

BEFORE THE HONOURABLE CENTRAL ADMINISTRATIVE
TRIBUNAL
ERANAKULAM BENCH

O. A. No.

484

OF 2003.

Applicant:-

K.Balakrishna Kurup, aged 54 years,
S/o.Late Kunjirama Kurup,
Superintendent of Police, Vigilance and Anti-
Corruption Bureau, Special Cell, Kozhikode,
Residing at Flat No.2512, Block No.7, K.S.H.B.Flats,
Bilathikulam, P.O.Eranjipalam - 673006.

V/S

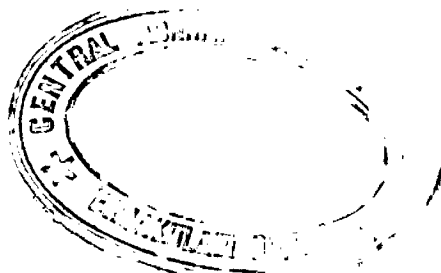
Respondents

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

**ORIGINAL APPLICATION FILED UNDER SECTION 19 OF
THE ADMINISTRATIVE TRIBUNAL S ACT 1985.**

DETAILS OF APPLICATION

- [1] Particulars of the order against which the application is
made N/L ✓
- [2] Jurisdiction of the Tribunal ;



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The applicant declares that the subject matter of the orders against which he wants redressal is within the jurisdiction of the Honorable Tribunal.

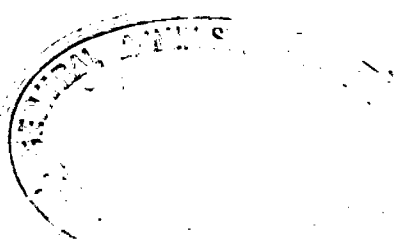
[3] Limitation;

The applicant further declares that the application is within the limitation period prescribed in section 21 of the Administrative Tribunal's Act 1985.

[4] FACTS OF THE CASE .

(1). The applicant commenced service as Sub Inspector of Police in the Kerala Police General Executive service on 1.1.1974. He was thereafter promoted as Circle Inspector of police on 23.6.1982. He was promoted to the substantive category of Deputy Superintendent of Police on 21.1.1992 and later promoted as Superintendent of Police on 22.6.2001. He is to retire on superannuation from the state Police service on 30.6.2003. He had rendered 29 years of qualifying service. The applicant was born on 15.6.1948.

(2). The applicant has got as many as 13 good service entries and appreciation letters from the senior officers. He was awarded Police Medal in the eve of Independence Day 2001. He was deputed to service in Intelligence Bureau and rendered meritorious service. In the C.R. Dossiers of the applicant, it has been recorded as out standing and very good. No departmental proceedings are contemplated or pending against the applicant. There are no adverse entries in the confidential reports of the applicant. There is no currency of penalty. Succinctly stated, the applicant is entitled to be considered for selection and appointment to the Indian Police Service to the vacancies that had arisen for year 2000, 2001 and 2002 respectively, under the provisions of Indian Police Service (Appointment by promotion) Regulation 1955.



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(3). The selection committee for promotion of state police service officers to Indian Police Service was met on 13.12.2000 to fill up the vacancies which arose during the period from 1.1.1999 to 31.12.1999. The selected candidates for year 1999 approved by Union Public Service Commission were appointed to Indian Police Service by notification dated 25.1.2001. No selection committee was met thereafter to fill up the vacancies that had arisen in the cadre from 1.1.2000 to 31.12.2000, 1.1.2001 to 31.12.2001 and 1.1.2002 to 31.12.2002 respectively. It is submitted that in view of the declaration of law by the Apex Court in Syed Khalid Rizevi's case [1993 [3] suppl. S.C.C. page 575] and Vipin Chandra's case [1996[6] S.C.C page 721], the committee when it meets prepare a separate list of each year keeping in view the number of vacancies in the year after considering the officers who were eligible and fell in the zone of consideration for selection in that year. However, this Hon'ble Tribunal by order dated 13-2-2003 in O.A. No. 762/2002 directed to have the meeting of the Select Committee convened for drawing up the select list for the vacancies of the year 2000 and 2001 for appointment to the Kerala Cadre of I.P.S., within a period of four months from 13-2-2003. A true copy of the order is produced herewith and marked as Annexure A-1. This Honourable Tribunal by order dated 12.6.2003 enlarged the period for 5 weeks from 13.6.2003²⁰⁰³ for compliance in an application filed by the 3rd respondent in O.A.762/2002. The applicant understands that steps are being taken to convene Select Committee shortly. If the select Committee meets before 31-6-2003, the applicant will be selected and appointed to I.P.S. cadre.

