

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.No.407/2009

Tuesday, this the 30th day of March, 2010

CORAM:

Hon'ble Mr. Justice K.Thankappan, Member(J)
Hon'ble Mrs.K.Noorjehan, Member(A)

B.Mohanan,
Deputy Collector(Election),
Kollam,
Residing at G.O.Quarters, No.8,
Thevally, Kollam.

.. Applicant

By Advocate: Sri P.K.Manoj Kumar for
Mr.N.Nandakumara Menon, Sr.

vs.

1. The Union of India represented by the Secretary to Government Public Grievances and Pension, (Department of Personnel & Training), Government of India, New Delhi.
2. The State of Kerala represented the Chief Secretary to Government, Secretariat, Thiruvananthapuram.
3. The Union Public Service Commission, represented by its Secretary, Office of the U.P.S.C., Shahjahan Road, New Delhi.
4. The Selection Committee for Appointment by Promotion to the Indian Administrative Service(I.A.S.), Kerala Cadre Represented by its Chairman, (U.P.S.C) Shajahan Road, New Delhi.
5. T.Baskaran I.A.S, Secretary, State Land Board, Public Office Building, Museum Junction, Thiruvananthapuram.

... Respondents

By Advocate: Ms. Sheeja for SCGSC(R-1)
Mr.N.K.Thankachan, GP(R-2)
Mr.Thomas Mathew Nellimoottil(R3-4)
Ms.Ann Susan George for Mr.Lal George(R-5)



The Application having been heard on 24.02.2010, the Tribunal on 30.3.10 delivered the following:-

ORDER

HON'BLE MR. JUSTICE K. THANKAPPAN, MEMBER(J):

Aggrieved by the non-inclusion of the name of the applicant in the select list of officers for appointment by promotion to the Indian Administrative Service, Kerala Cadre issued by the Government of India vide notification dated 8.4.2009, the applicant has filed this O.A. It is prayed in the O.A. that this Tribunal may direct the respondents 1 to 4 to consider the applicant for appointment by promotion to the Indian Administrative Service, Kerala Cadre by including the name of the applicant in the select list of State Civil Service (Executive) Officers for the year 2008 by convening an ad-hoc Selection Committee. Further it is prayed that the second respondent may be directed to issue the Integrity Certificate of the applicant for consideration by the Union Public Service Commission for considering the name of the applicant for selection to the I.A.S., Kerala Cadre.

2. The applicant was appointed as Deputy Collector in the Kerala Civil Services(Executive) as per the advice of the Kerala Public Service Commission dated 10.8.1990. The applicant joined as Deputy Collector on 7.12.1990 at Kottayam and thereafter the applicant was posted as Deputy Collector, Kozhikode(L.A.). The applicant had also worked as



Deputy Collector, Appellate Authority Land Reforms, Deputy Collector, Election, Deputy Collector (General & ADM), Revenue Divisional Officer in several centres in the State. The applicant was found eligible to be included in the zone of consideration of Civil Service Officers in the Kerala Civil Service (Executive) and was included in the select list of officers for appointment by promotion to the Indian Administrative Service in the year 2003 and 2004 as per the notification dated 23.3.2005. However, the inclusion of the name of the applicant in the list was provisional and subject to the clearance of disciplinary proceedings which was pending against the applicant and subject to the granting of integrity certificate. However the disciplinary proceedings which was pending against the applicant were terminated by the State Government by the order dated 10.3.2006 finding the applicant not guilty of any of the charges levelled against him and the applicant was exonerated from all the charges as per the order dated 10.3.2006. But only because of the pendency of the disciplinary proceedings against him, the applicant was not appointed to the I.A.S. on the basis of the select list dated 23.3.2005. It was also on the reason that there were some adverse remarks contained in the annual confidential report of the applicant for the period from 1.1.2004 to 15.3.2004. However the said adverse remarks were expunged by the State Government by the order dated 1.2.2007. While so, the selection committee met on 23.10.2006 for selecting suitable officers from State Civil Service (Executive) for inclusion in the 2005 select list. The applicant was not considered for selection and inclusion in the select list of the State Civil Service officers



for appointment by promotion under the relevant rules for the year 2005. In spite of the expunging order passed by the State Government on the adverse remarks contained in the annual confidential report and the stopping of the disciplinary proceedings, the applicant was not considered for appointment either in the select list for the year 2005 in the selection committee meeting held on 23.10.2006. Under the above circumstances, the applicant has filed this O.A. with the above prayers.

