

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

OA Nos. 230/04, 127/03, 139/03, 325/03, 409/03, 484/03, 756/03 & 1022/03

FRIDAY, THIS THE 23RD DAY OF DECEMBER, 2005

CORAM

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

OA No. 230/2004

- 1 VV Mohanan s/o V.C. Vasu
Commandant, KAPI Trissur
retired on 30.9.2003
residing at Rema Nivas, Thrissur
- 2 M Wahab s/o A.Mytheenkunju
Superintendent of Police, Vigilance and
Anti Corruption Bureau, Southern Range
Thekkummoodu, Thiruvananthapuram
AYISHAS Kankathumukku, Kollam
- 3 TP Rajagopalan s/o Padmanabhan
Superintendent of Police, ^{CB&CP} Kottayam
residing Tholidum Kavala Padinjarethil Veedu
Amaloor Thiruvalla Pathanamthitta District
- 4 PI Varghese s/o PS Issac
Commandant, MSP Malappuram
residing 2/ 2441-A
Kozhikode
- 5 Balakrishna Kurup s/o late Kunjirama Kurup
Superintendent of, Police, Vigilance and
Anti Corruption Bureau, Special Cell
Kozhikoide residing at Flat No. 2512 Block
Block No. 7, KSHB Flats Bilathikulam
Eranjipalam-673006

Applicants

By Advocate Mr. PV Mohanan

Vs

- 1 Union of India represented by its Secretary
Ministry Home Affairs, New Delhi
- 2 State of Kerala represented by Chief Secretary
Government Secretariat, Thiruvananthapuram
- 3 Selection Committee to Indian Police
Service constituted under Regulation 3 of
Indian Police Service Appointment by Promotion
Regulation 1955 represented by its Secretary
Union Public Service Commission, Shahjahan Road
New Delhi

Respondents

By Advocate Mr TPM Ibrahim Khan SCGSC
Advocate Mr Thavamony GP

OA 127/2003

PI Varghese S/o PS Issac
Commandant, MSP Malappuram
residing at 2/ 2441-A
Kozhikode

Applicant

Advocate Mr. PV Mohanan

Vs

- 1 Union India represented by its Secretary
Ministry Home Affairs, New Delhi
- 2 Selection Committee to Indian Police
Service constituted under Regulation 3 of
Indian Police Service(Appointment by Promotion)
Regulation 1955 represented by its Secretary
Union Public Service Commission, Shahjahan Road
New Delhi-110011
- 3 State of Kerala represented by the Chief Secretary
Government Secretariat, Thiruvananthapuram
- 4 Director General of Police
Thiruvananthapuram

..Respondents

Advocate Mr. Ranjith A, GP for R 3 & 4
Advocate Mr. TPM Ibrahim Khan, SCGSC for R 1 & 2

OA 139/03

TP Rajagopalan s/o Padmanabhan
Superintendent of Police, CBCID, Kottayam
residing at Tholidum Kavala, Padinjarethil Veedu
Amaloor Thiruvalla, Pathanamthitta District

Applicant

By Advocate Mr. PV Mohanan

- 1 Union India represented by its Secretary
Ministry Home Affairs Delhi
- 2 Selection Committee, Indian Police
Service constituted under Regulation
Indian Police Service Appointment, Promotion
Regulation 1955 represented by its Secretary
Union Public Service Commission, Shahjahan Road
New Delhi.
- 3 State of Kerala represented by Chief Secretary
Government Secretariat, Thiruvananthapuram
- 4 Director General of Police
Thiruvananthapuram

Respondents

Advocate Mr. Ranjith A, GP for R3 & 4
Advocate Mr. TPM Ibrahim Khan, SCGSC for R 1 & 2

OA 325/2003

M.V.Somasundaram s/o Kunhambu Nair
Assistant Inspector General Police(Retd)
residing Pallikunnu Kannur District

Applicant

By Advocate Mr. A.Mohamed Mustaque

Vs

- 1 Government, Kerala**
representd by Principal Secretary
Home Department
Thiruvananthapuram
- 2 Director General of Police**
Kerala Police Head Quarters
Thiruvananthapuarum
- 3 State of Kerala represented by**
Chief Secretary, Govt Secretariat
Thiruvananthapuram
- 4 Union of India represented by its**
Secretary, Ministry Home Affairs
New Delhi-110001
- 5 Union Public Service Commission**
represented Secretary
Shajahan Road, New Delhi-110 011

Respondents

By Advocate Mr. Ranjith.A
Advocate Mr. TPM Ibrahim Khan, SCGSC

O.A. 409/2003

M. Wahab s/o A.Mytheenkunju
Superintendent Police, Vigilance &
Anti Corruption Bureau Southern Range
Thekkummoodu Thiruvananthapuram
AYISHAS Kankathumukku, Kollam-12

Applicant

By Advocate Mr. P.V. Mohanan

Vs

- 1 Union India represented by its Secretary**
Ministry Home Affairs, New Delhi-110001
- 2 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, Shahjahan Road
New Delhi-110011
- 3 State of Kerala represented by Chief Secretary**
Government Secretariat, Thiruvananthapuram
- 4 Director General of Police**
Thiruvananthapuram

