

(2016) 09 KL CK 0022

In the High Court Of Kerala

Case No : Writ Petition (C). No. 27455 of 2009 (S)(Against the Order in OA 111 of 2008 of Central Administrative Tribunal, Ernakulam Bench dated 10.9.2009)

K.C. Elamma

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 09-09-2016

Acts Referred:

Constitution of India, 1950 — Article 14, Article 226
Police Service (Appointment by Promotion) Act, 1955 — Regulation 5

Citation : (2016) 4 KLT 69

Hon'ble Judges : Mr. P.R. Ramachandra Menon and Mr. Anil K. Narendran, JJ.

Bench : Division Bench

Advocate : Sri. Thomas Mathew Nellimoottil, SC UPSC, for the Respondent Nos. 2 and 3; Sri. P.C. Sasidharan, Advocate, for the Respondent No. 5; Sri. P.V. Mohanan, Advocate, for the Petitioner; Sri V.K. Rafeeqe, Government Pleader, for the Respondent No. 4; Sri. S.

Final Decision : Dismissed

Judgement

Mr. Anil K. Narendran, J. - This Writ Petition arises out of the order of the Central Administrative Tribunal, Ernakulam Bench dated 10.9.2009 in O.A.No.111 of 2008. The petitioner herein filed the said O.A. before the Tribunal seeking an order to quash Annexure A7 communication dated 4.8.2007 by which her claim for consideration and inclusion in the select list for IPS (Kerala) Cadre as on 1.1.2005 was turned down stating that she has crossed the age limit of 54 years as on 1.1.2005 and as such, not eligible for consideration. The petitioner has also sought a declaration that she is eligible to be considered for selection and appointment against the substantive vacancies in the IPS (Kerala) Cadre as on 1.1.2005 for promotion quota under the provisions of Indian Police Service (Appointment by Promotion) Regulations, 1955. She also seeks to direct the respondents to consider her claim against the unfilled vacancy as on 1.1.2004 in IPS (Kerala) Cadre by convening Review Selection Committee and to select and

appoint her to that cadre with retrospective effect from the date on which Annexure A3 notification appointing the selected candidates of the year 2004 had been made and to grant year of allotment and consequential seniority. The further relief sought for in the OA is to set aside Annexure A6 select list for IPS (Kerala) Cadre as on 1.1.2005 in so far as it selects and appoints the 5th respondent herein to that Cadre. The petitioner has also sought a declaration that Regulation 5(3) of the IPS (Appointment by Promotion) Regulation, 1955; to the extent it prescribes that the Committee shall not consider the case of the members of the State Police Service who have attained the age of 54 years as on the first day of January of the year on which it meets, is illegal, unreasonable, violative Article 14 of the Constitution of India and also violates Regulation 5(1) of the said Regulations.

2. Before the Tribunal, the reliefs sought for in the OA were opposed by filing Ext.P2 reply statement by respondents 2 and 3, Ext.P4 reply statement by respondent No. 4 and Ext.P5 written statement by the 1st respondent. The petitioner filed Ext.P6 rejoinder. The party respondent, the 5th respondent herein, filed Ext.P7 reply statement. The petitioner filed Ext.P6 rejoinder, which was followed by Ext.P8 reply statement to the rejoinder filed by respondents 2 and 3, Ext.P9 reply statement filed by respondents 2 and 3 to the amended OA and Ext.P10 reply statement filed by the 4th respondent to the amended OA.

3. After considering the rival contentions, the Tribunal by Ext.P1 order dated 10.9.2009, dismissed the OA. Feeling aggrieved by Ext.P1 order, the petitioner is before this Court in this Writ Petition.

4. We heard the arguments of the learned counsel for the petitioner/applicant, the learned Assistant Solicitor General of India for respondents 1 to 3, the learned Government Pleader for the 4th respondent State and also the learned counsel for the 5th respondent.

5. The pleadings and materials on record would show that the applicant entered service as a Woman Police Constable on 6.11.1972, against the vacancy set apart for "Outstanding Sports Person", on account of her outstanding performance as a woman volleyball player representing the Nation. She was promoted as Woman constable on 2.7.1975, as Assistant Sub Inspector of Police on 17.1.1976, as Woman Sub Inspector of Police on 28.7.1978; and as Circle Inspector of Police (Woman) on 26.3.1991. She was selected and appointed as Deputy Superintendent of Police on 1.4.1995; and thereafter as Superintendent of Police on 9.3.2000. On 31.1.2005, on attaining the age of superannuation, she retired from the State Police Service.

