

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.No.448/99

TUESDAY THIS THE 20TH DAY OF JUNE, 2000.

HON'BLE MR.A. V. HARIDASAN, VICE CHAIRMAN
HON'BLE MR. G. RAMAKRISHNAN, ADMINISTRATIVE MEMBER

K.P.Ittan

Superintendent of Police

Vigilance Cell

Kerala State Civil Supplies Corporation,

Cochin-20.

..Applicant

By Advocate Mr. O.V. Radhakrishnan

Vs.

1. State of Kerala
represented by its Chief Secretary
Secretariat,
Thiruvananthapuram.
2. Union of India
represented by its Secretary
Ministry of Home Affairs,
New Delhi.
3. Union Public Service Commission
represented by its Secretary
Shahjahan Road,
New Delhi.
4. T.V. Kunhikannan
Commandanat
Kerala Armed Police Battalion
Trichur.
5. Scaria Sebastian
Superintendent of Police,
'Sreyas' Mambara House
Kumaranallur P.O.
Kottayam.
6. P. Sreenivasan
Superintendent of Police,
Narcotics Cell
Thiruvananthapuram.
7. E.J. Jayaraj
Superintendent of Police,
L.P.S. Trainee, Police Training College,
Thycaud
Thiruvananthapuram.

8. T. Sasidharan
Superintendent of Police,
Vigilance & Security
Travancore Devaswam Board,
Kowdiar
Thiruvananthapuram.

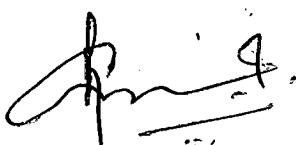
By Advocate C.A. Joy, Govt. Pleader, for R-1
Advocate Mr. Govindh K Bharathan, SCGSC for R-2 & 3
Advocate Mr. M.R. Rajendran Nair for R 4 & 6
Advocate Mr. Pachalloor B. Rajaraman Nair for R-7

The Application having been heard on 30.5.2000, the Tribunal delivered the following on 20.6.2000.

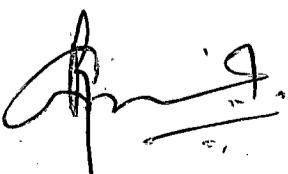
O R D E R

HON'BLE MR. G. RAMAKRISHNAN, ADMINISTRATIVE MEMBER

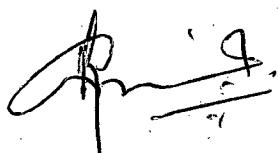
Applicant joined the General and Executive Branch of Kerala Police as Sub Inspector of Police in January, 1967. In 1984 he was promoted to the grade of Deputy Superintendent of Police (Dy.SP for short). He was confirmed in the post of Dy.SP w.e.f. 1.7.91 as per Govt. order issued on 18.10.97. He was promoted to the cadre of Superintendent of Police in December, 1995. He completed 8 years continuous service in the post of Dy.SP on 24.8.92. He was confirmed in the post w.e.f. 1.7.91. He became eligible for being considered for appointment by promotion to IPS on and from 24.8.92. According to the applicant, as there were eligible officers senior to him, his name was not placed before the Selection Committee during the years 1992-93, 93-94, 94-95 and 1995-96. As per the combined seniority list of State Police Service Officers for consideration to IPS circulated under letter dated 30.9.97 he was assinged rank and seniority at S1. No. 11 and respondents No.4, 5,6, 7 and 8 were placed at S1. Nos. 2, 7, 8, 18 and 6 respectively. Applicant submitted that no selection committee meeting was held during the year 1995-96.



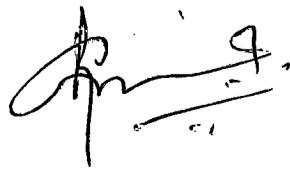
However, in pursuance to the directions issued by this Tribunal in O.A.No. 1030/96 the Selection Committee met on 26.12.96 and prepared 1995-96 select list which was approved by the Union Public Service Commission (UPSC for short). This select list contained four names against two vacancies which occurred on 1.6.96 and 1.11.96 due to the superannuation of S/Sri M. Bhagyanathan Nadar and Harris Xavier. The first two officers from the said list namely S/Sri M. Sethuraghavan and S. Gopinath were appointed to IPS as per notification dated 29.5.97 against these two vacancies. Applicant submitted that the Selection Committee which met on 26.11.97 for preparing the select list for the year 1996-97 for the anticipated vacancies of the year 1997 prepared a list containing 9 officers and the same was approved by the UPSC on 22.12.97. The said list was published in the Gazette of India dated 24.1.98. According to the applicant, out of the nine officers included in A2 Select List S1. No. 1 to 4 and 7 to 9 were appointed to IPS and they were assigned cadre vacancies in the State Indian Police Service cadre and were assigned seniority in the gradation list of IPS, Kerala cadre as on 1.7.98. In A-4 Gazette notification dated 3.11.98 it had been stated that the 8th respondent had been appointed in pursuance of the judgment dated 26.6.98 in O.A. 530/98. Applicant submitted that he was not made a party in the O.A., and as such the said judgment was not binding on him and the issues involved in the present O.A. were not adjudicated therein. S1. Nos. 5 and 6 in A2 select list were not given appointment to IPS. According to the applicant, for the selection committee which met on 26.11.97 the names of S/Sri T.V. Kunhikkannan, K.C. Jacob, C.V. Abdul Rahiman Kutty and



P.S. Sreenivasan included in A2 at S1. Nos. 4 to 6 and 9 who had attained the age of 54 years as on 1.4.97, should have been excluded in terms of 2nd proviso to Regulation 5(2) of the Regulations, 1955. He submitted that he became aware of the dates of birth of the employees at Serial No. 4,5,6 and 9 had attained the age of 54 years as on 1.4.97 and had incurred the disqualification under Sub Regulation (3) of regulation 5 of the Regulations, 1955 only on seeing Annexure A3 Gradation List as on 1.7.98 corrected upto 15.7.98. According to him the inclusion of respondents 4 to 6 and 9 in A2 select list and the appointments of S1. Nos. 4 and 9 to IPS were illegal and in-operative. According to the applicant, the number of posts to be filled up by promotion by selection under Rule (9) of the IPS (Recruitment) Rules, 1994 was 30 as per the Govt. of India notification dated 15.2.95 published in the Gazette of India dated 4.3.95 (A-5). However, as only 25 officials were in position as on 31.12.97 as per A-6 five vacancies were available for appointment by promotion to IPS from among the State Police Officers. Applicant submitted that A-7 Indian Police Service (Appointment by Promotion) Amendment Regulations 1997 dated 31.12.97 was made effective from 1.1.98 bringing about a substantive change in the matter of preparation of the select list. A-8 notification dated 31.12.97 was also issued amending IPS (Fixation of Cadre Strength) Regulations. By this 7th amendment Regulations which were brought into force on 1.1.98 the posts to be filled by promotion under Rule-8 of the IPS (Recruitment) Rules, 1954 became 36. Applicant claimed that as on the date of bringing into force A7 amendment Regulations, 1997 there were 11 substantive vacancies to be filled up by appointment by



promotion to IPS from among the State Police Officers namely five vacancies which remained unfilled upto 31.12.97 and 6 posts which became available consequent on the increase of number of posts to be filled up by promotion from 30 to 36 as per A8. The above 5 vacancies which existed prior to 31.12.97 were filled up from A2 select list for the year 1996-97 by appointing Sl. Nos. 1 to 4 and 7. The Selection Committee which met on 26.11.97 prepared the select list taking into account 5 vacancies which arose in 1997 and 2 vacancies which was to arise in 1998. According to him respondents 1 to 3 were legally obliged to arrange the convening of Selection Committee for preparing the select list for the year 1998 in accordance with A7 amended Recruitment Rules, 1997. He further submitted that the vacancies which arose on 31.1.98 and 28.2.98 ought to have been filled up according to the Amended Regulations, 1997. and the appointment of Respondents 5 and 6 to IPS could not be legitimatised by treating them to have been appointed to vacancies which existed on 1.1.98 consequent on the increase of the posts to be filled up by promotion as per A8. The vacancies which arose on 1.1.98 by force of A8 could be filled up only in accordance with A7 Amendment Regulations, 1997. He further submitted that on the basis of A-11 letter dated 21.7.98, the applicant was under legitimate expectation that he would be included in the select list as there were 11 substantive vacancies as on 1.1.98. The Selection Committee was convened on 1.9.98 and he was under the belief that the selection committee would consider the State Police Service Officers against the vacancies which arose on and from 1.1.98. However, the selection committee which met on 1.1.98 prepared a select list including only one

