

(2021) 06 CAT CK 0037

In the Central Administrative Tribunal

Case No : Original Application No. 180, 00008 Of 2021

K.V. Vijayan

APPELLANT

Vs

Union Of India & Others

RESPONDENT

Date of Decision : 17-06-2021

Acts Referred:

IPS (Appointment By Promotion) Regulations, 1955 — Regulation 3, 5, 5(2)

Citation : (2021) 06 CAT CK 0037

Hon'ble Judges : P. Madhavan, Member (J); K.V. Eapen, Member (A)

Bench : Division Bench

Advocate : Babu Joseph Kuruvathazha, Anil Ravi, Thomas Mathew, M. Rajeev

Final Decision : Disposed Of

Judgement

P. Madhavan, Member J

1. The applicant has filed this Original Application seeking the following reliefs:

i) Issue appropriate direction or order, directing the respondents to fill up the vacancies occurred during 2019, to the Indian Police Service, from

among the eligible candidates under the 5th respondent, forthwith, at any rate within a time frame as may be fixed by this Hon'ble Tribunal;

ii) Issue such other appropriate direction or order as this Hon'ble Tribunal may deem fit and proper in the interest of justice.

2. In brief, the case of the applicant is that he retired from service while he was working as Superintendent of Police on 31.5.2019 and he comes

within the zone of consideration for the promotion to IPS. He has filed OA No. 351/2019 before this Tribunal for consideration of his name in spite of

his retirement and this Tribunal had directed that "the fact that the applicant is retiring from State Police Service will not stand in the way of his case

being considered for inclusion in the IPS, if he is otherwise eligible"". The said order was obtained on 27.5.2019. Now 1½ years passed after his retirement and according to him the respondents have not convened the Screening Committee Meeting (SCM) for the year 2018 till date and the matter is being delayed indefinitely. He is entitled for consideration for the selection for the year 2019. He has also produced an earlier order passed by this Tribunal in OAs Nos. 213 of 2020 and 215 of 2020 wherein this Bench directed the respondents to expedite the selection for the year 2018. So the applicant prays for an interim relief to direct the respondents to convene the SCM for selection of vacancy for the year 2019 at the earliest without any further delay.

3. Respondent No. 5 the State has filed a detailed statement. The counsel Shri Advocate Thomas Mathew Nellimoottil appeared for the UPSC and Selection Committee and submitted the difficulties experienced by the UPSC. Respondent No. 2 had also filed a brief statement stating the reasons for the delay.

4. We have gone through the detailed statement given by respondent No. 5 the State of Kerala in this case. According to the counsel appearing for the State, the respondents had taken steps for filling up the vacancies for the year 2018 and forwarded the names of eligible candidates to the UPSC and the UPSC had informed the convening of SCM on 26.4.2021 which is produced as Annexure R5(a). As per Regulation (3) of the IPS (Appointment by Promotion) Regulations, 1955 the Chief Secretary of the State Government, Principal Secretary/Secretary, Home Department and the DGP of Police are the members of the State Government to attend the SCM. But unfortunately due to the surge of Covid-19 cases in the State it was not possible for the above officers to attend the meeting on 26.4.2021. Due to the emerging pandemic across the Country the State Government has requested as per letter dated 17.4.2021 to postpone the SCM to another date in May or arrange the same through video conference. The said letter is produced as Annexure R5(b). The UPSC considered the issue of convening the SCM through video conference and decided to continue the present practice to hold the meeting physically. UPSC also informed that the SCM to be conducted on 26.4.2021 has been postponed and the date will be intimated later. The said letter is produced as Annexure R5(c). Again the State

Government on 15.5.2021 informed the Commission that due to the prevailing pandemic situation it is not conducive for the members of the State Government to travel to New Delhi at this juncture and it was suggested that the Resident Commissioner of the Government of Kerala may be permitted to represent the State in the SCM and they are awaiting the reply of the UPSC.

