

CENTRAL ADMINISTRATIVE TRIBUNAL ERNAKULAM BENCH

ORIGINAL APPLICATION NO. 396 OF 2007

Dated the 25th August, 2008

CORAM:-

HON'BLE Dr. K.B.S. RAJAN, MEMBER (JUDICIAL)
HON'BLE Dr. K.S. SUGATHAN, MEMBER (ADMINISTRATIVE)

A Mohanan,
Superintendent of Police,
Railways, Trivandrum.

... Applicant

[By Advocate: Mr. N.Nandakumara Menon)

-Versus-

1. Union of India,
Represented by the Secretary,
Ministry of Home Affairs,
New Delhi-110 001.
2. Union Public Service Commission (UPSC),
Represented by its Secretary, Shahjahan Road,
New Delhi.
3. State of Kerala,
Represented by the Chief Secretary to
Government, General Administration,
Special-A Department, Government Secretariat,
Thiruvananthapuram-695 001.
4. The Selection Committee for appointment by Promotion to the
Indiana Police Service, Kerala Cadre, represented by its
Chairman, Union Public Service Commission (UPSC),
Shahjahan Road, New Delhi.
5. The Director General of Police, Police Headquarters,
Vazhuthacuad, Thiruvananthapuram.
6. KJ Devassia, Superintendent of Police (Retired),
Karamvelil House, Kuravilangad, Kottayam-686 633.

... Respondents

[By Advocates: Ms. Simla for Mr. TPM Ibrahim Khan, SCGSC, for R/1,2,4,
Mr. Premshankar for R/3 Mr. S Sreekumar for R/6)

This application having been heard on 22.4.08 and on 8.7.08 the Tribunal delivered the following -

ORDER

[Hon'ble Dr. K.S Sugathan, M(A)]

The applicant in this OA is working as a Superintendent of Police, Railways, Trivandrum. He belongs to the Kerala State Police Service. He joined the service as a Circle Inspector and was promoted as Deputy Superintendent of Police in 1996 and subsequently as SP in the year 2003. He is eligible for appointment by promotion to the Indian Police Service by virtue of the provisions of the IPS (Appointment by Promotion) Regulations 1955. The applicant was included in the zone of consideration for the vacancies pertaining to the years 2002, 2003 and 2004 but he was not finally selected. He was also in the zone of consideration for the year 2006. The Selection Committee meeting for the year 2006 was held on 17.5.2007. But the applicant was not selected by the Selection Committee of the UPSC. The names of the selected candidates have been notified by the Ministry of Home Affairs on 7.11.2007. The applicant is aggrieved by the denial of selection by the Selection Committee in its meeting held on 17.5.2007. Hence this OA has been filed seeking the following relief:

"(A) To declare that the applicant is entitled to be included in the list of suitable officers for selection and appointment to the Indian Police Service, Kerala Cadre for the year 2006 and for appointment to the Indian Police Service, Kerala Cadre.

(B) To set aside the selection and inclusion of the 6th respondent in the list of eligible officers for appointment by promotion to the Indian Police Service, Kerala Cadre for the year 2006.

(C) To direct the respondents 1, 3 and 4 to produce before this Hon'ble Tribunal the entire files relating to the selection of State Police Service Officers for appointment by promotion to the IPS Kerala Cadre for the year 2006.

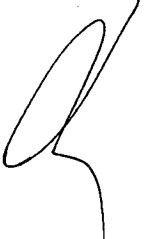
(D) To direct the 3rd respondent to produce before this Hon'ble Tribunal the file of the Vigilance Department containing the

Government letter No. 4149/A1/02/Vig. Dated 20.5.2002 and also the letter No.E20/30749/05 dated 16.8.2005 of the Director of Vigilance andante Corruption Bureau for perusal by this Hon'ble Tribunal.

(E) This Hon'ble Tribunal may kindly be pleased to set aside Annexure-A27 Notification dated 7.11.2007 issued by the 1st respondent in so far as it relates to the appointment of the 6th respondent in the Indian Police Service Kerala Cadre."

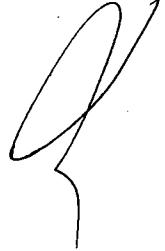
[2] It is the contention of the applicant that the Selection Committee has not made a proper assessment of the record of service of the applicant. Except for two adverse remarks pertaining to the period 1.1.2002 to 6.9.2002 (A5) and for the period 27.1.05 to14.7.05 (A/7) there are no other adverse entries in his record. The adverse entry for the period 1.1.2002 to 6.9.2002 is only to the effect that the applicant is an "average officer". It was communicated after two and half years but the representation against the entry has not so far been considered in accordance with law. The second adverse remark that he is an 'average officer' has never been communicated to the applicant. The applicant has received various Good Service Entries (GSE) (A8 to A13). The inclusion of the 6th respondent in the Select List is illegal and malafide. The vigilance enquiry ordered against the 6th respondent was dropped by the State Government in order to favour him. The integrity of the 6th respondent is seriously doubted. The classification of officers who were considered for appointment is absolutely arbitrary and unsustainable in law.