Respondents

By Advocate Mr. Ranjith A,
Advocate Mr TPM Ibrahim Khan, SCGSC

OA 484/2003

Balakrishna Kurup s/o late Kunjirama Kurup
Superintendent of Police, Vigilance
Anti Corruption Bureau, Special cell,
Kozhikoide residing Flat 2512 Block No.7
KSHB Flats, Bilathikulam Eranjipalam 673006

Applicant

By Advocate Mr. PV Mohanan

Vs

- 1 Union India represented by its Secretary
Ministry Home Affairs, New Delhi-110001
- 2 Selection Committee to Indian Police
Service constituted under Regulation 3 of
Indian Police Service (Appointment by Promotion)
Regulation 1955 represented by its Secretary
Union Public Service Commission, Shahjahan Road
New Delhi-110011
- 3 State of Kerala represented by Chief Secretary
Government Secretariat, Thiruvananthapuram
- 4 Director General of Police
Thiruvananthapuram

Respondents

By Advocate Mr. Ranjith A, GP
Advocate Mr. RPM Ibrahim Khan, SCGSC

OA No.756/2003

^{S/o V.C.}
VV Mohanan, Vasu
Commandant, KAPL, Trissur
residing at KAP Quarters, Trissur

Applicant

By Advocate Mr. PV Mohanan

Vs

- 1 Union of India represented by its Secretary
Ministry Home Affairs, New Delhi
- 2 Selection Committee to Indian Police
Service constituted under Regulation 3 of
Indian Police Service (Appointment by Promotion)
Regulation 1955 represented by its Secretary
Union Public Service Commission, Shahjahan Road
New Delhi.
- 3 State of Kerala represented by Chief Secretary
Government Secretariat, Thiruvananthapuram
- 4 Director General of Police
Thiruvananthapuram

Respondents

By Advocate Mr. Ranjith A, GP
Advocate Mr TPM Ibrahim Khan, SCGSC

O.A.No 1022/2003

A.T.Jose
Superintendent Police non-cadre
on deputation as Vigilance Officer
Kerala State Civil Supplies Corporation
Gandhi Nagar, Cochi-682020

Applicant's

By Advocate Mr. KRB Kaimal

Vs

- 1 Union of India represented by its Secretary
Ministry Home Affairs, New Delhi**
- 2 Union Public Service Commission
represented by its Secretary, Shahjahan Road
New Delhi-110011**
- 3 State of Kerala represented by Chief Secretary
Government Secretariat, Thiruvananthapuram**
- 4 Director General of Police, Kerala,
Thiruvananthapuram**
- 5 Selection Committee to Indian Police
Service constituted under Regulation 3 of
Indian Police Service (Appointment by Promotion)
Regulation 1955 represented by its Secretary
Union Public Service Commission, Shahjahan Road
New Delhi**

Respondents

By Advocate Mr TPM Ibrahim Khan, SCGSC
Advocate Mr. K Thavamony, GP

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

Since the prayer of the applicants in the above OAs is identical and they have raised similar questions of law, they were heard together and are being disposed of by this common order.

- 2 The main prayer of the applicants in these OAs is to consider their names for inclusion in the Select List of the IPS (Kerala Cadre) for the years 2000, 2001 and 2002 de hors the superannuation of the applicants from the State Police Service. There are certain minor variations in so far as the service details of the applicants are concerned and also their eligibility in terms of provisions of the IPS (Appointment by Promotion) Regulation 1955. The applicants in OA 230/ 2004 are also applicant in OA 756 / 2004, 409/03, 139/03, 127/03 and 484/03 and have got certain interim directions to the effect that**

their retirement will not be a bar for such inclusion. The factual matrix of all the cases can be briefly summarised as below. OA 230/2004 is being taken as the lead case.

O.A. 230/2004

3 The five applicants in this OA commenced their service as Sub Inspector of Police in the Kerala Police (General Executive) Service, were promoted to the post of Deputy Superintendent Police and Superintendent of Police. According to them, they were eligible to be considered for promotion to the IPS against the vacancies that arose during the years 2000, 2001 and 2002. Just before their retirement they filed OA 756/2003, 409/2003, 139/2003, 127/2003 and 484/2003 claiming consideration for selection to IPS and the Tribunal by interim orders directed that retirement of the applicants shall not adversely affect their cases being considered for the vacancies for the years for which they were other-wise eligible to be considered. The Tribunal also directed the respondents to have a meeting of the Selection Committee convened for the vacancies of the year 2000, 2001. In implementation of the above interim order of this Tribunal, the Selection Committee Meeting was held on 24.12.2003 to prepare year wise select lists. The recommendations of the Selection Committee were forwarded to the UPSC by the State Government vide letter dated 6.1.2004 and the Ministry of Home Affairs conveyed its concurrence also and the UPSC approved the recommendations of the select list 2001-2002 on 9.2.2004. The applicants had been included in the select list and at the time of filing the Original Application, the statutory notification under Rule 9 had not been issued and the applicants apprehended that their names would be deleted from the list.

