

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.No.480/2001

Monday this the 30th day of July, 2001

CORAM:

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

Ramakrishna Pillai Chitharanjan Nair(R.P.C.Nair), I.P.S.
Director General of Police(Prisons),
Trivandrum. ..Applicant

(By Advocate Sri N.Nandakumara Menon)

vs.

1. State of Kerala, represented by the Chief Secretary to Government, Secretariat, Trivandrum.
2. The Principal Secretary, Home Department, Government of Kerala, Secretariat, Trivandrum.
3. R.Padmanabhan,
Director General and Inspector General of Police, Kerala State, Police Headquarters, Vazhuthacaud, Trivandrum.
4. K.B.Ganesh Kumar,
Minister for Transport, Kerala State, Secretariat, Trivandrum.
5. R.Balakrishna Pillai, M.L.A.
Chairman,
Kerala Congress(B) Party,
Keezhoottil Veedu, Opposite N.S.S.College,
Kottarakkara.
6. Union of India, represented by the Secretary to Government, Ministry of Home Affairs, New Delhi. ..Respondents

(By Advocate General (R1-2 & 4)

Mr.C.Rajendran, SCGSC(R6)
Mr.M.R.Rajendran Nair, Advocate(R3)
Mr.N.James Koshy, Advocate(R5)

The Application having been heard on 24.7.2001, the Tribunal on 30.7.2001 delivered the following:-

ORDER

HON'BLE SHRI A.V.HARIDASAN, VICE CHAIRMAN:

Shri Ramakrishna Pillai Chitharanjan Nair
(R.P.C.Nair), a senior member of the Kerala Cadre of Indian

Police Service presently working as Director General of Police (Prisons) has filed this application impugning the order dated 30.5.2001 of the Ist respondent in so far as it relates to the promotion of the third respondent as Director General and Inspector General of Police of the Kerala State, for a declaration that the applicant is eligible and entitled to be appointed as Director General and Inspector General of Police in the Kerala State and for a direction to the respondents 1&2 to produce files leading to Annexure.A6 order and to consider the applicant for appointment to the post of Director General and Inspector General of Police (Law and Order) in the State of Kerala.

2. The material allegations in the application are comprehensively stated as hereunder. The applicant who was recruited to the Indian Police Service in the year 1965 was originally allotted to Gujarat cadre. He was transferred to the Kerala Cadre in the year 1974. He was promoted as Deputy Inspector General of Police in the year 1981, as Inspector General of Police in the year 1991, as Additional Director General of Police in March, 1996 and as Director General of Police with effect from 1.4.01. The applicant had held very important and sensitive posts in the cadre. He was recipient of police medal for meritorious service in the year 1991. He has an unblemished and meritorious record of service of 36 years in the Indian Police Service. The third respondent was recruited to the Indian Police Service in the year 1966 and is junior to the applicant. He was proceeded against under the provisions of All India Services (Discipline and Appeal) Rules, 1966 for grave misconduct

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involving corruption and a charge memo containing five serious charges were served on him in April, 1995. As the written statement of defence submitted by the third respondent was found by the disciplinary authority to be unsatisfactory, the State Government ordered a detailed enquiry under Rule 8(6) of the All India Services (Discipline and Appeal) Rules 1966 into the charges levelled against the third respondent. Shri V.S.Krishnamoorthy, IPS, the then Additional Director General of Police (Vig) was appointed as enquiry authority and the applicant was appointed as the presenting officer. The applicant has reliably understood that the disciplinary proceedings initiated against the third respondent under A.7 memorandum of charges has not been concluded and has been kept pending by the Government at the instance of the third respondent. As the disciplinary proceedings against the third respondent was pending, by order dated 8.10.96 three juniors of the third respondent were promoted to the cadre of Additional Director General of Police superseding him. The third respondent had not obtained any distinguished decoration such as police medal for meritorious service. The third respondent therefore, is not a person suitable to be appointed as Director General and Inspector General of Police which post is to be filled by appointing an officer of high degree of calibre, merit and seniority. The applicant with his blemishless and meritorious service and seniority is eminently suitable to hold the post while the third respondent who is facing disciplinary proceedings for grave misconduct including charges of corruption is absolutely unsuitable and ineligible for appointment as Director