[3] The respondents have filed reply statements. In the reply on behalf of the respondent No.1 various provisions of the IPS (Appointment by Promotion) Regulations have been reiterated. It is also stated that the subject matter of the present OA primarily concerns the State Government and the UPSC and therefore the submissions made by the UPSC and the State Government may be referred. In the reply statement

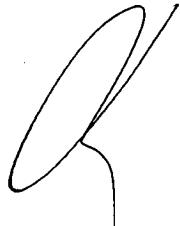


filed on behalf of the respondent 3 and 5,(the State of Kerala and the DGP) it is contended that the name of the applicant was included in the zone of consideration for the years 2002, 2003 and 2004, but he was not selected by the Selection Committee. The applicant's name was also included in the zone of consideration for the year 2006 for which there were five vacancies. The Selection Committee meeting took place on 17.5.2007. Respondent No.6 was included in the zone of consideration. Respondent No.6 had earlier expressed his unwillingness to join the IPS. Regulation No.9 of IPS (Appointment by Promotion) Regulation 1955 provides that in case a Select List officer has expressed his unwillingness for appointment to the service he shall have no claim for appointment to the service unless he informs the Central Government through the State Government before the expiry of the validity period of the Select List, revoking his earlier expression of unwillingness. Respondent No.6 has expressed his willingness to join the IPS, before the notification of the Select List. The allegation that the vigilance enquiry against the respondent No.6 was dropped to favour him is not true as no vigilance enquiry was pending against him.

[4] Respondent No.2, the UPSC has filed a reply. It is contended on behalf of the UPSC that the Selection Committee Meeting to prepare a Select List of 2006 was held on 17.5.2007 in compliance to the directions of the Tribunal in OA512/06 and OA36/2007. There were five vacancies for the year 2006; the number of officers in the zone of consideration was 15. The applicant's name was at serial No.5 of the list of officers included in the zone of consideration. Respondent No.6 was also considered by the Committee on the basis of the DOPT circular dated 22.11.1999 (Annexure-I). On an overall assessment of the service records, the Committee graded the applicant as "Good". The applicant's name could not be included in the Select List due to statutory limit on the size of the Select List. Respondent 6 was included in the Select List on the basis of a higher



grading awarded to him. While assessing the suitability of the officers for promotion as per the uniform and consistent practice followed the Selection Committee examines the service records of officers, with special reference to their performance during the years preceding the years for which the Select List is prepared. The Committee deliberates on the quality of the officer as indicated in the various columns recorded in the ACRs for different years and after detailed deliberation and discussion, arrives at a grading. While doing so, the Selection Committee also reviews the overall grading recorded in the CRs to ensure that it is not inconsistent with the grading/remarks under various specific attributes. The Selection Committee takes into account orders regarding appreciation for meritorious work done by the officers concerned and also keep in view orders awarding penalties or any adverse remarks duly communicated to the officers which even after due consideration of his representation are not expunged. Merit alone is the core of the selection process. Hon'ble Supreme Court in the case of R.S. Das (AIR 1987 SC 593) has held that when merit is the criteria for selection from amongst members of the service, no officer has the legal right to be selected for promotion, except that he has the right to be considered along with others. As per information furnished by the State Government at the time of submitting the proposal, no disciplinary proceedings has been shown as pending against the 6th respondent. The Selection Committee takes into account only pending disciplinary/criminal cases where a charge sheet has already been issued or a case has been filed in Court of Law. Selection is made in accordance with the provisions of Regulation 5(4) and 5(5) of the IPS Promotion Regulations. These regulations provide for classification of officers as outstanding, very good, good and unfit as the case may be on an overall relative assessment of their service records. The List is prepared by placing Outstanding Officers on top followed by those who are classified as Very Good and then Good.



[5] The respondent No.6 has also filed a reply. It is contended by him that no vigilance enquiry was ordered or conducted against him. He never received any memo in regard to any vigilance enquiry. He had earlier expressed his unwillingness to join the IPS. But subsequently on 31.5.2007 he revoked his unwillingness. The third proviso to Regulation 9 provides that an officer can revoke the unwillingness earlier expressed. There are no adverse entries in his ACRs.