OA 127/03

4 The applicant in this OA is the fourth applicant in OA 230/04. The prayer is for inclusion in the select list against vacancies which would have arisen in the years 2000, 2001 and 2002, despite his superannuation from the State Police Service on 28.2.2003. The OA was filed on 19.2.2003.

OA 139/03

5 The applicant in this OA is the third applicant in O.A.230/04. The date of his superannuation was 28.2.2003 and the OA was filed on 20.2.2003.

OA 209/03

6 The applicant in this OA is the second applicant in OA 230/04. The OA was filed on 20.5.2003 and the date of superannuation of the applicant was 31.5.2003. The

prayer of the applicant is to include him in the select list for the years 2000, 2001 and 2002.

OA 484/03

7 The applicant in this OA is the fifth applicant in OA. 230/04. The OA was filed on 16.6.2003. The date of superannuation of the applicant from the State Police Service was on 30.6.2003. The prayer is for inclusion in the select list for the vacancies which have arisen in the years 2001, 2002 & 2002..

OA 750/03

8 The applicant in this OA is the first applicant in OA 230/04. The OA was filed on 3.9.2003. The date of superannuation of the applicant was 30.9.2003. The prayer in the OA is for inclusion in the select list for the years 2000, 2001 and 2002.

1022/03

9 The OA was filed on 22.12.2003. The applicant retired on 31.1.2003. The prayer of the applicant is that he is entitled to be considered for promotion against vacancies that has arisen in the years 2000, 2001 and 2002. His name was included in the select list at SLNo. 2 for the year 2003. The Govt of Kerala have also issued orders dated 17.4.04 appointing the applicant and others in the IIPS and he is continuing in service.

OA 325/04

10 This OA was filed on 10.4.2003. The date of superannuation is 30.4.2002. The prayer of the applicant is that the selection committee was not convened in the year 2003. He was eligible to be considered before retirement against vacancies of the year 2002 in view the second proviso to Regulation 5 of IPS (Appointment by Promotion) Regulations 1955.

11 The main grounds urged by the applicants in these O.As are that they were eligible for consideration for promotion under the provisions of IPS (Appointment by Promotion) Regulation 1955 as they completed the required length of service in the State Police Service and possessed outstanding records with good service entries, appreciation letters, and there were no adverse entries in their ACRS during the relevant period nor was there any departmental proceedings pending or contemplated. The number of posts required to be filled up by promotion as on 1.1.2002 are 18 and the break up of vacancies yearwise is

Q

as given below:

1.1.2000	31.12.2000	4 vacancies
1.1.2001	31.12.2001	10
1.1.2002	31.12.2002	4

12 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 in that service the number equal to three times the number of substantive vacancies as on the first day of January of each year in which the meeting is held. The Director General of Police by Teleprinter Message No.29566 dated 25.5.2001 requested applicants to forward their details in the prescribed proforma for considering them for the selection for IPS. The applicants furnished their details in the proforma. There were disputes as regards the equation of the post of Assistant Commandant of Kerala Armed Police, MSP and SAP with that of Deputy Superintendent of Police (General Executive) Wing for the purpose of selection and Original Petitions filed by the Deputy Superintendents of Police before Hon'ble High Court Kerala were allowed. The Hon'ble High Court by judgment in OP 28895 dated 4.4.2003(2003(2)KLT 567) declared that the Assistant Commandant and above in the Armed Police are not equivalent to the category of Deputy Superintendent Police for the purpose of selection to IPS. The SLPs filed before the Apex Court were allowed to be withdrawn on 12.5.03. The applicants understand that selection committees for the years 2000, 2001 and 2002 were not held due to the pendency of the above Writ Petitions. In purported implementation of the Tribunal's interim order dated 13.2.2003 the selection committee meeting was held on 24.12.03 to prepare the year-wise list for 2001 and 2002. The State Government furnished the list of eligible officers to the UPSC. The UPSC approved the list. The applicants have been included in the select list though statutory notification under the Rules have not been issued. The applicants apprehend that the select lists so prepared and approved are being subjected to revision and the endeavor of the respondents to revise the select list has no authority as under the Regulations 1 it is prescribed that a select list will be in force until a fresh list is prepared. Therefore the legitimate claim of the applicants for induction in the IPS cannot be denied and any attempt to prepare a fresh select list is arbitrary and in violation of Article 16 of the Constitution of India. They have also relied on the declaration of law by the Apex

Court in Syed Khalid Rizvi Vs Union India (1993 Suppl (3)SC 575) and Union of India Vs. Vipin Chandra Heera Lal Shah (1996 (6) SCC 721) holding that the Committee when it meets shall prepare separate list for each year keeping in view the number of vacancies for the year after considering the officers eligible and fall within the zone of consideration for selection in that year.