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General and Inspector General of Police. As Shri P.R.Chandran, who was holding the post of Director General and Inspector General of Police, Kerala State was due to retire from service on superannuation on 31.5.2001 the State Government took steps to fill up the vacancy by selecting and appointing a suitable officer. The applicant and two other officers of the rank of Director General of Police namely Shri Joseph Thomas and Shri Joseph Dawson were considered for selection and appointment as Director General and Inspector General of Police on the retirement of Shri P.R.Chandran. The applicant has reliably understood that in the meeting of the State Cabinet which was held on 30.5.2001 after considering the applicant and two other officers, as some criminal case against Joseph Thomas was pending and as Joseph Dawson was not interested in taking up the responsibility of law and order, the Hon'ble Chief Minister recommended the applicant's name for appointment as Director General and Inspector General of Police and that as the 4th respondent opposed the suggestion, the third respondent who was ineligible and unsuitable was appointed by the impugned order. The objection of the 4th respondent the Minister for Transport, Kerala State who is the son of the 5th respondent Shri Balakrishna Pillai a Member of the Legislative Assembly was that the applicant in his capacity as Director General of Police (Prisons) had not extended necessary facilities to the 5th respondent while he was detained in Central Prison, Poojappura from 16.3.2001 to 24.3.2001 having been convicted by the Special Judge and Enquiry Commissioner, Trivandrum for offences under the provisions of Prevention of Corruption Act which was upheld by the Hon'ble High Court of

Kerala in appeal. As a matter of fact all facilities due to Shri Balakrishna Pillai as a sitting Member of the Legislative Assembly were extended to him. However, when the 5th respondent was released on bail he made a baseless press statement to the effect that while staff in Poojappura Central Jail had treated him well despite the directions from the Chief Ministers' Office, against it the applicant had expressed displeasure on the jail staff for being kind to him. This news item was published in Hindu dated 25.3.2001 (copy at Annexure.A1). It appeared in the newspaper Taniniram Malayalam daily dated 15.5.2001, that the proposed appointment of the applicant as Director General and Inspector General of Police would be opposed by the 5th respondent (copy at Annexure.A2). Again in Taniniram Malayalam daily dated 31.5.2001 another news item appeared (copy at Annexure.A3) which would show that the proposal for appointment of the applicant as Director General and Inspector General of Police was opposed by the 4th respondent and it was only due to the said opposition that the appointment was denied to the applicant. In Malayala Manorama daily dated 2.6.2001 also it was stated that the reason for denial of selection and appointment to the applicant as Director General and Inspector General of Police was due to the objection of the 4th respondent. The denial of appointment to the post of Director General and Inspector General of Police (Law and Order) which is the highest post in the cadre to the applicant who is a senior and meritorious person and appointment of the third respondent who was not a Director General of Police but was only an Additional Director General of Police therefore is

vitiated by malafides and extraneous considerations. Since the appointment of the third respondent is vitiated for the said reasons the applicant has filed this application seeking the reliefs as aforesaid.

3. The Ist respondent State of Kerala filed a reply statement and an additional reply statement. The material contentions raised are as follows. In the Kerala Cadre of the Indian Police Service, two cadre posts in the grade of Director General and Inspector General of Police namely one Director General and Inspector General of Police, Director of Vigilance and Anti Corruption Bureau and two ex cadre posts in the same grade are being operated. As on 31.5.2001 there were four officers working in this grade, they were Shri K.V.Joseph Thomas, IPS, Chairman and Managing Director, Kerala Shipping and Inland Navigation Corporation, Shri P.R.Chandran, IPS, Director General and Inspector General of Police, Shri W.J.Dawson, IPS, Director of Vigilance and Anti Corruption Bureau and Shri R.P.C.Nair, IPS, Director General of Police (Prisons). Shri P.R.Chandran, IPS was to retire on 31.5.2001 and therefore a vacancy in the grade of Director General and Inspector General of Police was to arise with effect from that date. The third respondent was the seniormost Addl.Director General of Police entitled to be promoted to the grade of Director General and Inspector General of Police in the scale Rs.24050-26000. The Council of Ministers on their meeting dated 30.5.2001 decided to promote the third respondent in the grade of Director General and Inspector General of Police with effect from 31.5.2001 afternoon. As the applicant was holding the grade