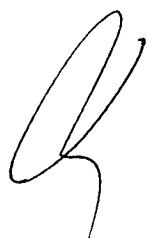
[6] We have heard the learned counsel for the applicant Shri Nanda kumara Menon, the learned counsel for respondent 1, 2 and 4 Ms. Simla for TPM Ibrahim Khan, SCGSC, learned counsel for respondent No.3 Shri Premshankar, and learned counsel for respondent No.6 Shri Sreekumar. We have also perused the documents on record very carefully.

[7] The issue for consideration in this OA is whether the non-selection of the applicant for appointment to the IPS for the year 2006 is vitiated by any illegality or arbitrariness. Appointment to the IPS by promotion is governed by Regulation 5 of the Indian Police Service (Appointment by Promotion) Regulations 1955. The sub-clause 5(4) and 5(5) of the Regulation 5 are relevant in this case. These are extracted below:

"5(4) The Selection Committee shall classify the eligible officers as 'outstanding' 'very good' 'Good' or 'Unfit' as the case may be, on an overall relative assessment of their service records.

5(5) The list shall be prepared by including the required number of names, first from among the officers finally classified as 'outstanding' then from among those similarly classified as 'Very Good' and thereafter from amongst those similarly classified as 'Good' and the order of names inter se within each category shall be in the order of their seniority in the State Police Service:

Provided that the name of any officer so included in the list shall be treated as provisional of the State Government, withholds the integrity certificate in respect of such officer of any proceedings are contemplated or pending against him or anything adverse against him has come to the notice of the State Government."



[8] It is not disputed that the applicant's name figured at serial No.5 of the list of officers in the zone of consideration for the year 2006 and he was also considered by the Selection Committee in its meeting held on 17.5.2007. The meeting was convened to select 5 suitable officers for the five vacancies that were notified for the year 2006. The total number of officers in the zone of consideration was fifteen. The Committee made a relative assessment of the officers in the zone of consideration, on the basis of the record of service, and selected five officers. The applicant was not selected while respondent No.6 was selected. The applicant has challenged his non-selection primarily on two grounds, namely that (1) except for two adverse entries in the year 2002 and 2005 he has an excellent record; even these two adverse entries merely says that he is an average officer. He has represented against the first adverse entry, and the second entry was not even communicated; (2) the selection of respondent No.6 is arbitrary and illegal as the vigilance enquiry against him was closed to favour his selection. The learned counsel for the applicant vehemently argued during the course of the hearing that the Committee had shown over anxiety to select a person who had expressed his unwillingness. We shall presently discuss the arguments in respect of the selection of respondent No.6. It is contended on behalf of the applicant that the vigilance enquiry against respondent No.6 was dropped by the State Government to favour him. It is seen from the records produced before us that no charge sheet was pending against respondent No.6 on the date of submission of proposal by the State Government. The State Government also certified his integrity while submitting the proposal. Thus for the purpose of his eligibility under the IPS Promotion Regulations, no illegality is seen. The second objection concerning the selection of respondent No.6 relates to the unwillingness expressed by him earlier. In this regard, proviso to Regulation 9 has to be seen. This proviso reads as follows:

"9. Appointments to the Service from the Select List - (1) Appointments of members of the State Police Service, who has

expressed his willingness to be appointed to the Service shall be made by the Central Government in the order in which the names of the members of the State Police Service appear in the Select List for the time being in force during the period when the Select List remains in force:

xx

xx

xx

Provided also that in case a Select List officer has expressed his unwillingness for appointment to the Service, he shall have no claim for appointment to the Service from that Select List unless he informs the Central Government through the State Government before the expiry of the validity period of the Select List, revoking his earlier expression of unwillingness for appointment to the service."

[9] It would be clearly evident from the above extract that the officer is entitled to revoke his unwillingness before the expiry of the validity of the Select List. In the present case, he has revoked his unwillingness even before the Select List was notified. Thus we do not see any illegality in the consideration of the respondent No.6 on this ground also.