13 A preliminary statement was filed by the second respondent stating that the delay occurred in drawing up the select list was not due to the failure of the Commission. The stand of the State Government of Kerala was that retired persons could not be appointed to the cadre of IPS under IPS (Appointment by Promotion) Regulations 1955. There cannot be appointment of such retired members of State Police Service even if included in the Select List approved by UPSC. This view had been confirmed this Tribunal in OA 532/03 filed by Shri Narayana and OA 463/03 filed by Shri Vijayasankar. Regulation 2(a) defines a cadre officer to mean member of the Service and the selection has to be from the list of such members of State Police Service. A retired police officer of the State Service cannot be considered as a cadre officer after retirement since he does not continue to be a member of the Service after retirement. Promotion by virtue of the Regulation is to a cadre post. The second proviso to Regulation 5(3) absolutely has no application to a case where the incumbent has retired already from the State Service and in the event of giving promotion to such retired Police Personnel it would be ultra vires of the main objective of the Regulation itself. When a cut off date for selection with regard to age is prescribed it has been done keeping in mind various factors like ability to discharge duties of the post efficiently and it does not contemplate the appointment of retired officers. In this circumstance, the OA is devoid of merit and liable to be dismissed. They also further filed a Miscellaneous Application on 24.6.05 including Annexure R-2 notification of the Ministry of Home Affairs dated 8.4.04 appointing the applicants 1 to 5 to the IPS and allocating them the Cadre of Kerala under sub rule 1(5) of Cadre Rules 1954 also stating that in view of this notification the grievances of the applicants have been redressed and the OA has become infructuous.

14 A reply has been filed on behalf of the UPSC stating that they are filing the factual reply limited to the extent of details of developments leading to the convening of the

Selection Committee Meeting to prepare the Select List of Kerala Cadre of IPS during the year 2003 only and that any grievance relating to the service records, forwarding necessary proposal, etc. are to be addressed to the State Government. According to them the proposal to prepare year-wise Select List of 2001, 2002 and 2003 was received by the UPSC and the Selection Committee was convened on 24.12.2003 in compliance with the orders of the Tribunal in the instant case and keeping in view the direction of the Tribunal that the applicants' retirement should not be a disqualification for consideration, the names of the applicants were considered by the Selection Committee and on an over-all assessment of the service records, the Committee graded the applicants "Very Good" and included them in the list of officers selected. The observations of the State Government under Regulation 6 of the Promotion Regulations were received by letter dated 6.1.2004. The Government India Ministry Home Affairs furnished their observations on the minutes vide their letter dated 20.1.2004. The Commission approved the recommendations of the Selection Committee and the approval have been conveyed to the Government of India by letter dated 19.2.2004. The Government India Ministry of Home Affairs notified the Select List vide Notification dated 8.4.2004. The applicants have been appointed to the cadre of Kerala by proceedings dated 17.4.2004.

15 We have heard S/Shri P.V.Mohanan, KRB Kaimal and A.Mohamed Mustaque learned counsel of the applicants, TPM Ibrahim Khan, SCGSC appearing for the Union India and UPSC, Renjith A, Ms Lalitha Nair and Mr.K Thavamony, GPs appearing for the State Government.

16 The learned counsel for the Applicants and the Government Pleaders appearing for the State Government have also filed detailed argument notes. It was argued by the learned counsel for the applicants that though the selection proceedings commenced by forwarding the list of eligible officers to the second respondent by the Director General Police on 24.5.2001, no steps were taken to prepare the select list for the years 2001, 2002 & 2003 till December 2003. The Apex Court in Syed Khalid Rizvi Vs Union India 1993 Suppl. (3) SCC 575 interpreted the Regulation for selection and held that:

"Unless the select list is made annually and reviewed and revised from time to time the promotee officers would stand to lose their chances

of consideration for promotion which would be a legitimate expectation. This Court in Mohan Lal Capoor's case held that the committee shall prepare every year the select list and the list must be submitted to the UPSC by the State Government for approval and thereafter appointment shall be made in accordance with the rules. We have, therefore no hesitation to hold that preparation of the select list for every year is mandatory. It would sub-serve the object of the Act and the rules and afford an equal opportunity to the promotee officers to reach higher echelons of the service. The dereliction of the statutory duty must satisfactorily be accounted for by the State Government concerned and this Court takes serious note of wanton infraction"

17 Relying on the above judgment of the Apex Court in Union India Vs. Vipin Chandra Heera Shah 1996 (6) SCC 721 the Court held as follows:

"It must therefore, be held that in view of the provisions contained in Regulation 5, unless there is a good reason for not doing so, the Selection Committee is required to meet every year for the purpose of making the selection from amongst the State Civil Service Officers who fulfill the conditions regarding eligibility on the first day of January of the year in which the Committee meets and fall within the zone of consideration as prescribed in clause(2) of Regulation 5. The failure on the part of the Selection Committee to meet during a particular year would not dispense with the requirement of preparing the Select List for that year. If for any reason the Selection Committee is not able to meet during a particular year the Committee when it meets next, should while making the selection, prepare a separate list for each year keeping in view the number of vacancies in that that year after considering the State Civil Service officers who were eligible and fell within the zone of consideration for selection in that year."