of Director General and Inspector General of Police with effect from 31.3.2001 he cannot have any legitimate grievance against the promotion of the third respondent to the grade of Director General and Inspector General of Police. It was when a vacancy in the grade of Director General of Police was anticipated on the superannuation of Shri B.S.Shastry on 31.3.2001, the Council of Ministers on 26.3.2001 promoted the applicant to the grade of Director General of Police from the grade of Additional Director General of Police and posted him as Director General of Police (Prisons) with effect from 31.3.2001. As per the Indian Police Service (Fixation of Cadre Strength) Regulations and Indian Police Service (Pay) Rules, the State Government can operate the four posts in the post of Director General and Inspector General of Police it was open to the Government to post any eligible officer to the post of Director General and Inspector General of Police on the occurrence of vacancy with effect from 31.5.2001. The allegations of the applicant that in the meeting of the State Cabinet on 30.5.2001 the names of the applicant and two other officers were considered for appointment as Director General and Inspector General of Police is far from truth. The decision to promote the third respondent from the post of Additional Director General of Police to the grade of Director General and Inspector General of Police, the question of posting one among the four eligible persons were taken up and it was decided to post the third respondent as Director General and Inspector General of Police. As the applicant was holding the grade of Director General of Police with effect from 31.3.2001 there is no

supersession involved in the appointment of the third respondent as Director General and Inspector General of Police with effect from 31.5.2001 by the impugned order. The applicant is not entitled as a matter of right to claim that he only should be posted as Director General and Inspector General of Police. Two officers senior to the applicant who are also functioning in the grade of Director General and Inspector General of Police are holding other co-equivalent positions and therefore, there is absolutely no legitimate basis for the grievance of the applicant projected in the application. The four posts in the grade of Director General and Inspector General of Police in the scale Rs.24050-26000 in the Kerala Cadre are independent to each other and holder of one post is not amenable to the supervisory jurisdiction of another. The allegation that the third respondent is absolutely unsuitable unfit and ineligible to be appointed as Director General and Inspector General of Police is baseless and is made without any bonafides. It is true that disciplinary proceedings were initiated against the third respondent and the article of charges were served on him in April 1995. The third respondent filed OA 484/96 challenging the Memorandum of Charges (A7) on the ground that three enquiries had already been held against him on the very same allegations and findings in all these enquiries were in his favour and that the fourth effort was intended to discredit him and deny him due promotion owing to malafides. The Tribunal in its order dated 31.5.96 in OA 484/96 directed that if the applicant (third respondent in this case) were to make a representation before the Government against A7 order the

nature and discussions and records of which as per Rules of Business of the Government of Kerala being secret cannot be produced in court as has been held by the Apex Court in AIR 1987 SC 1554 and AIR 1988 SC 782. As no legal rights of the applicant have been violated and as there is no infraction of the rules in appointing the third respondent as Director General and Inspector General of Police (Law and Order) the applicant is not entitled to any relief as sought for in this application.

4. Respondent No.3 filed a reply statement and an additional reply statement. The material contentions raised can be briefly stated as follows. This application which is an abuse of process of court intended to tarnish the image of this respondent and to harrass him as part of consistent effort to harrass the applicant by persons within the department and outside is liable to be dismissed in limine. The allegations in the application that the third respondent is absolutely unsuitable to be appointed as Director General and Inspector General of Police is reckless, baseless and malafide. The subject matter of the Original Application is only a matter of posting and not one of selection and therefore there is absolutely no legitimate grievance of the applicant which calls for adjudication and redressal. Promotion is only to the grade of Director General of Police in the scale Rs.24050-26000 from the grade of Additional Director General and among those who are Director Generals of Police appointment as Director General of Police and Inspector General of Police (Law and Order) amounts to only

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a posting. There is no selection involved in it. The post in the grade Rs.24050-26000 have equal and independent status. The applicant was well aware of the dropping of the disciplinary proceedings against the 3rd respondent and the allegations made in the application that the third respondent was facing disciplinry proceedings when he was posted by the impugned order as D.G. and IGP (Law and Order) is made without any bonafides and amounts to wilful suppression of relevant material facts. The contention that the Director General and Inspector General of Police has supervisory function over the other coequivalent posts is without substance. Since the application has been filed with false allegations with malafide intention to tarnish the image of the applicant wilfully suppressing material facts which were known to the applicant even before filing of this application is liable to be dismissed with costs.

