
(2003) 03 KL CK 0128
In the High Court Of Kerala
Case No : O.P. No. 1985 of 2003

Thomas, K.V.

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 20-03-2003

Acts Referred:

Administrative Tribunals Act, 1985 — Section 19, 19(3)
Constitution of India, 1950 — Article 226

Citation : (2003) 03 KL CK 0128

Hon'ble Judges : Jawahar Lal Gupta, C.J.;Kurian Joseph, J

Bench : Division Bench

Advocate : N.N. Sugunapalan, for the Appellant; Rajan Joseph, A.A.G. for Respondent Nos. 1, 6 and 11, P.S. Sreedharan Pillai, S.C.G.S.C. for 2nd Respondent, P. Gopinath, O.V. Radhakrishnan, Public Prosecutor Rao M.P. Rajendran Nair and Thottathil B. Radhakrishnan for Respondents Nos. 4, 5, 7, 8 and 9, for the Respondent

Final Decision : Allowed

Judgement

Jawahar Lal Gupta, C.J.—Is the selection and appointment of Respondent Nos. 7 and 9 to the Indian Administrative Service as notified by the Government on February 5, 2003 fair, legal and in conformity with the Rules? This is the short question that arises for consideration. In a nutshell, the Petitioner alleges that the selection was unfair. The 11th Respondent, the present Chief Secretary and a Member of the Selection Committee, had arbitrarily tailored the service record of the 9th Respondent. He had graded him as "Exceptional" and "Outstanding" in the confidential reports for the relevant period of six years viz. 1995 to 2000. These reports were actually written in the year 2001 and are identical in content. An unfair assessment was made. Thus, the selection is even tainted by mala fides. A few facts as relevant for the decision of this case may be briefly noticed.

2. The Petitioner joined service in the year 1972. He held various posts. On December 3, 1990, he was appointed as an Under Secretary in the State Government. In the year 1995, he was promoted as Deputy Secretary. In March

1999, the Petitioner was still farther promoted to the post of Joint Secretary. On September 17, 2002, he was promoted as Additional Secretary. In the meantime, on September 6, 2002, the Petitioner had been posted as Director of Treasuries. On his promotion to the post of Additional Secretary, the Petitioner was allowed to continue on the post of Director as held by him. He continues to hold this post even today. The Petitioner maintains that the promotions were made on the basis of his consistently good performance.

3. Respondent Nos. 4 to 9 had similarly joined different posts in different Departments. The Petitioner claims that Respondent Nos. 4 to 6 and 9 have put in lesser years of service than him. He further maintains that Respondent Nos. 7 and 8 have lesser years of gazetted service to their credit. The Petitioner claims to have held important posts. He lays a further claim to a consistently outstanding record, which is better than that of Respondent Nos. 4 to 9. He claims to have become eligible for consideration for promotion to the I.A.S. in 1998.

4. In the year 2001, there was a proposal for appointment to the Indian Administrative Service by selection from amongst the non-State Civil Service Officers as contemplated under the I.A.S. (Appointment by Selection) Regulations, 1997. Certain officers filed a petition before the Central Administrative Tribunal complaining that the State Government had not laid down any guidelines for making the selection. This petition was registered as O.A. No. 1228/2000. The Tribunal dismissed it. Aggrieved by the order, the Petitioners therein filed a petition under Article 226 of the Constitution viz. O.P. No. 34248/2000. It was decided vide order dated December 21, 2001. A copy of the order passed by the Division Bench has been produced as Ext. P-2. While allowing the petition, the Bench had directed the State Government "to frame proper guidelines so as to assess the performance of the eligible candidates for inclusion in the zone of consideration". It was further observed that the criteria to be adopted by the Government should be "transparent and based on relevant materials. Orders to be passed by the State Government should have some rational basis while including or excluding (Officers) from the zone of consideration". Finally, the Bench had said, "after formulating proper guidelines and assessing performance on the basis of the guidelines, the State Government would prepare the panel for being considered by the selection committee for appointment to the I.A.S. for the year(s) 2000 and 2001".

5. Despite the directions given by the Bench, the State Government did not formulate or publish any guidelines. Aggrieved by the inaction and apprehending that selection was being made arbitrarily, the Petitioner approached this Court through a petition under Article 226 of the Constitution. This petition was registered as O.P. No. 36919/2002. The two-fold grievance made by the Petitioner was that the guidelines have not been published and that the cases were not being considered on merit. This petition was decided by a learned Single Judge of this Court vide order dated December 12, 2002. The grievances

made by the Petitioner were noticed. The submission made by the learned Government Pleader was recorded in the following words:

The learned Government Pleader upon instructions submits that guidelines as directed by this Court have already been finalised, though not published. Relying on those guidelines, a Committee consisting of the Chief Secretary and four others has already selected, the eligible candidates. The Petitioner is not included in that.

In view of the above statement made on behalf of the State Government, the learned Judge observed that no relief in the nature of a direction to the selection committee "to interview the Petitioner can be granted". However, the petition was disposed of with the following directions.

The first Respondent shall furnish a copy of the guidelines to the Petitioner and also publish the same within one month from the date of receipt of a copy of this judgment. The Petitioner will be free to work out his remedy against his non inclusion in the panel of candidates prepared for selection to the I.A.S.

6. After the disposal of the writ petition, the selection committee met on December 13, 2002. It interviewed the candidates. Soon thereafter, the Petitioner submitted a representation dated December 15, 2002 with the request that a list of the selected candidates be furnished to him. A copy of the representation is Ext. P-4. This representation having elicited no response, he filed a petition u/s 19 of the Administrative Tribunals Act, 1985. This petition was dismissed in limine by the Tribunal vide its order dated January 7, 2003. A copy of the order has been produced as Ext. P-5.

