

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

OA No. 463 of 2003

Tuesday, this the 28th day of October, 2003

CORAM

HON'BLE MR. A.V. HARIDASAN, VICE CHAIRMAN
HON'BLE MR. T.N.T. NAYAR, ADMINISTRATIVE MEMBER

1. A.K. Vijayasankar,
Superintendent of Police (Retd.),
S/o T.V. Gopalan Nair,
House No. 34/1531, Karapparamba,
Calicut-10Applicant

[By Advocate Mr. P.V. Mohanan]

Versus

1. Union of India represented by its
Secretary, Ministry of Home Affairs,
New Delhi.

2. The Selection Committee to Indian Police Service
constituted under Regulation 3 of Indian Police
Service (Appointment by Promotion) Regulation 1955,
represented by the Secretary,
Union Public Service Commission,
Shajahan Road, New Delhi.

3. State of Kerala represented by Chief Secretary,
Government Secretariat, Thiruvananthapuram.

4. Director General of Police,
Thiruvananthapuram.Respondents

[By Advocate Mr. C. Rajendran, SCGSC (R1&2)]
[By Advocate Mr. Renjith A, GP (R3&4)]

The application having been heard on 28-10-2003, the
Tribunal on the same day delivered the following:

O R D E R

HON'BLE MR. A.V. HARIDASAN, VICE CHAIRMAN

The applicant, who commenced service as a Sub Inspector of Police in the Kerala Police General Executive Service on 5-9-1973, was promoted to the post of Deputy Superintendent of Police on 7-5-1992 and was further promoted as Superintendent of Police with effect from 4-7-2001. On 31-5-2002 he retired from the State Police Service on attaining the age of

superannuation. He had a meritorious career in the Kerala State Police Service. Appointment to the India Police Service by promotion of officers belonging to the Kerala State Police Service is governed by the provisions of Indian Police Service (Appointment by Promotion) Regulation, 1955 [Regulation for short]. A committee for preparation of a select list for the vacancies for appointment by promotion during the period from 1-1-1999 to 31-12-1999 met on 13-12-2000 and those who were placed in the select list were appointed to the Indian Police Service by notification dated 25-1-2001. Thereafter, meetings of the committee for preparation of the lists for the vacancies from 1-1-2000 to 31-12-2000, 1-1-2001 to 31-12-2001 and 1-1-2002 to 31-12-2002 were not held. The applicant, coming to know that steps were in progress for convening a meeting for preparation of the select list for the vacancies of the above said three years pursuant to the order of this Tribunal in OA No.762/2002, filed this application for a direction to the 3rd respondent to forward the name of the applicant to the Selection Committee for consideration for selection to the India Police Service for the vacancies that had arisen during the year 2000 and 2001 and to consider the applicant's name on the basis of the seniority in the cadre of Deputy Superintendent of Police for appointment to the vacancies pertaining to the years 1-1-2000 to 31-12-2000 and 1-1-2001 to 31-12-2001 respectively, declaring that the applicant is eligible and entitled to be considered for selection and appointment to the India Police Service that had arisen during the year 2000 and 2001 despite his superannuation from the State Police Service on 31-5-2002. It is alleged in the application that a harmonious and joint reading of all the provisions in the Indian Police Service (Appointment by Promotion) Regulation, the retirement of the applicant on

31-5-2002 would not make him ineligible for consideration and had the Committee met at the appropriate time, the applicant would have been within the zone of consideration.

2. Respondents in their reply statement do not dispute the length of service of the applicant or his claim that he had a meritorious service. They contend that the applicant did not come within the zone of consideration for the vacancies of the year 2000 as the vacancies were 4 and the number of seniors were larger. Regarding his claim for being considered for the vacancies which arose between 1-1-2001 and 31-12-2001, the respondents contend that the applicant having attained the age of 55 years as on 2-5-2001, i.e. before the crucial date of 1-1-2002, in view of the provisions contained in Sub Regulation (3) of Regulation 5 of the Indian Police Service (Appointment by Promotion) Regulation, 1955, the applicant is not eligible. Being an officer who has retired from service the applicant has no right to be considered, contend the respondents.

3. The applicant in the rejoinder does not dispute the fact that against the vacancies of the year 2000 the applicant would not come within the zone of consideration. However, the applicant contends that he was eligible to be considered against the vacancies of the year 2001, i.e. which arose between 1-1-2001 and 31-12-2002, as he had not crossed the age of 54 years as on 1-1-2001. The applicant in his rejoinder has contended that this Tribunal placing reliance on the order of the Tribunal in OA No.1045/96 had held that a retired officer could also be considered for induction into the Indian Police Service.