5. In the reply statemnt of the 4th respondent, the allegations of malafides has been refuted. The allegation that as the Chief Minister recommended the applicant's name for appointment as Director General and Inspector General of Police that the 4th respondent opposed the suggestion on the ground that the applicant had not extended necessary facility to the 5th respondent while he was detained in the Poojappura Central Jail are false and therefore denied. In the meeting of the Cabinet on 30.5.2001 after a decision was taken to promote the third respondent to the grade of

Inspector General of Police four persons in the grade of Director General and Inspector General of Police including the applicant and the third respondent were considered for posting as Director General and Inspector General (Law and Order) and the Cabinet after discussion decided to post Shri Padmanabhan, the third respondent as Director General and Inspector General of Police. The allegations have been made by the applicant placing reliance on some paper reports which are not true to facts.

6. The 5th respondent has filed a reply statement in which he has denied the allegations made against him in the application and has stated that no reliance can be placed on the press reports which are merely hearsay in nature. As no relief has been sought against the 5th respondent and the 5th respondent is not a necessary party it is prayed that the application may be dismissed with costs.

7. The applicant has filed a rejoinder raising following contentions. When the Cabinet considered filling up the post of Director General of Police (Law and Order) the third respondent being only the Additional Director General of Police he was not entitled to be considered for appointment as Director General and Inspector General of Police (Law and Order). The post of Director General and Inspector General of Police (Law and Order) is the highest post in the hierarchy in the Kerala State and the officer holding that post has supervisory jurisdiction over the Intelligence wing of the police department in which a DGP

can be appointed in additional charge of the wing. It has been the practice to appoint the seniormost officer in the cadre as the Director General and Inspector General of Police (Law and Order). The opinion of the Advocate General recommending dropping of proceedings against the third respondent and the order of the State Government dropping the proceedings is not according to the rules. There has not been a proper termination of the disciplinary proceedings initiated against the third respondent as per Annexure A7 memorandum of charges in accordance with the provisions of All India Services (Discipline and Appeal) Rules and therefore, the third respondent is ineligible for appointment as Director General and Inspector General of Police (Law and Order). Since the Government has conceded that the appointment to the post of Director General and Inspector General of Police is based on a selection and that no cogent reason has been stated in the reply statement as to why the applicant was overlooked in the matter of appointment to the said post and that the third respondent was preferred it is to be held that the whole process of selection and appointment of the third respondent as Director General and Inspector General of Police (Law and Order) is vitiated by irregularities, illegalities and malafides.

8. Shri Nandakumara Menon, learned counsel for the applicant stressed mainly three points. The first point taken by him is that the post of Director General and Inspector General of Police (Law and Order) being the

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highest post in the Kerala Cadre of Indian Police Service, the same was required to be filled by selection from among the eligible officers on the basis of seniority and merit and therefore, the appointment of the third respondent, who was yet to hold the post of Director General overlooking the seniority and merits of the applicant and the other officers is arbitrary, illegal and discriminatory. The next point stressed by him is that the third respondent is an officer who is facing a disciplinary proceedings for very grave alleged misconduct including charges of corruption and therefore he is absolutely ineligible, and unsuitable to be selected and appointed to the most prestigious post of Director General and Inspector General of Police. The last point stressed by him is that the non-selection of the applicant as Director General and Inspector General of Police was on account of malafides.

