

JJI THOMSON
Chief Secretary
Government of Kerala

No. 23979/AR-12(2)/2014/P&ARD

Dated 6th February 2015

To

The Secretary to Government of India
Department of Personnel and Training
Govt of India

Attn: Sri A. Asholi Chalai
Director, DoP & T
Room No.280 A,
North Block,
New Delhi - 110001

Sir,

Sub: Appointment of Members to Kerala Administrative
Tribunal - reg.

Ref: DoP&T Letter No.A-11014/14/2014-AT
dated 2 Feb 2015.

Kindly refer to the above letter calling for a report from the Government of Kerala on the representation dated 12.10.2014 from Shri N. Krishna Prasad Advocate against the appointment of Shri Jose Cyriac as Administrative Member of Kerala Administrative Tribunal (KAT).

The matter has been examined. Point wise comments on the Memorandum (which had already been submitted by the petitioner to Shri Justice (Retd) P. Sathasivam, Hon'ble Governor of Kerala) are attached as **Appendix 1**. The objections are totally baseless.

His Excellency the Governor of Kerala (whose concurrence for the appointment had been taken) had seen the Memorandum and decided not to pursue the matter. A simple reading of the Memorandum will itself reveal that none of the arguments advanced by the Petitioner can be held, even prima-facie, against the appointment of Shri K Jose Cyriac as Member KAT. It may be mentioned that the selection process was done in strict conformity with the terms and provisions enshrined in the



Act and Rules. The proposal for appointment of Sri. Jose Cyriac as Member in Kerala Administrative Tribunal was forwarded to the Central Government after obtaining clearnace on vigilance angle. It may also be mentioned that Shri K Jose Cyriac more than satisfies the eligibility conditions prescribed for an Administrative Member of the State Administrative Tribunal and that the selection has been made unanimously from amongst a list of 3 eligible applicants by the statutorily mandated Selection Committee under the Chairmanship of the Chief Justice of Kerala. The justification for the selection has also been clearly brought out by the Selection Committee in their minutes, which is available in the Government of India file.

It may also be pointed out that Shri N Krishna Prasad was an officer of the Finance Department of Kerala working under Shri K Jose Cyriac, who was posted as Principal Secretary/Addl Chief Secretary Finance during the period 2004 to 2008. Shri K Jose Cyriac had initiated disciplinary action against the officer for a case of insubordination against his then Secretary, one Shri Sanal Kumar IAS. Shri Krishna Prasad, then an Under Secretary level officer, wrote in an official file... "as our Secretary is very poor in English language, section may please translate the above paras to Malayalam language so as to enable him to comprehend the matter". A copy of the order issued by Shri K Jose Cyriac imposing a minor penalty on Shri N Krishna Prasad is attached as **Appendix 2**.

It is lucidly revealed that the allegations and apprehensions in the petition are quite trivial and the tone and tenor of presentation reveal the petitioner's personal animosity towards Shri K Jose Cyriac; that certainly, this is not a "Public interest" memorandum.

Hence, all the contentions in the memorandum may be rejected outright. The appointment of Shri K Jose Cyriac as Member KAT may be pursued and orders issued early.

Encl: a/a

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JOHNY. K
 Under Secretary
 P & AR Department
 Government Secretariat
 Thiruvananthapuram

Yours faithfully,

(UJI THOMSON)

05 Feb 2015

Comments on the representation of Adv.N. Krishna Prasad, Trivandrum against the appointment of Shri K. Jose Cyriac, former Chief Secretary Kerala as Administrative Member in Kerala Administrative Tribunal.

