CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.432/2004, 858/2004, 146/2005, 251/2005, 100/06 and 144/2006

.....Friday.....this the 3rd day of November, 2006

CORAM

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

O.A.432/2004:

T.C.Khalid,
Superintendent of Police (Retd)
now on deputation as Managing Director,
Steel Industries Kerala Ltd.
PO.Athani,Thrissur Dist. ....Applicant

(By Advocate Mr.Pirappancode V.S.Sudheer)

V.

1 Union of India, represented by its Secretary, Ministry of Home Affairs, New Delhi.

2 State of Kerala, represented by its Chief Secretary, Secretariat, Thiruvananthapuram.

3 Principal Secretary to Government of Kerala, Home Department, Secretariat, Thiruvananthapuram.

4 Union Public Service Commission, represented by its Secretary, Shajahan Road, New Delhi.

5 The Selection Committee to the Indian Police Service constituted under Regulation3 of the IPS (Appointment by Promotion) Regulation, 1955 represented by its Chairman, Union Public Service Commission, Shajahan Road, New Delhi.

6 Director General of Police,

Thiruvananthapruam.

7 S.Vijayasreekumar,
Commandant, KAP III Bn, Adoor.

8 Varghese George, Superintendent of Police,
Alappuzha.

9 M.V.Somasundaran, Commandant,
SRAF, Malappuram.

10 M.Wahab,Superintendent of Police
VACB, ER,Kottayam.

11 P.T.Nandakumar, Superintendent of police,
SSB(Admn), Thiruvananthapuram.

12 T.P.Rajagopal, Supdt. Of Police
(Telecom), Thiruvananthapuram.

13 P.I.Varghese,
Assistant Director (Admn)
Kerala Police Academy
Thrissur. Respondents

(By Advocates Mr.TPM Ibrahim Khan, SCGSC for R.1,4,5
Advocate Mr.Thavamony for A.Ranjit GP (R.2,3&6)
Advocate Mr.PV Mohanan (R.9& 13)
Advocate Mr.S.Sreekumar (R.7,10&12)

O.A.858/2004:

K.K.Joshwa, presently working as
Superintendent of Police (Non-IPS Cadre)
Vigilance & Anti Corruption Bureau (VACB)
Pattom, Thiruvananthapuram.4
presently residing at Priji Bahvan,
Powdikonam PO,Thiruvananthapuram. ....Applicant

(By Advocate Mr.Alexander Thomas)

V.

1 State of Kerala, represented by
Chief Secretary to Govt. of Kerala,
General Administration (Special A Dept)
Govt. Secretariat Buildings,,
Thiruvananthapuram1.

2 The Selection Committee for appointment
by promotion to the Indian

Police Service, Kerala Cadre represented by its Chairman -Chairman, Union Public Service Commission, Shajahan Road, New Delhi.

3 Union Public Service Commission(UPSC) reprinted by its Secretary, Shajahan Road, New Delhi.

4 Union of India, represented by Secretary to Govt. of India, Ministry of Home Affairs, Grih Mantralaya, New Delhi.

5 Shri T.Chandran, Supdt. Of Police, Pathanamthitta.

6 Shri V.V.Mohanan,Supdt. Of Police, Kozhikode (Rural) Vadakara, Kozhikode.

7 Shri K.Vijaya Shankar, Supdt. Of Police, Malappuram.

8 Shri T.V.Kamalakshan, Supdt. Of Police, CBCID, Kozhikode.

9 Shri M.N.Jayaprakash Supdt. Of Police (Rural) Alwaye,Ernakualm.

10 Shri M.Wahab,Supdt of Police, Kottayam.

11 Shri P.T.Nandakumar, Managing Director, Matsyafed, Thiruvananthapuram.

12 Shri T.P.Rajagopalan, Commandant, KAP V Batallion Maniyar Camp, Pathanamthitta.

13 Shri P.I.Varghese, Commandant, State Rapid Action Force, Pandikadu,Malappuram.

14 Shri K.Balakrishna Kurup, Supdt. Of Police, Vigilance & Anti Corruption Bureau Central Range, Emakulam. Respondents

(By Advocate Mr. TPM Ibrahim Khan SCGSC
Advocate Mr.S.Sreekumar (R.10,11 & 12)
Advocate Mr.Thavamony for C.P.Saji for R1

Advocate Shri N.N.Sugunapalan (R.5)
Advocte Shri P.V.Mohanan (R.6,13&14)

O.A.146/2005:

K.Ramabhadran, 54 years
S/o late C.K.Kunjupilla Asan,
Supdt. Of Police (Non-IPS)
State Special Branch CID, Ernakulam Range
SRM Road, Kochi.18 residing at15 B
Link Heights, Panampilly Nagar,
Kochi.36. ....Applicant

(By Advocate Mr.O.V.Radhakrishnan (Sr)

V.