9. Shri Nandakumara Menon with considerable tenacity argued that though four posts, two cadre posts and two ex-cadre posts, are operated in the State of Kerala in the grade of Director General of Police (DGP) in the scale Rs.24050-26000, the post of DGP and IGP (Law and Order) is the apex post in the cadre and the DGP & IGP (Law and Order) has the prime place as the principal police functionary in the State. Therefore the appointment to the post of DGP and IGP, Law and Order, should be made by selection in terms of Rule 3(2)(a) of the Indian Police Service(Pay)Rules, 1954, argued the learned counsel. The counsel further argued that as the third respondent on the date on which the Annexure A6

order was issued was only an Additional Director General of Police and not a Director General of Police, he should not have been considered for selection and appointment to the post of DGP and IGP(Law and Order) along with the applicant because that would amount to treating unequals as equals violating Article 14 of the Constitution.. Further as the applicant is undisputedly senior and has outstanding service records, the appointment of the third respondent as DGP and IGP, Law and Order, ignoring the superior merit and seniority of the applicant, is arbitrary and irrational, argued the counsel. To buttress his argument that the third respondent who is undisputedly junior to the applicant and had not been holding the post of Director General of Police on 30.5.2001 could not be simultaneously promoted as Director General of Police and IGP(Law and Order), Sri Menon sought support from the decision of the Karnataka High Court in C.Dinakar, I.P.S. petitioner vs. Government of Karanataka and others respondents reported in 1999 Lab I.C. 320. In the said case, the petitioner before the High Court Sri Dinakar who was appointed to the I.P.S. in the year 1963 and was senior to the respondent No.4 ,Sri T.Srinivasalu filed an O.A. No.200 of 1997 before the Central Administrative Tribunal, Bangalore Bench challenging the promotion and appointment of Sri Srinivasalu as DGP and IGP by notification dated 6.3.97 alleging that the promotion and appointment of Sri Srinivasalu was vitiated by malafides and extraneous considerations inasmuch as the applicant who was senior and was already holding the post in the grade of Director General of Police was not properly considered in

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accordance with the provisions contained in Rule 3(2)(a) of the I.P.S.(Pay)Rules and the Government order dated 23rd December 1996. It has been contended by the Government of Karnataka before the Tribunal that the cases of the petitioner as also the respondent No.4 were considered in accordance with the rules on the basis of an objective assessment of the merits as revealed from the overall service records of the officers and the appointment of Sri Srinivasalu was made properly, observing the rules and guidelines. The Tribunal accepted the contention and dismissed the application. Petitioner approached the High Court of Karnataka filing Writ Petition No.4264 of 1998. Before the Karnataka High Court it was contended that the posting of Sri Srinivasalu who was also in the grade of Director General of Police was a mere assignment of duties which is not required to be done after selection. The Karnataka High Court noting the inconsistency in the pleadings of the Government of Karnataka before the Tribunal and before it and on an appreciation of the facts of the case, held that the selection and appointment of Sri T.Srinivasalu as DGP and IGP without being promoted to that grade earlier was against the rules and set aside the order as illegal and unsustainable. Sri Nandakumara Menon argued that the decision of the Karnataka High Court was upheld by the Hon'ble Supreme Court in Government of Karnataka vs. Dinkar and others reported in 1999 Lab IC 2421. The learned counsel therefore argued that on the same analogy, the contention of the respondents 1 to 3 in this case that the third respondent who was decided to be promoted in the

meeting of the Cabinet on 30.5.2001 was properly posted as DGP and IGP cannot be sustained. The learned Advocate General appearing for the respondents 1 and 2 and Sri M.R.Rajendran Nair, Advocate, learned counsel of the third respondent argued that as ~~the~~ four posts in the grade of DGP and IGP are being operated in Kerala State, 2 cadre posts and 2 ex-cadre posts in terms of rule 3(2)(a) of the Indian Police Service(Pay) Rules, appointment to the posts carrying pay above the time scale of pay in the Indian Police Service is to be made by selection on merit with due regard to seniority ^{and} once the officer is promoted to the grade for the purpose of posting to a particular post in the same grade, no further selection is either contemplated as per the rules or required by any administrative order as far as the Kerala State is concerned. Learned Advocate General and Sri M.R.Rajendran Nair attempted to distinguish the ruling of the Karnataka High Court in Dinkar's case on the ground that the decision in that case was rendered in the undisputed facts of the case and in the wake of the inconsistent plea taken before the Tribunal as also before the High Court. The learned counsel argued that it was held by the High Court that appointment to the post of DGP and IGP in the State of Karnataka was to be made on the recommendation of a Committee constituted as per Order No.DPAR 72 SPS 94 dated 20th March 1995 as superseded by the Government Order No.DPAR 70 SENENI 96 dated 23rd December 1996 and that the Hon'ble Supreme Court has in Government of Karnataka vs. Dinkar and others, upheld the ruling of the Karnataka High Court on the facts and circumstances of the case and in the