6. The grievance of the applicant is that the selection and appointment against the substantive vacancies of the IPS (Kerala) Cadre on promotion quota as on 1.1.2003 and 1.1.2004 in terms of the Indian Police Service (Appointment by Promotion) Regulation, 1955 (hereinafter referred to as "the Regulations") were not held in time. However, by proceedings dated 16.6.2004 an eligibility list of 24

officers were forwarded in the field of choice for consideration of selection/ appointment against 2 substantive vacancies as on 1.1.2003 and 6 substantive vacancies as on 1.1.2004. The name of the applicant was not included in the list of 8 eligible candidates in the zone of consideration.

7. According to the applicant, one substantive vacancy out of 6 vacancies determined as on 1.1.2004 for appointment by promotion to the IPS (Kerala) Cadre was reserved to be filled up by woman candidate as a matter of policy and that she was the only qualified woman Deputy Superintendent of Police in the State Police Service during the period, as envisaged under Regulation 2 (j) of the Regulations to be considered for selection/ appointment. The applicant would contend that her name was subsequently forwarded for consideration for selection in compliance with Annexure A1 judgment as the last personnel in the zone of consideration for the year 2004. However, in the proposal, the State Government has indicated that the post of Superintendent of Police, Woman cell, Trivandrum held by the applicant was not forming part of the General Executive of Kerala State Police Service or declared equivalent thereto. The Selection Committee prepared Annexure A3 select list dated 10.3.2005 consisting of 5 Officers for the year 2004 against the 6 notified vacancies as on 1.1.2004. The claim of the applicant was not considered by the Selection Committee, as only 15 candidates could be included in the field of choice against 5 vacancies.

8. Aggrieved by non-selection of the applicant, she filed O.A.No.70 of 2005 before the Tribunal, challenging the select list for appointment by promotion to IPS (Kerala) Cadre and seeking an order directing the respondents therein to consider her for conferment, she being the senior most and the most appropriate candidate. In the said OA, the State of Kerala filed reply statement contending that the Selection Committee for the year 2004 considered the applicant; but she was not included in the select list prepared by the Selection Committee. The Committee had considered 18 State Police Service officers in the zone of consideration for making selection against 6 vacancies which arose in the cadre during the period from 1.1.2003 to 31.12.2003. The applicant was also included in the zone of consideration in obedience to Annexure A1 judgment of this Court in W.P.(C). No. 25414 of 2004. As there is a statutory limit on the size of the select list, as provided under Regulation 5 of the Regulations, the applicant did not find a place in the select list.

9. After considering the rival contentions, the Tribunal by Annexure A4 order dismissed O.A.No.70 of 2005 on a finding that the applicant had been considered for promotion to the IPS (Kerala) Cadre for the year 2004 in the meeting of the Selection Committee held on 30.12.2004 in compliance with Annexure A1 judgment of this Court in W.P.(C).No.25414 of 2004, as Sl.No.18 in the eligibility list. On assessment of service records, the Committee found that the applicant was ineligible to be included in the select list. The Tribunal noticed that for the preparation of select list, the Selection Committee has to classify the eligible officers as "outstanding", "very good", "good" or "unfit", as the case may be,

and the select list is prepared by including the required number of names first from the officers who have been graded as "outstanding"; then among those classified as "very good" and thereafter, those classified as "good" and the order of names shall be in the order of seniority in the State Police Service. There is also a statutory limit on the number that could be included in the select list which is equal to the number of substantive vacancies. Due to this restriction, against 6 vacancies of the year 2004, the applicant could not be included in the select list. Therefore, the Tribunal in Annexure A4 order held that the action of the respondents therein in not including the name of the applicant in the select list for IPS (Kerala) Cadre for the year 2004 was strictly in accordance with the Rules and Regulations. Since the applicant has already been considered, nothing more survived in OA No. 70 of 2005 and accordingly, the Tribunal dismissed the same by Annexure A4 order.

10. Annexure A4 order passed by the Tribunal upholding the action of the respondents therein in not including the name of the applicant in the select list for the IPS (Kerala) Cadre for the year 2004 has attained finality, in the absence of any challenge made by the applicant. Therefore, the only issue that arises for consideration in this Writ Petition is as to whether the applicant is entitled for inclusion of her name in the select list for the IPS (Kerala) Cadre as on 1.1.2005 and whether the action of the respondents in rejecting her claim on the ground that she has crossed the age of 54 years as on 1.1.2005 and as such not eligible for consideration is sustainable or not.