1 State of Kerala, represented by its
Chief Secretary, Secretariat,
Thiruvananthapuram.

2 Union of India, represented by
its Secretary, Ministry of Home Affairs,
New Delhi.

3 Union Public Service Commission,
represented by its Secretary,
Shajahan Road, New Delhi.

4 The Selection Committee for selection to the Indian
Police Service constituted under Regulation3 of
the IPS (Appointment by Promotion) Regulations, 1955
represented by its Chairman, Union Public Service Commission,
Shajahan Road, New Delhi.

(By Advocate Mr.TPM Ibrahim Khan, SCGSC (R.2,3&4)
Advocate Mr.Thavamony for Deepthi .G.P(R.4)

O.A.251/2005:

K.Ramabhadran, 55 years
S/o late C.K.Kunjupilla Asan,
Supdt. Of Police (Non-IPS)
State Special Branch CID, Ernakulam Range
SRM Road, Kochi.18 (retd. From State Police Service)
residing at15 B, Link Heights, Panampilly Nagar,
Kochi.36. ...Applicant

(By Advocate Mr. O.V.Radhakrishnan (Sr.)

V.

1 State of Kerala, represented by its
Chief Secretary, Secretariat,
Thiruvananthapuram.

2 Union of India, represented by
its Secretary, Ministry of Home Affairs,
New Delhi.

3 Union Public Service Commission,
represented by its Secretary,
Shajahan Road, New Delhi.

4 The Selection Committee for selection to the Indian
Police Service constituted under Regulation3 of
the IPS (Appointment by Promotion) Regulations, 1955
represented by its Chairman, Union Public Service Commission,
Shajahan Road, New Delhi.

5 Director General of Police,
Police Headquarters,
Thiruvananthapuram.

6 Shri T.Chandran, Supdt. Of Police,
Pathanamthitta.

7 Shri V.V.Mohanan,Supdt. Of Police,
Kozhikode (Rural)
Vadakara, Kozhikode.

8 Shri K.Vijaya Shankar,
Supdt. Of Police, Malappuram.

9 Shri T.V.Kamalakshan,
Supdt. Of Police, CBCID, Kozhikode.

10 Shri M.N.Jayaprakash
Supdt. Of Police, Ernakulam Rural
Aluva.

11 Shri M.Wahab,Supdt of Police,
Kottayam.

12 Shri P.T.Nandakumar,
Managing Director,
Matsyafed, Thiruvananthapuram.

13 Shri T.P.Rajagopalan,
Commandant, KAP Batallion
Maniyar Camp, Pathanamthitta.

14 Shri P.I.Varghese, Commandant,

KAP 4, Mangattuparambu,
Kannur.

15 Shri K.Balakrishna Kurup,
Supdt. Of Police,
Vigilance & Anti Corruption Bureau
Central Range, Emakulam. ..... Respondents

(By Advocate Mr. TPM Ibrahim Khan, SCGSC (R 2,3&4)
Advocate Mr.R.Muraleedharan Pillai Sr.GP (R.1&5)
Advocate Mr.PV Mohanan (R.7,14&15)
Advocate Mr.S.Sreekumar (R.11&12&13)

O.A.No.100/2006:

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

(By Advocate Mr.R.Rajasekharan Pillai)

V.

1 The Union of India, rep.by the
Secretary,M/o Home Affairs
New Delhi

2 The State of Kerala rep.by Chief Secretary
Government Secretariat, Thriuvananthapuram.

3 The UPSC rep.by its Secretary
UPSC, New Delhi

4 The Selection Committee constituted under Reg.3 of
the IPS appointment by promotion Regulations
represented by the Chairman
UPSC, New Delhi