light of the finding on the facts by the High Court in the backdrop of the inconsistent pleas taken before the High Court and the Tribunal as also the existence of the Government Order dated 20.3.95 modified by G.O. dated 23.12.96 in the matter of selection to the post of DGP and IGP in the State of Karnataka. They argued that the observations of Their Lordships of the Hon'ble Supreme Court in paragraphs 11 and 12 would reveal that the decision of the Karnataka High Court was upheld only in the facts and circumstances of the case and that the Apex Court has not held that for posting of an officer in the grade of DGP in the scale Rs.24050-26000 as DGP and IGP(Law and Order) carrying the same pay scale, another selection is required. The observations of the Hon'ble Supreme Court in Government of Karnataka vs. C.Dinakar and others ,1999 Lab I.C. 2421, contained in paragraphs 11 and 12 are as follows:-

"11. On the basis of the above conclusion on facts which cannot be disputed, the High Court set aside the impugned Notification and directed to make fresh appointment by selection to the post of DG & IGP by considering the cases of all the eligible Director Generals and keeping in mind the observations made by it.

12. As noticed earlier, the learned Advocate General extensively argued the case by reiterating the stand taken before the High Court that the appointment of the fourth respondent as DG & IGP was an order simpliciter assigning the duties attached to that post. In the light of the elaborate discussion and findings of the High Court set out above, we are unable to persuade ourselves to agree with the contention of the learned Advocate General. It was amply demonstrated before the High Court that the impugned Notification was not a mere set of assignment of duties attached to the post of DG & IGP and the High Court was right in holding that the impugned Notification cannot be sustained on the facts of the case. The High Court, however, made it clear that the fourth respondent having been promoted as Director General has acquired a right to

be considered along with other eligible candidates. A doubt was raised that in view of the quashing of the impugned Notification whether the Government could make an order promoting the fourth respondent with retrospective effect from the date of impugned Notification. We make it clear that nothing stands in the way of the Government from so doing. It is also brought to our notice that the direction of the High Court to constitute a Committee as per G.O. No.DPAR 72 SPS 94 dated 20.3.95 has to be modified as the said G.O. has been superseded by a subsequent Government Order No.DPAR 70 SENEN 196 dt. 23.12.1996. If that be so, the appellant is at liberty to constitute a Committee as per the relevant G.O. in force."

Learned Advocate General argued that in the State of Kerala there is no Government order as in the case of Karnataka regarding selection and appointment to the post of DGP and IGP . The posting of an officer in the grade of DGP in the scale Rs.24050-26000 as DGP and IGP is to be made by a decision of the Cabinet and no selection is involved. We are inclined to agree with this argument. Learned counsel of the applicant has not ^{been} able to show to us that there is any provision in the Indian Police Service (Pay)Rules or in the Indian Police Service(Fixation of Cadre Strength) Regulations or that there is any order of the Government of India or State of Kerala which prescribed a selection from among DGPs for appointment to the post of DGP and IGP (Law and Order). It is evident from the pleadings and materials placed on record as also from the impugned order(Annexure A6) that the third respondent who was Additional Director General of Police(Modernisation) was promoted to the grade of DGP and IGP and that he was posted as DGP and IGP on the retirement of Sri P.R.Chandran IPS on the afternoon of 31.5.2001. On promotion of the third respondent to the grade of DGP and IGP including the applicant and the third