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name viz. Sri J. Jayaraj, the 7th respondent and the 7th respondent was appointed by notification dated 29.10.98 published in the Kerala Gazette dated 12.1.99. (A-12). He submitted that action of the respondents in not arranging the holding of Selection Committee for preparing the select list for the vacancies of the year 1998 not exceeding the number of substantive vacancies which existed as on 1.1.98 was patently illegal and arbitrary. According to the applicant by A-13 letter dated 11.2.98 the second respondent decided to give effect to the increased promotion posts in respect of State IPS cadre in a phased manner and by A-14 letter dated 19.2.98 second respondent released two number of vacancies for utilising the same in respect of officers included in the current Select List of 1997 in case the officer(s) were eligible for appointment to IPS under the relevant rules and further the balance vacancies of enhanced promotion quota were to be utilised in respect of Kerala cadre by way of preparation of Select Lists of 1998, 1999 and 2000. According to the applicant, the second respondent was not competent to take decision as contained in A-13 letter dated 11.2.98 dehors A-7 Amendment Regulations 1997 and A-8 Amendment Regulations 1997. Applicant also claimed that A-14 Govt. letter dated 19.2.98 was also ultra vires and illegal in as much as the second respondent was not competent to release two numbers of vacancies out of the six number of vacancies increased by A-8 Amendment Regulations, 1997 for utilising the same in respect of officers included in the current list of 1997. Applicant claimed that he had meritorious service record to his credit and he was granted 11 Good Service Entries since 1979 and his performance was rated "very good" during the years upto 1997

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and his performance was rated as "outstanding" during 1997 and 1998 and the applicant had bright prospects for inclusion in the select list of the year 1998 if made in accordance with A-7 Amendment Regulations, 1997. He claimed that he had a fundamental right guaranteed under Article 16(1) of the Constitution of India for being considered against the vacancies of the year 1998 in accordance with the amended regulations and non-consideration of his name for inclusion in the select list by not taking into account all the vacancies of the year 1998 and making a select list including only one name was violative of the Amendment Regulations, 1997 and also infringed the fundamental right of the applicant guaranteed under Article 14 and 16(1) of the Constitution of India. He submitted that he did not attain the age of 54 years on 1.1.98 and therefore being eligible to be selected and appointed before he attained the age of 54 he could not be put to any disadvantage in case he was superannuated on attaining the age of 55 years. In view of the above, the applicant sought the following reliefs:

- i) to call for the records relating to Annexure A4 dated 3.11.98, Annexure A-12 notification dated 29.10.98, Annexure A-13 Government letter dated 11.2.98 and Annexure A-14 Government letter dated 19.2.98 and the orders appointing respondents 4 to 6 to the cadre of IPS by promotion and to set aside the same.
- ii) to issue appropriate direction or order directing the respondents 1 to 3 to make selection for appointment by promotion to IPS cadre taking into account all the vacancies which existed as on 1.1.98 without regard to Annexures A-13 and A-14 and to make appointments there from to IPS for the year 1998 strictly in accordance with Annexure A7 Amendment Regulation, 1997.



(iii) to declare that the inclusion of Serial Nos. 4,5,6 and 9 in Annexure A2 who had attained the age of 54 years as on 1.4.97 in A-2 select list is violative of sub regulation (2) and (3) of Regulation 5 of the (Appointment by Promotion) Regulations, 1955.

(iv) to declare that appointments by promotion to IPS made against the vacancies which arose on and from 1.2.98 and 1.3.98 from A2 select list as illegal and impermissible.

(v) to issue appropriate direction or order directing the respondent 1 to 3 to arrange the holding of Selection Committee meeting for preparing the select list of the year 1998 taking into account 10 vacancies available during 1998 which does not exceed the number of substantive vacancies existed as on 1.1.98 in accordance with A-7 Amendment Regulations, 1997.

(vi) to issue appropriate direction or order directing the respondents 1 to 3 to consider the applicant for selection for appointment by promotion to IPS with reference to his rank and seniority at S1. No.11 in Annexure A1 eliminating his ineligible seniors and to include him in the select list for the year 1997-98 and for the select list of the year 1998 and to appoint him to the IPS before his date of superannuation from the State Service.

(vii) to issue appropriate direction or order directing the respondents 1 to 3 to appoint the applicant by promotion to IPS cadre with effect from the date of his entitlement with all service benefits including arrears of pay and allowances

(viii) to issue appropriate direction or order directing the respondent 1 to 4 to complete the selection process within 1 month in view of the impending retirement of the applicant from State Police Service.

(ix) to grant such other reliefs which this Hon'ble Tribunal may deem fit, proper and just in the circumstances of the case; and

(x) to award costs to the applicant.

2. In the reply statement filed by the first respondent the claim of the applicant was resisted. While admitting that the IPS (Appointment by Promotion) Regulations were amended w.e.f. 1.1.98 by A-7 Government of India notification dated 31.12.97, it was submitted that the select list was prepared for the arising vacancies on the basis of pre-Amendment Regulations by the Select Committee for 1996-97 which met on

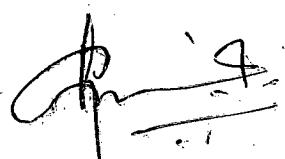


26.11.97 The said Selection Committee prepared a list of 9 officials computing vacancies upto 28.2.98 and the amendments made on 31.12.97 did not affect this select list. It was submitted that the amendment related to new selections to be made from 1.1.98 onwards. Under the pre-amended rules, the Committee for the year 1997-98 had to meet on or before 31.3.98. If this Committee had not actually met before 31.12.97 then this Committee could not be convened in view of the amendment and a Committee for the year 1998 had to be convened under the new amended rules. Government of India in their A-10 letter dated 14.9.98 had clarified the above points. In A-8 notification dated 31.12.97 promotion quota to State IPS was enhanced from 30 to 36 and since the enhancement was made by reducing the direct recruitment quota the enhancement had to be done in a phased manner. Accordingly, out of the six enhanced vacancies two were released to be filled up from the select list of 1997 and the remaining vacancies were to be filled up in a phased manner, viz. one in 1998, one in 1999 and two in 2000 by A-14 Govt. of India letter dated 19.2.98. Thus, the total number of posts in the promotion quota for 1998 selection was 33 i.e. existing 30 plus 2 released for 1996-97 plus one released for 1998 selection. Seven officials were subsequently appointed from the list of 1996-97 and so 32 were in position as far as the 1998 Selection Committee was concerned. Since the number of promotion quota was 33, selection was conducted for one vacancy as determined by the Govt. of India in terms of Regulation 5(1) and appointment made. The applicant was also

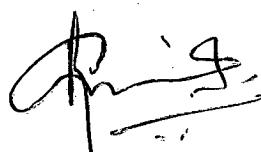
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considered by the Committee but not selected. Applicant completed 54 years of age as on 1.1.1999 and hence he was not eligible for consideration by the 1999 Selection Committee.

3. Respondent No.2 Union of India filed reply statement resisting the claim of the applicant. It was submitted that as per statutory provisions under IPS (Appointment by Promotion) Regulations, 1955, prevailing at the relevant point of time, 1996-97 Select List was required to be prepared on or before 31.3.97 by taking into consideration the eligibility conditions as on 1.4.96. However, the State Govt. could not furnish the proposal for convening the meeting of the Selection Committee in time as the Select List for the year 1995-96 which was prepared on 26.12.96 could not be finalised and acted upon before 31.3.97. Aggrieved by non-convening of Selection Committee meeting for preparing 1996-97 Select List in time, Shri P. Sreenivasan (6th respondent) filed O.A. No. 945/97 before this Tribunal which was disposed of by this Tribunal vide order dated 17.10.97 with a direction to the State Government to send a proposal for holding the meeting of the Selection Committee for the year 1996-97 within fifteen days from that day. Thereafter, the UPSC was directed to take necessary steps to ensure that the meeting of the Selection Committee was held on or before 30.11.97. Accordingly, the Selection Committee met on 26.11.97 and prepared the 1996-97 Select List consisting 9 State Police Service officers against 7 vacancies which occurred during the period 1.4.97 to 31.3.98 as per Regulation 5(1) of IPS (Appointment by Promotion) regulations, 1955 prevailing at the relevant time. As the 1996-97 Select list was prepared by taking into consideration

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the eligibility conditions as on 1.4.96, the cases of S/Shri T.V. Kunhikannan, K.C. Jacob, C.B. Abdul Rahimankutty and P. Sreenivasan who fulfilled the eligibility conditions as on 1.4.96 were considered and included in the Select List by the Selection Committee. The said select list was approved by the UPSC on 22.12.97. S/Shri K. C. Jacob and C. B. Abdul Rahimankutty superannuated from State Police Service before 22.12.97. As the select list came into force from the date of its approval, S/Sri K. C. Jacob and C.B. Abdul Rahimankutty who ceased to be members of State Police Service much before that date, could not be appointed to IPS from the said Select List. The first four officers S/Sri A. Balakrishnan Nair, Jose George, B. Shamsudeen and T.V. Kunhikannan were appointed to IPS against the vacancies which occurred on 1.5.97, 1.6.97, 1.6.97 and 1.9.97 respectively. Shri T. Shashidharan S1.No.7 was appointed to IPS against the vacancy which occurred on 1.11.97. In the meanwhile, promotion quota of IPS cadre of Kerala was increased by 6 posts vide Department of Personnel & Training's notification dated 31.12.97 which came into force from 1.1.98. In terms of Regulation 7(4) of IPS (Appointment by Promotion) regulations, 1955, prevailing at the relevant time, a Select List remained in operation till preparation and finalisation of the next Select List. As such a process of smooth transition from the old regulations to the new Regulations was to be worked out so that neither the operation of the previous Select List prepared under the pre-amended Regulations and valid till the preparation of subsequent Select List was not hampered and at the same time, the process of preparation of 1998 Select List in terms of the amended Regulations against those vacancies



determined by the Central Govt. under Rule 4(2)(b) of Recruitment Rules was also ushered in. Keeping the above in view the Department of Personnel & Training issued letter dated 11.2.98 wherein it was mentioned that immediate charge on the increase in promotion quota in the respective State cadre would be the persons who stood included in the waitlist part of the 1996-97 Select Lists prepared in 1997 and in force and that wait-listed officers would accordingly be considered for appointment to the IAS against the vacancies made available from 1.1.98 in the first instance. Accordingly, the Ministry of Home Affairs vide letter dated 19.2.98 decided that two posts out of the 6 posts enhanced in Promotion quota of IPS cadre of Kerala may be utilised for making appointment of both the wait-listed officers to IPS. Accordingly both the wait-listed officers of 1996-97 Select List namely S/Shri Scaria Sebastian and P. Sreenivasan were appointed to IPS against the aforesaid two vacancies released from the enhanced six posts. It was submitted that it was the prerogative of the employer - in this case the Govt. of Kerala and the Govt. of India- to fill up a vacancy or not. The second respondent cited the following judgments of the Hon'ble Supreme Court in support of this pleading:

- i) Shankarsan Das Vs. Union of India (1992 (1) SLJ 7(9) SC
- (ii) Govt. of Orissa Vs. Har Prasaddas (1998 SCC (L&S) 382)

It was submitted that in terms of pre-amended Regulations 5(1) and 7(4) of Promotion Regulations, a person included in the Select List has a legitimate right to be considered for



appointment to the service against the vacancies occurring in the promotion quota anticipated and unforeseen during the period of 12 months commencing from the date of preparation of the Select List and accordingly, the waitlisted officials in the 1996-97 Select List against vacancies enhanced vide DOPT's notification dated 31.12.97. The respondents cited the following judgments of the Hon'ble Supreme Court and this Tribunal in support of this plea:

(i) Parveen Jindal and Others Vs. State of Haryana and Others (JT 1993 (2) SC 311)

(ii) K.S. Yadav Vs. Union of India (CAT Chandigarh Bench in O.A. 284/HR/95 dated 12.1.96)

They submitted that the officials included in the list of year 1997 had the equity right for being considered for appointment to the Service against any vacancies unforeseen or otherwise falling during the period of 12 months from the date of meeting of the Selection Committee. This right on the part of the officers was not nullified by coming into force of the amended regulations and the amended Recruitment rules which actually were put into operation only in respect of remaining vacancies after catering to the wait listed officers of 1996-97 Select List. Those officers included in the Select list against these vacancies could not be denied appointment merely because the regulations had been amended from 1.1.98. It was submitted that the Select List for 1996-97 which was designed to fill up vacancies occurred upto 31.3.98 in terms of pre-amended regulations remained in operation upto 31.8.98 as the Selection Committee met on 1.9.98 to prepare 1998 Select List. Respondents also relied on the Govt. of India



circular dated 12.1.96 which was also quoted by the applicant. It was submitted that in terms of pre-amended Regulations the select list for 1997-98 was required to be prepared by 31.3.98 to fill up the vacancies in the promotion quota during the year 1998-99 viz. the period from 1.4.98 to 31.3.99. However, as the amended regulation 5(1) of Promotion Regulations came into force from 1.1.98 the preparation of 1997-98 Select List became a legal fiction. As such, it was not possible to prepare 1997-98 Select List and as per amended regulation, the 1998 Select List was to be prepared by taking into consideration the eligibility conditions as on 1.1.98 and therefore the DOPT issued letter dated 14.9.98 to clarify that in terms of second proviso to Regulation 5(3) of Promotion Regulations, crossing of 54 years of age of State Police Service officers as on 1.4.1997 should not make them ineligible for consideration for inclusion in 1998 select list. They submitted that respondent No.7 was appointed on the basis of 1998 select list which was prepared strictly in accordance with the rules prevailing at the relevant time. It was denied that there was any violation of Articles 14 and 16 of the Constitution of India. They submitted that the applicant was not entitled to any of the reliefs sought for by him and the O.A. was liable to be dismissed as devoid of merits.

4. The applicant filed rejoinder to the reply statement filed by the second respondent reiterating the points raised in the O.A.

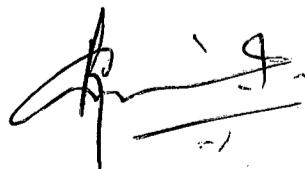
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5. Heard the learned counsel for the parties Sri O.V. Radhakrishnan for the applicant, Sri C.A. Joy, Govt. Pleader for the State of Kerala, Sri Govindh K. Bharathan, SCGSC for Union of India and UPSC and Sri M.R. Rajendran Nair for respondents 4 and 6. They also submitted argument notes. The other respondents did not respond to the notice and put in appearance.

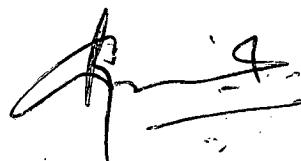
6.. Learned counsel for the applicant submitted that inclusion of the names of Sl. Nos. 4, 5, 6 and 9 who attained the age of 54 years on 1.4.97 in A-2 select list prepared by the Committee which met on 26.11.97 was illegal and violative of sub rule (2) and (3) of Regulation 5 of the IPS (Appointment by Promotion) Regulations 1955. He submitted that appointments of respondents 4 and 6 out of A-2 list were illegal being violative of Regulations 5(2) and (3) of IPS (Appointment by Promotion) Regulation 1955. He submitted that according to Regulation 5(1) each Committee shall ordinarily meet at intervals not exceeding one year. The Selection Committee met for preparing the select list for the year 1995-96 on 26.12.96 and for preparing the select list for the year 1996-97 the Selection Committee met on 26.11.97 and thus the regulation 5(1) was strictly complied with. He submitted that the crucial date regarding age bar is the 1st day of April of the year in which the committee met in terms of Regulation 5(3). The Committee met on 26.11.97 and the 'year' for the purpose of Regulation 5(3) was the year 1997. Hence according to him the plea of the respondents that the meeting of the Selection Committee for preparing the select list for the year 1996-97, ought to have met on a day between 1.4.96

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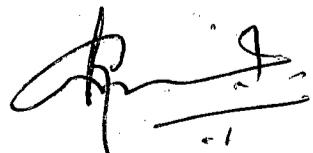
and 31.3.97 and therefore inclusion of Sl. Nos. 4,5,6 and 9 in A2 who did not attain the age of 54 years as on 1.4.96 were eligible to be considered for preparation of the select list for the year 1996-97 was entirely untenable. He referred to Regulation 5(1) and submitted that the same referred to the date of meeting of the Committee and it mandated that each Committee should ordinarily meet at intervals not exceeding one year and further directed that the number of members of the State Police Service to be included in the list should be calculated as the number of substantive vacancies anticipated in the course of the period of 12 months commencing from the date of preparation of the list. He contended that it followed that it was the date of preparation of the list that was relevant for calculating the anticipated vacancies and applying the age bar. Therefore, according to him, the year as defined in Regulation 2(1)(1) had no relevance or application for calculating the substantive vacancies anticipated in the course of the period of 12 months and for determining the age bar imposed under Regulations 5(2) and (3). Learned counsel for the applicant relied on the decision of the Supreme Court in Union of India Vs. Dr. M.G. Dighe and Others (1991 4 SCC 551) in support of his submissions. He also relied on the decision in K. Balakrishna Rao Vs. Haji Abdulla Sait (1980 1 SCC 321), C.I.T Vs. Venkandeshwara Hatcheries (P) Ltd. (1999 3 SCC 632) and submitted that the word 'year' appearing in Regulation 5(1) and Regulation 5(3) could not be applied as defined in Regulation 2(1)(1) as the word "year" was qualified by the words "each Committee shall ordinarily meet at intervals not exceeding one year" in Regulation 5(1) and the words "on the 1st day of April of the



year in which it meets" in Regulation 5(3) Therefore, the word year in the context of Regulation 5(1) and Regulation 5(3) must be given the meaning assigned to it in the context and could not be read as defined in Regulation 2(1)(1) so as to effectuate the scheme provided under regulation 5(2). He submitted that respondents could not have also given relaxation to the eligibility conditions for recruitment to the IPS. According to him the eligibility for recruitment to IPS was a condition of Recruitment and was not a condition of service as held by Hon'ble Supreme Court in Syed Khalid Rizvi and Others Vs. Union of India and Others (1993 Suppl.3 SCC 575) and were not relaxable. Learned counsel submitted that Respondents 4 and 6 were not included in the select list of 1995-96 immediately before the date of meeting of selection committee and therefore they who had attained the age of 54 during 1997 were ineligible to be included in the select list for 1996-97 and their appointment to IPS was illegal and void. Their inclusion in the select list could not be legitimised under the first proviso to Regulation 5(3). It was submitted that by their inclusion in the field of choice and select list the right of persons like the applicant for being considered for promotion to IPS had been wrongly deprived offending Articles 14 and 16 of the Constitution of India. It was also submitted that second proviso to Regulation 5(3) was also not attracted as the select list was prepared for the previous years 1992-93, 1993-94, 1995-96 as the Selection Committee actually met in all previous years. Learned counsel for the applicant further submitted that Respondents 5 & 6 were waitlisted officers and as existing and anticipated vacancies for 1996-97 were only 7. According to him the second

