

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.38/2003

THURSDAY THIS THE 7TH DAY OF JULY, 2005

CORAM

HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN
HON'BLE MR. K.V.SACHIDANANDAN, JUDICIAL MEMBER

K.J.Thomas, IPS S/o Joseph,
aged 59 years,
Superintendent of Police (Railways)
Thiruvananthapuram,
residing at Kuzhithottu House,
ThidanaduPO, Via.Erattupetta,
Kottayam District.

.....Applicant

(By Advocate Mr.K.P.Dandapani)

V.

1. The State of Kerala represented by Chief Secretary
to Government, Secretariat,
Thiruvananthapuram.
2. The Principal Secretary,
(Home and Vigilance) General Administration
(Special A) Department, Government of Kerala,
Secretariat, Thiruvananthapuram.Respondents

(By Advocate Mr.A.Ranjit, Government Pleader)

The application having been heard on 16.6.2005, the Tribunal on 7.7.2005
delivered the following:

ORDER

HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN

The applicant is a retired Indian Police Service (IPS) Officer who
is aggrieved by the non-distribution of his salary for the period from 11.3.98 to
26.11.01 during which he was out of service due to the non-consideration of

his case for appointment to the Indian Police Service under the promotion quota in accordance with Regulation 5(1) of the Indian Police Service (Appointment by Promotion) Regulations, 1955.

2. The facts of the case as narrated by the applicant are briefly as under. The applicant was directly recruited as a Sub Inspector of Police by the Kerala Public Service Commission on 10.1.1967 and subsequently promoted as Circle Inspector and Deputy Superintendent of Police. A select list of State Police Service Officers to be appointed to the IPS for the year 1997-98 was prepared in which one Shri K.C.Jacob was included and since he retired on 30.6.97 his name was deleted from the Select List. The contention of the applicant is that if the name of Shri K. C.Jacob was not included he would have been included as he was ranked Sl.No.10 as the next eligible officer in the list. Since no action was taken by the State Government for deleting the name of Shri K.C.Jacob, the applicant approached this Tribunal in OA 641/98 which was however dismissed on 29.5.98. He then approached the Hon'ble High Court of Kerala in OP 9814/98 in which an interim order was given that any appointment made by the IPS Committee will be subject to the outcome of the main OP. In the meantime the IPS (Appointment by Promotion) Regulation was amended with effect from 1.1.98 substituting the financial year by calendar year i.e., from 1st January to 31st December of the same year. In the light of the above amendment the respondents refused the claim of the applicant for inclusion in the select list. Hence the applicant approached the Hon'ble High Court by filing another OP 9427/98 seeking to declare the amendment in the Regulation as unconstitutional and void on which again an interim direction was given that the retirement of the applicant which falls on 31.5.98 will be

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subject to the result of the OP. The Hon'ble High Court rendered the judgment on both petitions on 25.7.2000 directing the State Government to reconsider the matter and place the applicant's claim before the Selection Committee within three months from the date of receipt of the copy of the judgment. Since no steps were taken for implementing the judgment, the applicant filed a Contempt Petition in 1232/2000 before the Hon'ble High Court of Kerala. A review meeting of the selection committee was held on 13.12.2000 in the UPSC and the committee reviewed the select list of 1996, 1997 and 1998. The name of the applicant was included at Sl.No.9 for the year 1996-97 and at Sl.No.1 for the year 1998. The inclusion was subject to the furnishing of the integrity certificate by the State Government. The State Government withheld the issue of integrity certificate on the ground that an enquiry was ordered against the applicant for delay in taking up investigation of a suspicious death of a married woman. The enquiry had to be cancelled on the ground that the applicant had retired from service on 31.5.98. During the course of the Contempt of Court Case the High Court of Kerala passed an order directing the State Government to review its earlier decision to withhold the integrity certificate and pass fresh orders. Based on this the applicant was given a personal hearing by the Additional Secretary (Home) and the Special Secretary (Home). The Hon'ble High Court further directed the Chief Secretary to Government of Kerala to issue the certificate within two weeks from 19.9.01 to avoid contempt action. Still the matter was further delayed and finally the certificate was given only on 20.11.01 to enable the Government of India to issue appointment order. The President of India issued the appointment order (A7) dated 21.11.01 appointing the applicant to the IPS with effect from 11.3.98 which is the date

by

from which his immediate senior one Shri P.Sreenivasan was appointed to the IPS. The applicant was then posted as Commandant, Kerala Armed Battallion, Trichur on 20.12.01. On 5.2.02 the applicant submitted a detailed representation to the Chief Secretary to Govt. of Kerala requesting for payment of salary and allowances for the period from 11.3.98 to 27.11.01 the date when he reported for duty. Now as per the impugned order dated 4.10.02 the second respondent has rejected the request of the applicant stating that the applicant has rendered no service to the State Government during the said period and hence no monetary benefits could be given.

3. The main grounds submitted by the applicant are that his case is not covered by the Supreme Court Judgment cited by the respondents to support the dictum of "no ~~work~~ no pay" as his promotion was unjustly denied to him when he was entitled to get an earlier date of promotion. The applicant has relied on the judgment of the Division Bench of the Hon'ble High Court of Kerala in *Rajagoplan Nair Vs. State of Kerala and others*, 1984 KLT 141 and *Nelson Vs. KSRTC*, ILR 1991(2) Kerala 98 and *Soman Vs. State of Kerala*, 1992(1) KLT 83. The applicant also further relies on orders passed in the case of Shri P.K.Lambodharan Nair and Shri N.P.Balakrishnan who were also appointed to the IPS and similarly placed and whose request for regularization of their appointment with all consequential benefits including pay and allowances were granted by the State Government vide orders at Annexures.A11 and A12.

