

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

**Original Applications No. 180/00213/2020 &
No. 180/00215/2020**

Thursday, this the 9th day of July, 2020

CORAM:

**Hon'ble Mr. P.Madhavan, Judicial Member
Hon'ble Mr.K.V.Eapen, Administrative Member**

OA No.213/2020:

1. A.R.Prem Kumar, aged 57 years,
S/o. Appukkuttan,
Retired Deputy Commissioner of Police,
Cochin City (Retired on 30.06.2018)
Residing at 73/503 A, Thundiparambil House,
Karshaka Road, Pachalam, Vaduthala
Cochin 23
Mob:9446474450
2. D.Mohanan, aged 57 years,
S/o Damodaran
Retired SB CID(Intelligence),
Thiruvananthapuram (Retired on 31.05.2018)
Residing at Aswathy, Chunakkara,
South Charumode,
Mavelikkara, Alappuzha-690 505.
Ph:9446421055

Applicants

(Advocate : Mr. M.P.Ashok Kumar)

Versus

1. Union of India represented by it's Secretary,
Ministry of Home Affairs, North Block,
New Delhi-110 001.

2. State of Kerala
 Represented by its Chief Secretary,
 Government Secretariat, Thiruvananthapuram-695 001.
3. The Selection Committee
 For selection and appointment of Indian Police Service
 Constituted under Regulation 3 of the
 IPS (Appointment by promotion), Regulations, 1955,
 Represented by its Chairman,
 Union Public Service Commission,
 Shajahan Road, New Delhi-110 069.
4. The Director General of Police,
 (State Police Chief)
 Police Headquarters,
 Thiruvananthapuram-695 010. Respondents

(Advocate : Mr.T.C.Krishna Sr.PCGC for R1; Mr.Thomas Mathew Nellimootttil for R3 and Mr.M.Rajeev (GP) for R 2&4).

OA No.215/2020:

1. N.Vijayakumar, Aged 58,
 S/o Narayanan
 Superintendent of Police (Non-IPS) (Retired on 30.7.2018)
 TC4/12870, Govindam,Kawdiar, Thiruvananthapuram-3
2. Johnson Joseph M, aged 58,
 S/o Joseph, Superintendent of Police (Non-IPS)
 (Retired on 31.5.2018)
 Mattathil House, Chowoor P.O,
 Narimattam, Kottayam. Applicants

(Advocate :Mr. P.V.Mohanam)

Versus

1. Union of India represented by its Secretary,
 Ministry of Home Affairs, North Block,
 New Delhi- 110 001.

2. State of Kerala represented by its Chief Secretary,
Government Secretariat, Thiruvananthapuram – 695 001.
3. The Selection Committee
For Selection and appointment of Indian Police Service
Constituted under Regulation 3 of the IPS
(Appointment by Promotion) Regulations, 1955,
represented by its Chairman,
Union Public Service Commission ,
Shajahan Road, New Delhi – 110 069.
4. The Director General of Police,
(State Police Chief), Police Head Quarters,
Thiruvananthapuram – 695 001.

(Advocate : Mr.Thomas Mathew Nellimoottil for R1 & 3; Mr.M.Rajeev, (GP) for R2 & 4).

These two OAs having been heard together on 1st July, 2020, the Tribunal delivered the following common order on 09.07.2020:

ORDER

P.Madhavan, Judicial Member

These OAs are filed by State Police Officers who seek promotion to the Indian Police Service as per IPS (Appointment by Promotion) Regulations, 1955 and IPS (Recruitment) Rules, 1954. According to the applicants, they have become eligible for consideration for promotion to the cadre of IPS and the 2nd respondent is not taking initiative to conduct the Selection Committee Meeting. According to them, this is affecting their prospects for promotion. Applicants in these OAs are already retired from the State Service owing to the difference in retirement age and they have become eligible for consideration for recruitment for the year 2017 and 2018 respectively. According to the applicants, the delay in finalizing the Select List is violative of their fundamental right and it is against Articles 14 & 16 of the

Constitution. So they seek appropriate direction to see that the selection process is undertaken at the earliest. The 2nd respondent had already forwarded the list of 2017 and not forwarded the list for selection for the promotion quota for the year 2018 so far. The applicants are apprehending that the respondents may appoint non-cadre officers to the post and may delay the process of selection and they seek a stay of any attempt to appoint non-cadre officers to the vacant posts.