7. Having failed before the Tribunal, the Petitioner approached this Court through a petition under Article 226 of the Constitution. The petition was presented to the Court on January 17, 2003. Notice was directed to be issued to the Respondents. However, on February 4, 2003, it was reported in the newspapers that the Union Public Service Commission had approved the selection. The Petitioner, filed C.M.P. No. 7760/2003 to amend the petition. This prayer was allowed by the Bench by order dated February 11, 2003.

8. In the meantime, on February 5, 2003, the Government had published a notification appointing Respondent Nos. 7 and 9 to the Indian Administrative Service. The Petitioner filed C.M.P. No. 12244/2003 seeking permission to again amend the petition. This prayer was allowed vide order dated March 3, 2003. Thus, the writ petition was amended so as to impugn the selection and appointment, of Respondent Nos. 7 and 9 to the Indian Administrative Service.

9. Another fact, which deserves notice is that in pursuance to the directions of the Court, the State Government had published the guidelines regarding the selection and appointment of the non-State civil service officers to the I.A.S. on January 24, 2003. A copy of these instructions was produced as Ext. P-7 with the amended petition.

10. In the background of the facts as noticed above, the Petitioner alleges that the selection of Respondent Nos. 7 and 9 is wholly arbitrary and unfair. It does not conform to the provisions of the Rules and Regulations. Thus, he prays that the order passed by the Tribunal as well as the selection and appointment of Respondent Nos. 7 and 9 as published vide notification at Ext. P-6 be quashed.

11. The Respondents have controverted the Petitioner's claim. Separate counter-affidavits have been filed by Respondent Nos. 1, 3, 7 and 9. However, Respondent Nos. 4, 5 and 8 have, in a separate counter-affidavit supported the Petitioner. The claim made by the contesting Respondents is that the selection conforms to the provisions of the statutory Rules and Regulations. The committee had considered the case of the persons who were selected by the State Government, It is on an examination of the confidential reports and other record of service that Respondent Nos. 7 and 9 have been selected. It has also been averred that the Petitioner "ought to have approached the Administrative Tribunal with this prayer as the Court of first instance before approaching the Honourable High Court...." Similar pleas have been raised by the other contesting Respondents as well. Reference to the specific averments shall be made at the appropriate stage. Reply affidavits have been filed by the Petitioner.

12. Learned Counsel for the parties have been heard. On behalf of the Petitioner, Mr. N.N. Sugunapalan has contended that the selection was not fair. It does not conform to the provisions contained in the statutory regulations. Even the guidelines which were said to have been finalised by the State Government at the time of the disposal of the writ petition by this Court were; not followed. Resultantly, the selection and appointment of Respondent Nos. 7 and 9 is vitiated.

13. On the other hand, Mr. P.P. Rao, learned Counsel for Respondent No. 9, has raised a preliminary objection regarding the maintainability of the petition. It has been contended that the Petitioner had merely approached the Tribunal with the prayer that a copy of the list of selected candidates be furnished to him. That petition was dismissed as premature. Thereafter, if the Petitioner had any grievance against the actual selection or appointment, he had to approach the Tribunal by way of a petition u/s 19 of the Act. He was debarred from approaching this Court directly through a petition under Article 226 of the Constitution. On merits, it has been submitted that the claim as made by the Petitioner, is not tenable. Even if there were certain procedural irregularities in either the recording of the reports or any consideration of the claim, no ground for setting aside the selection as approved by the Commission and the appointments as finally made by the Central Government, is made out. On these premises, learned Counsel has contended that the petition deserves to be dismissed,

14. Mr. Thottathil B. Radhakrishnan, learned Counsel for Respondent No. 7, contends that separate posts had been sanctioned for the years 2000 and 2001. The Petitioner had not been sponsored by any authority for the year 2000. He was not, thus, competing with the 7th Respondent. Even if there was some

irregularity in the selection of Respondent No. 9, the selection of Respondent No. 7 is not affected. In particular, the learned Counsel has pointed out that the selection of the five candidates in which the name of the 7th Respondent had been included, was made by Mr. V. Krishnamoorthy, the Chief Secretary at the relevant time. Thus, the ground of challenge as made in the petition against the selection of Respondent No. 9 does not exist in the case of the 7th Respondent.

15. The argument on behalf of the State Government and in particular, the 11th Respondent viz. the present Chief Secretary, is basically an apology. It is submitted that Respondent No. 11 had filed his affidavits dated February 19, 2003 and March 12, 2003. He had submitted that the 9th Respondent had filed his self-appraisal reports in March, 2001. Thus, there was a delay in recording his confidential reports for the years 1995 to 2000.

16. Mr. Gopinatha Menon appearing for the Union Public Service Commission (the third Respondent) has submitted that all the relevant materials had been considered before the selection was finally approved. Thus, no ground for interference with the selection or the order of appointment was made out.

17. Mr. O.V. Radhakrishnan learned Counsel for Respondent Nos. 4, 5 and 8 supported the contentions raised on behalf of the Petitioner.

18. In view of the contentions as raised by the learned Counsel for the parties, the two questions that arise for consideration are:

(1) Whether the selection and appointment of Respondent Nos. 7 and 9 to the Indian Administrative Service was fair and legal?

