

**Central Administrative Tribunal
Ernakulam Bench**

OA/180/00536/2015

Friday, this the 11th day of January, 2019.

CORAM

Hon'ble Mr.E.K.Bharat Bhushan, Administrative Member

Hon'ble Mr.Ashish Kalia, Judicial Member

D.Madhu, IPS, aged 59 years
S/o Demianose
Superintendent of Police and Assistant
Director (Training), Kerala Police Academy
Ramavarmapuram, Thrissur-680 631.

Applicant

[Advocate: Mr.Nidhi Balachandran and Mr.M.R.Sudheendran]

versus

1. Union Public Service Commission
represented by its Secretary
Shajahan Road, New Delhi-110 069.
2. Union of India represented by the
Secretary, Ministry of Home Affairs
New Delhi-110 001.
3. State of Kerala represented by
Chief Secretary, GAD (Spl)
'C' Dept., Govt. of Kerala, Secretariat,
Thiruvananthapuram-695 001.
4. State of Kerala represented by the
Additional Chief Secretary for Home Department
Government of Kerala
Secretariat, Thiruvananthapuram-695 001.
5. The State Police Chief and
Director General of Police
Police Headquarters, Kerala
Thiruvananthapuram-695 001.
6. Mr.S.Sasikumar, IPS
Superintendent of Police
Now District Police Chief
Kollam Rural District
Office at Kottarakkara
Kollam District, Kerala.

Respondents

Advocates:

Mr.Thomas Mathew Nellimoottil, Sr.PCGC for R1

Mr.N.Anilkumar, SCGSC for R2

Mr.M.Rajeev (GP) for R 3, 4 &5.

This OA having been heard on 7th January, 2019, the Tribunal delivered the following order on 11.01.2019:

ORDER

By E.K.Bharat Bhushan, Administrative Member

This OA is filed by Sri D.Madhu, against the rejection of his claim to be considered for promotion to the I.P.S., with effect from the date of promotion of his junior in the Kerala Police Service and to include him in the list of candidates for the year 2008A. The reliefs sought in the OA are as follows:

(i) Quash Annexure A11.

(ii) Declare that the non-inclusion of the applicant in the select list for promotion to IPS for the year 2008A is illegal.

(iii) Direct the respondents 1 & 2 to include the applicant in the select list for promotion to IPS for the year 2008A and consider him for promotion in accordance with his merit and seniority above his junior, the 6th respondent, with all consequential benefits including pay and allowances.

2. The applicant belongs to the Kerala Police Service and was promoted into the IPS (Kerala Cadre) from among the list of candidates for the year 2009. He is aggrieved by the fact that the 6th respondent who is junior to him in the State Police Service as per seniority list issued by the Home Department on 6.4.2010 (Annexure A1) was considered for the 2008A list. He has produced copies of Indian Police Service (Appointment by Promotion) Regulations, 1955 as Annexure A3 and Guidelines/Procedures for selection of State Police Service officers to the IPS, issued by the Union Public Service Commission in 2005 and 2010 (Annexure A4 & A5 respectively).

3. The applicant submits that there were adverse entries in his ACR for the period 2003-2004. But the same were expunged by the Government as per GO dated 27.1.2006. The “Satisfactory” grade given by the DIG concerned against the remark, “*an excellent officer in all respects*” made by the Reporting Officer for the period 2003 has also been expunged by the Government as per GO dated 10.10.2011. The same has been communicated by the applicant to the Chief Secretary to the Government of Kerala, UPSC and Ministry of Home Affairs on 10.10.2011 itself i.e.. before finalization of approval of 2008A and 2009 select list by the UPSC on 22.10.2011. The copies of the respective GOs dated 27.1.2006 and 10.10.2011 are at Annexure A6 & A7.

4. It is further maintained by the applicant in the OA that the ACRs for the period from 2003 to 2007 alone are to be considered for the selection for the year 2008. Pointing this out, the applicant had submitted a representation before 1st, 2nd and 3rd respondents seeking revision of the select list of 2008A by including him, in accordance with his seniority, above the 6th respondent. But the 2nd respondent issued orders dated 25.9.2014 overlooking the claim of seniority of the applicant and included him only in the select list of the year 2009 whereas respondent No.6 who was junior to him in the Kerala Police Service found a place in the 2008A list. The applicant alleges that the rating of the 6th respondent adjudged by the Selection Committee for 2008A select list had been “Very Good” while the applicant was assessed only as “Good”, but for the period 2009, the same Committee assessed him as “Very Good”.

5. Thereupon the applicant filed OA No.1085/2014 and the same was disposed of by this Tribunal vide order dated 11.12.2014 directing the applicant

to file a representation and the 1st respondent was directed to consider the same and issue appropriate orders within a time limit of two months (Annexure A9). The representation dated 24.12.2014 (Annexure A10) filed by the applicant in accordance with the orders of this Tribunal was rejected by the 1st respondent by order dated 24.2.2015, stating that as per Regulations 5(4) and 5(5) of the relevant Regulations, only the ACRs for the year 2004 to 2008 were to be considered for 2008A.

