

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A. NO. 235/2006

This the 20th day of August, 2008

C O R A M

**HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER
HON'BLE DR. K.S. SUGATHAN, ADMINISTRATIVE MEMBER**

**V. Santharam IPS
Deputy Inspector General of Police
Kannur Range, Kerala State**

Applicant

By Advocate Mr. M.R. Nandakumar

Vs.

**1 Union of India represented by the Secretary
Ministry of Home Affairs
Government of India
New Delhi.**

**2 Union Public Service Commission
represented by its Secretary
New Delhi.**

**3 State of Kerala
represented by the Secretary
Department of Home Affairs
Thiruvananthapuram.**

Respondents

**By Advocate Mr. T.P.M. Ibrahim Khan, SCGSC for R 1 & 2
By Advocate Mr. R. Premshankar GP for R-3**

**The Application having been heard on 16.7.2008 the Tribunal
delivered the following**

O R D E R

HON'BLE DR. K.S. SUGATHAN, ADMINISTRATIVE MEMBER

**Aggrieved by the denial of his request for appropriate seniority in
the Indian Police Service cadre the applicant filed this O.A. The applicant
was originally appointed as Deputy Superintendent of Police in the Kerala
State Police Service in the year 1977. He joined the State Police Service**

on 28.1.1977. He was appointed to the IPS cadre vide notification dated 31.12.1992 and was assigned seniority of 1988. It is his contention that he should have been given seniority of 1986 on par with one Shri Baburaj whose seniority was pre-dated on the basis of the direction issued by this Tribunal in O.A. 1402/1997 which was also upheld by the Hon'ble High Court of Kerala. The applicant has prayed for the following reliefs in this O.A.:

- i Call for the records leading to Annexure A5 and quash the same
- ii Issue an appropriate direction to compel the respondents to pre-pone the year of appointment of the applicant to IPS by promotion to 1986 the year in which Sri Baburaj the batch-mate of the applicant has been appointed by promotion to the IPS, and to grant all consequential benefits pursuant thereto.
- iii Orin the alternative to direct the respondents to postpone the year of appointment of the applicant to IPS by promotion to 1987 and to grant all consequential benefits pursuant thereto
- iv Issue such other order or direction which this Hon'ble Tribunal may be pleased to grant in the facts and circumstances of the case and sufficient for the redressal of the grievance of the applicant.

In support of the reliefs claimed, the applicant has submitted that he is similarly placed as Shri Baburaj in whose case the Tribunal had directed ante-dating the year of allotment to 1986. It has also been contended by the applicant that one Shri Viswanatha Pillai who was given the year of allotment as 1986 was subsequently dismissed from service for production of wrong caste certificate. The vacancy arising out of the dismissal of Shri Pillai should have been available to the applicant. The service prospects of the applicant has been adversely affected by the wrong and void appointment of Shri Pillai and that had Shri Pillai not been in the zone of consideration initially, the applicant should have been


selected and appointed to the IPS from the date on which Shri Pillai was appointed. It is also contended that the applicant was not given weightage for which he is entitled under Rule 3(3)(ii) of IPS (Regulation of Seniority) Rules, 1988.

2 In the reply statement filed by the respondent No.1 it is stated that the appointment by promotion of State Police Service to the IPS and fixation of seniority of such appointees are governed by Indian Police Service (Appointment by Promotion) Regulations 1955 and Indian Police Service (Regulation of Seniority) Rules 1988 as amended from time to time. As per the IPS (Appointment by Promotion) Regulation, the Selection Committee of the Union Public Service Commission prepares a select list every year. The select list of 1988 included the name of Shri Viswanatha Pillai and he was accordingly appointed to the IPS by promotion by order dated 29.9.1989. Although the applicant's name also figured in the zone of consideration for the select list of 1988 he was not included in the select list because of the lower grading given by the Selection Committee. The next select list of 1989-90 was prepared by the UPSC on 9.3.1990. There were 21 officers in the zone of consideration. The applicant was also in the zone of consideration. However, the applicant's name was not recommended by the Selection Committee for inclusion in the select list due to lower grading given by the Committee. The name of Shri Baburaj figures in the select list of 1989-90 at Sl. No. 5. There were five vacancies for that year. However, pursuant to the direction received from the Ernakulam Bench of the Tribunal in O.A. No. 491/89 for appointment of one Shri Paul Lesie, Shri Babu Raj could not be appointed then. The next Selection Committee for the 1990-91 select list was held