5 The Director General of Police,Kerala
Thiruvananthapuram.

6 Vijaysreekumar
Superintendent of Police Special Cell PHQ,
Thiruvananthapuram.

7 A.T.Jose.
Superintendent of Police Special VACB Ernakulam

8 Varghese George
Superintendent of Police, Alappuzha

9 M.V. Somasundaram
Superintendent of Police Special VACB
Ernakulam Range.

10 T. Chandran.T
Superintendent of Police, Palakkad

11 V.V.Mohanan.V.
Assistant Director Kerala Police Academy,
Trissur

12 K. Vijaysankar
Commandant Kerala Armed Police Bn.I. Trissur

13 T.V.Kamalakshan
Superintendent of Police, CBCID Kozhikode

14 M.N. Jayaprakash
Superintendent of Police, Trissur

15 M. Wahab
Superintendent of Police Ernakulam Rural

16 P.T. Nandakumar
Superintendent of Police Analysis Wing,
CBCID Hqs,Thiruvananthapuram.

17 T.P.Rajagopalan
Principal Police Training College,Trivandrum

18 P.I.Varghese
Kerala Armed Police Bn.IV,Kannur

19 K. Balakrishna Kurup
Superintendent of Police,VACB Kozhikode Range

20 M.Sugathan
Superintendent of Police, SBCID Security,Trivandrum

21 T.M.Aboobaker
Supdt.of Police Kozhikode Rural on
spl.duty with Haj Committee, Haj Council,
Mecca, Saudi Arabia

22 K.G. James.
Superintendent of Police, Malappuram

23 K.K. Chellappan
Superintendent of Police SBCID,Ernakulam Range

24 M. Padmanabhan
Superintendent of Police, Wayanad

25 A.M. Mathew Policarp
Superintendent of Police , Kannur

26 C.Sherafudin
Superintendent of Police,Kozhikode Rural,Kozhikode

27 P.K.Kuttappai
Commandant Kerala Armed Police Bn.V.
Maniyar,Pathanamthitta

28 T.Sreesukan
Superintendent of Police , Kasargod ....Respondents

(By Advocate Mr.T.P.M. Ibrahim Khan SCGSc (R.1,3&4)
Advocate Mr.K.Thavamony (R.2&5)
Advocate Mr.P.V.Mohanan for R.9)
Advocate Mr.N.Nandakumara Menon (R.22-23)
Advocate Mr.P.V.Mohanan (R.11-18 & 19)
Advocate Mr. PC Sasidharan (R.21,24,25,26 & 28)

O.A.144/2006

1 M.Krishnabhadran, Supdt. Of Police,
Crime Branch CID, Kollam
residing at Geethanjali, Prathibha Junction,
Kadappakada, Kollam.

2 Martin K.Mathew, Supdt. Of Police
CBCID, Ernakulam.

3 Kailasanathan, Supdt. Of Police,
working as Vigilance Officer,
Kerala State Civil Supplies Corporation,
Kochi. .....Applicants

(By Advocate Mr.R.Rajasekharan Pillai)

V.

1 The Union of India, rep.by the
Secretary,M/o Home Affairs

New Delhi

2 The State of Kerala rep.by Chief Secretary
Government Secretariat, Thriuvananthapuram.

3 The UPSC rep.by its Secretary
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4 The Selection Committee constituted under Reg.3 of the IPS appointment by promotion Regulations represented by the Chairman
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5 The Director General of Police,Kerala
Thiruvananthapuram.

6 Vijaysreekumar
Superintendent of Police Special Cell PHQ,
Thiruvananthapuram.

7 A.T.Jose.
Superintendent of Police Special VACB Ernakulam

8 Varghese George
Superintendent of Police, Alappuzha

9 M.V. Somasundaram
Superintendent of Police Special VACB
Ernakulam Range.

10 T. Chandran.T
Superintendent of Police, Palakkad

11 V.V.Mohanan
Assistant Director Kerala Police Academy,
Trissur

12 K. Vijaysankar
Commandant Kerala Armed Police Bn.I. Trissur

13 T.V.Kamalakshan
Superintendent of Police, CBCID Kozhikode

14 M.N. Jayaprakash
Superintendent of Police, Trissur

15 M. Wahab
Superintendent of Police Ernakulam Rural

16 P.T. Nandakumar

Superintendent of Police Analysis Wing,
CBCID Hqs,Thiruvananthapuram.

17 T.P.Rajagopalan
Principal Police Training College,Trivandrum

18 P.I.Varghese
Kerala Armed Police Bn.IV,Kannur

19 K. Balakrishna Kurup
Superintendent of Police,VACB Kozhikode Range

20 M.Sugathan
Superintendent of Police, SBCID Security,Trivandrum

21 T.M.Aboobaker
Supdt.of Police Kozhikode Rural on
spl.duty with Haj Committee, Haj Council,
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22 K.G. James.
Superintendent of Police, Malappuram

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Superintendent of Police SBCID,Ernakulam Range