(2) Whether the petition is not maintainable? Regarding 1:

19. A few facts, which are relevant for the decision of this matter may be noticed.

20. The matter was posted before a Bench of this Court (of which one of us was a member) on January 20, 2003. Mr. Rajan Joseph, learned Additional Advocate General had put in appearance on behalf of some of the Respondents. He was directed to produce the personal files of the Petitioner as well as Respondent Nos. 4 to 9 whose names had, at that time, been recommended by the committee. He was also directed to produce the file showing the consideration of the claims of the officers. The case was adjourned to January 28, 2003. On that day, a file containing the confidential reports of the Petitioner was produced before the Bench. On perusal, a direction for issue of notice before admission was given. Counsel had put in appearance for Respondent Nos. 2,3,7,9 and 10. A direction for the issue of notice to the other Respondents was, thus, issued. Mr. Rajan Joseph was directed to produce the records on the next date of hearing also. Thereafter, the matter was taken up for consideration on February 18, 2003. On that day, Mr. Rajan Joseph had produced the file containing the confidential reports of the Petitioner as well as Respondent Nos. 7 and 9. The file relating to Mr. N. Ayyappan, Respondent No. 9, contained the reports for the years 1995 to 2001 only. Certain unusual facts were noticed. It appeared that

the reports for the years 1995 to 2000 did not bear any date or year. The language appeared to be identical. Only the type-print was different. The record did not indicate as to when the reports had been recorded or signed. Still further, it was not clear as to why the date and the year had not been indicated. Even the date on which the reports had been placed on the file was not available on the record. Another fact, which appeared was that the reports had been endorsed by the reviewing authority on May 11, 2001. In view of this situation, the learned Counsel for the State of Kerala had requested for a short adjournment to enable him to file the affidavit of the officer, viz. Mr. Chandrasekharan Nair, who had recorded the six reports. The adjournment was granted. The affidavit of the officer was filed.

21. The matter was posted for hearing on February 21, 2003. At that time, it was pointed out that the 9th Respondent had submitted the self-appraisal reports only in March 2001. Thus, the reports for the years 1995 to 2000 were recorded by the Principal Secretary in March 2001. It was admitted that the reports for the years 1996 to 2000 had been endorsed by the reviewing authority on May 11, 2001. In view of this factual position, learned Counsel for the other Respondents had prayed for time to enable them to file their counter-affidavits in the light of the facts disclosed by Mr. Chandrasekharan Nair. The request was accepted. Opportunity to file affidavits was given. Subsequently, Mr. Nair was also impleaded as a party. C.M.P. No. 12245/2003 filed by the Petitioner in this behalf was allowed vide order dated March 3, 2003. After having been impleaded as a party, the 11th Respondent has also filed a counter-affidavit in reply to the writ petition. Mr. Rajan Joseph had also shown the reports to the counsel for both the sides.

22. The file containing the confidential reports for the years 1995 to 2001, has been produced by Mr. Rajan Joseph even today. A perusal of the report for 1995 shows that the 9th Respondent has himself filled up the performance appraisal form. At page 5, Mr. N. Chandrasekharan Nair, the Principal Secretary, Higher Education Department has indicated that a separate sheet has been attached. The sheet is supposed to reflect the actual assessment of the reporting officer regarding the performance of the 9th. Respondent. It reads as under.

Shri N. Ayyappan is a very hard working disciplined, honest and sincere officer with excellent communicative skills, extremely devoted in his work and highly dependable. The Stores Purchase System in Stationary Department which was in a mess was streamlined and made a model worthy of emulation by other departments. He could manage major purchases and supply of stationary articles for various departments without any complaints from any corner. With exceptional leadership qualities he maintained cordial relationship with the staff and could motivate and. extract maximum work out of them. Smart and pleasing personality who could endear himself to superiors, colleagues and subordinates alike. He has proved himself to be an officer with outstanding abilities who could be safely entrusted with greater responsibilities. His performance during the

period was outstanding and exceptional. I strongly recommend him for out of turn promotion and top level assignment in Government, particularly for selection to the I.A.S. cadre.

The factual position and the reports as recorded by Mr. Nair for the subsequent years viz. 1996 to 2000 are identical. The only difference is that in the reports for the years 1999 and 2000, the following additional sentence had been added:

Inventory management system was also streamlined and computerized leading to greater transparency and more effective and economic utilisation.

Otherwise, except the change in the computer print, there is no difference in any of the six reports. Still further, in none of the reports, the year to which it relates or the date on which it had been recorded, has been indicated. Why?

23. The officer had given his explanation in the affidavit dated February 19, 2003. It was stated by him that he was the Principal Secretary, Higher Education Department from January 20, 1995 to June 20, 2001. He had recorded the reports of Sri N. Ayyappan "who was Controller of Stationary during the period". The six reports related to the calendar years 1995 to 2000. The "reports were recorded sometime in March 2001 while I was continuing as Principal Secretary (Higher Education)". As for the delay, the officer says that it is "attributable to the fact that the self appraisals for these years were submitted by the 9th Respondent only in March 2001". The officer further admits that he does not "remember the exact date in March 2001 when these reports were prepared". The confidential reports "were received in Government file on 8th October 2001. The confidential record dossier was forwarded to the General Administration (Special) Department by Sri Dharamveer, the then Secretary, Higher Education Department on 8th October 2001. The confidential records were reviewed by the Minister concerned on 11th May 2001".