on 11.3.1991. The name of the applicant also figured in the zone of consideration. However, his name was not recommended by the Selection Committee for inclusion in the select list due to lower grading. The name of Shri Baburaj figure at Sl. No. 2 in the Select list. Pursuant to the inclusion in the select list, Shri Baburaj was appointed to IPS by notification dated 26.9.1991 and he was also given the seniority of 1987 on the basis of Rule 3(3)(ii) of IPS (Regulation of Seniority) Rules, 1988. Subsequently on the basis of the direction of this Tribunal in O.A. 1402/1997 which was upheld by the Hon'ble High Court of Kerala, Shri Baburaj was given the year of allotment as 1986 subject to the outcome of the SLP filed by the Government of India in the Hon'ble Supreme Court against the order of the High Court of Kerala. The next select list for the year 1991-92 was prepared by the Selection committee meeting held on 16.3.1992. The applicant figures in the select list at Sl.No.3 Pursuant to the inclusion in the select list he was appointed to IPS by notification dated 31.12.1992. In terms of Rule 3(3)(ii) of IPS (Regulation of Seniority) Rules, 1988 he was given the year of allotment as 1988. Though the applicant was given weightage of 5 years in accordance with number of years of service in the State Police Service, this weightage has to be restricted as his senior in the 1991-92 select list Shri G. Gopakumar was getting the seniority of 1988 only. As per the proviso to Rule 3(3)(ii)(c) of the IPS (Regulations of Seniority) Rules, 1988, an officer shall not be assigned the year of allotment earlier than what is assigned to an officer senior to him in that select list or appointed to the service on the basis of earlier select list. This particular proviso was upheld by the Hon'ble Supreme Court in the judgment dated 11.11.1992 in the case of IAS (SCS) Association, UP and others Vs. Union of India and others (1993 Supp. (1) SCC 730). The

applicant's contention that the vacancy arising out of the dismissal of Shri Pillai should have been given to him cannot be sustained. Shri Pillai was dismissed from service on 11.10.2000, several years after he was appointed to IPS. The vacancy arising out of his dismissal will become available only w.e.f. the effect of the dismissal order. The select list of 1988 which included the name of Shri Pillai did not include the name of the applicant. Therefore, the applicant cannot ask for the benefit of the dismissal of Shri Pillai. The applicant is also not similarly placed as Shri Baburaj. In the case of Shri Baburaj his year of allotment was ante-dated on the basis of the direction of the Tribunal which was only in personem. The applicant's case is not similarly placed as either Shri Pillai or Shri Babluraj for the reason both the persons were included in the select list while the applicant was not included in either of the select lists.


3 In the reply statement filed by the 3rd respondent namely the State of Kerala, it has been contended that the applicant was appointed to the IPS from the select list of 1991-92 which was prepared by the Selection Committee which met on 16.3.1992, whereas Shri Baburaj and Viswanatha Pillai were appointed to the IPS from earlier select lists. The name of the applicant did not figure in the Select Lists in which the names of the above said two persons were included. The applicant who has rendered 15 years and 11 months continuous service in the rank of Deputy Superintendent of Police is entitled to get weightage of 5 years for the fixation of his year of allotment as provided for in the Rules. The 1st respondent has given the applicant weightage of 5 years but this seniority was restricted in terms of the proviso to Rule 3(3)(ii)(c) of the Regulation of IPS (Seniority) Rules, 1988. The applicant is trying to derive advantage



from the order dated 11.3.1999 of the Hon'ble Tribunal in O.A.1402/97 filed by Shri G. Baburaj and also from the dismissal of Shri R. Viswanatha Pillai from service. The cases of Sri Baburaj and Shri Pillai do not have any similarity with the case of the applicant and he is indirectly trying to get all the benefits that are admissible to persons who were appointed to the IPS from earlier Select lists in which the name of the applicant did not figure. The dismissal of Sri Pillai from service does not have any effect on the fixation of seniority and year of allotment of the applicant as the same stems from the very fact of the rule position that the weightage shall be calculated with effect from the year in which the officers appointed to the service. The applicant who was appointed to the service on 31.12.1992 is entitled to get his year of allotment fixed with reference to the date of his appointment and he has been granted his due benefits by fixing 1988 as his year of allotment in accordance with the rules.

4 We heard the learned counsel for the applicant Shri Nandakumar, the learned counsel for the respondents 1 and 2 Shri TPM Ibrahim Khan, SCGSC, the learned counsel for the Respondent No.3. Shri R. Premshanker, GP. We have also perused the records carefully.

5 The subject matter of this O.A. is the fixation of seniority of State Police Service Officers appointed on promotion to the IPS. The appointment of State Police Service Officers to IPS is governed by Rule 5 of the IPS (Appointment by Promotion) Regulation 1955. Sub Rules which are relevant for consideration in this matter are 5(4) and 5(5) which are extracted below:



5 (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 (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.

6 It is seen from the pleadings available on record that the applicant was in the zone of consideration for the years 1988, 1989-90 and 1990-91. However, he was not included in the select list for the aforesaid years because of lower grading given by the Selection Committee. It was only in the year 1991-92 that his name was included in the select list. After inclusion in the select list he was appointed by order dated 31.12.1992. His seniority was fixed as per Rule 3 (3)(ii) of the Indian Police Service (Regulation of seniority) Rules, 1988. Rule 3(3) is extracted below:

"The year of allotment of an officer appointed to the service after the commencement of these rules shall be as follows:

(i) the year of allotment of a direct recruit officer shall be the year following the year in which the competitive examination was held

(ii) the year of allotment of a promotee officer shall be determined with reference to the year in which the meeting of the Committee to make selection to prepare the Select List on the basis of which he was appointed to the Service, was held and with regard to the continuous service rendered by him in the State Police Service not below the rank of a Deputy Superintendent of Police or equivalent, upto the 31st day of December of the year immediately before the year in which the meeting of the Committee to make selection was held to prepare the select list on the basis of which he was appointed to the Service, in the following manner:-


(a) for the service rendered by him up to twenty one years he shall be given a weightage of one year for every completed three years of service subject to a minimum of four years.

