

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

&

THE HONOURABLE MRS. JUSTICE SOPHY THOMAS

FRIDAY, THE 25TH DAY OF AUGUST 2023 / 3RD BHADRA, 1945

OP (CAT) NO. 21 OF 2023

AGAINST THE ORDER OA 199/2021 OF CENTRAL ADMINISTRATIVE
TRIBUNAL, ERNAKULAM BENCH DATED 5/12/2022

PETITIONER/S:

DR.RAJU NARAYANA SWAMY IAS.,AGED 54 YEAR
SS/O.K.S.VENKITACHALAM IYER, PRESENTLY WORKING AS
PRINCIPAL SECRETARY, PARLIAMENTARY AFFAIRS
DEPARTMENT, GOVERNMENT OF KERALA, SECRETARIAT,
THIRUVANANTHAPURAM-695 001, RESIDING AT R.G.324
ULLOOR GRAMAM, MEDICAL COLLEGE P.O.,
THIRUVANANTHAPURAM, PIN - 695011
BY ADVS.
LAKSHMI RAMADAS
P.RAVINDRAN (SR.) (R-341)
M.R.SABU(000K/521/1989)
APARNA RAJAN(K/851/2009)
SREEDHAR RAVINDRAN(K/559/2012)

RESPONDENT/S:

- 1 STATE OF KERALA, REPRESENTED BY ITS CHIEF SECRETARY,
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM, PIN -
695001
- 2 UNION OF INDIA, REPRESENTED BY ITS SECRETARY,
DEPARTMENT OF PERSONNEL AND TRAINING, NEW DELHI, PIN
- 110001

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- 3 DR. A. JAYATHILAK IAS, ADDITIONAL CHIEF SECRETARY,
REVENUE DEPARTMENT , SECRETARIAT, THIRUVANTHAPURAM,
PIN - 695001
- 4 ISHITA ROY IAS PRINCIPAL SECRETARY, AGRICULTURE,
SECRETARIAT, THIRUVANANTHAPURAM, PIN - 695001
BY ADVS.
PUBLIC PROSECUTOR/GOVERNMENT PLEADER SHRI ANTONY
MUKKATH
RAHUL KANDAMPULLY
AJIT JOY
RAAGA R.RAMALAKSHMI (K/628/2012)
P.K.SURESH KUMAR (SR.) (S-793)
ANEESH JAMES (K/214-D/2008)
SAYUJYA (K/687-E/2014)

THIS OP (CAT) HAVING BEEN FINALLY HEARD ON 23.08.2023,
THE COURT ON 25/8/2023 DELIVERED THE FOLLOWING:

J U D G M E N T

A.Muhammed Mustaque, J.

This original petition was filed challenging the order of the Central Administrative Tribunal (CAT), Ernakulam Bench. The petitioner is the Seniormost IAS Officer and is currently the Principal Secretary to Government. He approached the CAT as he was not considered for apex scale promotion as the Chief Secretary. The Central Administrative Tribunal, noting the procedure for the appointment of the Chief Secretary, negated the challenge. This is how the petitioner approached this Court challenging the said order under Article 227 of the Constitution.

2. The learned Senior Counsel, referring to Annexure A8 relating to the promotion of members of the Indian Administrative Service, argued that the petitioner is not claiming an appointment as the Chief Secretary but only claiming a promotion to grade him as the Chief Secretary. It is submitted that in the absence of any adverse remarks in the ACR, he is entitled to be graded as the Chief Secretary

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on completion of 30 years of service as a member of the Indian Administrative Service.

3. It is appropriate to refer to the principles relating to promotion in the grade of Chief Secretary as referred in Annexure A8 office memorandum issued by the Government of India, Ministry of Personnel P.G & Pensions, Department of Personnel & Training:

The zone of consideration for promotion in this grade would consist of all the members of the Service who have completed 30 years of service. Appointment in this grade would be made from amongst the officers thus cleared, at any time during the relevant year and subject to the provisions of rule 9(7) of the I.A.S. (Pay) Rules, 1954. The Screening Committee for this purpose shall consist of the Chief Secretary concerned, one officer working in this grade in the cadre and another officer of the cadre serving in Government of India in the same grade.