18 In addition to the above it was further contended that the judgments produced in Annexures A-12 to A-19 in OA 230/04 would conclusively prove that retired personnel in the State Police Service could be considered for selection and appointment to the cadre against vacancy^{ies} which arose in the respective years. These aspects of the Regulation have been taken judicial notice by this Tribunal and the Hon'ble High Court Kerala and the incumbents therein were appointed to the cadre posts after retirement from State Police Service, granted seniority and year of allotment and also pay and allowances were disbursed. Hence it is the time of occurrence of vacancy which will be relevant for determining the question of promotions, and on that basis, the applicants are entitled to be selected and appointed against vacancies of 2001, 2002 and 2003.

19 In the argument note filed by the State Government it was contended that the

h

promotion from State Police Service has to be done strictly in accordance with the Regulations and on a joint reading of the various Regulations it is abundantly clear that retired personnel of the State Police Service are not eligible and entitled to be considered after their retirement. The incumbent should be in the service of the State capable of being promoted and posted to the above cadre post as on the date of releasing of the list as well as at the time of notification of the list. A notional promotion is not expressly provided in the Regulations. Granting the benefit of promotion to the retired State Police Officer is illegal, ultra vires of the Constitution. It is also submitted by the learned counsel that the applicants in the OAs have been considered and inducted into IPS pursuant to the interim order passed by the Tribunal and their induction is subject to the final decision of the Tribunal in the above OAs as also other litigations in this connection pending in any Court of Law. Therefore, it is necessary to decide this matter finally taking into consideration all relevant rules and regulations framed for the purpose of appointment by promotion.

21 We have given serious consideration to the arguments of the learned counsel for both sides and have gone through in detail the orders and judgments referred by them. The State Government ^{of} Kerala, the second respondent is the main contesting respondent and the Ministry Home Affairs and the UPSC have not actively contested the issue with reference to the Rules but have taken the stand that they have implemented the interim orders of the Tribunal. The respondent No.2 namely the State Government based its argument totally on the frame work of the Rules and Regulations and contended that the prayer of the applicants is ultra vires of the Regulations. On the other hand the case of the applicants mainly rests on the edifice of a plethora of judgments of the Tribunal, the High Court of Kerala and that of the Apex Court. Hence for proper appreciation of the facts we find it necessary to narrate the rule position in detail. Conferment and appointment to the Indian Police Service of State Government Police Officers is governed by IPS (Appointment by Promotion) Regulation 1955 .

Regulation 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 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

© 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 to this Sub regulation shall be exercised in relation to the members of the State Civil Service of a constituent State by the Government of the State.

(3)The Committees shall not consider the cases of the Members of the State Police Service who have attained the age of 54 years on the first day of 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 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 mean while 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' then from among those similarly classified as 'Very Good' and thereafter from amongst those similarly classified as 'Good' and the order of names inter se within each category shall be in the order of their seniority in the State Police Service.

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

X X X X X X X X X

Regulation 7-Select List- (1) The Commission shall consider the list prepared by the Committee along with-

(a) the documents received from the State Government under Regulation 6:

(b) the observations of the Central Government and unless it considers any change necessary, approve the list.

(2) If the Commission considers it necessary to make any changes in the list received from the state Government the Commission shall inform the State Government and the Central Government of the changes proposed and after taking into

account the comments, if any, of the State Government and the Central Government, may approve the list finally with such modification, if any, as any, in its opinion, be just and proper.

(3) The list as finally approved by the Commission shall from the Select List of the members of the State Police Service.

(4) Select List shall remain in force till the 31st day of December of the year in which the meeting of the selection committee was held with a view to prepare the list under sub-regulation (1) of Regulation 5 or up to sixty days from the date of approval of the Select List by the Commission under sub-regulation (1) or, as the case may be, finally approved under sub-regulation (2), whichever is later.

Provided that where the State Government has forwarded the proposal to declare a provisionally included officer in the Select List as 'unconditional' to the Commission during the period when the select list was in force, the Commission shall decide the matter within a period of ninety days or before the date of meeting of the next Selection Committee, whichever is earlier and if the commission declares the inclusion of the provisionally included officer in the Select List as unconditional and final, the appointment of the concerned officer shall be considered by the Central Government under Regulation 9 and such appointment shall not be invalid merely for the reason that it was made after the select list ceased to be in force.

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

Regulation 9-Appointments to the Service from the Select List

(1) Appointments of members of the State Police Service, who has expressed his willingness to be appointed to the service shall be made by the Central Government in the order in which the names of the members of the State Police Service appear in the Select List for the time being in force during the period when the Select List remains in force;

Provided that in a Joint cadre, the appointment of members of the State Police Service shall, subject to any agreement regarding filling up of the vacancies in the Joint Cadre by promotion of a member of the state Police Service serving in connection with the affairs of any such State, be made in the order in which the names of the members of the State Police Service occur in the relevant parts of the Select List for the time being in force.

Provided further that the appointment of an officer, whose name has been included or deemed to be included in the Select List provisionally under the proviso to sub-regulation (5) of Regulation 5 or under the proviso to sub-regulation (3) of Regulation 7, as the case may be, shall be made within sixty days after the name is made unconditional by the Commission in terms of the first proviso to sub-regulation (4) of Regulation 7.