[10] We shall now discuss the issue of the non-selection of the applicant by the Selection Committee. The meeting of the Selection Committee was held on 17.5.2007. We called for the minutes of the meeting and perused it. The meeting was chaired by a Member of the UPSC and attended by five other senior officers including the Chief Secretary, the Home Secretary and Director General of Police of the State of Kerala. The committee considered the records of 15 officers in the zone of consideration. Out of the 15 officers considered by the Committee, ten officers were given the overall grading of Very Good, while the remaining five officers were given the overall grading of Good. The applicant was also in the list of 15 officers considered by the Committee. He has been given the overall grading of Good. Out of the ten officers who received the overall grading of Very Good, only five was included in the Select List as the number of vacancies was only five. It is also mentioned in the minutes of the meeting that the Committee considered the Annual Confidential Reports of the officers in

the zone of consideration up to the year 2005 and on an overall relative assessment of their service records, assessed them. In doing so the Committee has followed the stipulation of Regulation 5(4) and 5 (5) which have been extracted above. It is also mentioned in the minutes that the Committee did not take into consideration any adverse remarks in the Annual Confidential Reports of the officers which were not communicated to them. The aforesaid mention in the minutes removes the apprehension in the mind of the applicant that an un-communicated remark in his ACR of 2005 may have gone against him. The only point that is now left for our consideration is whether the adverse remark of 'average officer' in the ACR for the period 01.1.2002 to 06.9.2002 communicated to the applicant has been responsible for the non-selection of the applicant. The applicant had made a representation against the said adverse remarks. However, the respondent No.3, the Government of Kerala had not taken a decision on the representation. While sending the proposal to the UPSC the Government of Kerala also mentioned that no decision has been taken by them on the representation made by the applicant against the adverse remarks for the aforesaid period. With this background we also examined the ACRs of the applicant. The State Government had forwarded the ACRs from 1998 to 2005 in respect of all the officers in the zone of consideration. The entries in the column General remarks in the ACRs of the applicant are recorded as follows:

Period	Remarks by Reporting Officer	Remarks by the DIG	Remarks by the IG	Remarks by the DGP
"1.1.98 to 14.3.98	Good Officer	Good Officer	I agree	Nil
15.3.98 to 26.3.98	Satisfactory	I agree	Seen	Seen
26.3.98 to 11.12.98	Satisfactory	Good Officer	I agree	Seen
14.12.98 to 31.12.98	Good Officer	Very Good	Very Good	Seen
1.1.199 to 31.12.99	Very Good	Agreed	Agreed	Nil
1.1.00 to 17.8.00	Very Good	Agreed	Agreed	Nil

17.8.00 to 31.12.00	Very Good	Good Officer	Agreed	Seen
1.1.01 to 31.12.01	Satisfactory	Good officer	Nil	Seen
1.1.02 to 6.9.02	A good Officer	Average officer	Agree with DIG	Agreed
16.9.02 to 20.11.02	Very Good/ Excellent	Good Officer	I agree	Nil
1.1.03 to 18.7.03	Outstanding	Outstanding	I agree	Seen
18.7.03 to 31.12.03	Outstanding	Nil	I agree (By ADGP)	Agree with ADGP
1.1.04 to 25.10.04	Outstanding	Nil	Excellent (by ADGP)	Nil
25.10.04 to 13.1.05	Outstanding	Nil	I agree (ADGP)	Nil
27.1.05 to 14.7.05 (not communicated)	Average officer	Nil	Nil	Nil
14.7.05 to 27.10.05	Good	Nil	Nil	Very Good

[11] It would be seen from the above that during the five years upto 2005 the final grading given by the senior most officer who has assessed his work ranges from 'Average' to 'Outstanding'. He secured 'Average grading' during the period 27.1.05 to 14.7.05. Since this has not been communicated it has to be ignored as per the minutes of the Committee. In place of the ACR for 27.1.05 to 14.7.05, the Committee would have considered the ACR of 2000 i.e. prior to the five year period. The applicant was graded 'very good' for major part of the year 2000. The applicant is given 'Outstanding' for the year 2004 and 'Outstanding' for the year 2003. For the year 2002, as the decision about his representation against adverse remarks of 'Average' given by DIG for the period 1.1.2002 to 6.9.02 has not been taken, it should be treated as un-communicated and ignored and in its place another previous year's ACR (i.e. for 1999) will have to be considered. For the year 1999 he was graded 'Very Good'. For the



year 2001 he received 'Good" grading. This would show that during the five year period upto 2005 the applicant has received two 'Outstanding' gradings (2003 and 2004) two 'Very Good' (1999 and 2000) (in place of 2002 and 2005) and one 'Good' (for 2001). We have also seen the remarks in the other columns of the ACRs during the aforesaid period. We do not see any inconsistency between these remarks and the overall grading in the ACRs. Viewed in this background, we are unable to understand why the applicant was graded as only 'Good' by the Committee. It would appear that the remarks "an average Officer" during the period 01.01.02 to 06.09.02 was not ignored by the Committee since it has been communicated. We are of the considered view that this remark for the period 01.01.02 to 06.09.02 should have been ignored by the Committee, as no decision has been taken on the representation made by the applicant as per the report submitted by the State Government to UPSC. *In Brijmohan Singh Chopra -vs- State of Punjab, [1987(2) SLR 54]* the Hon'ble Supreme Court has held that -"unless the representation against the adverse remarks is considered and disposed of, it is not just and fair to act upon such a remark."