24. The officer filed another affidavit on March 12, 2003. This was by way of a counter-affidavit to the writ petition after he had been impleaded as a Respondent in the petition. In this affidavit, it has been inter alia averred that the guidelines in preparing the panel for selection of non-State Service Officers were approved by the Government on May 13, 2002. A copy of the guidelines was forwarded to the Advocate General on May 29, 2002. He had assumed charge of the Office of Chief Secretary on September 28, 2002. The panel of officers for the year 2000 had been prepared by his predecessor Mr. V. Krishnamoorthy. The 11th Respondent had prepared the panel for the year 2001. With regard to the reports recorded by him, it has been stated that he had watched the work of the 9th Respondent "for more than six years".... He had found him to be "an outstanding officer with exceptional abilities, who could manage an important department as Head of the Department for about 14 years". He "deserved elevation at the fag end of his official career. The report prepared by me was my impartial assessment which is neither colourable, mala fide or motivated as alleged". The Petitioner's allegation that he was the

Chairman of the selection committee has been controverted. In fact, a Member of the Union Public Service Commission was the Chairman. On this basis, the 11th Respondent has prayed that the writ petition should be dismissed with costs.

25. Learned Counsel for the Petitioner has vehemently contended that under the instructions issued by the State Government the report had to be recorded in the specified form for each calendar year. The reports have to be forwarded by the reporting officer "by the 1st February following the year reviewed ... and the successive authorities should pass on the report with their remarks to the next higher authority within one week of its receipt by them.... All such reports shall reach Government within three months of the expiry of the period of report".

26. The instructions undoubtedly lay down a period within which the reporting officer and the reviewing authority have to record their respective remarks. In fact, in paragraph 14 of the instructions, it has been specifically provided that the "time-limit has to be strictly followed and the confidential reports in final form should be made ready by the end of February".

27. Why did the 11th Respondent fail to comply with the instructions issued by the State Government? The only answer is that the 9th Respondent had not submitted the self-appraisal forms. Yet, the actual date on which the forms had been submitted has not been disclosed. No entry with regard to the failure to submit the forms in time, has been made. Despite this, the 9th Respondent has been graded as "exceptional and outstanding". This is not all. The language of the six reports is identical. In none of the reports, the date on which the remarks were recorded by the 11th Respondent has been indicated. Why? Again, there is no answer. Learned Counsel for the Respondent submitted that the mistake was bona fide. There was no extraneous reason for the delay in the recording of reports. Is it so?

28. We had specifically asked Mr. Rajan Joseph, learned Counsel for the State Government, to produce before us the file containing all the confidential reports of the 9th Respondent. The purpose was to ascertain as to what was the opinion expressed by various officers under whom the 9th Respondent had worked since the year 1972. This would have given the court an idea about the fairness of the reports recorded by the 11th Respondent. Mr. Rajan Joseph states that he had received only the file containing the reports for the years 1995 to 2001. In pursuance to the observations of the Bench, he had sent a fax message asking the Government to forward the complete file containing all the reports. He has been informed by a fax message that "the confidential reports of Sri N. Ayyappan, I.A.S. for the period from 1972 to 1994 are not readily available". Even his personal file has not been produced. It appears that the relevant material has been intentionally withheld.

29. Still further, it is apparent that the reports recorded by the 11th Respondent do not really represent an objective assessment with regard to the performance of the 9th Respondent. To illustrate this: In the report for the year 1995, it has

been observed that "the store purchase system in Stationary Department which was in a mess was streamlined and made a model worthy of emulation by other departments". These remarks have been repeated verbatim in all the subsequent reports. If the 9th Respondent had actually streamlined the department and cleared the mess in the year 1995, what was he doing in the year 1996. Which mess was he clearing? What was he streamlining? There is nothing. No answer has been given in the affidavits or at the hearing. In fact, the reports have been repeated verbatim. For all the years. Still further, if the reports had been actually recorded on one day and the reason for the delay was the late submission of the self-appraisal forms, did it not occur to the reporting officer that Mr. Ayyappan had not performed his duty efficiently. He had failed to submit the forms despite the requirement to do so at the opportune time. Nothing of this sort has been indicated in any of the six reports.

30. We had repeatedly asked Mr. Rajan Joseph to produce before us the receipt register or any other record, which may indicate as to when the 9th Respondent had submitted his self-appraisal forms. We had also asked him whether any note was put up after the delayed receipt of the self-appraisal forms by any official or officer in the Government. The purpose of asking for this record was to ascertain the actual facts. No record has been produced. It is well-known that in the Government, everything is recorded. Officers of the State Government do not function on oral instructions. Every document, which is received, is entered in a register. It invariably has the receipt number. A note is put up by the concerned official. Thereafter, the case is processed by the office. Then the competent authority takes the final decision. Nothing of the sort is shown to have been done in the present case.

31. Another fact, which deserves mention, is that the appraisal forms used by the officer appear to have been printed during different years. To illustrate: The form for the year 1995 appears to have been printed in the year 1986. As against this, the form for the year 1996 appears to have been printed in the year 1990. The forms for the years 1998, 1999 and 2000 appear to have been printed in the year 1995. Not only this. If the reports were being recorded on the same day and the language was identical, why did the officer (Mr. Nair) use different computer print for these reports? Was there an effort to camouflage? Too many questions arise. Our imagination gallops. Learned Counsel for the Respondents are unable to give any answer. Judicial restraint stands in our way. Otherwise, we are left with no doubt that all is not well with the process of selection and appointment to the I.A.S. The action of the reporting officer viz. Mr. N. Chandrasekharan Nair, the present Chief Secretary to the Government of Kerala, leaves a lot to desire.