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respondent's plea that the 5th and 6th respondents had equity right for being considered for appointment was untenable. He cited the judgment of the Hon'ble Supreme Court in Jammu Kashmir Public Service Commission Vs. Dr. Narinder Mohan (1994 2 SCC 630) in support of his submission. He submitted that in that case the Hon'ble Apex Court held "the process of selection and selection for the purpose of recruitment against existing or anticipated vacancies does not create a right to be appointed to the post which can be enforced by a mandamus" and further held that there is a distinction between "Rules of Recruitment" and "conditions of service" and that the conditions of the Rules of Recruitment could not be relaxed. It was submitted that as against the 7 anticipated vacancies during the period 1.4.97 to 31.3.98, 5 vacancies had arisen on various dates prior to 31.12.97 and 6th and 7th vacancies arose on 1.2.98 and 1.3.98 consequent on the retirement of S/Sri Prabhakaran Pillai and P.T. Varghese. Learned counsel for the applicant argued that these two vacancies could not be filled up from A2 Select List in view of the fact that A7 Amendment Regulations were brought into force w.e.f. 1.1.98. According to him by force of A7 Amendment Regulations the anticipated vacancies of the year 1998 which were taken into account while preparing A2 select list should be deemed to have lapsed and could not be carried forward. He submitted that this position had been accepted by the second respondent in A-10 letter dated 14.9.98. He also relied on the Circular No. 14015/54/95-AIS 9(I) dated 12.1.96 that select list could not be used to fill up vacancies outside the period considered by the selection committee since the select list was not designed to fill up those vacancies. He relied on the



decision of the Hon'ble Supreme Court in Gujarat State Deputy Engineers Association Vs. the State of Gujarat (JT 1994 (3) SC 559) in support of this submission. He further submitted that a candidate in the waitlist had no right to be given appointment to future vacancies which arise unless selection was made for it. He relied on the ruling of the Hon'ble Supreme Court in Prem Singh and Others Vs. Haryana State Electricity Board (JT 1996 (5) SC 219). He also cited the case of Vice Chancellor, University of Allahabad Vs. Dr. Anand Prakash Mishra (1997 10 SCC 264) and submitted that mere inclusion in the list would not confer any right to be appointed in the absence of rule.. According to the learned counsel for the applicant the select list prepared on 26.11.96 and approved on 22.12.97 ceased to have any operation after coming into force of the amended Regulations effective from 1.1.98. According to him the vacancies which arose on or after 1.1.98 would have to be filled as per the provisions of A-7 Amendment Regulations. He submitted that the eligibility for the recruitment process should be decided as per the law prevailing after the vacancies arose. He cited the case of State of Rajasthan Vs. R. Dayal and Others (1997 10 SCC 419) in support of his submission. He made a forceful plea that A-13 letter dated 11.2.98 and A-14 letter dated 19.2.98 issued by the Govt. of India were illegal, ultravires and were issued without authority of law. He submitted that the Central Govt. had no power or authority or jurisdiction to issue directions as contained in A-13 and A-14. Once A-7 Amendment Regulations 1997 and A-8 Amendment Regulations 1997 were brought into force with effect from 1.1.98 the Government of India was legally obliged to give full effect to those



Amendment Regulations and they could not phase over the implementations of annexure A7 and A8 unless specifically authorised to do so. A-7 and A-8 did not contain any provision empowering the Central Government to issue directions as contained in A-13 and A-14. Central Government was empowered under Regulation 5(1) to determine the number of State Police Officers to be included in the list in consultation with the State Govt. Under the guise of that power the Central Government was not competent to direct that the increased number of vacancies as per A-8 should be given effect in a phased manner. The power of the Central Government under Regulation 5(1) to determine the number of officers to be included in the select list would not encompass any power to direct that wait listed officers could be considered for appointment to the IAS against the vacancies created on and from 1.1.98 as ordered in A-13 or to release the two number of vacancies newly created as per A-8 for utilising the same in respect of officers included in the select list of 1997 as ordered in A-14. He submitted that the release of two vacancies newly created by A-8 for utilising the same in respect of officers included in the select list of 1997 and the appointments of the wait listed officers from A-2 select list to the IPS cadre against the vacancies released as per A-14 were manifestly illegal and void.

7. Learned counsel appearing for the State of Kerala submitted that as per statutory provisions under IPS (Appointment by Promotion) Regulations, prevailing at the relevant point of time- 1996-97- the committee ought to have

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been convened on or before 31.3.97. The committee was convened on 26.11.97 as per the unamended Regulations for the anticipated vacancies arising from 1.4.97 to 31.3.98 and accordingly this Committee was a Committee of the year from 1.4.96 to 31.3.97 for the anticipated vacancies of 1997-98 and that the crucial date for considering the eligibility of an officer to be placed before the selection committee was 1.4.96. He further stressed the points made in the reply statement.

8. The SCGSC on behalf of the Union of India submitted that as per statutory provisions laid under the IPS (Appointment by Promotion) Regulations, 1955, the select list for the year 1996-97 was required to be prepared on or before 31.3.97 by taking into consideration the eligibility conditions as on 1.4.96. Further in O.A. No. 945/97 this Tribunal had directed meeting of the Selection Committee to be held on or before 30.11.97. Accordingly the eligibility conditions as on 1.4.96 was taken into consideration and the select list for 1996-97 was prepared and approved by UPSC on 23.12.1997. The contention of the applicant that the eligibility condition as on 1.4.97 should be considered would be against the order of this Tribunal in O.A. No. 945/97. Therefore, officials at Serial No. 4 to 6 and 9 in A-2 select list who had not attained 54 years on 1.4.96 were eligible for consideration. As regards the two waitlisted officials respondents 4 and 6- it was submitted that in terms of the pre Amendment Regulation 5(1) and 7(4) of the Promotion Regulations they had a legitimate right to be considered for appointment against the vacancies occurring in the promotion

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quota anticipated and unforeseen during the period of 12 months from the date of preparation of the select list. Giving the background and the reasons for effecting the amendments to the IPS (Recruitment) Rules and the IPS (Appointment by Promotion) Regulations and giving the details of the pre and post amended provisions and the rationale behind the issue of A-13 and A-14 letters. it was submitted that the argument that neither Central Govt. nor State Govt. was empowered to fill up the enhanced vacancies in the promotion quota in a phased manner was absolutely baseless and ill -conceived and that the phased intake against the additional posts over a period of three years was not due to any malafide or arbitrary or ulterior motives as apprehended by the applicant. The decision was the outcome of an objective and well reasoned process of consideration of the matter by the Central Government in respect of all the three All India services as a whole in consultation with the State Governments.

9 Learned counsel for the 4th and 6th respondents submitted that the 6th respondent was the applicant in O.A. 945/97 and was due to be considered for appointment by promotion to IPS for the year 1996-97. On finding that the Selection Committee for the year 1996-97 had not met by 31.3.97 he approached the Tribunal praying for appropriate direction. It was further submitted that the applicant was also considered by the Selection Committee and he was superseded and even if the 6th respondent was excluded from selection, the applicant could not have been included in the select list as there were two seniors to him. It was submitted that as on 1.1.98 there were altogether 4 vacancies,

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2 resulting from non-appointment of S/Sri K.C. Jacob and Abdul Rahiman kutty and 2 by way of new creations and that the unamended rules were the relevant rules for the selection committee of 1996-97 and accordingly, the select list would be valid for one year or till another select list was made whichever was later. Therefore, their appointment from A2 select list was legal. According to the learned counsel the applicant did not have a right and not even a chance of getting an appointment to IPS. He was considered but not selected. Thereafter it was not permissible for him to say that the rule under which he was also considered should not apply. The amended rules would not affect the selection and select list made in accordance with the unamended rules. The select list once prepared in accordance with the then existing rules would have its full life until superceded by a procedure in accordance with rules. Assuming that applicant had a right to be considered for appointment by promotion to the IPS against a vacancy which arose after the commencement of amended rules, it was not necessary to set aside the appointment of respondents 4 and 6. There were vacancies against which applicant could be considered without disturbing the appointment of party respondents.

10. We have given careful consideration to the oral and written submissions made by the learned counsel for the parties and the pleadings and documents brought on record.

11. The applicant through this O.A. is seeking the relief of quashing the orders of appointment to the IPS cadre of Kerala of respondents 4,5,6 & 8 included in the select list

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for the year 1996-97 and respondent No.7 included in the select list for the year 1998 against promotion quota. He is also seeking to quash A-13 and A-14 Government letters dated 11.2.98 and 19.2.98 respectively and for a direction to the respondents 1 to 3 to arrange the holding of the Selection Committee meeting for preparing a select list for the year 1998 taking into account ten vacancies for the year considering the applicant also amongst other eligible employees.