respondent, there were 4 officers in the grade of DGP in the scale of pay of Rs.24050-26000 and one of them could be posted as DGP and IGP (Law and Order) in the absence of any rule or Government order prescribing a selection among the DGPs for assignment of the duties of the post of DGP and IGP(Law and Order), we are of the considered view that the claim of the applicant that he being senior to the third respondent should have been selected does not have the support of law. No material has been brought to our notice to show that there is any hierachial superiority or subordination among the 2 cadre posts and 2 ex-cadre posts of DGP in the scale of Rs.24050-26000 in the State of Kerala. On the other hand, the materials placed on record would show that the posts are of equal status and independent of one another, one not being subordinate to the other. The fact remains that the post of DGP and IGP(Law and Order) is the most prestigious and powerful post in the cadre and it appears to be ideal if seniority and merit are considered while making appointment to that post. However in the absence of any rule or binding administrative instruction to the effect that appointment to the post of DGP & IGP(Law and Order) is to be made by selection from among all those in the grade of DGP, we are of the considered view that the applicant cannot succeed in his claim that he, being senior, should have been appointed to that post in preference to the third respondent who also had reached the grade on the date of posting. The posting of

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the third respondent was made on the basis of a Cabinet decision. In State of Punjab vs. V.K.Khanna reported in 2001 Vol.2 SCC 330, the Apex Court observed as follows:-

"18. It is in terms with the orders of the Chief Minister dated 6.2.1997 that two notifications were issued as above. Before advertting to the contentions, certain other factual details are required to be noticed at this juncture. Elections to the State Legislative Assembly were held on 7.2.1997 and votes were counted on 9.2.1997. The party in power at the Punjab Assembly however, having lost the election, the Chief Minister Mrs. Bhattal resigned from the office and Shri Prakash Singh Badal was sworn in as the Chief Minister on 12.2.1997. Immediately on assumption of office, however both S/Shri Mann and Bikramjit Singh were appointed as the Chief Secretary and the Principal Secretary to the Chief Minister respectively in place of Shri V.K.Khanna and Shri S.S.Dawra with immediate effect. Admittedly, Shri R.S.Mann belongs to the 1965 batch in the service and by reason of the appointment he has, as a matter of fact, superseded ten of the officers in the State including Mr.V.K.Khanna - this was the noting of Ms K.Sidhu in the file apropos Shri Mann but so far as Bikramjit Singh is concerned, it has been noted that one vigilance enquiry was pending against Shri Biramjit Singh - this did not, however, impress the authority and resultantly in spite of the noting as above, both these two officers were appointed in the posts noted above. Though Mr. Subramaniam has been very critical about these appointment specially when an allegation of corruption involving an officer of the administrative service, pending further inquiry, we, however, do not wish to make any comment thereon, since the people's representatives would be the best person to judge the efficiency or otherwise of the officers, in the event of their appointments in the high posts in spite of their drawbacks being pointed out, it is for the authority concerned to decide as to with whom the State administration ought to be better run and not for the law courts to suggest, as such we are not making any comments thereon, save however, that probably it would be better if the notings has been given its proper weightage."

(emphasis supplied)

The decision to post the third respondent as DGP and IGP on his promotion taken by the Cabinet therefore cannot be

interfered with by the Tribunal, unless it is made out that the posting is against the rules or the action is vitiated by malafides.

10. Shri Nandakumara Menon, learned counsel of the applicant next argued that as a disciplinary proceedings against the third respondent for grave misconducts including charges of corruption initiated under memorandum of charge Annexure A7 has not been concluded resulting in his exoneration by any order lawfully issued, he is not suitable to be appointed as DGP and IGP. It is evident from the order of the Government of Kerala dated 11.8.1997(Annexure R3(a) that the Government of Kerala has dropped the disciplinary proceedings initiated against the applicant under Annexure A7. The learned counsel of the applicant argued that the opinion of the Advocate General that the proceedings against the third respondent should be dropped was illegal and unjustified and therefore Annexure R3(b) order of the Government of Kerala dated 11.8.97 cannot be a valid order passed under the All India Services Discipline and Appeal Rules and that therefore the disciplinary proceedings initiated against the third respondent has to be deemed to be pending. We do not find any substance in this argument at all. The State Government which is competent to initiate disciplinary proceedings against a member of the Kerala Cadre of the I.P.S. is competent to drop the proceedings. In this case, the Government of Kerala has by its order Annexure R3(b) dropped the disciplinary

proceedings against the third respondent and this order issued in the year 1997 has not been challenged by anybody including the applicant. Therefore the contention of the applicant that the third respondent is unsuitable for appointment as DGP and IGP is without any substance.