2. The applicants in OA No.213/2020 seek the following reliefs:

“(i). Direct the 2nd respondent to forward the proposal for selection and appointment of the Applicants to the IPS (Kerala) cadre on promotion quota for the year 2018, to the Selection Committee constituted under Regulation 3 of the Regulation 1955.

(ii) Direct the 1st respondent or any other authority not to fill up the cadre post in IPS (Kerala) Cadre on promotion quota determined for the year 2018 by provisionally promoting/adjusting/inducting/fortuitously officers in the State Police Service without undergoing selection process as envisaged under Indian Police Service (Appointment by promotion) Regulations, 1955.

(iii) To call for the records leading to the decision explained in Annexure A9 press statement and set aside the same”.

3. The applicants in OA No.215/2020 seek the following reliefs:

“(i) To direct the Selection Committee to convene the Selection Committee Meeting and to consider the names of the applicants in the field of choice for selection and appointment against 7(seven) vacancies determined for selection and appointment for the year 2017 and 11 vacancies determined for selection and appointment for the year 2018 and to select and appoint the applicants to Indian Police Service (Kerala) Cadre on promotion quota with all consequential benefits;

(ii) To direct the State Government to forward the proposal with name and service details of the applicants to the Selection Committee constituted under Regulation 3 of Regulations, 1966 for consideration of selection and appointment to IPS (Kerala) cadre on promotion quota for the year 2018;

(iii) *To direct respondents to take emergent steps to convene Selection Committee for selection and appointment to IPS (Kerala) cadre on promotion quota for the year 2018;*

(iv) *To direct the first respondent not to fill up the cadre post in Indian Police Service (Kerala) Cadre on promotion quota determined for the year 2017, 2018 and 2019 by promoting/adjusting/inducting/fortuitously officers in State Police Service without undergoing selection process as envisaged under Indian Police Service (Appointment by promotion) Regulations, 1955;*

(v) *To call for the records leading to the decision explained in Annexure A8 Press Statement and set aside the same.*

4. Notices were issued to respondents 1 to 3. The 2nd respondent – State of Kerala – filed a reply statement, holding that the 2nd respondent has scrutinized the proposal submitted by the State Police Chief through the Home Department for the selection of officers for the year 2017 in detail and they have already submitted the proposal to the UPSC vide letter dated 4.1.2020. It is for the UPSC to convene the Selection Committee Meeting. The 2nd respondent had already forwarded the necessary documents through e-mail as per letter dated 4.1.2020 (Annexure R2a). Subsequently they had also submitted ACRs of the officers through Single Window System of the Commission on 20.1.2020, in full compliance with the orders of this Tribunal in OA No.789/2019. Objections raised by the Commission were also rectified and the files were re-submitted on 27.2.2020. The State Government had already answered all the queries of the UPSC. According to respondent No.2, the delay occurred in this case is due to the lock down imposed by the Government on account of Covid 19 pandemic.

5. The State Government had already proposed to the Commission to examine the

viability of conducting the Selection Committee Meeting through video conference. The said letter was produced and marked as Annexure R2(c). The Commission had sought for soft copies of the ACRs of the officers included in the field of choice. But this could not be processed because the State Government had submitted the original ACRs to the Commission through the Office of the Resident Commissioner, Kerala House, New Delhi.

6. As regards the vacancies for the year 2018, the vacancies are 11 in number. Preparation of proposals for the selection and promotion to the IPS from the State Police Service is an elaborate exercise involving different wings of the State Government like the Police Department, Home Department and General Administration Department. According to them, about 33 officers had to be selected for the same and this requires scrutiny of voluminous documents such as ACRs etc. According to respondent No.2, direction had been given to the Home Department to furnish detailed proposals for the year 2018 for scrutiny and their onward submission to UPSC. Respondent No.2 had also denied allegation that they are going to fill up vacancies by adhoc appointment. The State Government is empowered under Rule 9 of the IPS (Cadre) Rules, 1954 to appoint non-IPS officers for a period of three months with the concurrence of Ministry of Home Affairs.