32. In this context, it also deserves notice that in the first order passed by the Bench on January 20, 2003, the learned Additional Advocate General Mr. Rajan Joseph had been directed to produce "the personal files of the Petitioner and Respondent Nos. 4 to 9". This direction was repeated in the subsequent orders.

However, the reports of the 9th Respondent for the years 1972 to 1994 have not been produced till today. When all the facts are cumulatively considered, we are left with no doubt that the reports for the years 1995 to 2000 do not represent an objective assessment of the officer for the relevant years.

33. Faced with the facts, it has been contended on behalf of the 11th Respondent that there is no material on record to show that he was motivated by any extraneous consideration. He had acted bona fide in the discharge of his duties. Thus, there was only a procedural mistake, which deserves to be overlooked. The apology should be accepted.

34. The submission cannot be accepted. It deserves notice that Mr. Nair is at present the Chief Secretary. He was the officer who considered the case of the officers for short listing to fill up the vacancy for the year 2001. He was also a Member of the selection committee that had finally selected Respondent Nos. 7 and 9. Thus, he was definitely in a position to affect the outcome of the entire process of selection. Secondly, if the mistake had been bona fide, the officer would have indicated the date on which the remarks had been actually recorded by him. His conduct would have then borne testimony to his innocence. He had not done so. Still further, even though in the affidavit, the mistake has been acknowledged and apology has been tendered, yet, no explanation for using different forms of type has been given. Resultantly, we are driven to the conclusion that the reports do not represent an objective assessment of the performance of the 9th Respondent. These had not been recorded within a reasonable time at the end of each year. The plea that the delay had occurred on account of the failure of the 9th Respondent to submit the self-appraisal forms, appears to have been trotted out to tender a plausible explanation. Even if the so-called explanation is assumed to be correct, the delay on the part of the 9th Respondent in submitting the self appraisal forms should have been reflected in the remarks recorded by the 11th Respondent. It deserves mention that a report has to reflect the efficiency of the officer. One who does not even submit the required forms for years cannot claim to be efficient. Yet, he was not even asked a question. The reporting officer had completely overlooked a serious lapse. He had mechanically signed the six reports. Why? There is no explanation in either of the two affidavits filed by him.

35. It is in this background that the issue of a fair and proper selection has to be considered.

36. It is the admitted position that two posts had to be filled up by selection from amongst the persons working in the non-State civil services. One of these related to the year 2000. The second was for the year 2001. It is also not in dispute that the recommendations had been invited by the Government from different Secretaries for recruitment to the solitary post for the year 2000, Still further, it is apparent from the record that the 11th Respondent had become the Chief Secretary on September 28, 2002. Till then, he had continued to hold the office of the Principal Secretary, Department of Higher Education. Thus, he was in a

position to forward the name of the 9th Respondent for the vacancy relating to the year 2000. At the relevant time, Mr. Nair was the Principal Secretary in the Department of Higher Education. He had seen the work of the 9th Respondent since 1995. He was, as is now sought to be projected, convinced about his ability and efficiency. Yet, he had not sponsored his name for being considered for appointment to the I.A.S. for the solitary post relating to the year 2000. This is so despite the fact that in the reports he has repeatedly observed that the officer deserved to be promoted to the I.A.S. Why? There is no explanation on the record. None has been given at the hearing. This fact also casts a doubt even with regard to the claim that the reports had been recorded in March 2001. Had it been so, the 11th Respondent would not have failed to forward the name of the 9th Respondent.

37. Learned Counsel for the Respondents have been at pains to point out that there is violation of instructions relating to the recording of confidential reports even in the case of the Petitioner and other officers. It may be so. It can only mean that these need to be rectified. However, two wrongs never make a right. If mistakes have been committed in the case of one officer, it cannot mean that they have to be repeated or condoned in all cases. So far" as the present case is concerned, it is clear that the selection was made on the basis of a record, which did not represent a fair and objective assessment of the performance of the candidate.

38. Still further, it is the admitted position that the committee had met to interview the candidates on December 13, 2002. The 11th Respondent was the Chief Secretary at that time. He had attended the meeting of the selection committee. The candidates had been interviewed by that committee. He occupies a senior position. He could have easily promoted the interest of any officer. He could have given a higher assessment to one officer and a lower one to the other.

39. Learned Counsel for the Respondents have contended that there is no direct evidence of bias.

40. Bias is a state of mind. It cannot always be proved by direct evidence. While examining the matter, the court has to see -- Did the authority have an open mind? Could the member have judged the individuals impartially? Very often the court has to draw an inference from the facts, which appear on the record. If the facts show that there was a bent of mind or a pre-disposition to decide in a particular way, an inference of bias can be inevitable.

41. In the present case, the facts indicate the 11th Respondent's inclination towards Mr. Ayyappan. The sequence of events as noticed above, gives a clear indication with regard to the actual state of affairs. It leaves no room for doubt that the process of selection was not fair. Judged by the "common man test", the process of selection does not inspire confidence. Even the record relating to the proceedings of the selection committee, which had met on December 13, 2002 has not been shown to us by the counsel for the Respondents. The reason can be

easily imagined.

42. Mr. Gopinath, learned Counsel for the 3rd Respondent, contended that the Union Public Service Commission has finally approved the select list. It is a constitutional authority. Its proceedings cannot be judicially reviewed by this Court.