(4). The gradation list of officers of Indian Police Service (Kerala Cadre) as on 1.1.2003 was published by the General Administration (Special - A) Department. As per the list the total Number of post is 139 and the post to be filled by promotion are 42. The gradation list contains the names of 24 officers promoted to I.P.S.Cadre. Thus the number of posts to be filled by promotion as on 1.1.2003 is 18. The Break up is :

2000 – 3(Three); 2001 – 11(Eleven) and 2002 – 4(Four). (The Government of India by notification No.11052/9/2000/AIS(II)A dated 23.3.2001 enhanced the authorized strength of the Kerala Cadre of Indian Police Service, as per which the total authorized strength have been enhanced from 121 to 139 effective from 22.3.2001. The promotion post had thus been enhanced from 30 to 42). As per Regulation 5(2), the committee shall consider for inclusion in the select list, the cases of members of the State Police Service in the order of seniority of a number which is equal to 3 times the number of substantive vacancies as on the first day of January of the year in which the meeting is held. It follows that the number of members of the State Police Service to be considered by Selection Committee for the above post is 54. The applicant is fairly senior in the seniority list of Deputy Superintendent of Police and he will be included in the filed of choice. The applicant satisfies all conditions provided under the Regulations. Therefore justice demands that the name of the applicant must be considered by Selection committee for induction to the I.P.S.

(5). The Honourable High Court of Kerala by judgment in O.P.No.289965/2001 and connected cases dated 4.4.2003 declared that the Assistant Commandant and above in the Armed Police Battalion are not equivalent to the category of Deputy Superintendent of Police for the purpose of induction to I.P.S. The above judgment has been confirmed by the Apex Court by judgment in S.L.P.No.9141-9146/2003 dated 12.5.2003.

[5] GROUND FOR RELIEF WITH LEGAL PROVISIONS;

[A] The applicant is eligible and qualified to be considered for selection and appointment to Indian Police Service cadre against the vacancies which had arisen for the year 2000, 2001 and 2002 respectively. The right to be considered for selection is a fundamental right and the same



has been impaired. The vacancies which had arisen for the year 2000, 2001 and 2002 remain unfilled. Therefore the superannuation of the applicant on 30.6.2003 will not disentitle him for consideration for induction to the I.P.S., as the determining factor for appointment is the qualification inures at the time of arousal of the vacancies.

[B]. Rule 2[g] of Regulation defined the 'year' means the period commencing on the 1st January and ending on 31st day of December .the applicant had not completed 54 year of age as on 1st day of January 2002. Therefore he is entitled to be considered for the vacancy which had arisen for the year 2002 as well.

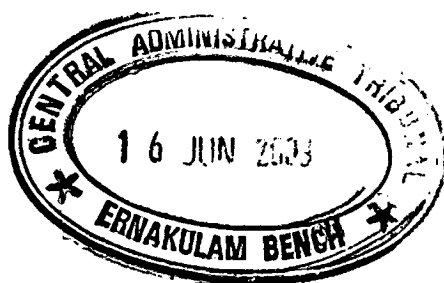
[C] Rule 5 of the Regulation reads thus;

'5 Preparation of a list of suitable officers ;-

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 1st 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 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.

Explanation ;- In case of joint Cadre 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



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[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 the that service of a member 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 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;

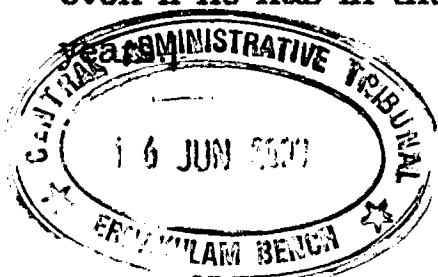
Provided also that the committee shall not consider the case of a member of the state police service unless on the [first day of January] of the year in which

It meets he is substantive in the state police service and has completed not less than eight years of continuous service [where officiating or substantive] in the post of Deputy Superintendent of police or in other post or posts declared equivalent thereto by the state Government .

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 committee shall not consider the case of the members of the state police service who have attained the age of (54years) 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 has included 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 fresh list to be prepared by the committee even if he has in the meanwhile, attained the age of fifty four



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[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 of the committee was held during such preceding year or years]

[[3-a] The committee shall not consider the case of such member 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;

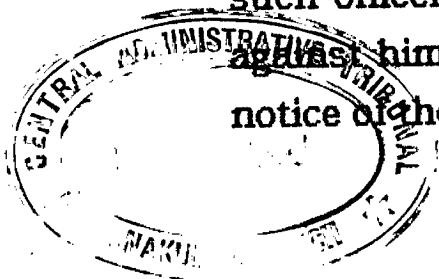
Provided that he shall be considered for inclusion in the select list, if before the commencement of the year , he applies in writing , to the state Government expressing his willingness to be considered for appointment to the service

[b] was not appointed to the service by the Central Government Regulation 9[a].