7. R3 UPSC was represented by Mr.Thomas Mathew Nellimoottil, Sr.PCGC, who submitted that the exercise involves scrutiny of voluminous records and it may not be feasible for them to convene the Selection Committee Meeting in present situation. However, the counsel appearing for the applicants contends that in view of the Covid

19 pandemic, all the Courts are functioning through video conference and even the Government Ministries are adopting video conference as a method for meeting together during this period. The State Government is also prepared to provide copies of ACRs etc through Resident Commissioner, Kerala if the same is provided to them for taking copies. So there is no merit in the contention put forward by the UPSC.

8. We have heard the learned counsel appearing for the applicants, respondents 1 to 4 and perused the pleadings. As per IPS (Appointment by Promotion) Regulations, 1955, Regulation 5, the Government is bound to prepare a select list every year. In **Syed Khalid Rizvi vs. Union of India** (reported in 1993 Supp (3) SCC 575), the Hon'ble Supreme Court in para 34 of the judgment held thus:

*“The absence of chances of promotion would generate frustration and an officer would tend to become corrupt, sloven and a mediocre. Equal opportunity is a fertile resource to augment efficiency of the service. Equal chances of promotion to the direct recruits and the promotees would produce harmony with accountability to proper implementation of government policies. Unless the select list is made annually and reviewed and revised from time to time, the promotee officers would stand to lose their chances of consideration for promotion which would be a legitimate expectation. This Court in **Mohan Lal Kapoor case** held that the Committee shall prepare every year the select list and the list must be submitted to the UPSC by the State Government for approval and thereafter appointment shall be made in accordance with the rules. We have, therefore, no hesitation to hold that preparation of the select list every year is mandatory. It would subserve the object of the Act and the rules and afford an equal opportunity to the promotee officers to reach higher echelons of the service. The dereliction of the statutory duty must satisfactorily be accounted for by the State Government concerned and this Court takes serious note of wanton infraction”.*

9. The said law laid down by the Hon'ble Apex Court has to be followed by the respondents. It seems that the respondents had not convened SCMs in the years 2017

& 2018 till date. The outbreak of Covid 19 pandemic has not prevented Courts and Government Ministries and Organizations from adopting methods such as online movement of files and Video Conference Meetings to dispose of pressing issues. We do not find any reason as to why State Government and the Commission cannot take steps for conducting the Selection Committee Meeting immediately. The Hon'ble Apex Court in ***Union of India vs. Vipin Chandra Harilal Shah***, (1996) 6 SCC, page 721 at para 11 held that *"It must, therefore, be held that in view of the provisions contained in Regulation 5, unless there is a good reason for doing so, the Selection Committee is required to meet every year for purpose of making the selection from amongst the State Civil Officers who fulfill the conditions regarding eligibility on the 1st date of January of the year in which the Committee meets and falls within the zone of consideration as prescribed in Clause (2) of Regulation 5"*. It is clear from the statement of R2 that this mandatory provision is not strictly adhered to.

10. It is now settled law that civil servants have a right to be considered for promotion and it is declared as a fundamental right and any person aggrieved has a right to enforce the same. (Articles 14 & 16 of the Constitution). The applicants in these cases mainly seek a direction to get their right enforced. The counsel for Respondent No. 2 had submitted that the State is willing to participate in SCM through video conferencing. Though the counsel for the UPSC raised objections, we do not find any valid reason for the same. The applicants are already retired and if the SCMs are delayed, it will, in a way, defeat the very right given to them. We do not find any merit in the objections of R3.