43. It is undoubtedly true that the Union Public Service Commission is a constitutional body. However, what stares us in the face is the fact that the 9th Respondent was selected on the basis of the reports, which had not been fairly recorded. In fact, it appears that the members of the selection committee, which had met on December 13, 2002 at Thiruvananthapuram, had not even cared to notice the contents of the confidential reports. It appears that they had mechanically accepted the gradation recorded by the 11th Respondent. If anyone of the members had cared to go through the reports, he could not have failed to notice the glaring fact that the remarks in all the reports, as already noticed, were a verbatim repetition. A look at the papers arouses doubts.

44. It may be mentioned that during the course of the hearing on an earlier date, Mr. Rajan Joseph, learned Counsel for the State Government, had stated before us that the original files relating to the confidential reports of the selected candidates had been forwarded to the Union Public Service Commission. The reports could be only for the years 1995 to 2001. However, the affidavit filed on behalf of the third Respondent states that the complete record was seen by them. The affidavit filed on behalf of the Union Public Service Commission states that "the selection committee is not guided merely by the overall grading that may be recorded in the A.C.Rs. by the reporting/reviewing officer and accepting authority but in order to ensure justice, equity and fair play make its own assessment of the eligible officers on the basis of an in-depth examination of their service records and their performance as reflected under various columns recorded in their A.C. Rs. by the Reporting Reviewing officer/Accepting Authority in the A.C. Rs. during the years preceding the year for which the Select List is prepared". We can only say that this is a tall claim made on behalf of the Commission. It is not substantiated by the facts on the record. It appears that the reports were not even cursorily examined. If the reports had been actually examined, the facts could not have escaped notice. Still further, in paragraph 10 of the counter-affidavit it has been indicated that the Commission and the selection committee can ascertain "whether the dossiers are complete...". We have been shown the personal file of Respondent No. 7. The reports recorded by the reporting officer are not shown to have been put up to the reviewing officer. Still further, the Commission could not have examined the complete record. The confidential reports on the performance of the 9th Respondent for the years 1972 to 1994 are not even traceable with the Government. This is what Mr. Joseph has stated before us even today. How could the Commission have examined it? Apparently, the claim as made in the counter-affidavit is not supported by any evidence on the file.

45. Learned Counsel for the Respondents submit that the factual position regarding the Petitioner is also identical. It may be so. If the Petitioner was overlooked on account of the incomplete reports, the Respondents should have judged even the others by the same standard. If not, the omission on the part of the Respondents shall not be a good ground for the court to overlook the obvious. Thus, the claim as made on behalf of the Union Public Service Commission that there was an in-depth examination of the reports recorded by the reporting/reviewing and the accepting authorities does not appear to be even prima-facie correct and cannot be sustained.

46. Mr. Thottathil B. Radhakrishnan, learned Counsel for Respondent No. 7, submits that even if there was any infirmity in the selection of Respondent No. 9, the factual position with regard to the year 2000 is different. Learned Counsel has been at pains to point out that the name of the 7th Respondent had been recommended by Mr. V. Krishnamoorthy, who was the predecessor of the 11th Respondent. At that time, the Petitioner's name had not been sponsored. Thus, the Petitioner can have no grievance against the selection of Respondent No. 7.

47. We are unable to accept this contention. It is the admitted position that even though two separate posts had been sanctioned for two different years and five candidates had been recommended for the year 2000 and five for 2001, the selection committee had actually interviewed only six candidates including Respondent Nos. 7 and 9. The proceedings of the selection committee were one. The file has not been shown to us despite being asked for. However, it is not disputed that:

- (1) The final selection was made by the committee of which the 11th Respondent was a member. He was in a position to influence the result.
- (2) The selection was made in one sitting. Only six persons were interviewed.
- (3) The papers were forwarded to the Union Public Service Commission together. Both the candidates were appointed by one notification.
- (4) Thus, both these selections are inextricably interlinked. It is not possible to separate one from the other.

48. Learned Counsel for the 7th Respondent submits that the Petitioner had not been sponsored for the year 2000. Thus, he can have no grievance against the selection of the 7th Respondent. However, it is not disputed that the 7th Respondent himself had filed a petition under Article 226 of the Constitution viz. O.P. No. 34245/2000. In this case, he was Petitioner No. 3. The complaint of the four Petitioners was that they had been illegally excluded, from the zone of consideration for the purpose of selection to the Indian Administrative Service. This petition was allowed vide order dated December 21, 2001. Thereafter, it appears that the names of the candidates were required to be considered in accordance with the guidelines to be framed by the State Government. On December 12, 2001, when the High Court was considering the Writ Petition filed

by the present Petitioner viz. O.P. No. 36919/2002, it was categorically stated on behalf of the State that the "guidelines as directed by the Court have already been finalised though not published Relying on those guidelines, a committee consisting of the Chief Secretary and four others has already selected the eligible candidates. The Petitioner is not included in that". We have repeatedly asked Mr. Rajan Joseph to show us any document which may indicate that any committee of five persons had considered the claim of the Petitioner or any of the Respondents for short listing the candidates for interview by the selection committee as constituted under the statutory regulations. Learned Counsel has not been able to produce any document. In fact, it has been conceded that the selection was made by the Chief Secretary alone. Yet, wrong information was given to the Court-Why? There is no answer. It is clear that the hands of the concerned Respondents are soiled from the start.

49. Admittedly, the directions given by the Division Bench vide its Judgment dated December 21, 2001 have become final between the parties. According to these directions, the Government, had to frame guidelines adopting a transparent criteria and then to select people on the basis of the prescribed parameters. It had to prepare separate panels for being considered by the selection committee for appointment to the I.A.S. for the years 2000 and 2001. It has not been shown that after December 2001, the Government had even invited any names for being considered for the years 2000 and 2001. Thus, the directions given by the Court do not appear to have been complied With.