12. Appointment of State Police Service Officers to Indian Police Service against promotion quota is governed by the IPS (Appointment by Promotion) Regulation 1955, made in pursuance of sub rule 1 of Rule 9 of the IPS (Recruitment Rules) 1954. We reproduce Regulation 2(1)(1) giving the definition of the word 'year' and Regulation 5 dealing with the "Preparation of list of suitable officers" as they existed in 1997 as these are relevant for considering the issues in this Original Application. (Extracted from Sarkar's "The All India Services Manual" (First Edition- Reprint 1996) Page 606 to 610):

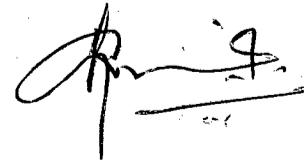
2. Definition (1) In these regulations unless the context otherwise requires

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(1) 'Year' means the period commencing on the first day of April and ending on the 31st day of March of the subsequent year.

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5. Preparation of list of suitable officers (1) Each Committee shall ordinarily meet at intervals not exceed one year and prepare a list of such members of the state Police Service, as held by them to be suitable for promotion to the Service. The number of members of the State Police Service to be included in the list shall be calculated as the number of substantive vacancies anticipated in the course of the



period of 12 months commencing from the date of preparation of the list, in the posts available for them under Rule 9 of the Recruitment Rules plus twenty percent of such number or two whichever is greater.

Explanation- In case of Joint Cadres a separate select list shall be prepared in respect of each State Police Service, the size of each Select List being determined in the manner indicated above.

(2) The Committee shall consider for inclusion in the said list, the cases of members of the State Police service in the order of seniority in that service of a number which is equal to three times the number referred to in sub-regulation(1):

Provided that such restriction shall not apply in respect of a State where the total number of eligible officers is less than three times the maximum permissible size of the Select List and in such a case the Committee shall consider all the eligible officers:

Provided further that in computing the number for inclusion in the field of consideration, the number of officers referred to in sub-regulation (3) shall be excluded:

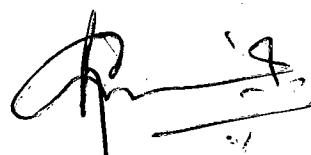
Provided also that the Committee shall not consider the case of a member of the State Police Service unless on the first day of April of the year in which it meets he is substantive in the State Police Service and has completed not less than eight years of continuous service (whether officiating or substantive) in the post of Deputy Superintendent of Police or in any other post or posts declared equivalent thereto by the State Govt.

Explanation:- The powers of the State Government under the third proviso to this Sub-regulation shall be exercised in relation to the members of the State Civil Service of a constituent State by the Government of the State.

(3) The Committees shall not consider the cases of the Members of the State Police Service who have attained the age of 54 years on the first day of April of the year in which it meets.

Provided that a member of the State Police Service whose name appears in the Select List in force immediately before the date of the meeting of the Committee shall be considered for inclusion in the fresh list, to be prepared by the Committee, even if he has in the meanwhile attained the age of 52 years.

Provided further that a member of the State Police Service who has attained the age of fifty four years on the first day of January of the year in which the Committee meets shall be considered by the Committee

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if he was eligible for consideration on the first day of April of the year or of any of the years immediately preceding the year in which such meeting is held but could not be considered as no meeting of the Committee was held during such preceding year or years.

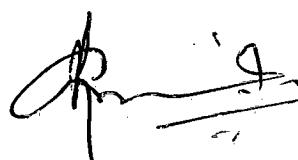
(4) The Selection Committee shall classify the eligible officers as 'outstanding' 'very good' 'Good' or 'Unfit' as the case may be, on an overall relative assessment of their service records.

(5) The list shall be prepared by including the required number of names, first from among the officers finally classified as 'outstanding' then from among those similarly classified as 'Very Good' and thereafter from amongst those similarly classified as 'Good' and the order of names inter se within each category shall be in the order of their seniority in the State Police Service.

Provided that the name of any officer so included in the list shall be treated as provisional if the State Government, withholds the integrity certificate in respect of such officer of any proceedings are contemplated or pending against him or anything adverse against him has come to the notice of the State Government.

(6) The list so prepared shall be reviewed and revised every year.

13. On a complete reading of the above provisions we are of the view that the objective of the above provisions in the Regulations is to keep a list of State Police Service Officers found suitable for appointment in the Indian Police Service Cadre of the concerned State in advance of the occurrence of vacancies. In terms of sub regulation (1) of Regulation 5 the Committee is to meet in every 'year'. As 'year' is defined as financial year under Regulation 2(1)(1), the Committee should meet in every financial year. As a corollary it follows that the date for considering the age bar of 54 years as in Regulation 5(3) would be the first April of the financial year in which it should have met. Viewed thus, in this particular case, the Selection Committee for the year 1996-97 should have met before 31.3.1997 and date for considering age under

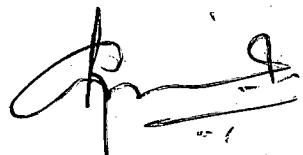
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Regulation 5(3) would be 1.4.96.. Such a view had been taken by this Tribunal in O.A. No. 945/97. The Tribunal in its order dated 17.10.97 stated as follows:

We therefore, dispose of the application with a direction to third respondent to send a proposal for holding the meeting of the Selection Committee for the year 1996-97 (which ought to have been held by 31.3.97) within 15 days of today. Thereafter, the second respondent shall take necessary steps to ensure that the meeting of the Selection Committee is held on or before 30.11.97. No costs.

14. Hon'ble Supreme Court in Syed Khalid Rizvi & Others Vs. Union of India and Others (1993 Suppl.3 SCC 575) held that preparation of select list every year was mandatory. Hon'ble Supreme Court held:

"9. It would, thus, be clear that the Selection Committee shall consider the eligibility and suitability of the members of the state Police Service on the basis of merit, ability and suitability. Seniority will be considered only where merit, ability and suitability are approximately equal and it should prepare the select list of such suitable officers in the order of merit in each category such as "outstanding" etc. and send the select list in order of seniority to the State Government who with its comments would forward the same to the UPSC for approval. The UPSC again would review the list, if necessary, with prior notice to the State Government and revise the order of names (seniority) in the list which should be final and operative for a period of 12 months. The list should consist of such number plus 20 per cent or two officers whichever is more and of three times the anticipated substantive vacancies in the cadre posts. The appointment to the cadre posts should be made by the Central government in the order in the list on the recommendation of the State Government. The word "may" in Regulation 5 indicates that the Committee ordinarily meets at intervals not exceeding one year. Though the word "may" indicates



that it is not mandatory to meet at regular intervals, since preparation of the select list is the foundation of promotion and its omission impinges upon the legitimate expectation of promotee officers for consideration of their claim for promotion as IPS officers, the preparation of the select list must be construed to be mandatory. The Committee should, therefore meet every year and prepare the select list and be reviewed and revised from time to time as exigencies demand. No officer whose name has been entered in the list has a vested right to remain in the list till date of appointment. The list would be liable to shuffle and the name may be excluded from the list on the comparative assessment of merit, ability and suitability based on the anticipated or expected availability of the vacancies within quota etc. The junior may supersede the senior and may be ranked top.

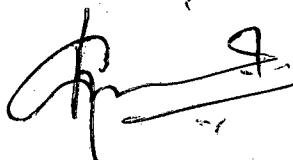
15. Further, the Hon'ble Supreme Court in Union of India and Others Vs. Vipinchandra Hiralal Shah (1996 6 SCC 721) held:

11. It must, therefore, be held that in view of the provisions contained in Regulation 5, unless there is a good reason for not doing so, the selection Committee is required to meet every year for the purpose of making the selection from amongst the state Civil Service officers who fulfil the conditions regarding eligibility on the first day of January of the year in which the Committee meets and fall within the zone of consideration as prescribed in clause (2) of Regulation 5. The failure on the part of the Selection Committee to meet during a particular year would not dispense with the requirement of preparing the Select List for that year. If for any reason the Selection Committee is not able to meet during a particular year, the committee when it meets next



should, while making the selection prepare a separate list for each year keeping in view the number of vacancies in that year after considering the State Civil Service officers who were eligible and fell within the zone of consideration of selection in that year."

16. Even in the case of Union of India Vs. Dr. M.G. Dighe and Others (1991) 4 SCC 551) cited by the learned counsel for the applicant, Hon'ble Supreme Court held that the crucial date for considering the age bar as 1.1.1988 even though the vacancies were to be assessed for 12 months from 16.3.1989- the date of the meeting of the Selection Committee. Hence, the submission of the learned counsel for the applicant that as the selection committee met on 26.11.97, the date for the purpose of age bar should be 1.4.97 cannot be accepted. Such an interpretation would be against the law laid down by the Hon'ble Apex Court and as provided for in the Regulations. Accordingly, we do not find any infirmity in considering Sl. Nos 4,5,6 and 9 in Annexure A2 by the Selection Committee which met on 26.11.97 as they had not attained the age of 54 years on 1.4.96 their dates of birth being 10.12.42, 3.6.42, 21.11.42 and 20.3.43 respectively. They had not been given any relaxation from the provisions of the Regulation. Hence, we do not find any infirmity in their inclusion in A-2 select list approved by the UPSC on 22.12.97. Having been included in the select list and the same coming into force from 22.12.97, respondents 4 & 6 who were in service on that day were eligible to be appointed in IPS. We do not find any infirmity in their appointment in IPS.

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17. The next issue to be considered is regarding the appointment of respondents 5 & 6 to the Indian Police service. According to the applicant, they being waitlisted officers they have no right to be appointed for the following reasons.