6. If this is so, the applicant claims, his records for the 5 years from 2004 to 2008 have been blemishless and are better than that of the 6th respondent. He finds fault with the rating given by the Selection Committee. The applicant had no departmental punishments, no adverse remarks in his ACRs and had accumulated 35 Good Service entries and other tokens of appreciation. He challenges the benefit granted to his junior - respondent No.6 by including him in 2008A list on the ground that his records are better than those of his own.

7. Respondent No.3 has filed a reply statement wherein it has been submitted that the selection or exclusion from the list of candidates promoted to the IPS “wholly depends on the 1st respondent and the 3rd respondent has no role”. The State Government - Respondent No.3 – hence had no further contention to make as none of its actions had been challenged.

8. Respondent No.1 - the UPSC, which convened the Selection Committee under its Chairmanship, has filed a detailed reply statement. So also a detailed reply has been filed by respondent No.2. It is submitted that the meeting of the Selection Committee had been held on 3.10.2011 for preparation of the Select List for the years 2008A and 2009 for promotion of State Police Service officers to the IPS (Kerala Cadre). The 2nd respondent had determined 5 vacancies each

for the years 2008 and 2009 respectively. The Committee considered 15 officers each in the respective zones of consideration for the two years 2008 and 2009. The applicant was considered as Sl.No.9 in the zone of consideration for the vacancy year 2008. After examination of his service records for the period 2004 to 2008, the Committee assessed him as “Good” for the select list 2008A. As officers with better grading were available, the applicant did not find a place in the select list for that year. In so far as the 6th respondent is concerned, he was at Sl.No.10 in the zone of consideration. But the Committee assessed him as 'Very Good’ on the basis of his overall performance. Hence he came to be included in the select list for 2008A at Sl.No.4.

9. The applicant was considered as Sl.No.5 in the zone of consideration for the vacancy year 2009 and after examination of his service records for the period 2005 to 2009, the Committee assessed him as 'Very Good' and accordingly he was selected for the 2009 vacancies, being placed provisionally at Sl.No.1 subject to clearance in the departmental proceedings pending against him and grant of integrity certificate by the State Govt. Subsequently the integrity of the applicant was certified by the State Govt by letter 31.5.2012, which was in compliance with the order of this Tribunal in OA 132 of 2012 filed by the applicant. Since no further charge sheet was pending against him, the applicant's name was unconditionally included in the Select List of 2009.

10. Heard Mr. Nidhi Balachandran, learned counsel for the applicant, Mr.Thomas Mathew Nellimoottil, learned Sr.PCGC on behalf of respondent No.1, Mr.N.Anilkumar, learned SCGSC on behalf of respondent No.2 and Mr. M.Rajeev (GP) on behalf of respondents 3, 4 & 5.

11. The applicant appears to have confused the ratings given by his superior authorities in the State Police Service as the ones which prevailed at the Selection Committee Meeting. In Annexure A5 **Guidelines/procedures for categorization of State Civil/Police/Forest Service officers and preparation of a list of suitable officers by the Selection Committee for promotion to the Indian Administrative Service/Indian Police Service/Indian Forest Service in terms of Regulation 5(4) and 5(5) of the Promotion Regulations**, under *the Overall Assessment/Categorization of Officers*, the following is stated:

“4.4 While finalizing the Overall Assessment of the officers [para 3.1 above refers], an officer shall be graded as:

A: “Outstanding”, if in the opinion of the Selection Committee, the service records of the officer reflect that he is of outstanding merit possessing exceptional attributes and abilities and these characteristics are reflected in at least four of the ACRs for the last five years as indicated in paras 3.1 and 3.2 above including the ACR for the last year provided he is graded at least “Good” in the ACR of the remaining year. While grading an officer as “Outstanding”, the following indicative guidelines would be observed:

- (i) Whilst the overall grading in the ACRs will have its relevance, however, in order to have a final view, it will be essential to carefully peruse and assess all the individual attributes/columns in the ACRs like work, performance, targets achieved, supervision, managerial capabilities, personality traits etc before the Committee decides to grade an officer as “Outstanding”.
- (ii) Thus, there should be an in-depth analysis of the performance of the officer before he is rated as 'Outstanding'. There should also be consistency in the grading given by different Committees in different years.
- (iii) Considering the fact that such 'Outstanding' officers are going to supersede other officers, there is a greater need to ensure that such an officer has met the stringent norms of being graded as 'Outstanding'. For such purposes, the ACRs of the concerned officer should elaborate his significant achievements or exceptional nature of work in the areas of law and order, disaster management, implementation of developmental schemes etc.
- (iv) Postings are not within the competence of an officer for which he ought not to be discriminated. However, the Committee may also like to examine the various positions that such 'Outstanding' officers have occupied and the nature of duties performed by him over the years in the process of assessing the officer.