4. We have carefully perused all the pleadings and have heard at length the argument of Shri P.V.Mohanan, learned

counsel of the applicant, Shri C.Rajendran, learned SCGSC appeared for respondents 1 and 2, and Shri Renjith A, learned State Government Pleader appeared for respondents 3 and 4 and .

5. Shri P.V.Mohanan, learned counsel of the applicant, with great vehemence and considerable tenacity attempted to stress that the applicant having not crossed the age of 54 years as on 1-1-2001, there is no justification in not considering his name for preparation of the select list for the vacancies which arose in the year 2001. Right for consideration for appointment being a fundamental right, the action on the part of the respondents in not considering the case of the applicant amounts to negation of the constitutional guarantee under Articles 14 and 16 of the Constitution, argued Shri Mohanan.

6. Shri Renjith, learned State Government Pleader appeared for respondents 3 and 4, on the other hand, argued that if a person who is not a member of the State Police Service on the date on which a committee meets for considering members of the State Police Service for placement in the select list, that would amount to consideration of unequals as equals and such an action would offend Articles 14 and 16 of the Constitution.

7. The question will have to be approached on the basis of the rules and regulations on the subject. It is a fact not disputed and undisputable that appointment to the vacancies reserved for promotion to the Indian Police Service from the State Police Service is to be made in accordance with the provisions contained in the Indian Police Service (Appointment

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by Promotion) Regulation, 1955. The 'year' for the purpose of this regulation is defined in the definition clause at 2(1), which reads as follows:-

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

8. For a proper appreciation and interpretation of the provisions vis-a-vis the factual situation, it is profitable to extract Regulation 5 of the India Police Service (Appointment by Promotion) Regulation, 1955 in its entirety:-

"5. Preparation of list of suitable officers--(1) Each Committee shall ordinarily meet every year and prepare a list of such members of the State Police Service, as held by them to be suitable for promotion to the 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 9 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 either 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.

Explanation.--In the case of joint cadres, a separate Select List shall be prepared in respect of each State Police Service.

(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 January 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 Government:

Explanation.--The powers of the State Government under the third proviso of 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 January 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 and who has not been appointed to the Service only because he was included provisionally in the Select List 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 fifty-four 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 if he was eligible for consideration on the first day of January 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.

(3-A) The Committee shall not consider the case of such members of the State Police Service who had been included in an earlier Select List and--

(a) had expressed his unwillingness for appointment to the Service under Regulation 9:

Provided that he shall be considered for inclusion in the Select List, if before the commencement of the year, he applies in writing, to the State Government expressing his willingness to be considered for appointment to the Service;

(b) was not appointed to the Service by the Central Government Regulation 9(a).

(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' them 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 of 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."

9. Since the fact that against the 4 vacancies of the year 2000 the applicant did not come within the zone of consideration is not disputed. The applicant has no case that by virtue of his seniority he would come within the zone of consideration for these vacancies. Hence, we need only to consider his claim in respect to the vacancies of the year 2001. Going by the definition of the 'year' contained in 2(1) of the Indian Police Service (Appointment by Promotion) Regulation, 1955, the vacancies for the year 2001 are those vacancies which arose after 1-1-2001 till 31-12-2001 and subsisting as on 1-1-2002. According to Sub-Regulation (1) of Regulation 5, the number of members of the State Police Service to be included in the select list is not to exceed the number of substantive vacancies as on the first day of January of the



year to which the meeting is held. Since the committee should ordinarily meet every year, when the committee meets all the vacancies subsisting as on the first day of January of the year of the meeting would be considered leaving it to the committee of the next year to consider preparation of the list for the vacancies which would subsist on the first day of the succeeding year. Sub-Regulation (3) makes it very clear that the committee should not consider the case of the members of the State Police Service who have attained the age of 54 years on the first day of January of the year in which it meets. What would happen if a member of the Service had not crossed the age of 54 years on the crucial date of a relevant year, but could not be considered for non-convening of the meeting of the committee have been provided for in Sub-Regulation (2). A provision has been made for considering such members of the Service as and when the committee meets.