3. This O.A. has been admitted by this Tribunal and notice ordered to the respondents. In pursuance to the notice ordered by this Tribunal, the second respondent, the State of Kerala has filed a reply statement and respondents 3 and 4 have also filed their respective reply statements.

4. We have heard the counsel appearing for the applicant Mr. P.K.Manoj Kumar and also the counsel appearing for the second respondent, the State of Kerala Mr. N.K.Thankachan and the counsel appearing for the respondents 3 and 4 Mr.Thomas Mathew Nellimoottil as also Ms. Ann Susan George for respondent No.5. We have also perused the documents filed in this O.A. The learned counsel appearing for the applicant had taken three contentions before this Tribunal, firstly the counsel submits that though as per Annexure A1 notification, the inclusion of the name of the applicant in the select list was provisional and subject to the integrity certificate being issued by the second respondent, the applicant was not appointed on the ground that a



disciplinary proceedings was pending against the applicant. But the said disciplinary proceedings were terminated by the State Govt. vide the order dated 10.3.2006 finding the applicant not guilty of any charges levelled against him. If so, the reason for not offering the appointment to the applicant, is not in existence. Hence his name ought to have been considered for appointment as per the select list Annexure A1 and even in the subsequent selection committee meeting held on 23.10.2006 for inclusion in the 2005 select list. Further the counsel submits that when the selection committee met for the selection to be made for the year 2005, there was no disciplinary proceedings pending against him as it is revealed from Annexure A2 order dated 10.3.2006. The State Govt. have even examined the entire connected records relating to the disciplinary proceedings drafted against the applicant and it was found that since the charges levelled against the applicant are not proved, he was fully exonerated from the charges and the disciplinary action initiated against him has been closed. Further the counsel submits that the alleged adverse remarks made in the Annual Confidential Report for the period 1.1.2004 to 15.3.2004, on appeal filed by the applicant, the State Govt. have expunged the adverse remarks as per the order dated 1.2.2007 as evidenced from Annexure A3 passed by the State Govt. If so, there was no adverse remarks pending against the applicant against consideration of his appointment even when the selection committee met on 22.2.2007. Hence the counsel for the applicant submits that Annexure A4 order passed by the State Government on 20.2.2007 is without considering the factual position of the expunging of the adverse remarks in the Annual



Confidential Report of the applicant and hence Annexure A4 has to be quashed by this Tribunal, while considering the fact that the said order has been considered for non-consideration of the applicant for appointment to the I.A.S., Kerala Cadre by promotion. Further the counsel submits that the applicant should have been considered for appointment even for the year 2008. To consider these arguments, we have to consider the reply statement filed on behalf of the respondents and also to consider the contentions raised on behalf of the respondents. The stand taken in the reply statement filed for and on behalf of the second respondent, the State of Kerala, is to the effect that even though the name of the applicant was included in the select list provisionally, it was subject to the clearance of the disciplinary proceedings pending against him and grant of integrity certificate by the State Government. It is the further stand taken in the reply statement that as per regulation 7 (4) of the Indian Administrative Service (Appointment by Promotion) Regulation, 1955, the validity of the select list is either 31st December of the year in which the selection committee meets or 60 days from the date of the list which is finalized by the Commission, whichever is later. In respect of the officers whose integrity certificate is withheld by the State Government or if any proceedings, departmental or criminal are pending against them, their names are included only provisionally in the select list. In such cases if the officer is exonerated from all the charges framed against him, the State Government should forward a proposal to declare such provisionally included officers in the select list as unconditional to the UPSC during the validity period of the select list. It is further stated



that the name of the applicant was included provisionally in the year 2003 and 2004 and integrity certificate was not issued by the State Government as disciplinary proceedings pending against the officer was not finalized during the validity period of the select list. It is further stated that the name of the applicant was included in the zone of consideration for promotion to the IAS for the year 2005, 2006, 2007 and 2008. But the State Government withheld the integrity certificate of the applicant as disciplinary action/vigilance case was pending against him. The name of the applicant was not included in the select list for the year 2005, 2006, 2007 and 2008 and further it is stated that the pendency of W.P (C) No.20002/08 filed by the applicant was not known to the Department and without notice, the State Government forwarded the consolidated proposals with supporting documents to UPSC for convening the selection committee meeting on 18.8.2008 incorporating the name of the applicant also. It is the stand taken in the reply statement filed on behalf of the respondents 3 and 4 is that the right of promotion of the applicant has been denied on the ground that there were adverse remarks in the ACR for the period 1.1.2004 to 15.3.2004. Further it is stated that while the selection committee met on 23.10.2006, the expunging of the adverse remarks in the ACR or dropping of the disciplinary proceedings were not known to the Union Public Service Commission. It is further stated in the reply statement that when the selection committee met for preparation of the select list for the year 2007 which was held on 9.7.2008, the Govt. of India or the DoP&T had determined only 2 vacancies and the zone of consideration was 6. The