4. Promotion to the cadre of Chief Secretary will have to be considered by a Screening Committee. It is further mentioned in Annexure II of Annexure A8 office memorandum that all papers are to be put up with the Screening Committee. It is specifically mentioned in para.4(1) that 90% of the updated and completed ACR should be made available with the committee. It seems that 90% of ACR related to the petitioner was not unavailable. However, the Screening Committee considered the petitioner with available records and rejected his request for consideration to the grade of Chief Secretary. The Cabinet

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of the State Government approved the recommendations of the Screening Committee. Upon approval by the cabinet, the petitioner made a representation before the Government to include him for promotion. Thereafter, he moved the CAT seeking consideration of the representation. The Government considered the representation based on the direction of the Tribunal and rejected the representation. The petitioner challenging the rejection of the representation approached the Tribunal. The Tribunal noting that 90% of ACR of the petitioner was unavailable and considering that the petitioner had not challenged the decision of the Screening Committee, dismissed the petition filed by the petitioner.

5. The petitioner is a senior civil servant. He would have been aware that 90% of his ACR was not available. The screening committee was handicapped in considering his request for want of ACR. The petitioner has a case that he had submitted a self-appraisal form but nothing is available on record to show that he had submitted the self-appraisal form. The Screening Committee considered the case of the petitioner with the available records and found that performance was not satisfactory. As seen from various ACRs produced before this Court, and Annexure A8, the ACR has to be self generated and to be reported before the Reporting Officer. Nothing prevents the

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petitioner from generating a self-appraisal form and making the complete ACR available before the Screening Committee. The Committee will have to meet at regular intervals to fill up various vacancies during the course of year as seen from para.8 of Annexure A8. The present exercise cannot be interfered with as the non-inclusion of the petitioner was for want of ACR. Therefore, nothing prevents the petitioner from moving the authorities for the preparation of his ACR and making a request for considering him for the promotion in the grade of Chief Secretary. As seen from Annexure A8, all members who had completed 30 years of service are eligible for consideration for promotion to the Grade of Chief Secretary. Thus, notwithstanding the prayers in the petition, the petitioner is given liberty to move the authorities for consideration to the post of Chief Secretary after ensuring availability of 90% of his ACR. The original petition is dismissed with the observations as above.

Sd/-

A.MUHAMED MUSTAQUE, JUDGE

Sd/-

SOPHY THOMAS, JUDGE

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APPENDIX OF OP (CAT) 21/2023

PETITIONER ANNEXURES

AnnexureA1	THE TRUE COPY OF THE DECISION OF COUNCIL OF MINISTERS DATED 24-12-2020
AnnexureA2	THE TRUE COPY OF THE REPRESENTATION DATED 10-02-2021 MADE BY THE APPLICANT TO THE 1ST RESPONDENT
AnnexureA3	THE TRUE COPY OF THE ORDER OF HON: C.A.T DATED 26-02-2021 IN O.A NO. 110 OF 2021
AnnexureA4	THE TRUE COPY OF A LETTER ISSUED BY THE 1ST RESPONDENT DATED 22-03-2021
AnnexureA5	THE TRUE COPY OF THE REPLY DATED 22-03-2021 SENT BY THE APPLICANT TO THE 1ST RESPONDENT
AnnexureA6	THE TRUE COPY OF THE LETTER DATED 12-04-2021 SENT BY THE APPLICANT TO THE 1ST RESPONDENT
AnnexureA7	THE TRUE COPY OF THE G.O(RT) NO.1693/2021/GAD DATED 27-04-2021ISSUED BY THE 1ST RESPONDENT
AnnexureA8	THE TRUE COPY OF THE O.M NO.20011/4/92-AIS-II DATED 28-03-2000
AnnexureA9	THE TRUE COPY OF THE APPLICANT'S ANNUAL CONFIDENTIAL REPORT FOR THE PERIOD BETWEEN 1-4-1992 TO 24-8-1993
AnnexureA10	THE TRUE COPY OF THE APPLICANT'S ANNUAL CONFIDENTIAL REPORT FOR THE PERIOD OF 1991-1992 AND 1993
AnnexureA11	HE TRUE COPY OF THE APPLICANT'S ANNUAL CONFIDENTIAL REPORT FOR THE PERIOD BETWEEN 9-6-1999 AND 27-11-1999
AnnexureA12	THE TRUE COPY OF THE LETTER ISSUED BY THE REVIEWING AUTHORITY DATED 7-5-2015
AnnexureA13	THE TRUE COPY OF THE ORDER OF THE HON'BLE CHIEF MINISTER OF KERALA DATED 21-10-2013
AnnexureA14	THE TRUE COPY OF THE REPRESENTATION DATED 16-06-2014 MADE BY THE APPLICANT THROUGH EMAIL TO THE PRESIDENT , KERALA IAS OFFICERS ASSOCIATION