Provided also that in case a Select List officer has expressed his

unwillingness for appointment to the service, he shall have no claim for appointment to the Service from that Select List unless he informs the Central Government through the State Government before the expiry of the validity period of the Select List, revoking his earlier expression of unwillingness for appointment to the service.

21 The main question arising for consideration in these OAs is whether retired State Police Officers are eligible and entitled to be considered for promotion to IPS after their retirement. According to the State Government the provisions of Regulation 5(1) and the proviso thereof, stipulate that the Committee shall consider the case of a member of the State Police Service on the first day of January each year who is a substantive member of the State Police Service who has completed not less than 8 years of continuous service, and the wording makes it clear that only those in service at the time of consideration and on the date of preparation of the list and at the time of appointment can be considered. There is no doubt that in the normal course when the Selection Committee meets every year this position holds good and therefore these have to be read along with the proviso in the Regulation for convening the meetings. The circumstances under which the Select Lists have been prepared for the three years at a stretch are different and the very genesis of the problem has arisen on account of the Regulations not being followed in convening the Selection Committee Meetings on regular basis as provided for under sub regulation (1) of Regulation 5. The proviso to the above Regulation envisages only three situations when the Committee Meeting cannot be held (i) when there is no substantive vacancy (ii) when the Central Government decides in consultation with the State Government that recruitment shall not be made during a particular year or (iii) when the Commission on its own or on a proposal from the Government decide that it is not practicable to hold a meeting. It is therefore, mandatory for the Govt to convene a meeting of the Selection Committee every year unless a decision has been taken on account of the reasons mentioned above. None of these reasons were applicable in the instant cases which fact has not been considered by the respondents. In fact, from the pleadings of both sides it is clear that the Selection Committee Meeting could not be held on account of cases pending before the Hon'ble High Court on the question of equation of the Assistant Commandant of the Armed Police with that of the Deputy Superintendent Police (General Executive) Wing of Kerala Police. Thus no responsibility could be attributed to the

applicants for this delay caused.. The Apex Court in Syed Rizvi's case interpreted identical Regulations relating to IAS and held that the preparation of Select List is mandatory and would sub serve the object of the Act and afford equal opportunity to promotee officers to reach higher echelons of the service. In the Vipin Chandra Heera Shah's case relied upon by the applicants Apex Court unequivocally held relying again on the earlier judgment in Syed Rizvi's case that failure on the part Selection Committee to meet during a particular year would not dispense with the requirement of preparing the Select List for that year and while making selection, separate list shall be prepared for each year keeping in view the vacancies in that year after considering the State Civil Service Officers who were eligible and fell within the zone of consideration in that year. This position of law has been thus settled i.e. the Selection Committee can meet for preparing a list for previous years for which it did not meet and consider the eligibility of the officers in the zone of consideration as it stands in that year. The contention of the State Government therefore does not seem to have much force. This becomes particularly relevant because there is a difference in the age of retirement between the State Government and Central Government Services which in the case of Kerala State is 55 years, the age of retirement in the Central Government is 60 years- the gap is of 5 years^{and}. Under these circumstances^{such} a situation can naturally be envisaged^{when} by the time the Selection Committee meets after a gap of one to three years as in this case, and matters are pending before the Courts, such selections have to be essentially considered on a different footing as extra-ordinary in nature, as the probability of the contesting claimants retiring during the interregnum cannot be ruled out. It is pertinent to note that all the applicants except the applicant in O.A. 1022/2003 had retired from State Service before the Selection Committee met on 24.12.2003. No doubt the Regulations do not envisage such a situation and therefore we have to be necessarily guided by the judicial pronouncements. In our opinion, it is high time that the Government of India took note of the judicial pronouncements and made suitable provisions in the Rules/Regulations providing for such contingencies. In the instant cases it is to be borne in mind that all the applicants had approached this Tribunal before they retired from service and at the time of obtaining the interim direction they were in service.

22 It is also the contention of the State Government that notional promotion is not expressly provided in the Regulations and the non-consideration of promotion at the