11. Going by the admitted facts, the date of birth of the applicant is 19.1.1950. On 31.1.2005, the applicant retired from State Police Service on attaining the age of superannuation of 55 years. Admittedly, as on first day of January, 2005, the applicant has crossed 54 years of age. Since the appellant has crossed the age of 54 years as on 1.1.2005, she became ineligible to be considered for selection to the IPS (Kerala) Cadre against the vacancies that had arisen as on 1.1.2005 in terms of Regulation 5 (3) of the Regulations. The contention advanced by the learned counsel for the applicant is that, though a select list was prepared for the year 2004, one vacancy remained unfilled and as such while conducting selection and appointment to the IPS (Kerala) Cadre for the year 2005, the eligibility criteria for the said vacancy should be that as on 1.1.2004. If that be so, in the select list prepared for the year 2005 for 3 vacancies, the petitioner should have been considered for one among those vacancies which is a carried forward vacancy of the year 2004.

12. Regulation 5 of the Kerala Police Service (Appointment by Promotion) Regulations, 1955 deals with preparation of a list of suitable officers. As per sub-regulation (1) of Regulation 5, each Committee shall ordinarily meet every year and prepare a list of such members of the State Police Service, as are held by them to be suitable for promotion to the Service. The number of members of the State Police Service to be included in the list shall be determined by the Central Government in consultation with the State Government concerned and shall not

exceed the number of substantive vacancies as on the first day of January of the year in which the meeting is held, in the posts available for them under Rule 9 of the recruitment rules.

13. First proviso to sub-regulation (1) of Regulation 5 provides that, no meeting of the Committee shall be held, and no list for the year in question shall be prepared when, (a) there are no substantive vacancies as on the first day of January of the year in the posts available for the members of the State Police Service under Rule 9 of the recruitment rules; or (b) the Central Government in consultation with the State Government decides that no recruitment shall be made during the year to the substantive vacancies as on the first day of January of the year in the posts available for the members of the State Police Service under Rule 9 of the recruitment rules. Second proviso to sub regulation (1) of Regulation 5 provides further that, where no meeting of the Committee could be held during any year for any reason other than that provided for in the first proviso, as and when the Committee meets again, the select list shall be prepared separately for each year during which the Committee could not meet, as on the 31st December of each year.

14. Sub-regulation (2) of Regulation 5 provides for a statutory limit on the number of candidates in the select list. As per sub-regulation (2) of Regulation 5, the Committee shall consider for inclusion to the said list, the cases of members of the State Police Service in the order of a seniority in that service of a number which is equal to three times the number referred in sub-regulation (1) of Regulation 5. Third proviso to sub-regulation (2) of Regulation 5 provides that, the Committee shall not consider the case of a member of the State Police Service unless, on the first day of January of the year for which the select list is prepared he is substantive in the State Police Service and has completed not less than 8 years of continuous service (whether officiating or substantive) in the post of Deputy Superintendent of Police or in any other post or posts declared equivalent thereto by the State Government.

15. Going by sub-regulation (3) of Regulation 5, the Committee shall not consider the cases of the members of the State Police Service who have attained the age of 54 years on the first day of January of the year for which the select list is prepared. First proviso to sub-regulation (3) of Regulation 5 provides that, a member of the State Police Service whose name appears in the Select List prepared for the earlier year before the date of the meeting of the Committee and who has not been appointed to the Service only because he was included provisionally in that select list shall be considered for inclusion in the fresh list to be prepared by the Committee, even if he has in the meanwhile, attained the age of 54 years. Second proviso to sub-regulation (3) of Regulation 5 provides further that, a member of the State Police Service who has attained the age of 54 years on the first day of January of the year for which the select list is prepared shall be considered by the Committee, if he was eligible for consideration on the first day of January of the year or of any of the years

immediately preceding the year in which such meeting is held but could not be considered as no meeting of the Committee was held during such preceding year or years under item (b) of the proviso to sub-regulation(1) of Regulation 5.

16. As per sub-regulation (4) of Regulation 5, 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. As per sub-regulation (5) of Regulation 5, the list shall be prepared by including the required number of names, first from amongst the officers finally classified as "Outstanding" then from amongst 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. First proviso to sub-regulation (5) of Regulation 5 provides that, the name of an officer so included in the list, shall be treated as provisional, if the State Government, withholds the integrity certificate in respect of such an officer or any proceedings, departmental or criminal, are pending against him or anything adverse against him which renders him unsuitable for appointment to the service has come to the notice of the State Government. Second proviso to sub-regulation (5) of Regulation 5 provides further that, while preparing year-wise select lists for more than one year pursuant to the second proviso to sub-regulation (1), the officer included provisionally in any of the select list so prepared, shall be considered for inclusion in the select list of subsequent year in addition to the normal consideration zone and in case he is found fit for inclusion in the suitability list for that year on a provisional basis, such inclusion shall be in addition to the normal size of the select list determined by the Central Government for such year.