50. On behalf of the Respondents, it has been contended that the defective maintenance of reports is a regular pattern. Thus, the setting aside of the selection would not promote justice. Reference was made to the decisions in E.P. Royappa Vs. State of Tamil Nadu and Another, and Ashok Kumar Yadav and Others Vs. State of Haryana and Others, . This contention cannot be accepted. It is the admitted position that the reports recorded by the reporting officers have not even been examined by the reviewing authority in a majority of the cases. The provision for reporting and reviewing authorities has an obvious purpose to serve. They can take different views. We cannot imagine that the reviewing authority would mechanically endorse the report recorded by the reporting officer. An officer who has been graded as "outstanding" by the Reporting Officer may be assessed as "average" by the reviewing authority and vice versa. The reports, as existing today, could not have formed the basis for a valid selection.

51. Mr. Rao has contended that the writ issued by this Court shall ultimately prove to be futile. He has placed reliance on the observations of their Lordships of the Supreme Court in S.L. Kapoor Vs. Jagmohan and Others, . We find no merit in this submission. It is reasonable for the court to expect that the concerned authorities shall make a fair assessment regarding the performance of the candidates. The reports as recorded by the reporting officers shall be reviewed by the concerned authorities. Thereafter, a final decision with regard to the short listing and selection shall be taken in accordance with the provisions of

the rules and the instructions. Such an exercise would ensure a fair and objective selection. It would not be an exercise in futility. Surely, the concerned authorities should have no predisposition in the matter.

52. Another fact, which deserves mention is that the selection is governed by statutory rules. Normally, appointments to All India Services are made by direct recruitment and promotion. However, in order to provide an incentive to persons of outstanding ability in non-state civil services, the Central Government had promulgated the Indian Administrative Service (Appointment by Selection) Regulations, 1956. These regulations were substituted by the I.A.S. (Appointment by Selection) Regulations, 1997. It was inter alia provided that the Central Government shall determine the number of posts for which recruitment shall be made from amongst the non-state civil service officers. The State Government has to send proposals for the consideration of the committee. Persons of outstanding merit and ability alone are eligible to be considered. A detailed procedure for consideration by the committee, preparation of a list and then consideration of the Commission etc., has been laid down. The committee is under a duty to scrutinize the personal service records and to conduct an interview. In the present case, the facts disclose that what to talk of scrutiny, there was not even a cursory examination of the reports. Even the Commission had failed to consider the matter in its correct perspective while considering the recommendations of the committee. Thus, there was an infraction of the rules also.

53. In view of the above, the first question is answered in favour of the Petitioner. It is held that the selection of Respondent Nos. 7 and 9 was not fair, legal or in conformity with the Rules and Regulations.

Regarding 2:

54. Mr. Rao contended that the present petition is incompetent. The Petitioner has to be relegated to his remedy before the Central Administrative Tribunal. Is it so?

55. The sequence of events as noticed above shows that the Petitioner had initially approached this Court through O.P. No. 36919/2002. His complaint was that the State Government had not framed the guidelines in accordance with the directions given by a Bench of this Court in O.P. No. 34245/2000. It was further contended that the selection should be made in accordance with the guidelines and not arbitrarily. The Government had submitted that the guidelines had been finalised. The selection of eligible candidates had been made. The Petitioner had not been included in the list. Thereafter, the Petitioner has approached the Central Administrative Tribunal through a petition u/s 19 of the Administrative Tribunals Act, 1985. In the petition, it was specifically averred by the Petitioner that Respondent Nos. 4 to 9 had been included in the panel. Comparatively, their record of service was not as good as his own. He was entitled to be considered for inclusion of his name so as to be in the zone of consideration. The action in

ignoring him was illegal. In fact, 10 persons were required to be considered. The Respondents were considering only six. The guidelines had not been followed. The Tribunal had decided the matter by passing the impugned order on January 7, 2003. The Petitioner's grievance was noticed in the following words:

The applicant claims that he is a meritorious candidate to be selected and appointed to the I.A.S. under the provisions of I.A.S. (Appointment by Selection) Regulations, 1997. It is alleged in the application that Respondents 4 to 9 were considered by the Selection Committee and stated that the applicant reliably understands that the Respondents 4 to 9 have been placed in the panel while the applicant has not been placed, and that above placement was made without proper consideration of the merit of the applicant. Therefore, for his placement in the panel, the Applicant has filed this application.

After noticing these contentions, the Tribunal had dismissed the petition with the following observation:

It is seen from the application that an interview has been held on 13th December 2002 and the applicant was not called for the interview. However, the appointment pursuant to the selection has not been made. We find that the applicant has not shown prima facie that a selection has been made in contravention of the Rules. It has also not been shown that there is any rule or instructions which cast a duty on the Respondents to give the applicant a Copy of the short list. We find that no cause of action has arisen to the applicant to invoke jurisdiction of the Tribunal and that the application is premature.

(emphasis supplied)

In the light of what is stated above, the application is rejected u/s 19(3) of the Administrative Tribunals Act, 1985. No costs.

Thus, the Tribunal had recorded a finding that prima facie, there was nothing to show that the selection had been made in contravention of the rules. Resultantly, the Petitioner's claim was rejected. It is undoubtedly true that at the end of paragraph 3, the Tribunal has observed that the application was premature. However, in the 4th paragraph, it was observed that his petition is rejected. Thus, there is a clear expression of opinion.