appropriate time could not have the effect of creating a right, as promotion is not a fundamental right or legal right. We are unable to agree with this view. It has been consistently held by the Courts that consideration for promotion is a legal right and every employee can have a reasonable expectation to be promoted to a higher post during the service subject to eligibility. Therefore, if there is a right for consideration there is also a consequential right for promotion if other wise found eligible. In the instant case it is also on record that the Selection Committee met on 24.12.03 to prepare the year-wise select list as on 31.12.2001, 31.12.2002 and 31.12.2003 and while furnishing the list of eligible officers by the State Government the eligibility conditions of officers as on 1.1.2001, 1.1.2002 and 1.1.2003 respectively was taken into account and recommended suitable officers. The State Government indicated its concurrence to the UPSC on 6.1.2004 and the UPSC approved the list on 9.2.2004 and the Central Government notified the appointment as in Annexure R-2 notification by which the applicants in OA 230/2004 have been included in the Select List of 2002 at Sl. Nos 2,6, 8, 9 & 10 and the applicant in OA 1022/03 in the Select List for the year 2003 and the applicant in OA 325/03 in the Select List for the year 2001. The State Government after having made the above appointments and continued ^{there} in their posts in IPS have now contended that such appointments are ultra vires the Regulations. It has been contended that a consideration of the persons in accordance with the proviso to Regulation 5 (3) is only fictitious and does not confer any right to the incumbent to get appointment in IPS. The above appointments were made on a provisional basis and subject to the outcome of the Clarificatory Applications/Writ Petitions filed by the State Government in various Courts in this regard along with the right of Government of India to file appeal against in the higher Courts. However, the fact remains that such appointments are not new as far as the respondents are concerned and the applicants' side has brought to our notice various orders and judgments in this regard. Even a cursory glance of the orders and judgments would reveal that the petitioners in all the cases were retired from the State Police Service and has¹² sought protection of this Tribunal and other Courts for inclusion in the Select List and also for the benefit of pay and allowances. We find it pertinent to refer to a few such cases. In OA. 1553 of 1997 Shri P.K. Lambodharan Nair a retired Kerala State Police Officer who was appointed by direction in O.A. 36/96 was inducted in the service on a notional basis w.e.f. 31.12/1995 his date of retirement from the State Police Service and he was granted all consequential benefits including pay and allowances by the State Government orders dated

15.6.99, the applicant and another Mr. PV Thomas were given consequential benefits. In O.A. 1045/1996 again a retired Police Superintendent Shri N.P. Balakrishnan who retired on 30.4.1994 was given the benefit of consideration for the vacancies which arose in 1992-93 and 1993-94 and he was included in the list of 1993-94 and granted also consequential benefits by order of the State Government dated 6.4.1998. The Hon'ble High Court of Kerala in OP NO. 9427/1998 considered the case of the petitioner Mr. K.J. Thomas who retired before the occurrence of the vacancy and ordered his consideration by the Selection Committee and a Review Selection Committee was held. He was appointed to IPS after his retirement from the State Service by order dated 21.11.2001 (Annexure A-15). Similar benefits were given to Shri K. Rajasekharan Pillai and Shri S. C Jacob by the Hon'ble High Court in OP NO. 3962/1998 and 4249/98. In the light of the above precedents the stand of the State Government cannot be justified.

23 The meeting of the Selection Committee held on 23.12.2003 has to be treated as a meeting on the lines of a Review Committee which has to consider the eligibility of the officers in the zone of consideration on a notional basis as on that year for which the list is being prepared. In this view, the recommendation of the Committee as approved by the UPSC and the Central Government in accordance with the provisions of the Regulation cannot be said to be ultra vires. We are further enforced in taking this view by the judgment of the Hon'ble High Court of Kerala in OP 10707/2004 dated 1.4.2004 in which identical provisions in the Indian Forest Service (Appointment by Promotion) Regulation 1956 have been considered and interpreted. In this case the prayer of the applicants was that the Selection Committee had not met from the year 2000 onwards and that the applicant therein retired by 31.3.2003 and is precisely the same issue came up before the Hon'ble High Court as the State Government had delayed the preparation of the Select List in spite of an interim order of the Tribunal in O.A. 35/2003 and the incumbent being retired the State Government had taken the same stand. The applicant's name was included in the Select List on 31.10.2003. It was contended that only a member of the State Forest Service can be appointed and not a retired person. The observations of the Hon'ble High Court on the above points is extracted below:

“12. Even on merits, we do not find any valid and sufficient reason to

entertain these writ petitions in exercise of the jurisdiction under Art. 226 of the Constitution of India. The petitioners have no case that the applicant was not entitled to be included in the select list for the year 2002. The only ground raised by the petitioners for refusing to appoint the applicant to the IFS is that by the time the applicant's name was included in the final Select List notified on 31.10.2003, the applicant had already retired from service on superannuation on 31.3.2003. But they have no case that the delay in the preparation of the Select List for the year 2002 was due to any action or inaction on the part of the applicant. On the other hand the Union of India has admitted that the delay in the preparation of the Select List was due to the failure of the State Government to forward the Confidential Reports of the Officers whose names had to be considered for promotion. In such circumstances there cannot be any justification for denying appointment to the applicant for the reason that the petitioners failed to consider his name for inclusion in the Select List for the year 2002 before his retirement from service on 31.3.2003. The applicant cannot be made to suffer for the failure of the petitioners to hold the meeting of the Selection Committee and to prepare the Select List in time and in accordance with the rules. This is not a case where the applicant slept over his right till he retired from service and claimed appointment to IPS after his retirement from service. Much before his retirement the applicant had filed OA No. 35/2003 and had obtained an order dated 10.3.2003 directing the petitioners to convene the meeting of the Selection Committee and to prepare the select list before 31.3.2003 and that if for any reason the select list could not be prepared before 31.3.2003, such delay in preparing the Select List would not in any way affect the applicant's claim for appointment to the IFS for the reason that he retired from service on superannuation on 31.3.2003. Therefore the applicant cannot be denied appointment to the IFS only on the ground that he has already retired from service.