24 M. Padmanabhan
Superintendent of Police, Wayanad

25 A.M. Mathew Policarp
Superintendent of Police , Kannur

26 C.Sherafudin
Superintendent of Police,Kozhikode Rural,Kozhikode

27 P.K.Kuttappai
Commandant Kerala Armed Police Bn.V.
Maniyar,Pathanamthitta

28 T.Sreesukan
Superintendent of Police , Kasargod ....Respondents

(By Advocates Mr.TPM Ibrahim Khan, SCGSC for R.1,3&4
Advocate Mr. K.Thavamony GP (R.2&5)
Advocate Mr.N.N.Sugunapalan (Sr. (R.10)
Advocate Mr.PV Mohanan (R.11,18& 19)
Advocate Mr. N.Nandakumara Menon (R.22-23)
Advocate Mr.P.C.Sasidharan(R.21,24, 26 & 28
Advocate Mr.George Jacob (R.7)

These applications having been heard jointly finally on 17.10.2006, the Tribunal on 3rd..Nov.2006 delivered the following:

ORDER

Hon'ble Mr. George Paracken, Judicial Member

The six Original Applications invdving the common questions of law and fact were taken up for hearing and are being disposed of by this common order. Applicants in all these O.As are State Police Service Officers of Kerala who have been included in the zone of consideration for selection to the Indian Police Service, Kerala Cadre for the Select Years from 2001 to 2004 but were not selected. The applicants in both O.As 432/04 & 85804 were considered for the year 2002. The applicant in O.A. 146/05 and OA 251/05 is same and he was included in the zone of consideration for both the years 2002 and 2003. The applicant in O.A.100/06 was also included in the zone of consideration for both the years 2002 and 2003. There are three applicants in O.A.144/06 and they did not fall in the zone of consideration for any of the select list years from 2001 to 2004. The main allegation of all the applicants who were included in the zone of consideration for any of the aforementioned years but not selected was that the Selection Committee has given a go-by to the statutory mandate of Regulations 5(4) and 5(5) of the IPS (Appointment by Promotion) Regulations, 1955 (Regulations for short). The other allegation is that Regulation 5(2) of the Regulation were violated by including ineligible persons in the field of choice in the impugned selection. They have, therefore, challenged the Select Lists of 2001, 2002 and 2003 issued vide notification dated 8.4.2004. The grievance of Shri K.Ramabhadran in his OA 146/2005 was that since the Selection Committee for the year 2004 did not meet at the appropriate time, it won't include him in the zone of

consideration as he was retiring from State Police Service on 28.2.2005. In his other OA 251/05, he was aggrieved by the consolidated revised list of 54 officers forwarded by the State Government to the Union Government/UPSC to be included in the field of choice for conferring IPS for the Select Year 2001,2002 and 2003 which was allegedly in violation of the Regulation 5(2) of the Regulations. The applicant in OA 100/2006 was included in the zone of consideration for the Select Year 2004 at Sl.No.2 but he was not selected as the Committee graded him as only "Good" and officers with higher grading was available for inclusion in the Select List. As in OA 251/05, the applicant herein also challenged the consolidated revised list of 54 officers included in the field of choice and the select list of 2003 issued vide the notification dated 8.4.2004. The applicants in OA 144/06 were also not considered for selection in any of the select list years under challenge from 2001 to 2004. They also have attributed violation of Regulation 5(2) for non-inclusion of their names in the zone of consideration and violation of Regulation 5(4) and 5(5) of the Regulation for inclusion of ineligible officers in the Select List.

OA 432/04:

2 The applicant in this O.A is serving as Superintendent of Police from 20.6.2001 with the State Government and he became eligible to be included in the Select List of Officers for promotion to the Indian Police Service (IPS for short) for the vacancies that arose during the period from 1.1.2000 to 31.12.2000 and from 1.1.2001 to 31.12.2001. The select lists of 2001, 2002 and 2003 for the State Police Service Officers of State of Kerala for filling up 4,10 and 4 substantive vacancies respectively were pending for preparation with Respondents 1 to 6 for various reasons.

Since the applicant was due to retire on 31.12.2002, he had earlier filed OA 869/2002 before this Tribunal seeking a direction to convene the Selection Committee Meeting and to consider his claim for inclusion in the select List for the aforesaid period and this Tribunal vide order dated 16.10.2003 directed the respondents 1 to 6 to do so irrespective of the fact that he crossed 54 years as on 1.1.2002. Thereafter, the Selection Committee met on 24.12.2003 included him in the zone of consideration and considered him for the select list of 2002 along with other eligible candidates, but he was not selected. Respondent No.1 issued the Annexure.A2 notification dated 8.4.2002 containing the year-wise select list as approved by the UPSC for 2001,2002 and 2003 respectively. The grievance of the applicant is that the respondents 1 to 6 have not followed the sub-regulations (4) and (5) of Regulation 5 of the Regulations and that the Select List was prepared on the basis of seniority. His claim is that in the event the Select Committee had followed the aforesaid regulations and made assessment of the applicant on the basis of his Service records, he would have been classified as "Outstanding" and accordingly he would have superseded the respondents 7 to 13 who are having the same grading and ranking of the applicant and against whom there were adverse entries. They were having remarks either in the Punishment Role (PR) or in the Confidential Report (CR) or both and have no achievements or assignments to their credit warranting their classification as "Outstanding". He has, therefore, prayed in this OA to include him in the select list of the officers appointed to the IPS cadre and appoint him in this cadre.

