

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.No.342/2013

Wednesday, this the 03rd day of July, 2013

C O R A M :

HON'BLE Dr.K.B.S.RAJAN, JUDICIAL MEMBER
HON'BLE MR.K GEORGE JOSEPH, ADMINISTRATIVE MEMBER

D.Madhu
S/o.V Demianose
Retd. Superintendent of Police (Non I.P.S) and Commandant
Rapid Response and Resque Force
Malappuram ...Applicant

(By Advocate Mr.M.R Rajendran Nair, Sr with Mr.C.Unnikrishnan)

V e r s u s

1. The Union Public Service Commission
Represented by its Secretary
Shajahan Road
New Delhi - 110 001
2. The Selection Committee for selection to IPS
represented by its Chairman
Union Public Service Commission
Shajahan Road
New Delhi - 110 001
3. Union of India represented by the Secretary
Ministry of Home Affairs
New Delhi - 110 001Respondents

(By Advocate Mr.Sunil Jacob Jose, SCGSC for R3 and Mr.Thomas Mathew Nellimoottil for R1&2)

This application having been heard on 03.07.2013 this Tribunal on the same day delivered the following :-

ORDER

HON'BLE DR.K.B.S.RAJAN, JUDICIAL MEMBER

1 The applicant was provisionally included in the Select list for promotion to Indian Police Service for the year 2009. The State Government had withheld the integrity certificate for the reason that he was under suspension pending disciplinary action on prima facie charge of misuse of official power and misconduct. Though proceedings were over as early as 28-01-2012, his integrity

certificate was not forwarded to the Union Public Service Commission. Hence, the applicant approached the Tribunal through OA No. 132 of 2012 and the Tribunal passed the following order on 15th May 2012 vide Annexure A-8:-

"12. In the result, the OA is allowed as under:-

Annexure A7 dated 18.02.2012 is quashed. The respondents 1 & 2 are directed to forward the integrity certificate of the applicant along with the required proposal for making the applicant's selection to the I.P.S. unconditional to the Union Public Service Commission forthwith at any rate within a period of two weeks from the date of receipt of a copy of this order. The Union Public Service Commission is directed to consider the case of the applicant upon receipt of the integrity certificate as if it is received within the stipulated period. No order as to costs. "

2. According to the applicant, Integrity certificate was thus forwarded by the State Government, vide Annexure A-9 of the OA. But the State Government did not forward the proposal to make the selection unconditional in spite of specific direction. Thus, UPSC had issued letter dated 02-07-2012 to the Government of Kerala and requested to forward a complete proposal to enable the Commission to take a decision on the inclusion of the applicant in the select list of 2009 as unconditional and final, vide Annexure A-10. A proposal was no doubt forwarded by the State Government; however, the State Government referred to two criminal complaints pending against the applicant in the JFCM Court, Wadakkanchery, vide Annexure A-11. The UPSC, referring to Regulation 7(3) of the IPS (Appointment by Promotion) Regulations, 1955 declined to include the name of the applicant in the select list unconditional, vide impugned order dated 23rd August, 2012 at Annexure A-1. This order is under challenge in this OA seeking the following reliefs:-

"(i) Quash Annx.A1 to the extent it deeming the inclusion of the name of the applicant in the Select List of 2009 as provisional.

(ii) Declare that the applicant's selection to IPS is liable to be made unconditional in the Select List of 2009 as no charge sheet was laid against him with in the validity period of 60 days of the Select List ie; from 22.12.2011 to 20.02.2012.

(iii) Declare that the proviso to Regulation 7(3) of Indian

Police Service (Appointment)
not applicable to the case.

(iv) Direct the respondent
applicant for making his selection
List of 2009 and his colleagues
notwithstanding the provisions of
Service (Appointment by Promotion).

3. On behalf of Respondent No. 3, the Union
Home Affairs, New Delhi, reply had been filed.

4. The applicant has filed a miscellaneous application annexing
the order dated 25-06-2013 of the Hon'ble High Court of Kerala in Cri MC No. 1550
of 2013 which relates to the cases referred to by the State Government in their
proposal (on account of pendency of which, the UPSC declined to unconditionally
include the name of the applicant in the select list). The operative part of the said
order reads as under:

"20. In the light of the findings of the Sub Divisional
Magistrate, who is a competent authority under the above Act, it can
be seen that the vehicles, which were allegedly seized in the above
crime, were having valid pass for transporting river sand. Annexure
A6 order of the said authority became final. So the contentions raised
by the learned Public Prosecutor, to assail Annexure A6 and his
attempt to convince this Court about the factual dispute i.e; the fact
whether the said vehicles were having valid pass at the material time
is not settled and yet to be decided in the criminal court, cannot be
accepted. So the possible conclusion that can be arrived is that in the
light of the above findings of the competent authority and particularly
in the light of the Government Order Annexure A-6, the main plank of
the prosecution case that the above lorries were not having valid pass
has broken. If the main plank of the prosecution has broken, there is
no meaning in directing the petitioner to face the trial especially when,
as I indicated earlier, there is no material to the satisfaction of this
Court to prove the presence of the petitioner at the material time at the
place of occurrence and to establish his identity and thereby to
implicate the petitioner in the above case. In such circumstances, if
the proceedings against the petitioner are allowed to continue, the
same will amount to abuse of process of the court and will result in
miscarriage of justice. In the above circumstances, by allowing
Cri.M.C.Nos.1550 and 1553 of 2013, all proceedings pending in
C.C.Nos.633 and 393 of 2012 on the file of the Judicial First Class
Magistrate Court-II, Wadakkanchery are quashed. Since the
proceedings in C.C.No.633 of 2013 are quashed, no separate order is
necessary in Cri.M.C.No.2311 of 2013 and the same is accordingly
closed. "

5. Senior Counsel for the applicant submitted that in view of the above
development, there is no impediment in the State Government forwarding the

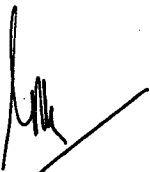
Proposal afresh without laying down any condition and the UPSC, on receipt of the proposal may take further action to include the name of the applicant in the select list for 2009 unconditionally and further action for promoting the applicant to the IPS cadre may be issued at the earliest as the applicant had retired from the State Service in 2012 itself.

6. Counsel for the UPSC submitted that further action has first to be initiated only by the State Government and the State Government is not a party.

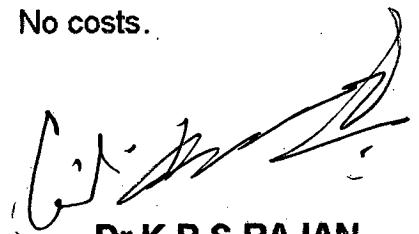
7. Senior Counsel for the applicant stated that in fact since the impugned order is from UPSC, the UPSC and the Union of India have been impleaded. However, the applicant would make a representation annexing a copy of the judgment of the High Court to the State Government which could be acted upon by the State Government for further reference to the UPSC and UPSC may be directed to take action thereon within a time frame.

8. As the UPSC can take action only on receipt of proposal from the State Government, the applicant shall prefer due representation annexing a copy of the judgment of the High Court and the State Government shall, after considering the same, forward without delay, the proposal to the UPSC and the first Respondent UPSC shall consider the case of the applicant for inclusion in the select list of 2009 unconditionally and the Third respondent would take further action. Time calendared for the entire drill to be accomplished is two months from the date of receipt of the representation by the applicant to the State Government.

9. With the above direction, the OA is disposed of. No costs.



K. GEORGE JOSEPH
ADMINISTRATIVE MEMBER



Dr. K. B. S. RAJAN
JUDICIAL MEMBER