4. The respondents have filed their reply statement admitting the facts of the case. They have stated that the accepted policy of the State Government is that no pay for no work. They have relied on the Hon'ble Supreme Court of India judgments in *State of Haryana Vs. O .P.Gupta*, JT

1996(3) SC 141 and *Paluru Ramakrishnaiah and others Vs. Union of India and another* JT 1989(1)SC 595 holding that there has to be no pay for no work when a person will not be entitled to any pay and allowances during the period for which he did not perform the duties of higher post although after due consideration he is given a proper place and deemed to be promoted to the higher post. During the period from 1.6.98 to 26.11.01 the applicant has held no office and taking into account the above orders of the Hon'ble Supreme Court of India, the respondents are of the view that for the service rendered by the applicant during that period no monetary benefit could be granted and it can be counted as duty only for the purpose of pensionary benefits.

5. We heard the learned counsel on both sides and perused the record and the judgment referred to by both parties. On the issue of payment of monetary benefits for period of notional promotion, as seen from the submissions on both sides there are judgments in favour and against. The judgment relied on by the respondents mainly *Paluru Ramakrishnaiah's* case was considered by the Hon'ble High Court of Kerala in *Somukuttan Nair Vs. State of Kerala*, 1997(1)KLT 601 in which a similar situation had arisen where the Government had denied pay and allowance to the petitioner therein. The Hon'ble High Court of Kerala observed that when a court declares that a particular individual is entitled to get an earlier date of promotion as such a promotion was unjustly denied to him such retrospective promotion will stand on entirely different footing and hence the petitioner was declared to have ^{become} entitled to pecuniary benefits. The same view was taken by the Hon'ble High Court in *Rajappan Nair Vs. State of Kerala*, wherein it was observed that it was only proper that Government

should restore all that is lost by way of salary or other emoluments for no fault of the petitioner. The principle therefore, discernible in the above judgments is that when there is an inordinate delay in granting the promotion which is not due to any fault of the applicant concerned but by indifferent actions or inactions by the administrative machinery, the applicants are entitled to monetary benefits even though they may not have actually worked during that period. We therefore proceed to examine the case of the applicant with reference to the facts of the case which have been summarized in detail above. It is fairly obvious that from the year 1996-97 onwards at the time of preparation of the select list the applicant's case had not been examined with sufficient care. The fact of the retirement date of Shri K.C.Jacob referred to by the applicant who was his senior was a known fact as far as the State Government is concerned and hence the estimate of vacancies could have taken into account the effect of his retirement during the pendency of the select list. When the selection for the next year 1997-98 was to be considered the Regulation was changed which was a fact beyond the control of the applicant and he was adversely affected by the same. It is also clear from the narration of facts that the applicant had to resort to protracted litigations before the Hon'ble High Court of Kerala at every stage to force the hands of the Government to take action even after his name was included in the list by the Review Committee. It is seen that only by threat of contempt the official respondents issued the integrity certificate to enable his appointment to the Indian Police Service. Therefore we are of the considered view that the applicant's case falls very much within the purview of the judgments of the Hon'ble High Court of Kerala in

"Rajappan Nair" and "Somukuttan Nair" as discussed above and it would be illegal and unjust to penalize the applicant for no fault of his.

6. Moreover we find that in two identical cases of Shri P.K.Lambodharan Nair, IPS and Shri N.P.Balakrishnan, IPS who also had approached the Central Administrative Tribunal in identical circumstances for non-inclusion in the select list and obtained directions for appointment to the Indian Police Service, the Government had issued orders regularizing the period during which they were out of employment and sanctioned all consequential benefits including pay and allowances for that period vide orders at Annexures.A.11 and A12. We are, therefore, of the view that denying the same benefit to the applicant who is also similarly placed is illegal and untenable.

7. In the light of the above facts and the ratio laid down in the Judgments of the Hon'ble High Court of Kerala in similar cases, we are of the view that the reliefs asked for by the applicant for payment of his salary for the period he was out of service has merits and deserve to be granted. Accordingly we direct the respondents to make payment of the salary and allowances due to the applicant for the period from 11.3.98 to 26.11.2001 within a period of two months from the date of receipt of a copy of this order. There would be no order as to interest or costs. The O.A is allowed accordingly.

Dated this the 7th day of July, 2005



K.V.SACHIDANANDAN
JUDICIAL MEMBER

(S)


SATHI NAIR
VICE CHAIRMAN

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH
(Judicial Section)

PUC is a copy of order of Hon'ble Supreme Court of India in SLP 721/10 against WP(C)29788/05 which was filed against order dt.7.7.05 in OA 38/03.

SLP was allowed in part vide order dt. 24.09.13.

Copy of order may be placed before the Hon'ble Members for kind perusal.

R
30/10/13

DR

Registrar

Bansari
30/10

Sundar
30.10.13

Hon'ble Member(J)/HOD

Vh
27/11/13

Hon'ble Member (A)

18/11

30/10/13