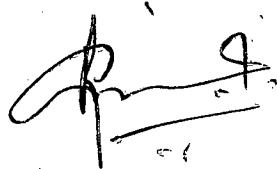
(i) They are waitlisted officers. They had no equity right to be appointed.

(ii) The vacancies which occurred on 31.1.98 and 28.2.98 could not be filled up by the officers included in the select list approved on 22.12.97 as A-7 Amendment to the IPS (Appointment by Promotion) Regulations came into effect from 1.1.98 and A-2 select list should be deemed to have been lapsed. This had been accepted in A-10 letter dated 14.9.98 by the Government.

(iii) They cannot be appointed against the additional vacancies which came into effect from 1.1.98. These additional posts should be filled up in accordance with the A-7 amended IPS (Appointment by Promotion) Regulations

(iv) A-13 and A-14 letters dated 11.2.98 and 19.2.98 respectively of the Govt. of India are illegal and inoperative.

18. We note that the vacancies assessed for the Select Committee which met on 26.11.97 was 7. In accordance with Regulation 5(1) existing at the relevant time, A-2 select list was formed in which 9 officers were included. Applicant's plea is that the officers included at Sl. No. 8

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and 9 in A-2 list who are respondents 5 and 6 in this O.A. are waitlisted officers. We do not find anything in A-2 to call them as waitlisted officers. The then existing Regulation 5(1) reproduced in para 12 above also does not provide for preparation of a waiting list of officers. The said Regulation provides as to how the number of officers to be included in the select it is to be decided and A-2 select list was prepared accordingly. Therefore, we are of the view that no distinction can be made amongst the officers included in a select list prepared and approved in accordance with IPS (Promotion by Appointment) Regulations.

19. The plea of the applicant is that respondents 5 and 6 were waitlisted officers and waitlisted officers have no right to be considered for the vacancies which had arisen on account of A-8 Amendment Regulations. It was also submitted that a candidate in the waiting list had no right to claim appointment to any future vacancy which may arise unless selection was held for it. It was also argued that eligibility must be decided as per the law prevailing after the vacancy in that post arose. Respondents justified their action stating that in terms of the provisions of the pre-amended Promotion Regulations 5(1) and 7(4), a person included in the Select list had a legitimate right to be considered for appointment to the service against the vacancies occurring in the promotion quota anticipated and unforeseen during the period of 12 months commencing from the date of preparation of the select list. It was submitted that this right was not nullified by coming into force of the amended Regulations and amended Recruitment Rules. It was

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also submitted that just because the Regulations were amended from 1.1.98, officers included in the 1996-97 select list for the vacancies occurring upto 28.2.98 could not be denied appointment.

20. We find that even though the rulings relied on by the applicant's counsel deal with matters connected with Regularisation/Direct Recruitment, in Prem Singh and Others Vs. Haryana State Electricity Board (JT 1996 (5) SC 219) Hon'ble Supreme Court held as follows:

20. In the case of Gujarat State Dy. Executive Engineers' Association Vs. State of Gujarat JT 1994 (3) SC 559= 1994 Supp.(2) SCC 591 the following question arose for consideration; "What is a waiting list? can it be treated as a source of recruitment from which candidates may be drawn as and when necessary and lastly how long can it operate?" Though this question was examined in the context of Executive Engineers (Civil) Gujarat Service of Engineers Class I Recruitment Rules, 1979, the following observations made by this Court are of general application. Therein this court has observed:

"How a waiting list should operate and what is its nature may be governed by the rules. Usually it is linked with the selection or examination for which it is prepared. For instance, if an examination is held say for selecting 10 candidates for 1990 and the competent authority prepares a waiting list then it is in respect of those 10 seats only for which selection or competition was held. Such lists are prepared either under the rules or even otherwise mainly to ensure that the working in the office does not suffer if the selected candidates do not join for one or the other reason or the next selection or examination is not held soon. Therefore, once the selected candidates join and no vacancy arises due to resignation etc. or for any other reason within the period the list is to operate under the rules or within reasonable period where no specific period is provided then candidate from the waiting list has no right to claim appointment to any future vacancy which may arise unless the selection was held for it.



21. Hon'ble Apex Court in para 25 held as follows:

25. From the above discussion of the case law it becomes clear that the selection process by way of requisition and advertisement can be started for clear vacancies and also for anticipated vacancies but not for future vacancies. If the requisition and advertisement are for certain number of posts only the state cannot make more appointments than the number of posts advertised, even though it might have prepared a select list of more candidates. The State can deviate from the advertisement and make appointments on posts falling vacant thereafter in exceptional circumstances only or in an emergent situation and that too by taking a policy decision in that behalf. Even when filling up of more posts than advertised is challenged the Court may not, while exercising its extra-ordinary jurisdiction, invalidate the excess appointments and may mould the relief in such a manner as to strike a just balance between the interest of the State and the interest of persons seeking public employment. What relief should be granted in such cases would depend upon the facts and circumstances of each case.

22. It is evident from the above that the Hon'ble Supreme Court has ruled that the state can deviate from the advertisement and make appointments on posts falling vacant thereafter in exceptional circumstances only or in an emergent situation and that too by taking a policy decision in that behalf. When the above is the law laid by the Hon'ble Apex Court in the matter of Direct Recruitment, we are of the view that the ratio of the judgments would be applicable in the matter of promotion quota also where instead of open market candidates serving employees are involved. Further, we are of the view that respondents 5 & 6 could never be treated as waitlisted officers on the date of approval of A-2 select list viz. 22.12.97 as two officers included at serial No. 5 and 6 of the list had already superannuated.. Hence, the list effectively consisted of only 7 officers against the 7 vacancies assessed for the select list 1996-97.

23. We note that had the Rules/Regulations not been amended respondents 5 & 6 could have been appointed to the

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Indian Police Service against the vacancies which occurred on 31.1.98 and 28.2.98 in accordance with the unamended Regulations 7(4) and 9(1) of the IPS (Appointment by Promotion) Regualtions which read as under:

7(4)The Select List shall ordinarily be in force until its review and revision, effected under sub-regulation (4) of Regulation 5 is approved under sub-regulation (1) or, as the case may be, finally approved under sub-regulation (2):

Provided that no appointment to the service under Regulation 9 shall be made after the meeting of the fresh Committee to draw up a fresh list under Regulation 5 is held:

Provided further that, in the event of any new Service or Services being formed by enlarging the existing State Police Service or otherwise being approved by the Central Government as the state Police Service under clause (j) of sub-regulation (1) of Regulation 2, Select List in force at the time of such approval shall continue to be in force until a new list prepared under regulation 5 in respect of the members of the new State Police Service, is approved under sub-regulation (1) or, as the case may be, finally approved under sub-regulation (1)

Provided further that in the event of a grave lapse in the conduct or performance of duties on the part of any member of the State Police Service included in the Select List, a Special review of the Select List may be made at any time at the instance of the State Government and the Commission may, if it so thinks fit, remove the name of such member of the State Police Service from the Select List.

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9(1):Appointments to the service from the select list-

Appointments of members of the State Police Service to the Service shall be made by the Central Government on the recommendations of the State Government in the order in which the name of members of the State Police Service appear in the Select List for the time being in force.

Provided that the appointment of member of the State Police Service shall be made in accordasnce with the agreement arrived at under sub-rule (5) of Rule 9 of the Recruitment Rules in the order in which the names of the members of the State Police Service occur in the relevant part of the Select List for the time being in force.

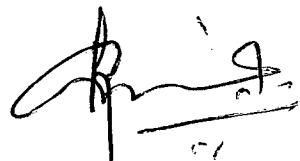


Provided further that the appointment of an officer, whose name has been included in the select list provisionally, under proviso to sub-regulation (5) of regulation 5 shall be made after his name is made unconditional by the Commission of recommendations of the State Governments during the period the Select List remains in force. While making appointment of an officer junior to a Select list officer whose name has been included provisionally in the select list one post will have to be kept vacant for such a provisionally included officer.

Provided also that in case where a select list officer whose turn for appointment has come, have exercised his unwillingness for appointment to the service and the State Government concerned informs the Central Government accordingly, his juniors from the select list shall be appointed without keeping any post reserved for such an officer. He shall have no claim for appointment to that Select List.

24. However, amendments to IPS (Recruitment) Rules, and IPS (Appointment by Promotion) Regulation had been brought into effect with effect from 1.1.1998. The promotion quota posts in Kerala IPS cadre also were enhanced from 30 to 36 by amendment to the IPS (Fixation of Cadre strength) Regulation with effect from 1.1.1998. In these changed circumstances is the second respondent empowered to allocate the enhanced number of 6 posts to different years and allocate two numbers to be filled from the officers (respondents 5 and 6) included in the select lists of 1996-97

25. According to the learned counsel for the applicant by A-10 letter dated 14.9.98, second respondent had accepted that by force of A-7 Amendment Regulations the anticipated vacancies of the year 1998 which were taken into account for preparing A-2 select list were deemed to have been lapsed. It is also pleaded that the 1997-98 select list in terms of unamended Regulation ceased to exist with the coming into force of A-7 Amendment Regualtions. We have perused A-10 letter dated 14.9.98. The same reads as under:

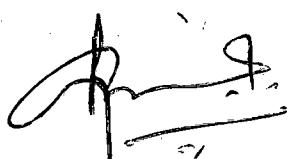


The undersigned is directed to refer to the provisions contained in the amendment regulations notified in respect of the IAS/IPS (Appointment by promotion) Regulations notified on 31.12.1997 and to say as follows. It is observed that in terms of the amended regulations 1st January, 1998, is the crucial date by which the eligibility criteria for consideration of the State Service Officers for consideration by the Selection Committee are required to be satisfied. In terms of Regulation 5(3) as amended, a State Civil Service Officer who has crossed 54 years between 1st April, 1997 and 31st December, 1997 and hence above 54 years as on the 1st January, 1998, is not eligible to be considered by the 1998 Selection Committee, though he would have been eligible to be considered by the 1997-98 Selection Committee scheduled to meet by March, 1998 had the regulations not been amended.