name of the applicant was considered as Sl.No.3 in the list of eligible officers, but the State Govt. informed that the decision on the representation received from the applicant against the adverse remarks in his ACR for the period 1.1.2004 to 15.3.2004 has not been taken and his integrity certificate has not been furnished. Hence the selection committee graded the applicant as 'Unfit' and on the basis of the said assessment, the name of the applicant was not included in the select list of officers selected for promotion to the I.A.S., Kerala Cadre for the year 2007 and at the same time further it is stated that the State Government informed that the decision of the State Government on the representation of the applicant against the adverse remarks in the ACR, was pending. Under the above circumstances, the applicant was graded as 'Unfit'. Accordingly his name was not included in the list of the officers for the year 2008 also. It is further stated in paragraph 8.6 of the reply statement that the Union Public Service Commission was not a party in WP No.20002/08 and thereby the Union Public Service Commission was not aware of the stay order issued by the Hon'ble High Court.

5. On considering the factual positions contained in the reply statement and on considering the arguments of the counsel appearing for the parties, the point to be decided in this O.A. is that whether the applicant is entitled for a direction to be issued to the respondents 1 to 4 to consider him for appointment by promotion to the I.A.S., Kerala Cadre by including the name of the applicant in the select list of the



State Civil Service Officers for the year 2008 or not. Admittedly Annexure A1 list contains the name of the applicant. However the inclusion of the name of the applicant was provisional on the reason of pendency of the disciplinary proceedings against him and also the pendency of the criminal cases. It is also not disputed before this Tribunal that at the time of drawing Annexure A1 list of officers fit for appointment to the I.A.S., Kerala Cadre for the years 2003 and 2004, the name of the applicant was included provisionally and it was found that he was unfit for appointment by such promotion by the UPSC. Even for the selection for the years 2006 for which the selection committee met on 24.2.2007 as evidenced from Annexure A4 list, the name of the applicant was not considered on the ground that the application or the appeal filed against the adverse remarks contained in the ACR of the applicant for the period 1.1.2004 to 15.3.2004, was still pending and not considered by the Govt. It is also to be noted that for the subsequent selection namely for the period 2007 and 2008, the stand taken by the third and 4th respondents are to the effect that as the State Govt. forwarded consolidated proposals with the supporting documents to the UPSC for convening the selection committee meeting on 18.8.2008 and that there were adverse remarks in the ACR of the applicant and it is not considered by the State Govt. either by an answer to the representation or the appeal filed by the applicant. Further this stand of the third and fourth respondents that the pendency of Writ Petition No. 20002/08 or the interim order passed by the Hon'ble High Court of Kerala has not been brought to the notice of the respondents 3 and 4 and hence, they are justifying the non-inclusion or



non-consideration of the applicant for the selection made to the year 2007 as per the selection committee held on 9.7.2008 and for the selection for the year 2008 also for which the committee met on 23.9.2009. The State Govt. have taken the stand that the disciplinary proceedings against the applicant is still pending and no decision has been taken by the Govt. and the vigilance cases are also pending against the applicant. If so, we are not in a position to find fault with the third and fourth respondents for non-inclusion of the applicant for the year 2006, 2007 and 2008. At the same time, we have to hold that the State Officers, namely the Chief Secretary of the State was a member of the selection committee, who was actually aware of the passing of Annexures A2 and A3 orders which would show that the disciplinary action initiated against him has been closed and the adverse remarks in the ACR have been expunged by the State Govt. as per orders dated 10.3.2006 and 1.2.2007. If so, the non-inclusion of the applicant in the select list on the merit of his claim, is irregular, which requires reconsideration. Even as per the guidelines issued by the UPSC for the selection to the All India Services branch it is stated in clause 4.6.1 as follows:-

"4.6.1 The Selection Committee meets to prepare the Select Lists for the current year only.

(a) If the currency of the penalty flows into the SCM year, the officer would be graded as "Unfit" in the Overall Assessment for the current year.

