

CENTRAL ADMINISTRATIVE TRIBUNAL  
ERAKULAM BENCH

O.A. NO. 174/2006

MONDAY THIS THE 26<sup>th</sup> DAY OF FEBRUARY, 2007

C O R A M

**HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN  
HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER**

S. Radhakrishnan Nair  
Superintendent of Police  
Investigation Agency, Kerala Lok Ayukta  
Thiruvananthapuram. ....Applicant

By Advocate Mr. M/s R. Rajasekharan Pillai, R. Sreedharan Nair,  
George Thachett & Sabina Jayan

Vs.

- 1 The Union of India represented by the  
Secretary, Ministry of Home Affairs  
New Delhi.
- 2 The State of Kerala represented by  
the Chief Secretary, Government Secretariat  
Thiruvananthapuram.
- 3 The Union Public Service Commission  
represented by its Secretary,  
New Delhi.
- 4 The Selection Committee constituted under  
Regulation 3 of the IPS Appointment by  
Promotion Regulations 1955  
represented by the Chairman UPSC,  
New Delhi.
- 5 The Director General of Police  
Kerala, Thiruvananthapuram.
- 6 E.J. Jayaraj, Commandant  
Kerala Armed Police III Bn.  
Adoor, Pathanamthitta district. .... Respondents.

By Advocate Mr. TPM Ibrahim Khan, SCGSC for 1, 3 & 4  
Mr. R. Premasankiar GP for R 2 & 5  
Mr. S. Radhakrishnan for R-6

**ORDER**

**HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN**

The applicant is a member of the Kerala Police Service at present functioning as a Superintendent of Police in thexxxxxxxxx Investigation Agency of the Kerala State Lok Ayukta. He is aggrieved by the action taken by the State in considering members of the Kerala Police Service who according to him are in-eligible for inclusion in the list of candidates recommended for being conferred with IPS and such action has grievously and prejudicially affected him with an exemplary service record and having won many awards and medals in his career.

2 The applicant has relied on the provisions of the Indian Police Service Recruitment Rules 1954 for his contention that the 6<sup>th</sup> respondent who was originally selected as an Assistant Commandant by direct recruitment in the Kerala Armed Police Battalion does not satisfy the definition contained in Rule 2g(ii) of the said Rules because the State Government has not declared the said Battalion as apart of the Principal Police Service of the State. Sub Rule 2g(ii) of the Rules state that "State Police Service means in all other cases the Principal Police Force of the State, a member of which normally holds charge of a Sub Division of a District for purposes of police

administration and includes any other duly constituted police service functioning in a state which is declared by the State Government to be equivalent thereto". In view of the above provision, only those police officers who hold the rank of Deputy Superintendent of Police or Superintendent of Police and non IPS officers in the regular line of police administration are eligible for consideration for conferment of IPS. In the case of others, the State Government is required to make a specific declaration and in pursuance of this the 4<sup>th</sup> respondent has issued orders to the effect that Assistant Commandants and above in Malabar Special Police and Special Armed Police Battalions are declared as equivalent to the officers of the Principal Police Service (Annexures A-III and A-III A). By Annexure A-IV another order dated 23.10.1973 has been issued declaring Armed Reserve as equivalent to the Principal Police Service of the State. Later as per GO dated 15.12.1979 the Government also declared Kerala State Police Telecommunication Unit as equivalent to Principal Police Service. By the above orders the Government have included all the Police units except the Kerala Armed Battalion as equivalent to the Principal Police Service. Since these declarations caused prejudice to the Kerala Police Officers who had been representing against the orders issued from time to time , the Government had withdrawn the equivalence granted to Armed Police and Armed Reserve as per G.O.MS. 534/2000/GAD dated 25.9.2000 (Annexure A-VIII).

3 It is further submitted that till 1972 there were only two Armed Police Battalions namely Special Armed Police(SAP) and Malabar Special Police (MSP) which were treated as distinct units for all purposes. The Government by orders dated 17.11.1972, 6.10.1976, 2.3.1979 and 17.6.1980 created Kerala Armed Police Battalions (four in number) and the Kerala Police Service Special Rules were amended as per order dated 18.1.1984 merging the units and including the Armed Police as a separate Branch for the purpose of ensuring uniformity. This amendment pertained only to Branch-II of the service and the applicant and the others who were discharging the duties of the regular police administration were governed by the Special Rules under Branch-I have not been amended. In the year 1998, the 6<sup>th</sup> respondent's name was recommended for conferment of IPS erroneously assuming that Assistant Commandants in the Kerala Armed Police were equivalent to Deputy Superintendent Of Police in the Police Force. The 6<sup>th</sup> respondent's name has never been included in the seniority list of Dy.SPs/GPs of the Principal Police Force and the action in recommending the 6<sup>th</sup> respondent for conferment of IPS was patently illegal and manifestly dehors the provision of law.