56. It is thereafter that the Petitioner has approached this Court. While the petition was pending, the Respondents had finalised the selection. Thereafter, the formal notification, dated February 5, 2003 was published in the gazette. The Petitioner had amended the petition with the leave of the court.

57. The sequence of events clearly shows that the Petitioner had approached the Tribunal to challenge the selection. Having failed, he had approached this Court. Since the process of selection had been finalised and an order of appointment had been issued during the pendency of the petition, he had sought permission to amend the petition. This permission was granted. It is in the light of this factual position that the objection as raised by the Respondents has to be

considered.

58. It deserves notice that the Petitioner was primarily aggrieved by the failure of the Respondents to consider his claim. The appointment at the end of the process of selection is only a formal act. Once the process of selection is challenged and is found to have been vitiated, it does not appear to be fair to say that the Petitioner should start the proceedings de novo before the Tribunal. Still further, it also deserves notice that the Tribunal has already expressed its opinion. In this situation, acceptance of the objection would only result in delaying the decision. It would not promote justice.

59. Mr. Rao has referred to the Judgment of Their Lordships of the Supreme Court in *L. Chandra Kumar Vs. Union of India and others*, . On the basis of this decision, it was contended that the Petitioner is debarred from approaching this Court.

60. We have perused the Judgment. It is beyond dispute that Article 226 confers the power of judicial review on the High Courts. In fact, judicial review has become a part of the constitutional process in our country. Still further, while dealing with the matter, Their Lordships had categorically observed that the Tribunals cannot "act as substitutes for the High Courts and the Supreme Court which have, under our constitutional set up, been specifically entrusted with such an obligation. Their function in this respect is only supplementary and all such decisions of the Tribunals will be subject to scrutiny before a Division Bench of the respective High Courts". Mr. Rao was at pains to point out that Their Lordships had conferred the jurisdiction to hear the petitions against the orders of the Tribunal only on a Division Bench. This is a departure from the normal practice of the writ petitions being heard by Single Benches.

61. In our view, Their Lordships had directed the matter to be considered by a Division Bench only in the interest of uniformity throughout the Country. The basic mandate is that the functions of the Tribunals are merely supplemental and not in substitution for the jurisdiction of the High Courts. It is undoubtedly correct that in paragraphs 93 and 99, it had been observed that it will not be open to the litigants to directly approach the High Courts. However, in the present case, we cannot say that the Petitioner has directly approached this Court. He had admittedly gone before the Tribunal. He had complained against his exclusion from the list. He had challenged the selection of Respondent Nos. 4 to 9. His petition was "rejected". Thereafter, he had approached this Court. The amendment was necessitated by the fact that the selection was approved and the Government had issued a notification regarding the appointment of Respondent Nos. 7 and 9. The order of appointment was virtually a consequence of the selection.

62. Thus, it would not serve any purpose at this stage to relegate the Petitioner to a fresh proceeding before the Tribunal.

63. Learned Counsel for the Respondents have contended that in the petition

before the Tribunal, the Petitioner had merely asked for a copy of the select list prepared by the Respondents. It is undoubtedly correct that if the prayer clause is seen in isolation, the Petitioner had asked for the supply of a copy of the select list. However, an examination of the entire petition as also the manner in which the case was projected and noticed by the Tribunal, it is clear that the real challenge was to the selection. That being so, we cannot construe the prayer so narrowly and hold that there was no challenge to the selection. In any event, both sides have argued the case fully. The entire record as produced by the Respondents has been examined. The confidential reports of both sides were shown to the counsel. Counsel for the Petitioner had seen the reports relating to the Respondents and counsel for the Respondents were shown the reports of the Petitioner. Thus, there is nothing more, which may require to be gone into by the Tribunal.

64. On behalf of the Respondents, Mr. Rao has faintly suggested that the Commission could have even summoned an officer for cross-examination. In response to this submission, we had clearly offered to the learned Counsel to indicate the officer he wanted to cross-examine. However, the counsel had immediately submitted that it was not necessary. He has not pressed the point. Obviously, the proceedings before the Tribunal, in the circumstances of this case shall not promote any party's interest. Resultantly, even the second question is answered against the Respondents.

65. No other point has been raised.

66. In view of the above, the answer to both the questions is against the Respondents. It is held that the selection of Respondent Nos. 7 and 9 was not fair or legal. Thus, even their appointment is vitiated.

67. Accordingly, the writ petition is allowed. The order passed by the Tribunal on January 7, 2003 a copy of which has been produced as Ext. P-5 and the notification, dated February 5, 2003 a copy of which has been produced as Ext.P-6 with the writ petition are quashed. Resultantly, it is directed that Respondent Nos. 7 and 9 shall cease to function as members of the Indian Administrative Service forthwith. The concerned Respondents are further directed to:

(1) Complete the confidential reports of all the officers in accordance with the instructions issued by the Government. The respective reporting/reviewing/and accepting authorities shall examine the matter in the light of the facts and the instructions issued by the State Government in this behalf from time to time.

(2) Consider the claims of the concerned officers in the light of their record of service and in accordance with the guidelines published on January 24, 2003. In the process, the competent authority shall also keep in view the actual contents and not merely the final assessment as made in the confidential reports.

(3) The committee, as constituted under the Rules, shall meet and conduct the

selection afresh in accordance with the Rules and Regulations. The Government shall also consider the desirability or otherwise, of associating the 11th Respondent with the process of selection in the present case.

The needful shall be done as expeditiously as possible. The parties are left to bear their respective costs.