Complaint

A: Hon'ble Supreme Court, in a case, has held that when the existing jurisdiction of a court is transferred to a Tribunal, its members should be persons of a similar rank, capacity and status. Since the jurisdiction of the High Court has been transferred to the State Administrative Tribunal, its members should be persons of a rank, capacity and status equal to that of a High Court Judge. Shri K Jose Cyriac lacks sufficient judicial wisdom and capacity to hold the office of Member, Kerala Administrative Tribunal. The appointment will also violate the basic principle of natural justice that no one shall be a judge of his own cause, because the orders issued by this former Chief Secretary to Kerala, is the root cause of a good number cases in Kerala Administrative Tribunal (KAT). "This appointment will be like entrusting Mr. Goase to preside the trial of Gandhi- murder case". The appointment of Shri K Jose Cyriac "will be terribly absurd like appointing a cow slaughterer to the post of a Paediatric surgeon on the ground that both of the jobs are related to animal flesh".

Response: The proposed appointment of Shri K Jose Cyriac is in accordance with the provisions of the Administrative Tribunals' Act 1985 and the various rules made thereunder. The Act and the Rules prescribe a minimum qualification for an Administrative Member viz. he should have held the post of Secretary to Government of India (GoI) or equivalent for at least 2 years or Additional Secretary to GoI or equivalent for at least 5 years. Shri K Jose Cyriac more than satisfies this criteria. His service in the grade of Secretary to GoI or equivalent is 5 years 7 months. His service in the grade of Additional Secretary GoI or equivalent is 9 years and 10 months.

In accordance with the provisions of the Act and the Rules, the selection (for the post of Administrative Member as well as Judicial Member of KAT) was done by a Committee chaired by the Chief Justice of the Kerala High Court(CJK). It is this committee which has recommended the name of Shri K Jose Cyriac for appointment of Administrative Member of KAT. In fact, there were only 3 eligible applicants for the advertised post. The Selection Committee in their minutes (available in the Government file) has fully justified the selection of Shri K Jose Cyriac over the other applicants.

Almost all Administrative Members of the State Administrative Tribunals have worked in the State concerned. Similar is the case even in

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the Central Administrative Tribunals. In fact, there is no legal objection even to the elevation to the High Court of lawyers who have appeared before the same Court. Hence, the application of Shri K Jose Cyriac cannot be rejected on the ground that he has worked in the same State Government.

Since Shri K Jose Cyriac more than satisfies the statutory conditions of eligibility for appointment and since the prescribed procedure has been followed in the selection process, this argument of the petitioner does not stand and may be rejected.

The language used is clearly indicative of the Petitioner's personal animosity towards Shri K Jose Cyriac.

Complaint

B: *This Officer's conduct in All India Service was characterised by arbitrariness and aversion to the compliance of rules and procedures of governance. Like the maxim 'dog's tail cannot be straightened', this Officer cannot act with impartiality, independence, fairness and reasonableness. The exercise of straightening the tail of a dog is also a cruelty to this animal.*

Response: These are general statements unsubstantiated by facts. In fact, the records show that this Officer has been graded Outstanding throughout. He would not have risen to the post of Secretary to Gov and Chief Secretary Kerala if he did not have such high qualities. The wordings used by the petitioner also clearly reveal personal animosity towards Shri K Jose Cyriac. This objection is also to be rejected.

Complaint

C: *This IAS Officer committed misappropriation of an amount of Rs.427 crore, "honestly earmarked" by the former Chief Minister of Kerala Shri A K Antony for the purpose of payment of salary to State Government employees for the 32 days' strike period in 2002.*

Response: This as an outrageous allegation and is to be rejected summarily. A section of the State Government employees were on strike in 2002 and accordingly 'dies non' (no work no pay) was imposed. The argument of the Petitioner is that in 2005/2006, Shri A K Antony Chief Minister had himself desired to reverse his earlier decision to impose 'dies non' during the period of strike and had provided an additional budget provision of Rs.427 crore for this purpose. Such an order was eventually not issued by the Kerala Government allegedly because of the objection of the Finance Department, then headed by Shri K Jose Cyriac. The amount was therefore not spent. This is what is being referred to as "misappropriation".

Geetha

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It is true that 'dies non' had been imposed on the striking employees in 2002. However, there was never any separate additional budget provision for paying the entire withheld salary of 2002. There was therefore no "misappropriation" as alleged. Hence, the allegation is baseless and needs to be rejected.