[4] The selection committee shall classify the eligible officers as 'out standing' 'very good' 'good' or unfit as the case may be, on an overall relative assessment of their service records.

list
[5] The shall be prepared by including the required number of names, first from among the officers finally classified as 'out standing' 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 s 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.

The applicant having been satisfied the conditions stipulated in Regulation 5 of the Regulation is eligible to be considered for selection.

[D] The applicant had rendered meritorious service . There are good service entries . There is no adverse entries in the confidential report of the applicant. There is no departmental proceedings contemplated and pending against the applicant, nor there is penalty imposed.

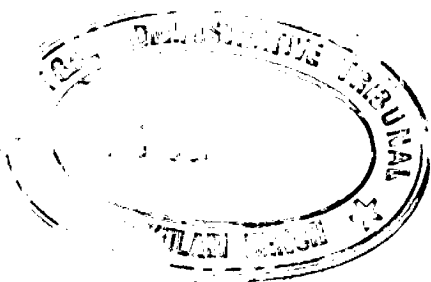
[E] In identical case, namely , O.A.No.762/2002, this Honorable Tribunal by order dated 13.2.2002 directed the respondent to convene the selection committee for selection to Indian Police Service cadre for the year 2000 and 2001 and to consider the claim of the applicant therein for selection to Indian Police Service cadre for the year 2000 and 2001 respectively . The applicant is similarly placed and is liable to be treated alike.

[6] Details of remedies exhausted

The applicant declares that he has no other remedy to approach before this Hon'ble Tribunal to redress his grievances .

[7] Matters not previously filed or pending any other with any other court

The applicant further declares that he had not previously filed any Application, Writ petition, or suit, regarding the matter in respect of which this application has made, before any court or other bench of Tribunal nor any such application, Writ petition or suit is pending before any of them.



[8]

RELIEF SOUGHT

i) To direct the 3rd respondent to forward the name of the applicant before the selection committee for consideration for selection to Indian Police Service Cadre [Kerala] for vacancies that had arisen in the year 2000, 2001 and 2002.

ii) To direct the respondents to consider the name of the applicant depending on his seniority in the cadre of Deputy Superintendent of police for selection to Indian Police Service Cadre [Kerala] under rule 5 of the Indian Police Service [Appointment by Promotion] Regulation 1955 and to include his name in the select list for the vacancies that had arisen during the year 1.1.2000 to 31.12.2000 and 1.1.2001 to 31.12.2001 and 1.1.2002 to 31.12.2002 respectively.

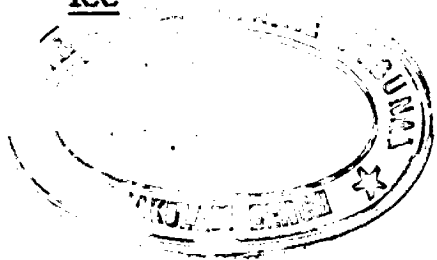
iii) To declare that the applicant is eligible and entitled to be considered for selection and appointment to Indian Police Service for the vacancies that had arisen during the year 2000, 2001 and 2002 despite his superannuation from the state police service on 30-6-2003.

iv) to issue appropriate order of direction as this Hon'ble Tribunal deem fit in the interest of justice,

[9] Interim order if any prayed for

may be pleased to issue direction to the respondents that the retirement of applicant from the State Police Service on 30-6-2003 shall not effect the claim of the applicant for consideration for induction to Indian Police Service for the vacancies which had arisen for the years 2000, 2001 and 2002 respectively by the selection committee pending disposal of the Original Application. And direct the respondent No.3 to forward the name of applicant for induction to I.P.S.Cadre.

[10] Particulars of postal order filed in respect of Application fee



Postal order No 17F 632886, 17F 632885, 3JA 033548
 Post office — High Court
 Amount 50/-
 Date of issue 16-6-03.

[11] List of Enclosures

- [1] Original Application along with the documents relied on by the applicant.
- [2] Postal order towards application fee;
- [3] Vakalath
- [4] Envelopes

VERIFICATION

I, K.Balakrishna Kurup, aged 54 years, son of late Kunjirama Kurup, Superintendent of Police, Vigilance and Anti Corruption Bureau, Kozhikode, residing at Flat No.2512, Block No.7, K.S.H.B.Flats, Erinjipalam, do hereby verify that the contents of the paragraph 1-4 are true to the best of my knowledge and Paragraphs No 5 to 12 are believed to be true on legal advice and that I have not suppressed any material facts.

✓ Ernakulam

- 15-

06.06.2003.

[Signature]
15/6/03

K.Balakrishna Kurup.

[Signature]
Counsel for applicant