[12] This Tribunal is aware of the dictum laid down by the Hon'ble Supreme Court that the Courts should not substitute its own opinion or devise its own method of evaluating the fitness of a candidate. *In Indian Airlines vs. Capt. K.C. Shukla, (1993) 1 SCC 17*, the Hon'ble Apex Court held that:

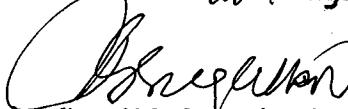
"Adjusting equities in exercise of extraordinary jurisdiction is one thing but assuming the role of a selection committee is another. The Court cannot substitute its opinion and devise its own method of evaluating fitness of a candidate for a particular post. Not that it is powerless to do so and in a case where after removing the illegal part it is found that the officer was not promoted or selected contrary to law it can issue necessary direction. For instance a candidate denied selection because of certain entries in his character roll which either could not be taken into account or had been illegally considered because they had been expunged the Court would be within jurisdiction to issue necessary direction. But it would be going

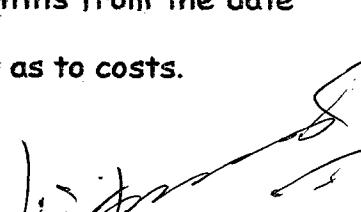
too far if the Court itself evaluates fitness or otherwise of a candidate, as in this case".

[13] We have considered the present case by keeping in mind the above law laid down by the Hon'ble Supreme Court. As we find that certain entries in the ACRs relating to the period 01.01.02 to 06.09.02 could not have been taken into consideration by the Committee, we are of the considered view that this is a fit case to issue a direction to the respondent No.2 and 4, the UPSC to assess the service record of the applicant through a review D.P.C. We consider it necessary to issue such a direction as the applicant is at serial No.5 in the zone of consideration and only two candidates above him received 'Very Good' grading. No one was given 'Outstanding' Grading. If the applicant's position in the seniority was at a lower level and if more than five candidates above him had received 'Very Good' grading, such a direction would have been meaningless.

[14] For the reasons stated above, the OA is partly allowed. The grading of 'Good' given by the Selection Committee to the applicant is quashed. The Respondent No.2 and 4, the UPSC is directed to re-assess the relevant service record of the applicant through a Review DPC. If the Review DPC results in improvement in his grading, the Respondent No.1 and 3 shall extend all consequential benefits to the applicant by creating a supernumerary post without unsettling the selection and appointment of the candidates in the Select List already notified on 7.11.07. The above exercise shall be completed within a period of three months from the date of receipt of copy of this order. There shall be no order as to costs.

Dated the 25th August, 2008.


 (Dr. KS Sugathan)
 Member (Administrative)


 (Dr. KBS Rajan)
 Member (Judicial)

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

THURSDAY, THE 15TH DAY OF OCTOBER, 2009

P R E S E N T

Hon'ble Dr K.B.S. Rajan

: Judicial Member

and

Hon'ble Ms K Noorjehan

: Administrative Member

**MA. NO 279/2009 In
ORIGINAL APPLICATION NO: 206/2007**

A. Mohanan

: Applicant in MA

Versus

Secy. Union Public Service Commission

: Respondent in MA

Mr. P.K. Manoj Kumar(rep)

: Counsel for applicant

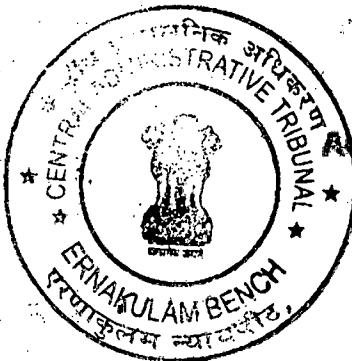
Mr. Mr. Thomas Mathew Nellimoottil

: Counsel for respondents

ORDER

MA 279/09 converted from CP(C) 4/09.

MA 279/09 converted from CP(C) 4/09 is closed, as it has been stated by counsel for respondents that there is a stay from the High Court till further orders.



To

Sd/-

K Noorjehan
Administrative Member

Sd/-

K.B.S. Rajan
Judicial Member

CERTIFIED TRUE COPY

Date 20-10-09


Deputy Registrar

1. Mr. P.K. Manoj Kumar
2. Mr. Thomas Mathew Nellimoottil, Advocate, Kochi

OK

20/10/09

20/10/09

1.O.1 issued on 20/10/09