11. In view of the facts revealed, we hereby issue the following directions to R 2, 3 and 4 as follows:

(i) **R2 & R4 will complete the required formalities for preparing list of officers for 2018 vacancies within a period of two months from the date of this order. R4 will appoint a competent officer to speed up the completion of the required formalities for selection of 2018 eligible officers within the said period. The SCM for the 2018 vacancies should be conducted by R3 - UPSC and select list drawn up within a period of six months from the date of this order.**

(ii) **R3 - UPSC is directed to conduct the SCMs for appointment to 2017 vacancies within a period of 40 days from the date of this order either through use of video conferencing, etc or through the physical holding of SCM at a convenient place.**

12. We believe that the State Government will not make any ad-hoc appointments as alleged till the SCM for 2017 is conducted and list published.

13. With these directions, the OAs are disposed of with no order as to costs.

(K.V. Eapen)
Administrative Member

(P. Madhavan)
Judicial Member

List of Annexures in OA No.213/2020:

- Annexure A1 : True copy of the letter issued by the State Police Chief to the Government on 30.07.2018 regarding the proposal for zone of consideration for promotion to the cadre of IPS for the year 2017.
- Annexure A2 : A true copy of the notification dt. 18.07.2019 issued by Government of India.
- Annexure A3 : A true copy of the eligibility list dt. 30.07.2018 issued by the State Police Chief.
- Annexure A4 : A true copy of the list dt. 17.09.2019 issued by the State Police Chief.
- Annexure A5 : A true copy of the interim order dt. 27.11.2019 passed by this Tribunal.
- Annexure A6 : True copy of the Statement filed on 04.01.2020 along with the attached documents.
- Annexure A7 : A true copy of the order dt. 07/01/2020 passed by this Tribunal.
- Annexure A8 : A true copy of the proceeding dt. 10/01/2020 issued by Government of India.
- Annexure A9 : A true copy of the press report published in the local daily dt. 17.05.2020.
- Annexure A9(A) : The English translation of Annexure A9.
- Annexure A10 : True copy of the select list dt. 11/06/2020 issued by 4th respondent.
- Annexure A11 : True copy of Order(oral) in OA 473 of 2018 dt.04/06/2018.
- Annexure A12 : True copy of Order(oral) in OA 488 of 2018 dt.07/06/2018.
- Annexure-R2(a): Letter No.2106022/AIS-C3/2018/GAD dated 04.01.2020.
- Annexure-R2(b): Letter No.2106022/AIS-C3/2018/GAD dated 27.02.2020.
- Annexure-R2(c): Letter No.2106022/AIS-C3/2018/GAD dated 06.05.2020.
- Annexure-R2(d): Letter No.2106022/AIS-C3/2018/GAD dated 27.05.2020.

List of Annexures in OA No.215/2020:

- Annexure A1: True copy of the notification dated 18.7.2019
- Annexure A2: True copy of the letter No.A1-18547/2018/PHQ dated 30.7.2018 along with the list of Twenty Five (25) Deputy Superintendents of Police in the field of choice issued by State Police Chief.
- Annexure A3: True copy of the letter No.A1-75425/2019/PHQ dated 17.9.2019
- Annexure A4: True copy of the interim order in O.A No.789/2019 dated 27.11.2019
- Annexure A5: True copy of the statement filed by the respondent No.2 in O.A No.789/2019 dated 7.1.2020.
- Annexure A6: True copy of the order in O.A No.789/2019 dated 7.1.2020 by this Tribunal
- Annexure A7: True copy of the proceedings F.No.I-14011/03/2020-IPS-I dated 10.1.2020
- Annexure A8: True copy of the press report dated 17.5.20 Malayalam Manorama daily
- Annexure A8A: True copy of the English translation Annexure A8
- Annexure R2(a): Letter No.2106022/AIS-C3/2017/GAD dated 4.1.2020
- Annexure R2(b): Letter No.2106022/AIS-C3/2017/GAD dated 27.2.2020
- Annexure R2(c): Letter No.2106022/AIS-C3/2017/GAD dated 6.5.2020
- Annexure R2(d): Letter No.2106022/AIS-C3/2017/GAD dated 27.5.2020