(b) He shall also be given a weightage of one year for every completed two years of service beyond the period of twenty one years referred to in sub clause (a) subject to a maximum of three years.

Explanation: For the purpose of calculation of weightage under this clause fractions if any, are to be ignored.

Provided that he shall not be assigned a year of allotment earlier than the year of allotment assigned to an officer senior to him in that select list or appointed to the service on the basis of an earlier select list."

7 In accordance with the aforesaid rule, the applicant who has more than 15 years of service in the State Police is entitled to get a weightage of 5 years for the fixation of seniority. This 5 year weightage is to be calculated from the year in which the Selection Committee was held (Section 3(3)(ii)). According to this calculation he should have been given the year of allotment as 1987 as the Selection Committee meeting was held on 16.3.1992. However, there is a proviso to the above said rule which states that he shall not be assigned a year of allotment earlier than the year of allotment assigned to an officer senior to him in that select list or appointed to the service on the basis of an earlier select list. It so happened that in the select list of 1991-92 Shri G Gopakumar who is placed above the applicant in the Select List of 1991-92 is eligible for a weightage of only 4 years. According to the aforesaid proviso the applicant cannot be placed above Shri Gopakumar who has been given the year of allotment as 1988. Therefore, the contention of the applicant that he has not been given weightage as per rules cannot be sustained. In the order issued by the respondents on 10.8.1993 (Annexure F) the respondents have duly mentioned that the applicant is entitled to 5 years weightage but it has been restricted in terms of proviso to Rule 3(3)(ii) to four years and accordingly he is given 1988 as the year of allotment.



8 The second contention of the applicant is that he is similarly placed as Shri Baburaj in whose case this Tribunal has issued a direction to ante-date his seniority to the year of 1986. We have considered this matter. In O.A. 1402/97 this Tribunal has directed as follows:

4. In this circumstances, we consider that the appropriate course would be for the applicant to be given promotion w.e.f. 12.2.91 when two additional posts in the cadre were cured. While it is true that the notification in regard to the Triennial Review was issued after the meeting of the select committee on 11.3.91 nevertheless these posts were created with retrospective effect from 12.2.91. As the applicant was kept out of his rightful claim of being appointed from 1.12.90 due to fortuitous circumstances, it will be in the interest of justice if he is deemed to be promoted w.e.f. 12.2.91.

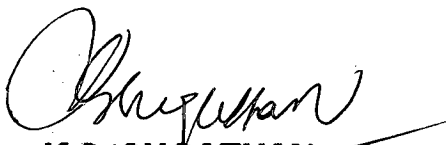
5 In the light of the above discussion, we allow the O.A. with a direction to the respondents to prepone the date of applicant's appointment to IPS by promotion to 12.2.91. He will also be entitled to all consequential benefits i.e. seniority and notional fixation of pay but no arrears of pay that may arise out of the new date of appointment to IPS.

9 The aforesaid direction of the Tribunal was upheld by the Hon'ble High Court of Kerala. It was in accordance with this direction that the appointment of Shri Baburaj was ante-dated to the previous select list and he was given the year of allotment of 1986. At this juncture, it is important to note that the name of Shri Babu Raj figured in the select list of both 1989-90 as well as 1990-91. He could not be appointed from the select list of 1989-90 because of a fortuitous circumstances. The Tribunal took note of this fact while directing the ante-dating of his seniority. But in the case of the applicant the facts are different. The applicant's name does not figure in any of the previous select list. In that view of the matter, it is not possible to accept the contention of the applicant that he is similarly placed as Shri Baburaj.

10 The third contention of the applicant is that the vacancy arising out of the dismissal of Shri Viswanatha Pillai should have been available to him. We are unable to accept this argument. The dismissal of Shri Pillai in the year 2000 cannot be considered to mean that this vacancy arose from the year 1988. Even the argument that the applicant would have been selected if Mr. Pillai was never appointed by the State Government in the State Police Service, cannot be sustained because the applicant was not included in the Select List of 1988 by the Selection Committee though he was in the zone of consideration. The inclusion of an officer's name in the select list is on the basis of relative merit of all the officers in the zone of consideration. It is not possible to conclude that the deletion of Mr. Viswanatha Pillai from the zone of consideration in 1988 would have ensured the applicant's selection. As per the grading given by the Committee in 1988, the applicant is at Serial No. 20, but only the first five persons were included in the select list.

11 For the reasons stated above, we are unable to grant the reliefs sought by the applicant. The O.A. is therefore dismissed. There shall be no order as to costs.

Dated 20th August, 2008


K.S. SUGATHAN
ADMINISTRATIVE MEMBER


GEORGE PARACKEN
JUDICIAL MEMBER

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