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AnnexureA15	THE TRUE COPY OF THE LETTER DATED 19-12-2016 SENT BY THE THEN CHIEF SECRETARY, OF KERALA STATE TO SECRETARY DEPARTMENT OF PERSONNEL AND TRAINING
AnnexureA16	THE TRUE COPY OF THE APPLICANT'S ANNUAL CONFIDENTIAL REPORT FOR 2005-2006 PERIOD OF THE APPLICANT
AnnexureA17	THE TRUE COPY OF THE PERFORMANCE APPRAISAL REPORT OF THE APPLICANT FOR THE PERIOD BETWEEN 16-04-2012 AND 28-01-2013
AnnexureA18	THE TRUE COPY OF ALETTER DATED 12-08-2016 ISSUED BY THE 2ND RESPONDENT TO THE SENIOR CENTRAL GOVT. STANDING COUNSEL
AnnexureA19	THE TRUE COPY OF THE G.O(RT) NO.1694/2021/GAD DATED 27-04-2021
AnnexureA20	THE TRUE COPY OF THE COMPLAINT DATED 9-3-2021 MADE BY ONE KADAKKAVOOR VIKRAMAN ADDRESSED TO THE CHIEF SECRETARY, GOVT. OF KERALA
AnnexureA21	THE TRUE COPY OF THE PERFORMANCE APPRAISAL REPORT OF THE APPLICANT FOR THE PERIOD BETWEEN 01-06-2016 AND 31-03-2017
AnnexureA22	THE TRUE COPY OF THE PERFORMANCE APPRAISAL REPORT OF THE APPLICANT FOR THE PERIOD BETWEEN 08-08-2018 TO 07-03-2019
AnnexureA23	THE TRUE COPY OF THE MINUTES OF THE SELECTION COMMITTEE HELD ON 16-11-2021
AnnexureA24	THE TRUE COPY OF THE REPLY NO.40/22/EKM DATED 15-01-2022 GIVEN BY THE DEPUTY SUPT. OF POLICE VIGILANCE & ANTI-CORRUPTION BUREAU, ERNAKULAM UNIT
AnnexureA25	THE TRUE COPY OF THE GOVT. ORDER GO(RT) NO.98/2022/GAD DATED 10-01-2022 ISSUED BY THE GOVT
AnnexureA26	THE TRUE COPY OF THE O.M.NO. 36/01 /2022-EO(SM-) DATED 15-09-2022 ISSUED BY THE DEPARTMENT OF PERSONNEL AND TRAINING, UNION OF INDIA (NOT MARKED BY CAT)
AnnexureA27	THE TRUE COPY OF THE LETTER NO. 454/SC2/2022GA(SC) DATED 13-09-2022

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AnnexureR1 (A)	TRUE COPY OF THE G.O (RT) NO.2316/2014/GAD DATED 19-03-2014
AnnexureR1 (B)	THE TRUE COPY OF DOPT LETTER DATED 20-05- 2019
AnnexureR1 (C)	THE TRUE COPY OF DOPT LETTER DATED 09-06- 2017
AnnexureR1 (D)	THE TRUE COPY OF THE ENQUIRY REPORT DATED 15-05-2019
Annexure R1 (E)	THE TRUE COPY OF THE FINAL ORDER PASSED BY THE CENTRAL ADMINISTARTIVE TRIBUNAL , MADRAS BENCH IN O.A NO. 1011/2019
Annexure R1 (F)	THE TRUE COPY OF G.O.(P) NO.250/1988/GAD DATED 26-07-1998
Annexure R1 (G)	THE TRUE COPY OF THE DOPT LETTER NO.10/16/2011-EO (PR) DATED 05-04-2016
Annexure R1 (I)	TRUE COPY OF G.O (RT) NO. 1065/2022/GAD DATED 11-03-2022 ISSUED BY THE CHIEF SECRETARY
Annexure R1 (H)	THE TRUE COPY OF THE G.O (RT) NO. 856/2022/GAD DATED 26-02-2022
ExhibitP1	THE TRUE COPY OF THE ORDER PASSED BY THE HON: CENTRAL ADMINISTRATIVE TRIBUNAL DATED 05-12-2022 IN O.A NO. 180/199/2021
ExhibitP2	THE TRUE COPY OF THE ORIGINAL APPLICATION ALONG WITH ANNEXURES FILED BY THE PETITIONER BEFORE THE HON: CAT, ERNAKULAM BENCH IN O.A NO. 180/199/2021
ExhibitP2 (a)	THE TRUE COPY OF THE MISC. APPLICATION FILED BY THE PETITIONER /APPLICANT AS M.A NO. 814 / 2021
ExhibitP2 (b)	THE TRUE COPY OF THE MISC. APPLICATION FILED BY THE PETITIONER /APPLICANT AS M.A NO. 75 / 2022
ExhibitP2 (c)	THE TRUE COPY OF THE MISC. APPLICATION FILED BY THE PETITIONER /APPLICANT AS M.A NO. 754 / 2022
Exhibit P2 (d)	THE TRUE COPY OF THE MISC. APPLICATION FILED BY THE PETITIONER /APPLICANT AS M.A NO. 812 / 20222

