
(1984) 02 KL CK 0045

In the High Court Of Kerala

Case No : O.P. No's. 3307 and 3580 of 1980

T.S. Radhakrishna Pillai and Others

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 16-02-1984

Acts Referred:

Constitution of India, 1950 — Article 162, 309, 320(3)

Citation : (1984) KLJ 156

Hon'ble Judges : M.P. Menon, J

Bench : Single Bench

Advocate : S. Easwara Iyer, E. Subramoni and K. Narayana Kurup, for the Appellant; T.P. Kelu Nambiar, T.K.M. Unnithan, V.M. Nayanar, V. Gopatakrishna Pillai, A.K. Avirah and P.R. Gopinathan Nair, for the Respondent

Final Decision : Dismissed

Judgement

M.P. Menon, J.—The petitioners were Taluk Supply Officers, They were eligible for being considered for selection to the cadre of District Supply Officers. Selection was to be made by a Departmental Promotion Committee constituted under Rule 28(b) (i) of the Kerala State and Subordinate Services Rules, and in accordance with the procedure prescribed therein. At a meeting of the Committee held on 10-6-84 a "select list" was prepared and forwarded to the Government for approval. The petitioners were included in the said list. But Government declined to approve it and returned it to the D.P.C. on the ground that certain senior officers in the feeder category against whom proceedings for imposition of minor penalties alone were pending, were excluded from the list, contrary to Note (i) to Rule 28 (b)(i)(7). The D.P.C. considered the matter again on 12-9-1980. They found that Government was right. The cases of those senior officers were then considered and a fresh list was drawn up; and in the process, comparatively junior officers like the petitioners lost their selection. The complaint is that the D.P.C. could not have revised the first list in the above fashion, in view of the various sub-clauses of Rule 28(b) (i), and also in view of Rule 29. Sub-clauses

(1) to (6) of Rule 28(b)(i) are not very material, except that they provide for the composition of the D.P.C. the field of choice, the data to be taken into account and other allied matters. Sub-clause (7) provides that the D.P.C. shall prepare a "select list" from among eligible officers on the basis of merit and ability, and that persons included in the list shall be ranked in the order of seniority in the lower category. Note (i) to the sub-clause prescribes a special approach to cases of officers:

(a) who are under suspension;

(b) against whom criminal proceedings are pending in the Sessions Court or higher courts for grave offences;

and (c) against whom departmental proceedings are pending, for imposition of major penalties.

The D.P.C. should consider them also and record findings as to their suitability, but that finding is to be included in a separate sheet of paper attached to the select list. And in that event, the authorities should also be separately advised that those vacancies are to be filled up only on a temporary basis. Note (ii) provides that when the officers included in the "separate sheet" are completely exonerated in the pending proceedings, they could be brought on to the appropriate places in the select list itself and promoted, "revising" the temporary promotions made in the meanwhile. When the exoneration is not complete, the D.P.C. will have to re-examine each on merits. And Note (v) lays down that for the purposes of such re-examination, mere censures and warnings should be ignored. In other words, full exoneration will have the effect of grouping the officers concerned with those regularly included in the select list. Imposition of censure or warning will be equated to full exoneration. And in all other cases, the suitability of each such candidate will have to be individually considered again.

2. Sub-clause (8) (a) of Rule 28(b) (i) provides for publication of the select list after approval by the Government. No reassessment of merit is ordinarily permissible, even under Rule 29, once the list is approved and published. But a superseded officer can make a representation to the D.P.C.; and if the Committee feels that a revision is called for/it can make a recommendation to that effect. If the Government accepts the recommendation, the list can be revised accordingly and published.

3. Sub-clause (8)(b) confers a reserve-power on Government not to accept the advice of the D.P.C. where exceptional circumstances and public interest are involved. Where such circumstances or interest are found to exist, Government can recommend to the D.P.C. to reconsider the matter; and even if the Committee sticks to its original decision, Government can go ahead with its decision. It will then be open to the Public Service Commission to include the matter in its Annual Report.

4. Rule 29 empowers the Government to revise promotions and appointments

made on the basis of the select lists, either suo motu or on receipt of representations from aggrieved members. But this power is subject to the provisions of paragraph (a) of Rule 28(b)(1)(8). That is, such cases will have to be processed on lines similar to those of superseded officers, by placing them again before the D.P.C. and obtaining their recommendations.

5. Now, there is no dispute that during the selection made on 10-6-1980, the D.P.C. had omitted to include in the select list the names of certain senior officers against whom disciplinary proceedings for imposition of minor penalties were pending. This was obviously a procedural irregularity or a mistake, because under Note (i) to sub-clause (7) of Rule 28(b)(i), only officers against whom proceedings for imposition of major penalties were pending, could have been treated in that manner. The question is whether it was open to the Government to ask the D.P.C. to correct its mistake, or whether the D.P.C. had the power to rectify it at the stage.

