Government to grant exemption by invoking Rule 39. The relevant part of the said judgment is as under:

"7. We have considered the submissions made. The main issue that calls for our decision is the validity of Ext.P6 and the correctness of the inclusion of directly recruited Assistant Sub Inspectors of Police in Exts. P10 and P11. Rule 39 of K.S. & S.S.R provides that notwithstanding anything contained in the Rules or in any other Special Rules or Government Orders the Government shall have the power to deal with the case of any person or persons serving in a civil capacity under the Government of Kerala or any candidates for appointment to a service in such manner as may appear to the Government to be just and equitable. This Rule has been considered by this Court on various occasions. In the decision reported in **T.C.Sreedharan Pillai & others v. State of Kerala & others** – 1973 KLT 151 it was held as follows:

"Ordinarily, therefore, it is not expected that the power under Rule 39 should be resorted to merely for the purpose of getting round the provision contained in any of the general rules or special rules. Rule 39 is to be invoked only to meet exceptional situation where gross injustice or inequity is seen to result from the application of the rules in all their rigour. In such cases and such cases alone, Rule 39 empowers the designated authority to met out equity and justice by passing appropriate orders in relaxation of the provisions of the rules concerned."

In **Koyit Joseph and others v Subhash George and others** – ILR 2006(3) Kerala 162, a Division Bench of this Court held that Rule 39 of K.S & S.S.R has to be understood as giving power to the Government to set right matters, when otherwise there was imminent hardship or illegalities. What was contemplated was a relaxation in public interest and that appointments to the Police Force are to be made with reference to the rules framed under Public Services Act and it should not be mistaken that Rule 39 of the K.S.S.R by itself confers a special sui juris or exclusive power than that is prescribed by the Special Rules. Understanding the scope of Rule 39 of K.S & S.S.R as held by this Court in the aforesaid two judgments, we proceed to examine whether the circumstances justified invocation of the said Rule.

8. A reference to Ex.tP6 discloses that 37 persons belonging to Scheduled Caste/Scheduled Tribe categories directly recruited as



Assitant Sub Inspectors of Police during 1988 joined training from 1.11.1988 and that in terms of Rule 9(a) of the Special Rules, they should pass the test conducted by the Kerala Public Service Commission for declaring satisfactory completion of their probation and for earning increments and that unfortunately, no test was conducted by the Kerala Public Service Commission till the date of the order. As a result, these 37 officers did not get an opportunity to appear for the test and consequently satisfactory completion of their probation could not be declared till then and that during 1991 when Assistant sub Inspectors of Police, who were juniors to these 37 officers, were promoted as Sub Inspectors of Police these 37 Assistant Sub Inspectors of Police approached this Court and pursuant to an interim order passed by this Court, they were provisionally promoted as Sub Inspectors of Police. Even thereafter question of passing of the test for declaration of their probation in the lower category of Assistant Sub Inspectors of Police remained unresolved and on account of these reasons, Director General of Police reported that the seniority of these officers could not be fixed and that these officers were denied the annual increments due to them. It was also reported to the Government that these 37 persons had become senior Sub Inspectors of Police, who could be considered for the post of Circle Inspectors of Police and that if the issue regarding passing of the test was not solved immediately, they were likely to be superseded to the post of Circle Inspectors of Police also for no fault of their's. Report further stated that the test has not been conducted for more than 12 years since their recruitment and that they were getting pay at the minimum of the scale of Assistant Sub Inspectors of Police and that after a lapse of more than 12 years insisting on the passing of the test by these officers was unjustified and illogical. On these reasons, director General of Police proposed that this was a fit case for invoking the powers of the Government under Rule 39 of K.S & S.S.R. Taking into account the extraordinary circumstances under which these officers have suffered for so long and examining the proposal in detail, Government passed Ext.P6 order, invoking its power under Rule 39 of K.S & S.S.R exempting these 37 directly recruited Assistant of Inspectors of Police from passing the test prescribed under Rule 9(a) of the Special Rules. These reasons have been reiterated by respondents 1 and 2 in their counter affidavit.


9. The reasons stated by the Government disclose an extraordinary situation and the injustice that was meted out to the Assistant Sub Inspectors of Police, warranting invocation of its powers under Rule 39 of K.S & S.S.R. Reasoning of the Government that it was illogical and unjustified to ask the Assistant Sub Inspectors of Police to appear for the test after rendering service of 12 years in the post also cannot be said to be unreasonable. We are satisfied that Government was justified in invoking the power under Rule 39 of K.S. & S.S.R and in our considered view, there is nothing illegal in Ext.P6 order of the Government."