5. As regards the selection for the year 2019 there exists 8 vacancies and proposal in this regard is being prepared in consultation with the Home Department. The list will be finalized soon. ACR of eligible officers (3 times of vacancies) has to be examined in detail and has to be checked after collecting the relevant documents. The State Government will finalize the list of 24 officers and forward the same to UPSC for conducting the SCM for the year 2019. It was also submitted that the eligibility list for the year 2019 can be finalized only after convening SCM for the year 2018 and notifying the select list for 2018. So according to the respondents there is no laches on their part and they are eagerly waiting for the reply of the UPSC in this regard.

6. Respondent No. 2 had filed a statement to the effect that it is for the State Government to take necessary steps for the selection and they have no objection to the meeting of the SCM as early as possible.

7. Counsel appearing for the UPSC submitted that the UPSC has serious apprehensions regarding the confidentiality of meetings held through video conference and hence they are desisting meeting through video conference. Any how he submitted that recently the Hon'ble High Court of Bombay in WP (ST) No. 10290/2021 dated 21.5.2021 had directed the UPSC to conduct such meeting either physically or by video conference.

8. We have heard all the counsels appearing in this case and we find that even though SCM has been scheduled to be held for the selection of 2018 batch of IPS from the State Service, it was not conducted and it got postponed due to the emerging Covid situation in the State and through out India.

Thereafter the State Government has proposed the meeting through video conference but that was also not accepted. It appears that for some

reasons or other the SCM for the year 2018 is being adjourned without any finality. We wish to bring to the notice of the respondents including the

UPSC that the Hon'ble Supreme Court in Syed Khalid Rizvi v. Union of India -

1993 Supp (3) SCC 575 had observed as follows:

The absence of chances of promotion would generate frustration and an officer would tend to become corrupt, sloven and a mediocre. Equal

opportunity is a fertile resource to augment efficiency of the service. Equal chances of promotion to the direct recruits and the promotees would

produce harmony with accountability to proper implementation of government policies. Unless the select list is made annually and reviewed and

revised from time to time, the promotee officers would stand to lose their chances of consideration for promotion which would be a legitimate

expectation. This Court in Mohan Lal Capoor case held that the Committee shall prepare every year the select list and the list must be submitted to

the UPSC by the State Government for approval and thereafter appointment shall be made in accordance with the rules. We have, therefore, no

hesitation to hold that preparation of the select list every year is mandatory. It would subserve the object of the Act and the rules and afford an equal

opportunity to the promotee officers to reach higher echelons of the service. The dereliction of the statutory duty must satisfactorily be accounted for

by the State Government concerned and this Court takes serious note of wanton infraction.

It has also to be noted that the Hon'ble apex court in Union of India v. Vipin Chandra Harilal Shah - (1996) 6 SCC 721 held as under:

It must, therefore, be held that in view of the provisions contained in Regulation 5, unless there is a good reason for doing so, the Selection Committee

is required to meet every year for purpose of making the selection from amongst the State Civil Officers who fulfill the conditions regarding eligibility

on the 1st date of January of the year in which the Committee meets and falls within the zone of consideration as prescribed in Clause (2) of

Regulation 5.

From this it can be seen that the applicant in this case has a fundamental right for consideration of his candidature and this is being defeated by

frequent postponement of SCM for one reasons or other. As per provisions contained in Regulation 5 the UPSC is bound to conduct SCM meetings

once in every year. This is also being defeated and more than two years is taken for the selection of 2018 batch. It has come to the notice of this

Tribunal that Government is loosing a lot of money on account of claim put

forward by the officers for the period which they would have worked if selection is conducted properly. This also causes loss to the state exchequer. So it is highly necessary to conduct the SCM through video conference or through physical meeting at the earliest.

9. Accordingly, we direct the respondents UPSC (R3&4) to conduct SCM within a period of 40 days either through video conference or through

physical meeting for the year 2018 without delay. The respondents State Government (R5&6) are directed to prepare the final list for selection of

2019 batch at the earliest after finalizing the aforementioned within a period of 90 days from the date of this order.

10. The Original Application is disposed of as above. No order as to costs.