4 He has further contended that had the 6<sup>th</sup> respondent not been recommended and selected, one more officer from the Principal Police Service would have been selected in his place and he would have retired either in the year 2003 or at the most in 2004 and further

there would have been an additional post for the year 2004. Consequently, the applicant would have definitely been included in the list for the year 2004.

5 The following are the reliefs sought for:

I Call for the records leading to and culminating in Annexure A-8 and quash the same as arbitrary, illegal, unconstitutional and opposed to the principles of equity and fair play.

II Direct the respondents 1 to 4 to consider the applicant's case for conferment of IPS for the year 2004

forthwith including the vacancy of the 6<sup>th</sup> respondent for the year 2004.

III. Award costs to the applicant.

6 A common reply has been filed by respondents 2 and 5 on behalf of the State Government. In the reply statement they have taken the preliminary objection that the OA is time barred as the impugned order appointing the 6<sup>th</sup> respondent to IPS was issued on 29.10.1998 and the OA is preferred after 7 years. The contention of the applicant that he stumbled upon the said notification dated 29.10.1998 only during 1<sup>st</sup> week of March, 2006 and that too from a contact in New Delhi, cannot be accepted by any stretch of imagination. The applicant was working in the State Police Service during all these years and the sixth respondent was also a member of the IPS, who held various posts in the department and the applicant cannot have been unaware of these facts for the last 7

years. There was only one vacancy available as on 1.1.1998 for which select list was prepared and the 6<sup>th</sup> respondent was appointed as he was duly selected by the selection committee and approved by the Government. At the time of sending proposal in 1998 and at the time of selection committee meeting during August, 1998 the 6<sup>th</sup> respondent was a member of the State Police Service working in the Kerala Armed Police Battalion and was in every respect in the Police Service and was eligible to be considered for promotion under the existing rules and regulations. The four State Armed Police Battalions were formed in order to meet the needs for additional police force to cope with emergent situations and they were always treated as having equal status and responsibilities as which the MSP and SAP Battalions had been formed in the early 1920's and 1950's. Officers from the rank upto Deputy Commandants are inter-transferable and posted in all the above Battalions and all those Battalions come under the category of Armed Police Battalions under an officer of the cadre of Additional Director general of Police. The MSP and SAP Battalions were declared as equivalent to the principal police service vide GO(MS)B No. 93/65/PD dated 22.1.1965, GO(MS) No. 372/65/PD dated 7.4.65 and GO(MS) NO. 278/73-PD dated 23.10.73. As on 1.9.1998 the crucial date of the selection committee meeting, this equation was very much in force and hence the 6<sup>th</sup> respondent was fully eligible to be considered for selection as per rules. It is however true that the State Government has since dispensed with the equation for the purpose of IPS

promotion as per order dated 25.9.2000.

7 The sixth respondent in his reply statement also contended that the OA is hopelessly barred under section 21 of the Administrative Tribunals Act, 1985, and therefore it is liable to be dismissed on that ground it self without going into the merits. Reiterating the contention of the official respondents that the MSP/SAP/Armed Battalions are declared equivalent to the State Police Service, it has been further submitted that Kerala Police Service consists of three branches (i) General (ii) Armed police (iii) Miscellaneous, which has been specified in Rule 1 of the Kerala Police Service Rules 1984. The amendment to the Kerala Police Service Rules, 1984 came into force w.e.f. 17.11.1972 according to which Armed Police Battalions and the SAP and MSP were treated as belonging to a common unit for the purpose of seniority, transfer and promotion. Therefore with effect from this amended rules, the MSP, KAP and SAP have been clubbed together with the Kerala Armed Police Battalion, and a second Branch was introduced to the Kerala Police Service including Officers of Armed Police Battalion in the Principal Police Service of the State. Quite apart from this, it is also contended that Annexure A-VII would prove beyond doubt that upto 25.9.2000, the Assistant Commandants of Kerala Armed Police Battalion were declared and treated as equivalent to Deputy Superintendent of Police of the Principal Police Service of the State. The sixth respondent has also produced a true copy of the provisional seniority list published by the

DGP and circulated to all Police Officers as per Annexure R-6(a) and it was on the basis of this seniority list wherein the respondent No. 6 figures at Sl. NO. 18, that he was conferred with IPS by the Annexure A-VIII order. Therefore the contention of the applicant that the sixth respondent was never included in the seniority list is patently wrong. Yet again, it is pointed out the applicant was promoted as a Deputy Superintendent of Police only on 20.2.1996, he had completed the 8 years of qualifying service in the cadre of Dy. Superintendent of Police only on 21.2.2004 and thus became eligible for consideration and conferment of IPS only during August, 2005. The applicant therefore was neither qualified nor eligible to be considered on 29.10.1998 when the sixth respondent was conferred with IPS. Therefore none of the grounds raised by the applicant is sustainable.