17. Regulation 6 deals consultation with the Union Public Service Commission and Regulation 7 deals with preparation of select list. As per sub-regulation (3) of Regulation 7, the list as finally approved by the Commission shall form the select list of the members of the State Police Service. As per sub-regulation (4) of Regulation 7, the select list shall remain in force till 31st day of December of the year in which the meeting of the Selection Committee was held with a view to prepare the list under sub-regulation (1) of Regulation 5 or upto 60 days from the date of approval of the select list by the Commission under sub-regulation (1) or, as the case may be, finally approved under sub-regulation (2), whichever is later. Regulation 9 deals with appointments to the Service from the select list, which provides that, appointment of a member 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.

18. In the case on hand, the first proviso to sub-regulation (3) of Regulation 5 does not apply to the applicant because she was not in the select list. Similarly, the second proviso also does not apply to her because she has completed 54

years as on 1.1.2005. When, the exceptions to sub-regulation (3) of Regulation 5 are only those contemplated under the first and second provisos to said sub-regulation, the applicant who does not come within the purview of those provisos has no legal right to get herself included in the zone of consideration for selection to the IPS (Kerala) Cadre for the year 2005.

19. As we have already noticed, the name of the applicant was considered for promotion to the IPS (Kerala) Cadre for the year 2004 and she was included in the eligibility list as Sl. No. 18. On assessment of service records, the Selection Committee found that she was ineligible for inclusion in the select list and the select list including the required number of candidates who have been graded outstanding, very good, good, in the order of their seniority in the State Police Service was prepared, in which the name of the applicant could not be included since the statutory limit on the number of candidates in the select list is as equal to the number of substantive vacancies.

20. Relying on the judgment of a Division Bench of the High Court of Punjab and Haryana in *Pravin Kumar v. Union Public Service Commission and others* (CWP No. 15798 of 2009 dated 1.2.2010), the learned counsel for the applicant would contend that, irrespective of the fact that the applicant had crossed the age of 54 years as on 1.1.2004, she could have been considered for one substantive vacancy for the year 2004, which remained unfilled during that year since the candidate selected against the said vacancy failed to obtain integrity certificate from the State Government.

21. In *Pravin Kumar's* case (*supra*), the Division Bench of the Punjab & Haryana High Court was dealing with a case in which select list was prepared for the years 2007 and 2008 and the issue before the Division Bench was as to whether a person who had attained the age of 54 years as on 1.1.2007 can be considered for selection in the Select Committee which was held in the year 2009. Therefore, that was a case in which the select list prepared by the Selection Committee was for the years 2007 and 2008. In spite of the mandate of the Regulations, the selection for the year 2007 was conducted only in the year 2009. It was in such circumstances, that the Division Bench held that, merely for the reason that the candidate had attained the age of 54 years as on 1.1.2007, he cannot be disqualified from claiming the vacancy for the year 2007, for which the recruitment was conducted only in the year 2009.

22. In the instant case, for the vacancies to the IPS (Kerala) Cadre for the year 2004, the Selection Committee considered the case of the applicant. However, she could not find a place in the select list prepared by the Selection Committee. If one of the vacancies for the year 2004 remained unfilled due to non-issuance of integrity certificate to the selected candidate; for the subsequent selection year that vacancy shall not remain as a vacancy of the year 2004 for filling up with reference to the eligibility criteria as on 1.1.2004. The provisions under the Regulations, which we have referred to hereinbefore make it explicitly clear that, the Regulations do not contemplate any carrying forward of vacancy for the year

2004, which has resulted due to non-joining of the selected candidate included in the select list of 2004, to the subsequent year, i.e., 2005. The second proviso to sub-regulation (1) of Regulation 5 contemplates preparation of separate select list for each year only where no meeting of the Selection Committee could be held during the previous year for any reasons other than that provided in the first proviso to sub-regulation (1) of Regulation 5. Therefore, while conducting selection to the vacancy that remained vacant during the year 2004 due to non-joining of the selected candidate, along with other vacancies for the year 2005, the eligibility criteria in respect of all those vacancies will be that as on 1.1.2005, in which event, the applicant will not be eligible for consideration, as she has already crossed the age of 54 years as on that date. Therefore, the Tribunal cannot be found fault with in concluding that the applicant is not eligible for consideration for the selection year 2005.

23. In the result, we find absolutely no merits in the Writ Petition. The Writ Petition fails and the same is accordingly dismissed.