11. The applicant has alleged malafides against the 4th respondent and it is stated that it is on account of malice of the 4th respondent against him that the proposal of the Chief Minister for appointing the applicant as DGP & IGP did not materialise. It is well-settled that if de hors the malafides, the action can be sustained, then the allegation of malafides has no consequence. Further we will examine whether the applicant has been able to establish any malafides in this case at all. Apart from producing certain paper reports, the applicant has not been able to bring on record any material which can be accepted as legal evidence to establish the malafides alleged. The respondents 4 and 5 have in their affidavit denied the allegations against them. The contention of the applicant that the Chief Minister proposed the appointment of the applicant as DGP and IGP (Law and Order) and that as the 4th respondent objected to it, he was not appointed and the third respondent was appointed is not borne out by any evidence at all, apart from the interested statement of the applicant made in the application and the statements contained in the newspaper reports to which no credibility can be attached .Further the

fourth respondent is only one of the Ministers and the decision to post the third respondent as DGP & IGP was the decision of the Cabinet. Therefore we find that the applicant has not been able to establish the malafides alleged.

12. The learned counsel of the third respondent vehemently argued that the applicant having been guilty of suppression of material facts and having levelled reckless and baseless allegations against the third respondent should not only be nonsuited but mulcted with heavy costs. He argued that from the materials available on record and from the facts and circumstances, it can be well inferred that the applicant when he alleged that the third respondent was unsuitable for appointment as DGP & IGP, for the reason that the disciplinary proceedings was pending, the proceedings had as a matter of fact been dropped. Since the application has been filed without any cause of action alleging the unsuitability of the third respondent which is contrary to the applicant's own knowledge, the applicant is liable to pay to the third respondent exemplary costs, argued the learned counsel. The applicant who is a very senior member of the Kerala cadre of the I.P.S. and one who has got an admirable record of service understandably felt aggrieved and disappointed when a person junior to him was posted to hold the most prestigious post of Director General and Inspector General of Police, which post commands supreme power in the principal police function of the State. Therefore he approached the Tribunal with this application.

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Though his grievance does not have a legitimate basis in the face of the rule position, it cannot be held that the application is a vexatious one warranting award of penal costs. About the serious allegations of unsuitability levelled against the third respondent, although the applicant should have verified and made sure whether the disciplinary proceedings against the third respondent had been terminated or not, we are not convinced that the applicant would have made ^{the} allegations had he known that the allegations were false.

13. In the conspectus of facts and circumstances as discussed above, we find no merit in this Original Application and therefore we dismiss it, leaving the parties to suffer their own costs.

T.N.T.NAYAR
(T.N.T.NAYAR)
ADMINISTRATIVE MEMBER

A.V.HARIDASAN
(A.V.HARIDASAN)
VICE CHAIRMAN

s/njj

List of Annexures referred to in the Order:

1. **Annexure A1** Photocopy of the extract of the paper report appeared in the Hindu English Daily on its issue dated 25.3.2001.
2. **Annexure A2** Photocopy of the extract of the paper report appeared in the Thaniniram Malayalam Daily on its issue dated 15.5.2001.
3. **Annexure A3** Photocopy of the extract of the paper report appeared in the Thaniniram Malayalam Daily on its issue dated 31.5.2001.
4. **Annexure A6** Photocopy of Order dated 30.5.2001 No.G.O.Rt) 4357/2001 GAD issued by the General Administration (Special-A) Department of the Government of Kerala.
5. **Annexure A7** True copy of the order G.O.(Rt) No.11833/95/GAD dated 22.12.1995 issued by the Government of Kerala.
6. **Annexure R1 A** True copy of G.O.(Rt) No.3515/97/GAD dt. 2.5.97 issued by Govt. of Kerala.
7. **Annexure R1 B** True copy of G.O.Rt.No.6838/97 GAD dt. 11.8.1997 issued by Govt. of Kerala.