

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.No.36 of 1996

Tuesday this the 19th day of March, 1996.

CORAM

HON'BLE MR.JUSTICE CHETTUR SANKARAN NAIR, VICE CHAIRMAN
HON'BLE MR. S.P. BISWAS, ADMINISTRATIVE MEMBER

P.K.Lambodaran Nair,
formerly Superintendent of Police,
Crime Branch Crime Investigation,
Department, Kozhikode, residing
at 'Shyladri', Kumarapuram,
Medical College Ward,
Thiruvananthapuram.

... Applicant

(By Advocate Mr.Pirappancode V.Sreedharan Nair)

Vs.

1. Union of India, represented by the Secretary, Ministry of Home Affairs, New Delhi.
2. State of Kerala represented by its Chief Secretary, Secretariat, Thiruvananthapuram.
3. The Selection Committee for selection to the Indian Police Service constituted under Regulation 3 of the Indian Police Service (Appointment by Promotion) Regulation 1955, represented by its Chairman, Union Public Service Commission, Shajahan Road, New Delhi.
4. Union Public Service Commission represented by its Secretary, Office of the Union Public Service Commission, Shajahan Road, New Delhi.
5. K.R.Purushothaman Pillai, Superintendent of Police, Kasargode.

.. Respondents

(By Advocates Mr. TPM Ibrahim Khan, SCGSC (R.1,3&4)
Mr.D.Sreekumar, Govt.Pleader for R.2
Mr.George Jacob for R.5

The application having been heard on 19th day of March, 1996, the Tribunal on the same day delivered the following:

O R D E R

CHETTUR SANKARAN NAIR(J), VICE CHAIRMAN

Applicant seeks a declaration that:

"he is entitled to be appointed to the Indian Police Service by promotion with effect from the date of A6 with all consequential service benefits."

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2. On 23.8.95 the Select Committee envisioned by the Indian Police Service (Appointment by Promotion) Regulations, 1955 (called the 'Regulations' hereinafter), met for "preparation of a list of suitable officers for appointment to the Indian Police Service by promotion." Applicant a member of the State Police Service was among those considered. He attained the age of 55 in September, 1995. By A3 order the State Government, invoking Rule 7 read with Rule 60 of the Kerala Service Rules Part-I, extended the services of applicant for three months - upto 31.12.1995. During that period a Select List as contemplated by Regulation 7(3) of the Regulations was made. Six appointments were made therefrom on 31.12.95, by A6. Applicant was not appointed. Upon that, this application was filed. Applicant would submit that after including his name in the Select List prepared under Regulation 7(3) and while he continued in service, appointment to the Indian Police Service should have been granted to him. The State Government supported the stand of applicant, while the Union of India took up the stand that the applicant was on 'extended service', and that such an official on extended service cannot be appointed in view of an Office Memorandum of the Government dated 18.5.1977. They would submit further that inclusion in the Select List will not confer a right on an official for appointment. The stand of the Union of India, was warmly endorsed by 5th respondent. 5th respondent would go one step further, and submit that inclusion of applicant in the Select List as also extension of service granted to him, were illegal.

3. For appreciating the contentions, it is necessary to examine the scheme, visualised by the Regulations. Appointments are made to an All India Service, referable to Article 312 of

of the Constitution in accordance with the provisions of the All India Services Act, The Indian Police Recruitment Rules, and The Indian Police Service (Appointment by Promotion) Regulations. The scheme, its import and the intendment of the Regulations have to be borne in mind. The process of appointment begins with the modalities in Regulation 5. A committee is to meet 'at intervals not exceeding one year and prepare a list of such members of the State Police, as are found by them to be suitable for promotion.' After a list is so prepared, consultation with the Union Public Service Commission is contemplated by Regulation 6, by "placing the records of all the members of the State Police included in the list" as also "all members of the State Police who are proposed to be superseded with the observations of the State Government.". After considering these, the Commission, if it considers necessary, may make changes in the list (Regulation 7(2)). Thereafter under Regulation 7(3):

"the list as finally approved by the Commission shall form the Select List of the members of the State Police."