10. Learned counsel of the applicant argued that the requirement of the meeting of the selection committee ordinarily every year being a mandatory requirement as has been held by the Apex Court in Syed Khalid Rizvi & Others vs. Union of India & Others, reported in 1993 Supp.(3) SCC 575, it is incumbent on the part of the committee to draw up an individual list for individual years considering only those who would fall within the zone of consideration for the vacancies of the relevant years as has been held by the Apex Court in Union of India & Others vs. Vipinchandra Hiralal Shah, reported in (1996) 6 SCC 721. As the applicant was very much within the limit of 54 years as on 1-1-2001, the applicant's case should have been considered by the committee whenever it meets for, according to Shri P.V.Mohanan. 'Meeting of the committee every year' means the committee for preparation of the select list for particular vacancies of a particular year should meet

before the close of that year, meaning thereby that towards the vacancies of the year 2001 for which the applicant claims eligibility, the meeting should have been held before the close of that year, in which event the applicant would have been very much within the age limit. Shri Renjith, learned Government Pleader argued that this argument is based on a misinterpretation of the Rules. According to him, it is evident from Sub-Regulation (3) that the committee should not consider the members of the State Police Service who have attained the age of 54 years on the first day of January in which it meets. He further argued that since the committee is to prepare a select list not exceeding the number of substantive vacancies existing on the first day of January of the year in which the meeting is held, the vacancies to be considered would fall between the first day of January of the preceding year and the first day of January on which the committee meets. If that be so, for the vacancies of the year 2001 the meeting can be held only in 2002 and the crucial date would be the first day of January, 2002. Admittedly, the applicant having crossed the age of 54 years in May, 2001, the committee cannot consider the case of the applicant because as on the first day of January, 2002, on the date of the meeting, the applicant had attained the age of 54 years. We find substance in the argument of the learned Government Pleader, which is in consonance with the Sub-Regulation (3) of Regulation 5 on a joint reading of the definition of 'the year' contained in 2(1)). The applicant who was not within the age of 54 years on the crucial date, viz. 1-1-2002, could not have been considered for inclusion in the select list, even if he had continued to be a member of the Service.

11. The next question is even if the applicant had not crossed the age of 54 years as on 1-1-2002, since the applicant

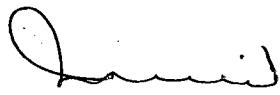
has ceased to be a member of the State Police Service with effect from 31-5-2002, the Committee was to consider his name for inclusion in the select list. Going through the entire scheme of the Regulation, we could not find any provision which permits a retired State Police Service officer to be considered for inclusion in the select list. Learned counsel of the applicant invited our attention to two decisions of the Division Bench of this Tribunal, viz. OA No.776/02 titled K.O.Mathew vs. Union of India & Others decided on 14-1-2003 and OA No.827/02 titled N.Subhash Babu vs. Union of India & Others decided on 21-1-2003, in which a direction was given for considering the applicants in those cases who had already retired from State Police Service. We find that the relevant provisions of the Regulation were not probably brought to the notice of the Bench, while the question was considered and that therefore the above decisions do not reflect the correct legal position. Since the applicant was no more a member of the State Police Service and had crossed the age of 54 years on 1-1-2002, we are of the considered view that the applicant is not entitled to the reliefs sought. Learned counsel of the applicant brought to our notice instances in which on account of interim orders passed by the Tribunal prior to the retirement State Police Service officers were even after retirement considered by the Committee and inducted to the Indian Police Service. Such cases again are distinguishable on facts. Apprehending that the Committee is not likely to meet jeopardising their chances for induction to Indian Police Service eligible State Police Service officers before attaining the age of 54 years or or superannuation had approached the Tribunal and the Tribunal had passed ~~an~~ interim order to the

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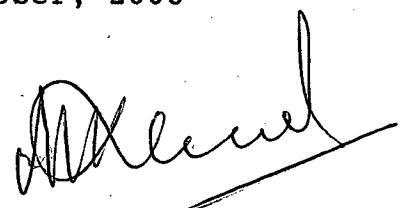
effect that their retirement on superannuation would not affect their otherwise valid claim that was perfectly valid. But the applicant's case is totally different on facts.

12. In the light of what is stated above, the Original Application fails and is dismissed leaving the parties to bear their costs.

Tuesday, this the 28th day of October, 2003



T.N.T. NAYAR
ADMINISTRATIVE MEMBER



A.V. HARIDASAN
VICE CHAIRMAN

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