Complaint

D: In a case that came up before KAT on the same issue of non payment of salary to the striking employees in 2002, the C&AG of India was a respondent. A forged counter affidavit was filed in 2013 by an officer of the Finance Department "impersonating as an authorised agent of the Comptroller & Auditor General of India". This was done on the direction of Shri K Jose Cyriac. This "mega fraud" was ignored by the Chairman Kerala Administrative Tribunal, who just directed the respondent "to cure this defect". Emboldened by this, the officer of Finance Department went on to file an application, marking/forging the signature of the successor Chief Secretary.

Response: This also is an outrageous suggestion without any basis. Since maintenance of the State accounts is a function still handled by the Accountant General Kerala, in almost all cases relating to the State accounts, the Accountant General requests the Finance Department to defend the case on their behalf. It is this fact which has been twisted by the Petitioner. There is absolutely no basis for the allegation that the Finance Department official "impersonated" and that too on the direction of Shri K Jose Cyriac. In fact, on his appointment as Addl Secretary Revenue in Gol, Shri K Jose Cyriac ceased to be Finance Secretary in February 2008. He returned to Kerala in October 2012 only, as Chief Secretary and retired in April 2013. No such direction as alleged has been given by Shri K Jose Cyriac to any official of Finance Department. Similarly, the insinuation of forgery of the signature of the successor Chief Secretary by the officer of Finance Department is incorrect. All that the officer of the Finance Department did was to affix his own genuine signature over the designation "4th Respondent" because he was filing the petition on behalf of 4th Respondent, the Chief Secretary Kerala. The Petitioner argues that the Chief Secretary, being the 4th Respondent, should have affixed his own signature and that an officer of the Finance Department affixing his signature as 4th Respondent amounts to forgery. This is a ridiculous allegation. It is relevant to mention that the Petitioner himself has admitted in one of the Annexures to the petition that the Kerala Administrative Tribunal in October 2013, has dismissed the petition.

Complaint

E: The State Government has inflicted insults and indignities on the present Chairman of KAT (himself a retired Judge of the Kerala High Court) by not providing enough funds for the functioning of the Tribunal. It is due to the "pragmatic vision" of the present Chairman of KAT that in the selection,

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he proposed/seconded Shri K Jose Cyriac who was Principal Secretary Finance in Government Kerala, even though at the cost of justice and fairplay.

Response: There is nothing on record to show that there was any kind of pressure on or extraneous consideration by the Selection Committee chaired by the Chief Justice of Kerala. Hence, this wild allegation may be rejected.

Complaint

F: To ensure independence of the Administrative Tribunals the expenditure on the same may be **charged** to the Consolidated Fund of the State, as in the case of the High Courts. At present, this is a **voted** expenditure.

Response: This is only a suggestion which would require an amendment to the Administrative Tribunals' Act and perhaps even the Constitution of India. This cannot, in any way, affect the issue of appointments already underway in various Administrative Tribunals.

Complaint

G: There are many audit paras relating to the period in which Shri K Jose Cyriac worked as Secretary, Animal Husbandry, Tourism, Finance and Chief Secretary. He is also trying to cover up very serious irregularities while he headed the Tourism Department in which he was personally involved.

Response: The Petitioner has not mentioned any specific audit para. There may have been audit paras relating to the period when Shri K Jose Cyriac worked as Secretary etc., but none of these have any direct reference to Shri K Jose Cyriac. There are also no observations of any kind that will affect in any manner the appointment of Shri K Jose Cyriac as Member KAT. This objection may also therefore be rejected.

Complaint

H: There is a case pending in court to recover a huge amount unlawfully drawn by this unscrupulous Ex IAS Officer from the State exchequer. If this is adjudicated against him, it will impact the honour of the Tribunal.

Response: The Petitioner has not given specifics of any case. To the best of our knowledge there are no such cases pending in any Court. Objection is vague and unsubstantiated and may be rejected.

G. J. S.

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