(b) If the currency of the Censure flows into the SCM year, the



officer would be graded as "Unfit" in the Overall Assessment for the current year. In case the officer has also been considered in the immediately preceding Select List and assessed as "Unfit" in that year on the basis of the same Censure, then its effect may be ignored by the Committee for the current selections to avoid a double penalty.

(c) If the currency/effect of the penalty lapses before the SCM year, but is having implications on any of the years in the Assessment Matrix, the Committee would categorise the officer as "Unfit" for the relevant year(s) (in the Assessment Matrix) when the penalty was current. Thereafter, the Overall Assessment of the officer may be made as per the procedure given in Section B.3 above.

(d) If the currency/effect of the Censure lapses before the SCM year, but is having implications on any of the years in the Assessment Matrix, the Committee would categorise the officer as "Unfit" for the relevant year, in the Assessment Matrix when the Censure was current. Thereafter, the Overall Assessment of the officer may be made as per the procedure given in Section B.3 above."

and further Chapter D clause 6 reads as follows:-

"6. The name of the officer, whose integrity certificate has been withheld by the State Government or against whom departmental or criminal proceedings are pending may be included in the Select



List by the Selection Committee provisionally subject to grant of integrity certificate or clearance in the departmental or criminal proceedings, if the Selection Committee finds the officer as otherwise suitable for promotion on the basis of an overall assessment of his ACRs as per the procedure indicated in the paragraphs 4.1 to 4.5 above. The proceedings shall be treated as pending only if a charge-sheet has actually been issued to the officer in disciplinary proceedings or filed in a court of law in criminal proceedings, as the case may be."

A reading of the above guidelines would show that the selection committee has to consider the officers as suitable for promotion on the basis of overall assessment of the ACRs as per the procedure indicated in paragraph 4.1 to 4.5. In this context it has to be noted that as the State Govt. has not informed the Union Public Service Commission or the Govt. of India regarding the termination of the disciplinary proceedings pending against the applicant as well as the expunging of the adverse remarks in the ACR, culminated in non-inclusion of the applicant in the list for appointment in any of the vacancies for the period 2006, 2007 and 2008. Out of this period it is to be noted that as per Annexures A2 and A3 orders pendency of the disciplinary proceedings or the pendency of the vigilance cases should not have been taken as a basis especially when the second respondent had not informed about Annexures A2 and A3 to the Central Govt. or the Union Public Service Commission. Hence we are of the view that it is only proper

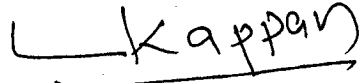


for the second and the third respondents to convene an ad-hoc selection committee meeting for consideration of the name of the applicant. In this context this Tribunal also finds that even as per the orders passed by the Hon'ble High Court of Kerala in Writ Petition No.20002/08, the name of the applicant ought to have been considered and the stand taken by the State Govt. that the State was not a party to the proceedings in the Writ Petition is unjustifiable as it would show that the Chief Secretary of the State was also a party in the Writ Petition and the Govt. was aware of the stay orders issued by the Hon'ble High Court of Kerala which was extended from time to time. It is also to be noted that learned Advocate General of the State might have got information regarding the pendency of the Writ Petition before the Hon'ble High Court of Kerala. In this context we are not ignoring the stand taken by the 5th respondent who was selected and appointed on the basis of the selection made by the UPSC. The stand taken by the 5th respondent is that since when the selection committee met for consideration of the names recommended by the State Govt. adverse remarks were in the ACR of the applicant and also vigilance cases pending against him. But at the same time it has to be noted that the claim of the applicant is on the basis of his merit on an overall consideration of the materials before the selection committee. We have already found that the State Govt. have not placed all the materials before the selection committee in time especially Annexures A2 and A3 orders passed for and on behalf of the Govt. of Kerala. If all these records were placed before the selection committee, the committee ought not have found that the applicant is unfit for selection.



Considering all these aspects, we are of the view that the Original Application has to be allowed and consequently the third and fourth respondents are directed to convene an ad-hoc selection committee and to consider the case of the applicant and the second respondent, the State of Kerala is directed to take steps for issuing an integrity certificate to the Concerned Authority immediately. The entire exercise has to be completed by the third and fourth respondents within three months from the date of receipt of a copy of this order.


(K.NOORJEHAN)
ADMINISTRATIVE MEMBER


(JUSTICE K.THANKAPPAN)
JUDICIAL MEMBER

/njj/