13 Learned counsel for the petitioners contended that under Regulation 9 of the Indian Forest Service (Appointment by Promotion) Regulations, 1966, only a member of the State Forest Service can be appointed by promotion to the Indian Forest Service and since the applicant ceased to be a member of the State Forest Service on 31.3.2003, he cannot be appointed to the Indian Forest Service after 31.3.2003. There is no merit in this contention. The applicant was admittedly entitled to be included in the Select List for the year 2002 and was entitled to be appointed to the Indian Forest Service in a vacancy of the year 2002. The delay in holding the meeting of the Selection Committee and in the preparation of the select List for the year 2002 was not due to any fault of the applicant. Before he ceased to be a member of the State Forest Service, the applicant filed OA No. 35/2003 and obtained an order directing the petitioners to hold the meeting of the Selection Committee and to prepare the select List before 31.3.2003 and also directing that if for any reason the Select List could not be prepared before 31.3.2003 such delay would not in any way affect the applicant's claim for appointment to the IFS for the reason that he retired from service on 31.3.2003. According to Regulation 5(1) of the IFS (Appointment by Promotion) Regulations, 1966, the Selection Committee shall ordinarily meet every year and prepare a list of such members of the State Forest Service as are held by them to be suitable for promotion to the service. Had the meeting of the Selection Committee been held in time to prepare the Select List for the year 2002 as provided in Regulation 5(1) of the Indian Forest Service (Appointment by Promotion) regulations, 1966 the applicant would have been included in the Select List and would have been appointed to the Indian Forest Service while he was still a member of the State Forest Service and before he ceased to be a member of the State Forest Service with effect from 31.3.2003. In such circumstances, the petitioners cannot deny appointment to the applicant on the ground that he ceased to be a member of the State Forest Service on 31.3.2003.

X X X X X X X X X X

15 Relying on the judgment of the Hon'ble Supreme Court in *Union of India V. Mohan Singh Rathore and Another* (1996) 10 SCC 469 learned counsel for the petitioners contended that the applicant was not entitled to be appointed to the Indian Forest Service and that at best he was entitled only to the retiral benefits on the basis that he was appointed to the IFS. We do not see any merit in this contention also. The facts of the case before us are entirely different from the facts of the above mentioned case in which the Hon'ble Supreme Court directed to give the officer the order of appointment and all the retiral benefits on that basis. In the case before the Supreme Court, the officer retired on superannuation on 31.5.1988. He filed the Original Application before the Central Administrative Tribunal only in 1992. It was only an order dated 7.8.1995 that the Tribunal directed to appoint him to the Indian Police Service. Thus by the time the Tribunal directed to give him appointment he had already crossed the age of retirement of a member of the Indian Police Service. Hence it was impossible to reinstate him in service as a member of the Indian Police Service. But in the case before us the applicant had approached the Tribunal even before his retirement on superannuation as a member of the State Forest Service and had obtained an order from the Tribunal to the effect that any delay in the preparation of the Select List would not in any way affect the applicant's claim for appointment to IFS for the reason that he retired on superannuation from the State Forest Service on 31.3.2003. The applicant is appointed to the Indian Forest Service now based on the inclusion of his name in the select list for the year 2002, he can serve as a member of the Indian Forest Service for a period of four years. Therefore, the above mentioned decision of the Supreme Court has no application to the facts of this case and the applicant is entitled to be appointed to the Indian Forest Service."

24 The above judgment has also gone into the issue of consequential benefits in the above para 15 thereof and observed that since the applicant therein had approached this Tribunal even before his retirement and had obtained an order from the Tribunal to the effect that any delay would not in any way affect the applicant's claim for consideration for appointment to the IFS cadre, the contention of the respondents that he could not be considered for appointment cannot be accepted. In the instant case also the applicants had obtained similar orders. Therefore we find that the above judgment of the Hon'ble High Court is squarely applicable to the applicants in these cases.

25 Having regard to the above settled position of law as discussed we do not find any merit in the contention of the respondents that the selection and appointment of the applicants to the IPS is ultra vires of the Regulations. Therefore following the ratio of the judgments elaborately discussed above particularly the judgment of the Apex Court in *Syed Khalid Rizvi Vs. Union of India* and that of the Hon'ble High Court of Kerala in OP No. 10707/2004 we allow the OAs. Since the specific prayers have already been granted the only

issue that remains is whether the interim order should be made absolute. We declare that the action of the respondents in having convened the Selection Committee to prepare the Select List for the years 2001, 2002 and 2003 and the inclusion of the applicants therein in the Select List and their consequential approval and appointment by the notification dated 8.4.2004 is in accordance with the law relating to the provisions of the IPS (Appointment by Promotion) Regulation, 1955 and is therefore valid.

26 The OAs are accordingly allowed. No costs.

Dated the ^{23rd}.....December, 2005.


GEORGE PARACKEN
JUDICIAL MEMBER

Kmn


SATHI NAIR
VICE CHAIRMAN