After the Select List is approved, appointments are made from the Select List in terms of Regulation 9. Regulation 9(1) reads:

"Appointments of members of State Police Service to the Service shall be made by the Central Government on the recommendations of the State Government in the order in which the names of members of the State Police Service appear in the Select List for the time being in force."

(emphasis supplied)

After running through the gamut of Regulations 5, 7(2) and 7(3) the State Government makes a recommendation under Regulation 9(1) and the Government of India shall make appointments. As

far as the 'recommendation' is concerned, counsel for Union of India argued that there is no need or occasion, for 'recommendation' by the State Government after finalising the Select List under Regulation 7(3). The argument is attractive at the first blush. But on closer examination, it cannot stand scrutiny. The recitals in Regulation 9A clearly illustrates, that recommendations have to be made by the State Government, after the Select List is made under Regulation 7(3). Regulation 9A speaks of:

"..the recommendations made by the State Government concerned under Regulation 9(1)."

(emphasis supplied)

Notwithstanding these provisions and the recommendations made by the State Government under Regulation 9(1), Government of India may decline to appoint any person in the Select List, 'if it is of the opinion that it is necessary or expedient to do so in public interest provided that the Union Public Service Commission is consulted', before resorting to such a course.

4. In the case of applicant, he commenced his journey from Regulation 5, found his way through Regulations 7(2) and 7(3) and obtained a recommendation under Regulation 9(1). The only question then is, whether the Government of India can thereafter decline appointment, as they did by A6.

5. We have noticed that the provision in Regulation 9 is mandatory. If the State Government makes a recommendation under Regulation 9(1), the Government of India is left with no choice (except when it resorts to Regulation 9A), as the Government of India:

"shall make appointments".

Admittedly and undisputedly the power under Regulation 9A has not been invoked. Hence the Government of India had no choice, but to make an appointment.

6. Confronted with this position, learned Standing Counsel for Government of India would say that the Government of India still has discretion in a general sense. Eventually and candidly too, he admitted that there is no provision of law which confers such discretion.

7. However, he would refer to instructions of the Government of India dated 18.5.1977 which read:

"..no Government servant who is on extension of service after the prescribed date of retirement should be promoted to another post during the period of extension of service..."

These instructions are not issued under any statutory provision and it is not referable to any fountainhead of power. Counsel for 5th respondent would submit that the executive can issue administrative instructions, where statutory rules do not govern the field. In a broad sense, the statement may be valid in the sense that administrative instructions may be issued to 'fill up open spaces'. But, that is not to say that matters governed by statutory regulations framed under constitutional provisions can be superimposed with executive fiats. Counsel presumes, that this is an area where there is an omission or 'vacuum', to borrow his phraseology. Whenever an Act of Parliament or a statutory order does not make mention of a matter, it means not, that it is due to an omission. It would be by intendment. The legislature or the rule making authority may feel that there is no need to provide for certain matters. If we take the view that whenever there is room to add something into a legislation according to the perceptions of the executive, it will lead to a situation where administrative orders usurp legislative power. It is not for the administrator to delve into the mind of the legislator or rule maker, find out assumed loopholes, and plug

them according to his visions. It is only where by necessary implication something has been left open, that administrative orders can be issued. It is in respect of ancillary and incidental matters, that administrative orders can be validly made. Otherwise, the executive orders will be able to masquerade under a disguise and exercise legislative functions, contrary to the scheme of the legislation itself and change its complexion, by addition or subtractions. In the case on hand the conditions of eligibility are laid down by Regulation 5. If these conditions are satisfied there is no question of reading further restrictions into the scheme by administrative innovation, at will. As we pointed out the Act and Regulation are self contained. Conditions of eligibility are prescribed in Regulation 5, disqualifications are outlined in Rule 5 of the Indian Police Service Recruitment Rules, scrutiny is provided for in Regulation 7(2) and even after passing the rubicon, when needed there is power in the Government of India under Regulation 9A and in the State Government under Regulation 9(2) to remedy a wrong, if there is a wrong. In an area so exhaustively covered by statutory provisions, emanating from the constitutional fountainhead under Article 312, we think it will be the height of hazard to read administrative orders into the regulations. We cannot assent to the argument that the instructions of the Government of India aforementioned, throw any shackles on the statutory provisions hereinbefore mentioned.