The matter has been carefully considered. It is observed that in terms of the second proviso to Regulation 5(3) of the IAS (Appointment by Promotion) Regulations, 1955, those officers who had crossed 54 years of age on the crucial date and who were not considered in the year immediately preceding the year in which the meeting of the Committee held are entitled to be considered by the Committee in addition to the normal zone of consideration placed before the Committee. The 1997-98 Select List year in terms of the Promotion Regulations existed as a legal fiction upto the 31st December, 1997 and it ceased to exist with the coming into force of the IAS (Appoinmtment by promotion) Second Ammdement regulations 1997 with effect from 1.1.1998. In all the cases where the Selection Committee for 1997-98 did not meet during the period from 1.4.97 to 1.12.97 it has to be construed that the Selection Committee for the immediately preceding year did not meet and those officers crossing the age of 54 years during this year allowed the benefit of consideration by the 1998 Selection Committee as and when it meets in terms of the second provisio to sub regulation (3) of Regualation 5 of the amended regulations.

Government of Andhra Pradhesh etc. are advised to prepare the zone of consideration to be placed before the 1998 Selection Committee in terms of the IAS (Appointment by promotion) Regulations, 1955 as amended inter alia keeping in view the clarification contained in the preceding paragraph. Receipt of this circular may kindly be acknowledged.

26. It is evident from the above that the above circular letter deals with the application of age condition in respect of officers crossing 54 years of age between 1.4.97 and 31.12.97. Nowhere in the above letter it had been stated that 1997-98 select list or 1996-97 select list will cease to exist

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from 1.1.98. What is stated as ceased to exist from 1.1.98 was the " 1997-98 Select List Year." Therefore, this plea of the applicant is without any basis and we reject the same.

27. It was submitted by the second respondent that the Cadre Strength Regulations were amended enabling additional number of posts in the promotion quota with corresponding entries for enabling decrease in the number of posts that could be filled from Direct Recruit quota to conform to the requirement of the amended rule 9(2) of the IPS (Recruitment) Rules, 1954. It was submitted that it was made clear to the State Governments including the State Govt. of Kerala that it would not be possible to fill the additional posts in the promotion quota immediately as there was no corresponding increase in the authorised Cadre Strength envisaged by the Cadre Strength Regulations and further the fact that the additional posts in question were held by incumbent RR (Regular Recruits/Direct Recruits) officers who could not be wished away overnight. It was submitted that recruitment against the additional posts by promotion without looking to this factor would lead to an unwieldy cadre composition with actual incumbency becoming far in excess of the authorised cadre strength in each State cadre. It was therefore decided to propose to all State Governments even while introducing the amendments to the Recruitment Rules that the additional posts enabled in the promotion quota should be filled in the phased manner over a period of 3 to 5 years against posts vacated by incumbent Direct Recruit officers due to retirement/ resignation/death etc. by a process of attrition. It was further submitted that the purpose and objective of

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recruitment by promotion from among State Police Service Officers in terms of Regulation 5(4) and 5(5) of the Promotion Regulations was to recruit officers in the order of their merit cum seniority. The Regulations envisaged inclusion in the select list of such officers who were graded as "outstanding" "very Good" and "Good" on an overall relative assessment of their service records in the same order. It was submitted that recruitment against the large number of additional posts at a stretch in the same year would enable officers of relatively lesser merit also enter the service not in tune with the object of the Promotion Regulations. Hence it was decided in consultation with the state Governments, to make the recruitment against the additional posts in promotion quota over a period of three years from 1998 to 2000 by invoking the provisions of Rule 4(2)(b) of the Recruitment Rules to the required purpose. Accordingly, all the State Governments were advised by A-13 Govt. of India, Department of Personnel & Training circular dated 11.2.98 determining the ceiling of the promotion posts upto which recruitment may be permitted invoking Rule 4(2)(b) of the Recruitment Rules. It was submitted that only as per A-13 circular dated 11.2.98 the transition from the pre-amended rules and regulations to the amended Rules and Regulations could be effected in a smooth way. It was submitted that keeping in view that the rights and privileges of State Police Service Officers included in the waitlist part of the select list included unconditionally for the year 1996-97 could not be abridged, it was provided in A-13 circular that the immediate charge on the additional posts for 1998 should be such officers included in the 1996-97 select list. It was further submitted that the Central

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Government's decision to fill up the additional posts of promotion quota over a period of three years was not due to any malafide or arbitrary action or with ulterior motives but was the outcome of an objective and well reasoned process of consideration of the matter by the Central Government in respect of all the three All India Services as a whole in consultation with the State Governments.

28. The amended Rule 4(2) of the IPS (Recruitment) Rules 1954 extracted in the argument note of SCGSC reads as under:

4(2) Subject to the provisions of this rules,

(a) the method or methods of recruitment to be adopted for the purpose of filling up any particular vacancy or vacancies as may be required to be filled during any particular period of recruitment, shall be determined by the Central Government in consultation with the Commission and the State Government concerned;

(b) the number of persons to be recruited by each method shall be determined on each occasion by the Central Government in consultation with the State Government concerned.

29. We have also gone through the Amended Regulation 5(1) of A7 IPS (Appointment by Promotion) Regulations. The same reads as follows:

5(1) Each Committee shall ordinarily meet every year and prepare a list of such members of the State Police service as are held by them to be suitable for promotion to the service. The number of members of the State Police Service to be included in the list shall be determined by the Central Government in consultation with the State Government concerned, and shall not exceed the number of substantive vacancies as on the first day of January of the year in which the meeting is held in the posts available for them under rule 9 of the Recruitment Rules. The date and venue of the meeting of the Committee to make the Selection shall be determined by the Commission.



Provided that no meeting of the Committee shall be held and no list for the year in question shall be prepared when,

(a)there are no substantive vacancies as on the first day of January of the year in the posts available for the members of the State Police Service under Rule 19 of the Recruitment Rules or

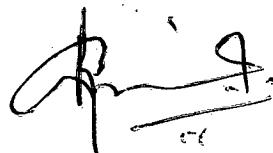
(b)the Central Government in consultation with the State Government decides that no recruitment shall be made during the year to the substantive vacancies as on the first day of January of the year in the posts available for the members of the state Police Service under Rule 9 of the Recruitment Rules or

(c)the Commission on its own or on a proposal made by the Central Government or the State Government after considering the facts and circumstances of each case, decides that it is not practicable to hold a meeting of the Committee to make the selection to prepare a select list."

The amended definition of the term "Year" under Regulation 2(1)(1) of the IPS (Appointment by Promotion) Regulations reads as under:

"Year" means the period commencing on the first day of January and ending on the thirty first day of December of the same year."

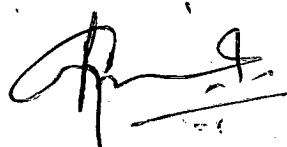
30. According to Rule 4(2)(b) and Regulation 5(1) extracted above, from 1.1.98, the number of State Police Service Officers to be included in the select list for promotion to Indian Police Service is to be decided by the Central Government in consultation with the State Government subject to the ceiling of the number of substantive vacancies existing on the 1st day of January of the concerned calender year. We also find that the Central Government has the power to make no recruitment even if vacancies against promotion quota are available on the first January of a year. After considering all the aspects we hold that the second respondent



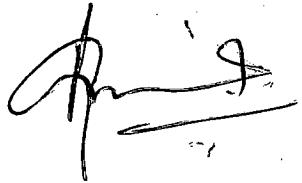
is competent in accordance with IPS (Recruitment) Rules and IPS (Appointment by Promotion) Regulations to decide to spread the increased in promotion quota posts from 1.1.98 over three years.

31. We have also given our anxious consideration to the factors which weighed with the Central Government for issuing A-13 circular letter dated 11.2.98 giving direction to spread the recruitment against the enhanced promotion quota vacancies over those years. They were (i) There was no increase in the authorised strength and the increase in promotion quota posts was by a corresponding reduction in the Direct Recruitment quota posts which were held by Regular Recruit/Direct Recruits. If the recruitment against the additional posts were not done in a phased manner over a period of 3 to 5 years against the posts vacated by incumbent direct recruit officers due to retirement, resignation, death, etc. the same would lead to an unwieldy cadre composition in excess of the authorised cadre strength of the State (ii) The recruitment against a large number of additional posts at a stretch in the same year would enable officers with lesser merit to enter the IPS not in tune with the object of the Promotion Regulation. We are of the view that these considerations cannot be brushed aside lightly. If the recruitment against the additional promotional quota posts were not spread over some years, the result could be as apprehended by the Central Government.