B. “Very Good”, if in the opinion of the Selection Committee, his ACRs reflect that the officer has done highly meritorious work and possesses positive attributes and these characteristics are reflected in at least four of the last five ACRs as indicated in para 3.1 and 3.2 above provided he is graded at least “Good” in the ACR of the remaining year.

C. “Good; if in the opinion of the Selection Committee, the service records reflect that the officer's performance is generally good and he is considered fit for promotion and those characteristics are reflected in each of the ACRs for the last five years as indicated in para 3.1.and 3.2 above.

12. This clearly goes to show that the rating made by the department has only an indirect bearing on the overall rating made by the Selection Committee because there are other attributes and qualities which would be taken into consideration by the latter. It is to be understood that three senior authorities namely, the Chief Secretary to the State Government, the Principal Secretary in charge of Home Department and the Director General of Police are all members of the Selection Committee chaired by the UPSC and the examination made by the said committee would be exhaustive and thorough and would necessarily override views of departmental functionaries.

13. We are also inclined to agree with the averment made in the reply statement filed on behalf of UPSC (Respondent No.1) that the assessment made by the Selection Committee should be given paramount importance over other matters. In *UPSC vs. H.L.Dev and Ors*[AIR 1988 SC 1069], the Hon'ble Supreme Court has held as under:

“How to categorize in the light of the relevant records and what norms to apply in making the assessment are exclusively the functions of the Selection Committee. The jurisdiction to make the selection is vested in the Selection Committee”.

14. The applicant cannot have a case that in the event of induction from the State Police Service into IPS, seniority in the erstwhile service should be the guiding principle in selection and placement. In *R.S.Dass vs. UOI and others* [AIR 1987 SC 593], the Hon'ble Supreme Court has held as under:

*“The amended provisions of Regulations 5 have curtailed and restricted the role of Seniority in the process of Selection as it has given priority to merit. Now the Committee is required to categorize the eligible officers in four different categories viz. “Outstanding”, “Very Good”, “Good” & “Unfit” on overall relative assessment of their service records. After categorization is made the committee has to arrange the names of the officers in the Select List in accordance with the procedure laid down in Regulation 5(5) . In arranging the names in the Select list the Committee has to follow the inter-se seniority of officers within each category. If there are five Officers who fall within “Outstanding” category their names shall be arranged in the order of their inter-se Seniority in the State Civil Service. The same principle is followed in arranging the list from amongst the officers falling in the category of “Very Good” and “Good”. Similarly , if a junior Officer’s name finds place in the category of “Outstanding” he would be placed higher in the select list in preference to a senior officer finding place in the “Very Good” or “Good” category. **In this process a junior officer having higher grading would supersede his seniors. This cannot be helped. Where a selection is made on merit alone for promotion to a higher service selection of an officer though junior in service in preference to senior does not strictly amount to supersession**”. (emphasis supplied).*

15. The applicant had been considered by the High Level Selection Committee chaired by the UPSC and including 3 senior authorities of the State Government. They have assigned various ratings on the basis of documents and facts before them. Their conclusion is unimpeachable unless it is vitiated by other reasons. The applicant has no such claim and is merely harping on the fact that a junior in the state Police Service had been assigned an earlier year on the ground that his records are better. We conclude that the OA has no merit and is liable to be dismissed. We do so. No order as to costs.

(Ashish Kalia)
Judicial Member

(E.K.Bharat Bhushan)
Administrative Member

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Annexures filed by the applicant:

- Annexure A1: Copy of the seniority list dated 6.4.2010.
- Annexure A2: Copy of the select list for promotion to IPS for 2008A.
- Annexure A3: Copy of the Indian Police Service (Appointment by Promotion) Regulations, 1955.
- Annexure A4: Copy of the guidelines/procedures for categorization of State Police Service officers to IPS issued by the UPSC as on 2005.
- Annexure A5: Copy of the guidelines/procedures for categorization of State Police Service officers to IPS issued by the UPSC as on 13.10.2010.
- Annexure A6: Copy of the GO dated 27.1.2006.
- Annexure A7: Copy of the GO dated 10.10.2011.
- Annexure A8: Copy of the order dated 25.9.2014.
- Annexure A9: Copy of the order dated 11.12.2014 in OA/180/01085/2014.
- Annexure A10: Copy of the representation dated 24.12.2014.
- Annexure A11: Copy of the order No.F.No.11/7/2015-AIS dated 24.2.2015 issued by the first respondent.
- Annexure A12: Copy of the ACRs of the applicant for the period from 2004 to 2008.
- Annexure A13: Copies of the ACRs of the 6th respondent for the period from 2004 to 2008.
- Annexure A14: Copy of the information under the RTI Act dated 29.12.2011.
- Annexure A15 series: Copies of the 35 Good Service Entries, 1 Meritorious Service Entry, 3 Appreciation Letters and 1 UN Medal Certificate, awarded to the applicant.