8. It was then argued, that the applicant has ceased to be a member of the Kerala Police Service and that he cannot be appointed for that reason. This argument is sought to be buttressed with reference to the date on which applicant attained the age of 55. The age of 55 is not always, and not invariably, the age at which a member of the State Police ceases to be a

member of the Service. Ordinarily, it is. Inevitably, it is not. Rule 60 of the Kerala Service Rules Part I which governs superannuation of a member of the Kerala State Police reads:

"except as otherwise provided in these rules the date of compulsory retirement of an officer shall take effect from the afternoon of the last day of the month in which he attains the age of 55."

When it is otherwise provided, retirement does not occur on the last day of the month. It is otherwise provided in Rule 7, which reads:

"where Government are satisfied that the operation of any rule under these rules causes undue hardship in any particular case, the Government may dispense with or relax the requirements of that rule to such extent and subject to such conditions as they may consider necessary..."

In the case on hand, the State Government relaxed the ordinary rule by A3 and continued applicant in service. Therefore, he was a member of the Service till 31.12.95. It was also argued by counsel for Union of India that an officer on 'extended service' cannot be appointed.

9. Extended service, in quality, is service for all purposes. It is not as if an official on extended service falls in a lower category. The Regulations make no distinction between 'service' and 'extended service'. As pointed out by counsel for applicant Cabinet Secretaries, Directors General of Police and Chief Secretaries etc. have been continued in service beyond the ordinary age of superannuation. It will neither be accurate in fact or law, to say that they were not in service.

10. Learned counsel for 5th respondent has a further contention that even inclusion of applicant in the List under Regulations 5 and 7(3), was illegal. He submitted further that extension granted to applicant under Rule 7 read with Rule 60 of the Kerala Service Rules Part I was also illegal and motivated by favouritism. As far as inclusion in the Select List under Regulations 5 and 7(3) is concerned, (in which he also finds a place), it is too late in the day for 5th respondent to challenge it in collateral proceedings. As for extension of service, this is a matter which is not in the province or jurisdiction of this Tribunal. Applicant not having chosen to challenge it in appropriate proceedings, in the appropriate jurisdiction, cannot make a devious attempt to found a collateral challenge on a collateral fact. This argument also must fail.

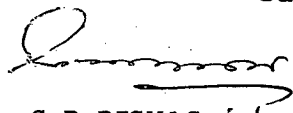
11. The only other argument advanced by counsel for the Union of India and counsel for 5th respondent, is that inclusion in a Select List will not confer a right for appointment. Broadly stated, this proposition is correct. But this is not a principle of universal application, unrelated to fact situations and statutory provisions. In a case like this, where the process of selection and appointment are ordained by statutory provisions like Regulations 7(3) and 9(1) - the question of rights must be determined by application of those Regulations. This argument is also devoid of merit.

12. In the result, we declare that the Government of India acted without jurisdiction in refusing to appoint applicant who had been included in the Select List under Regulation 7(3), after

the State Government made a recommendation under Regulation 9(1). The matter having moved past Regulation 9(1), and since Regulation 9A has not been resorted to, refusal to appoint applicant is illegal. The Government of India will comply with the mandate of Regulation 9(1) forthwith.

13. With the aforesaid directions, we allow the application. Parties will suffer their costs.

Dated the 19th March, 1996.



S.P.BISWAS
ADMINISTRATIVE MEMBER



CHETTUR SANKARAN NAIR(J)
VICE CHAIRMAN