12. In the rejoinder the applicant has submitted that the selection committee




for selection and appointment of 3 vacancies as on 1.1.2007 has met on 23.6.2008 and the committee prepared the select list which was sent to the State Government for perusal and the final notification was yet to be published. He has also submitted that the applicant has also challenged the seniority conferred upon the respondents 6 to 12 in W.P.(C) No.4549 /2008 on 30.1.2008 and the same is under consideration. He has also submitted that Shri C.Rajagopalan, Shri S Joseph and Shri George Varghese were selected and the selection of Shri Rajagopalan and Shri S Jogesh was conditional as they were under cloud. However, the selection of the above 3 incumbents has also been challenged in O.A.387/2008 which is pending consideration.

13. We have heard the learned counsel on both sides. The grievance of the applicant in this case is mainly two fold. His first grievance is that the respondents 6 to 12 were not eligible to be considered for selection to IPS (Kerala) cadre against the vacancies as on 1.1.2006 and 1.1.2007 but by their inclusion in the zone of consideration, his right has got infringed and thereby the respondents have violated the provisions contained in Article 16(1) of the Constitution. His second grievance is that respondents 1 to 4 have failed to hold the mandatory quinquennial cadre review which was due on 22.3.2006 and as a result the Select Committee failed to consider the additional 3 posts which have arisen as on 1.1.2007 to prepare the select list of 2007 and the applicant was denied the benefit of the enhanced number of vacancies for the select year 2007. We find no merit in the contentions raised by the applicant in support of his aforementioned grievances. The power of the State Government for granting exemption from passing the tests has already confirmed by the Hon'ble High Court of Kerala in the cases of **C.Sherafuddin**(supra) and **A.P.Showkath Ali**



(supra). The private respondents 6 to 12 have been shown senior to applicant for the last several years. The applicant has challenged his seniority vis-a-vis the respondents 6 to 12 only in W.P.(C) 4549/2008 in 2008 which is still pending before the Hon'ble High Court. Therefore, his prayer to include him just above respondents viz. B Babu does not arise. The second issue is regarding the cadre strength of IPS in Kerala as on 1.1.2007. With the amendment of the Regulation 4(2) of the Indian Police Service (Cadre) Rules, 1954 as submitted by the respondents, it is no more mandatory on the part of the Government to enhance the cadre strength on the due date itself. As the cadre strength has since been enhanced by the respondents, it is not necessary to take the same into consideration retrospectively for the select list for 2006 as claimed by the applicant. Hon'ble Supreme Court has upheld the above position in its judgment in **T.N. Administrative Service Officers Association and another v. Union of India** [(2000) 5 SCC 728] wherein the appellants were members of T.N and Haryana State Administrative Services who contended that on account of failure of the Central Government to timely review the cadre strength as statutorily required, their promotion got inordinately delayed and they lost their seniority in the promoted cadre. They have, therefore, claimed that their seniority shall be fixed with retrospective effect. The Apex Court, considering its various earlier judgments on the issue rejected the said contention and held as under:

"The prayer of the petitioners for encadrement of the ex-cadre/temporary posts in reality amounts to asking the Central Government to create more posts. The question then arises whether there is any such right in the petitioners to seek such creation of additional posts. It is a well-settled principle in service jurisprudence that even when there is a vacancy, the State is not bound to fill up such vacancy nor is there any corresponding right vested in an eligible employee to demand that such post be filled up. This is because the decision to fill up a vacancy or not vests with the employer who for good reasons; be it administrative, economical or policy, decide not to fill up such post(s). See *The State of Haryana v. Subhash Chander Marwaha & Ors.* [(1974) 3 SCC 220]. This



principle applies with all the more force in regard to the creation of new vacancies like by encadrement of new posts; more so when such encadrement or creation of new posts is statutorily controlled. We have noticed earlier that the Cadre Regulations and the Recruitment Rules require the Central Government to follow a particular procedure and make necessary consultations before fixing or re-fixing the cadre strength. In such a situation, issuance of a mandamus to increase the cadre strength or to encadre a particular post merely on the basis of long existence of these posts would be inappropriate."

14. In the above facts and circumstances, this O.A is dismissed. There shall be no order as to costs.


K NOORJEHAN
ADMINISTRATIVE MEMBER


GEORGE PARACKEN
JUDICIAL MEMBER

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