8 The applicant filed additional documents in Annexure A-9 along with M.A.76/07 which is a reply received from the Government of Kerala to his request under Right to Information Act to the effect that no specific orders relating to Integrated Armed Police Battalion as equivalent to Deputy Superintendent of Police of the General Executive Branch have been issued for the purpose of Regulation 2 (1) (i)(ii) of IPS (Appointment by Promotion) Regulation, 1955.

9. We have heard learned counsel, Shri R. Rajasekharan Pillai, the learned counsel appearing for the applicant, Mr. TPM Ibrahim

Khan, SCGSC for Union of India and UPSC, Mr R. Premsankar GP for R 2 and 5 and Mr.S. Radhakrishnan appearing for R-6.

10 First of all we shall deal with the question of inordinate delay in filing the O.A. The sixth respondent was conferred with IPS on 29.10.1998. Since then he was working as Superintendent of Police in various districts and holding other similar posts under the State Government and it cannot be believed that the applicant who was also working in the State Police Department, became aware of this position as contended by him only in 2006. It is undoubtedly an erroneous statement. While the applicant's own averment in the O.A. particularly in para 5 thereof that representations were being made from time to time to the State Government regarding equation already given to MSP/SAT/Armed Reserve Police that the government had appointed a committee and on the basis of the Committee's report the equation given was dispensed with in the year 2000 go to show that he was well aware of the facts. Therefore the stand of the applicant that he was in the dark about the provisions of the Regulations and Government orders cannot be accepted as true.

11 The other important point to be considered in this Application is that when the 6<sup>th</sup> respondent was conferred with IPS, the applicant was nowhere in the zone of consideration. He became eligible to be considered for conferment of IPS only in 2004. This fact is not

disputed. In fact, the applicant had challenged the selection made in the previous years for the year 2003-2004 in O.A. 100/06 and O.A. 144/06 which have since been dismissed by the Tribunal along with O.A. 432/04 on 3.11.2006. The cause of action as stated by the applicant is that if the 6<sup>th</sup> respondent had not been considered and selected, another officer would have been selected who would have retired in 2004 thereby another vacancy in 2004 would have occurred and the applicant would have been selected". The entire challenge is based on a series of "would have beens" and against a promotion order issued eight years back, no court can entertain such an Application on baseless grounds. On the ground of delay and the absence of any reasonable cause of action, this Application has to be dismissed.

12 - On merits too, we find that the two grounds urged by the applicant namely that (i) the Kerala Armed Police Battalion is not declared by the State Government as equivalent to the Principal Police Service as per Rule 2g(ii) of the IPS Recruitment Rules and (ii) that the name of the respondent NO. 6 has never been included in the seniority list of Deputy Superintendent of Police are also not correct in the light of the averments of the respondents in the reply statements as discussed above. As regards the <sup>legal</sup> position, the MSP and SAP officers were equated with the Principal Police Service as per GOMS No. 93/65/PD dated 22.1.65, GOMS No. 372/65/PD dated 7.4.65 and GO MS 278/73/PD dated 23.10.73.

The four Armed Police Battalions were merged with the Special Armed Police and MSP as a single Unit and they were included as Branch II under the Kerala Armed Police in the Kerala Police Service Rules by an amendment made in 1984 w.e.f. 17.11.1972 the date on which the first Armed Battalion was constituted. Hence a separate declaration of equivalence was not necessary in respect of the Kerala Armed Police Battalion. This equation of MSP, SAP and Armed Police Battalion continued till it was dispensed with by the order dated 25.9.2000 (Annexure A-VII), the operative portion of the order at para 5 extracted below is self explanatory:

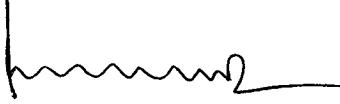
"5 Government have examined the report of the Committee carefully and accept the findings of the Committee. The duties and responsibilities of the officers in the Armed Police and Armed Reserve are entirely different from those in the General Executive, the Armed Police officers are also not put in out in charge of Sub Divisions for Police administration. In the circumstances of the case, accepting the recommendations of the Committee, Government order that the equation of the Armed Police and the Armed Reserve with the Principal Police Service of the State and also the Assistant Commandants with Deputy Superintendents of Police for purposes of promotion to the IPS be dispensed with."

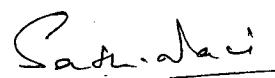
13 From the above position it is evident that the officers of the Armed Police were equated with the Principal Police Service of the State and this equation came to an end only by the above amendment order in 2000. The 6th respondent was selected in the year 1998. He was therefore considered by the respondents and the Selection Committee in terms of the Rules existing at that point of time. Therefore the contention of the applicant that the selection was

dehors the rules has no support of law. We are therefore of the considered view that this Application which has no legs to stand on the basis of merit and is hopelessly time barred and based on fictional premises is to be dismissed. O.A. is dismissed accordingly.

No costs.

Dated 26.2.2007

  
**GEORGE PARACKEN**  
**JUDICIAL MEMBER**

  
**SATHI NAIR**  
**VICE CHAIRMAN**

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