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ExhibitP3	THE TRUE COPY OF THE REPLY STATEMENT FILED BY THE 1ST RESPONDENT
Exhibit P3(a)	THE TRUE COPY OF THE REPLY STATEMENT FILED BY THE 1ST RESPONDENT IN M.A NO. 75 / 2022
Exhibit P3(b)	THE TRUE COPY OF THE MISC APPLICATION FILED BY THE PETITIONER IN M.A NO. 335 / 2022
ExhibitP3(c)	THE TRUE COPY OF THE REPLY STATEMENT FILED BY THE 1ST RESPONDENT IN M.A NO. 335 / 2022
ExhibitP3(d)	THE TRUE COPY OF THE ADDITIONAL REPLY STATEMENT FILED BY THE 1ST RESPONDENT IN THE O.A
Exhibit P3(e)	THE TRUE COPY OF THE ADDITIONAL REPLY STATEMENT FILED BY THE 1ST RESPONDENT IN M.A NO. 75 / 2022
Exhibit P4	A TRUE COPY OF G.O (RT) NO. 1065/2022/GAD DATED 11-03-2022 ISSUED BY THE CHIEF SECRETARY, SRI. V.P.JOY
Exhibit P5	TRUE COPY OF THE REPLY STATEMENT FILED BY THE 3RD RESPONDENT
ExhibitP6	THE TRUE COPY OF THE REJOINDER FILED BY THE PETITIONER/APPLICANT
Exhibit P6(a)	THE TRUE COPY OF THE MISC. APPLICATION FILED BY THE PETITIONER /APPLICANT AS M.A NO. 164 / 2022
Exhibit P7	THE TRUE COPY OF THE PROCEEDINGS OF THE CAT, ERNAKULAM BENCH IN O.A NO. 199/2021
ExhibitP8	TRUE COPY OF OM NO.21011/1/2010-ESTT A DATED 13.04.2010 ISSUED BY THE 2ND RESPONDENT
ExhibitP9	THE TRUE COPY OF THE ER SHEET OF DR.ASHA THOMAS, WHO WAS A MEMBER OF THE SCREENING COMMITTEE ON 16-11-2021
ExhibitP10	THE TRUE COPY OF THE ER SHEET OF SRI. KAMALA VARDHANA RAO
Exhibit P11	TRUE COPY OF THE MINUTES OF THE SCREENING COMMITTEE DATED 02-11-2022

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Exhibit P12	A TRUE COPY OF G.O (RT) NO. 2836/2017/GAD DATED 06/05/2017
Exhibit P12 (a)	THE TRUE COPY OF THE CABINET DECISION DATED 25-08-2016
Exhibit P13	THE TRUE COPY OF THE DOP&T NOTIFICATION NO.11059/5/91-AIS III DATED 05.03.1992.
Exhibit P14	A TRUE COPY OF THE REPLY RECEIVED BY THE PETITIONER IN RESPONSE TO AN RTI APPLICATION IN THIS REGARD DATED 24-12- 2022
Exhibit P15	A TRUE COPY OF G.O(MS) NO. 159/2018/GAD DATED 23-07-2018
Exhibit P16	THE TRUE COPY OF THE THE JUDGMENT OF THIS HON'BLE COURT DATED 04/08/2021 IN OP(CRL) NO. 165 OF 2021
Exhibit P17	TRUE COPY OF THE COMPLAINT GIVEN BY KUMMANM RAJASEKHARAN DATED 31-8-2021
Exhibit P18	THE TRUE COPY OF THE ORDER DATED 25/09/2021 OF THE ENQUIRY COMMISSIONER AND SPECIAL JUDGE, KOZHIKODE IN CMP 512/2019 WHEREIN SRI. K.JAYAKUMAR IS THE FIRST ACCUSED
Exhibit P19	A TRUE COPY OF THE COMMON JUDGMENT DATED 08/12/2022 IN WP(C)NO. 38265/ 2022 ,38375/ 2022 AND 38389 OF 2022
Exhibit P20	A SUMMARY OF THE THREE SCREENING COMMITTEE PROCEEDINGS
Exhibit P21	TRUE COPY OF THE PAR OF THE APPLICANT FOR THE PERIOD FROM 01/04/2021 TO 31/03/2022