6. The contention raised on behalf of the petitioners, if I understand it correctly, is that Government is bound to accept and approve whatever list is received from the D.P.C. unless it is a case where it can be remitted for reconsideration under sub-clause (8)(b), because of the existence of exceptional circumstances and public interest. Alternatively, it is contended that mistakes like the one committed in this case could be treated only as instances of supersession under sub-clause (8)(a), to be corrected by the D.P.C. when representations from aggrieved officers are received. A third line of argument is that once a list leaves the hands of the D.P.C. there is no provision in the rules authorising Government to remit it to the Committee either for rectification of honest mistakes or for curing procedural irregularities. In the absence of specific conferment of power in that behalf, there could be no reconsideration of a list by the D.P.C. at the instance of the Government, except under Rule 28(b) (i)(8)(b), or under Rule 29, it is urged.

7. I am unable to accept this contention. Under Article 162 of the Constitution read with Entry 41 in List II of the VIIth Schedule, the State has executive power to make appointments to its public services. The exercise of this power may be regulated by rules made under Article 309 (or under the Public Services Act, 1968); but so long as the rules do not prohibit exercise in a given manner, it will be open for the State to exercise it in that manner. The D.P.C. is only an agency created by the rules to assist the State in making selections. The mere creation of such an agency does not curtail the power of the government to act in its executive capacity in areas not governed by the rules. Regulation 4(cc) of the Kerala P.S.C. (Consultation) Regulations, 1957 shows that where a member of the Public Service Commission is a member of the D.P.C. no separate consultation with the Commission is necessary under Article 320(3), for making appointments to the posts in question. It is well-settled that consultation in this context does not mean absolute compliance with the advice of the Commission. The real question therefore is not whether the rules specifically empower the

government to remit a list to the D.P.C. before approval, but whether the rules prohibit exercise of such a power. The proper approach will be to recognise the existence of such power--a power to direct the correction of an obvious mistake--unless it is specifically denied by the rules. And so far as I could see, the rules do not do so either expressly or by necessary implication. The rules are designed to eliminate arbitrariness and provide for the process of selection to proceed in an orderly manner; they are not designed to perpetuate mistakes and make eligible officers the victims thereof. It is in this background that the rules specifically relied on by the petitioners have to be examined.

8. As already noticed, the provisions of sub-clause (8)(a) of Rule 28(b)(i) indicate that the select list drawn up by the Departmental Promotion Committee is in the nature of an advice, and that it is to be acted upon only after "approval" by the Government. Sub-clause (8)(b) specifically employs the term "advice". Till approval there is no valid list, though I am free to concede that the advice tendered by a high-power committee is entitled to grant weight and cannot be lightly brushed aside by the Government. No doubt, once the list is approved and is allowed to become operative, Government can direct the Committee to reconsider it only under sub-clause (8)(b) of Rule 28(b)(i), or under Rule 29. Till approval is granted, however, no such restrictions statutorily apply. Reconsideration under sub-clause (8)(b) can be directed only on the limited ground of public interest and exceptional circumstances; and the reconsideration under Rule 29 arises at a later stage i.e., after the approved list is acted upon and officers are promoted on its basis. The revision under Rule 29 is a revision of the appointment order, and not of the select list. In other words, these rules are not concerned with a reconsideration of the list by the D.P.C. at the instance of the Government till it is approved, published or acted upon.

9. Cases of honest omission cannot also be equated to the supersession referred to in sub-clause (8)(a) of Rule 28(b)(i). The supersession there is supersession after consideration of an officer's case on the merits. And the reconsideration there is to take place after publication of the select list, when an officer finds that his name is not included in the published list. There could be no reconsideration of a case under the sub-clause except after approval and publication of the select list; the D.P.C. cannot entertain an application for reconsideration before approval and publication. Cases of honest omissions or procedural mistakes detected before approval of the list, are outside the scope of the sub-clause. I would therefore hold that there is nothing in the rules which prevents the Government from remitting a list to the D.P.C. for correction of patent mistakes, before the list is approved. Rule 28(b)(8)(i)(b) is not intended to correct mistakes. The revisional power under Rule 29 also operates in a different area. The D.P.C. acts on data supplied by the Department, and they are not infallible. They committed a mistake on 10-6-1980. The Committee was prepared to correct it when it was pointed out. The petitioners cannot be permitted to make capital out of such a situation and insist on erroneous promotions.

The Original Petitions are accordingly dismissed, but without any order as to costs.