32. Another aspect included in A-13 circular dated 11.2.1998 was that the immediate charge on the increase in promotion quota posts in the respective State Cadres would be

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the persons who were in the select lists prepared in 1997 subject to the same being current. According to the second respondent this was provided so that the rights and privileges of the officials included in the select lists for the anticipated vacancies from 1.1.98 to 28.2.98 did not get abridged. Learned counsel for the applicant would argue with considerable vehemence, referring to number of judgments of the Hon'ble Supreme Court, that one does not acquire any right for appointment just because one is included in a select list and the filling up of the additional posts should be as per A-7 Amendment regulation. We find both from unamended and amended provisions of the IPS (Appointment by Promotion) Regulationsthat they protect the interests of the State Police Service Officers included in a select list e.g. first proviso under the unamended Regulation 5(3) and first proviso under the amended Regulation 5(3). It cannot be disputed that it is natural that a State Police Service Officer who is included in the Select list can develop a legitimate expectation of being appointed in the posts/service on occurrrence of a vacancy. Of course legitimate expectation is not a distinct enforceable right but at the same if the second respondent-Central Government-takes a policy decision giving due weight to this legitimate expectation without sacrificing the larger public interest, the same cannot be faulted especially when they had been following such a policy all along. Moreover, there is nothing in A-7 Amendment Regulations which states that the select list current on 31.12.97 will lapse on that day.

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33. Hon'ble Supreme Court in Food Corporation of India Vs. M/s Kamdhenu Cattle feed Industries (JT 1992 (6) S.C. 259)

held as follows on the Doctrine of 'legitimate expectation':

7. In contractual sphere as in all other State actions, the State and all its instrumentalities have to conform to Article 14 of the Constitution of which non-arbitrariness is a significant facet. There is no unfettered discretion in public law. A public authority possesses powers only to use them for public good. This imposes the duty to act fairly and to adopt a procedure which is 'fair play in action.' Due observance of this obligation as a part of good administration raises a reasonable or legitimate expectation in every citizen to be treated fairly in his interaction with the State and its instrumentalities, with this element forming a necessary component of the decision making process in all State actions. To satisfy this requirement of non-arbitrariness in a State action, it is, therefore, necessary to consider and give due weight to the reasonable or legitimate expectations of the persons likely to be affected by the decision or else that unfairness in the exercise of the power may amount to an abuse or excess of power apart from affecting bonafides of the decision in a given case. The decision so made would be exposed to challenge on the ground of arbitrariness. Rule of law does not completely eliminate discretion in the exercise of power, as it is unrealistic but provides for control of its exercise by judicial review.

8. The mere reasonable or legitimate expectation of a citizen, in such a situation, may not by itself be a distinct enforceable right, but failure to consider and give due weight to it may render the decision arbitrary, and this is how the requirement of due consideration of a legitimate expectation forms part of the principle of non-arbitrariness, a necessary concomitant of the rule of law. Every legitimate expectation is a relevant factor requiring due consideration in a fair decision making process. Whether the expectation of the claimant is reasonable or legitimate in the context is a question of fact in each case. Whenever the question arises, it is to be determined not according to the claimant's perception but in larger public interest wherein other more important considerations may outweigh what would otherwise have been the legitimate expectation of the claimant. A bonafide decision of the public authority reached in this manner would satisfy the requirement of non-arbitrariness and withstand judicial scrutiny. The doctrine of legitimate expectation gets assimilated in the rule of law and operates in our legal system in this manner and to this extent.



The above would indicate that State could take decisions keeping the legitimate expectation of the affected parties but keeping the larger public interest in view.

34. Keeping all the above in view, on examination of A-13 letter dated 11.2.98 we do not find any reason to set aside and quash the same as sought for by the applicant. We also find that A-13 letter is issued by Government of India, Ministry of Personnel, Public Grievances and Pensions, Department of Personnel and Training and the said Ministry is not impleaded as a respondent.

35. As a follow up of A-13 general circular, A-14 letter dated 19.2.98 was issued to Government of Kerala specifically authorising to utilise two posts from the increased posts in promotion quota for appointment of waitlisted officers in the 1996-97 select list and allotting the balance 4 posts of promotion quota for utilising one each in 1998 and 99 and two in 2000 select lists respectively. The respondents 5 and 6 were included in the select list 1996-97 against 20% anticipated vacancies in accordance with the rules. The said list was valid till 31.8.98. Denying them appointment merely for the reason that the amendment Regulations A-7 was effective from 1.1.98 would have been arbitrary. We have already rejected the prayer for quashing A-13 letter dated 11.2.98 issued by the Govt. of India. A-13 was specifically dealing with Indian Administrative Service. However, the Rules and Regulations of the three All India Services viz. Indian Administrative Service, Indian Police Service and Indian Forest Service are pari materia. Therefore, when the

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relief sought for quashing A-13 had been rejected for the same reasons the relief sought for quashing A-14 letter dated 19.2.98 is also liable to be rejected. We also do not consider that the action of the respondents has in any way affected consideration of the applicant by the selection committee for 1998 for appointment to IPS by promotion. The applicant has only a right to be considered for promotion which is a term of service but mere chances of promotion are not conditions of service. He cannot claim that he should be appointed. What the applicant by his plea is trying is to demand that the Central Govt. release all the increased posts against promotion quota which occurred due to amendment to the Cadre Regulations w.e.f. 1.1.98 i.e Six may be filled from 1.1.98 itself. When statutorily the Central Govt. is vested with powers to decide the number of posts to be filled up in a particular year and if in exercise of the said power, Central Govt. decides to reduce the number of posts for promotion in a year for valid reasons we do not consider that the same affects the applicant's right in any way. Viewed on the basis of the doctrine of legitimate expectation laid down by the Hon'ble Supreme Court in the Food Corporation of India cas (supra) the decision taken by A-14 letter dated 19.2.98 cannot also be faulted especially when the fact of the matter is that the applicant and respondents 5 and 6 were all considered together for the preparation of the select list for 1996-97 and applicant was not included in A-2 select list for 1996-97 and respondents 5 & 6 / ^{were} included in A-2 select list. Further, the assessed vacancies for 1996-97 select list was 7 and only 7 posts were ~~xxxx~~ filled up even by issue of A-14 letter. In the particular facts and circumstances of this O.A. we are



of the view that the case laws cited by the learned counsel for the applicant has no applicability. In view of the foregoing we reject the relief sought for quashing A-14 letter dated 19.2.98.

36. In the light of what has been held by usas above, appointment of respondents 5 & 6 against the two posts made available by A-14 is a valid one. This results in only one vacant post being available against promotion quota as on 1.1.98- the one allotted by A-14 letter. It has been averred by the first respondent that the applicant was considered along with others who were in the zone of consideration for being placed in the select list during 1998 but he was not selected. This has not been denied by the applicant. Having not been selected by the Committee, we do not find the applicant has any legitimate cause of grievance, seeking to quash A-12 order appointing 7th respondent. We find no merit in this relief and accordingly we reject the same.

37. As respondent No.8 is placed at Sl. No.7 in A-2 select list and as we have held that there is no infirmity in the promotion of respondents 5 & 6, who are placed in A-2 at Sl.No.8 & 9, we reject the relief for quashing A-4 order dated 24.9.98 promoting the 8th respondent. Further we note from A-4 order that the same had been issued pursuant to the order of this Tribunal in O.A. No.530/98.

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38 In the light of the detailed analysis as given above, we hold that the applicant is not entitled for any of the reliefs sought for and the Original Application is liable to be dismissed. Accordingly, we dismiss the Original Application with no order as to costs.

Dated the 20th June, 2000.



G. RAMAKRISHNAN
ADMINISTRATIVE MEMBER



A.V. HARIDASAN
VICE CHAIRMAN

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List of Annexures referred in this Order

- A2 True copy of the notification dated 6.1.98 of the Ministry of Home Affairs published in the Gazette of India dated 24.1.98
- A4 True copy of the notification G.O.(RT) No.6834/98-GAD dated 24.9.98 published in the Kerala Gazette dated 3.11.98 of the 1st respondent.
- A5 True copy of the notification No. 11052/13/94-AIS(II) dated 15.2.95 published in Govt. of India Gazette dated 4.3.95
- A6 a list of officials whowere in position as on 31.12.97
- A-7 Photo copy of the notification No.F/14015/52/96 -AIS(1) B dated 31.12.97 of the 2nd respondent.
- A-8 True copy of the relevant pages of the notification No. 11033/15/95-AIS (II) B dated 31.12.97
- A-10 True copy of the letter No. F.14015/5/98-AIS (I) dated 14.9.98 of the 2nd respondent.
- A-11 True copy of the letter No.Al-49003/98 dated 21.7.98 of the Director General of Police, TVM.
- A-12 True copy of the notification dated 29.10.98 of the 2nd respondent published in the Kerala Gazette dated 12.1.99.
- A-13 True copy of the letter No. F-14015/1/98-AIS(I) dated 11.2.98 of Department of Personnel, New Delhi
- A-14 True copy of the Govt. letter No.11013/11/96-IPS.I dated 19.2.98 Ministry of Home Affairs,New Delhi.