3 Earlier this Tribunal considered his prayers in this OA and vide order dated 15.6.2004 dismissed it under Section 19(3) of the AT Act;

1985 finding no reason to entertain the same, with the following observations:

> "Scanning through the application, what we could see is a wishful thinking in the mind of the applicant that his service records and performance had been better than those of respondents 7 to 13 and the inference arrived at by him that respondents 7 to 13 had been placed in the select list and appointed solely on the basis of seniority inconsiderate of the merit. No allegation of malafides or unfairness against the selection committee or any particular member thereof individually has been made to show that the committee or any member thereof has disabled itself to act fairly and justly. No material has been placed on record to show that any rules with regard to the selection had been violated, nor is there anything at all on record which is sufficient to create even a suspicion that the selection has not been done fairly. The committee which prepared the select list has been chaired by the Chairman/Member, UPSC and consisted of officials at very senior levels. Although fallibility is human unless something on record suggests that the process had not been gone through properly, judicial intervention would not be justified."

4 The applicant challenged the aforesaid orders before the Hon'ble High Court of Kerala which remitted the OA back to this Tribunal vide order dated 10.8.2005 for consideration of the case on merits after service of notice is completed. In the said Writ Petition the applicant has chosen to include all the private respondents before this Tribunal except Respondents 9,12 and 13 (S/Shri M.V.Somasundaran,T.P.Rajagopal and P.I.Varghese). The operative part of the aforesaid judgment is extracted below:

> "5 We had heard Sri S.Sreekumar and he submits that the Tribunal had taken a dispassionate view and in very strong terms had shown that it was a case where petitioner had thoroughly failed to make a prima facie case. There was no allegation of any malafides and no materials had been placed on record to show the manner in which the selection process was irregular.
>
> 6 Although a number of persons had been included as respondents in the O.A it appears that when the writ petition was filed, all of them were not included as respondents (namely respondents 9,12 and13). On behalf of such a

group, although not a party, Sri P.V.Mohanan submits that as far as those persons are concerned, challenge may not be justified or sustainable since there is a binding judgment between the petitioner and them. This appears to be contention which is to be upheld.

7 It is brought to our attention that the selection of respondents is already under challenge and the same is pending before the C.A.T as O.A No.251 of 2005. We are of opinion that the petitioner has a grievance, and it is not a purely experimental claim. It was the last opportunity for him in his advanced age and in his career. Therefore, we feel that opportunity is to be given to the petitioner to agitate his grievances. The grounds urged are worthy of examination."

5 The 2nd and 3rd respondents (State Government) in the reply has submitted that the applicant was included in the zone of consideration for selection of 10 candidates in the year 2002 at Sl.No.26 and the Selection Committee has prepared a list of 10 selected officers after an objective analysis of the performance of the eligible officers included in the zone of consideration as revealed from their confidential records.

6 The 4th and 5th respondents (UPSC and Selection Committee)submitted that the Selection Committee strictly followed the ratio in this matter by first considering the eligible officers and including them in the zone of consideration in terms of Regulation 5(2) and thereafter selecting the required number of candidates and included them in the select list in accordance with Sub Regulations 5(4) & 5(5) of Regulation 5. The said sub-regulations provide as under:

"5(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).

5(4) The Selection Committee shall classify the eligible officers as 'Outstanding', 'very good', 'good' and 'unfit' as the case may be on an over all relative assessment of their service record.

5(5) The list shall be prepared by including the required

> number of names, first from amongst 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."

In accordance with the regulation 5(4), the Selection Committee duly classified the eligible officers included the zone of consideration as 'outstanding', 'very good', 'good', or 'unfit' as the case may be on an over all relative assessment of their service records. Thereafter, as per the provisions of Rule 5(5) the Selection Committee prepared the list by including the required number of names from the officers finally classified as 'outstanding' and from amongst them classified as 'very good' and 'good' in that order. For making an over all relative assessment of the eligible officers, the Selection Committee considered the service records of the each of the eligible officers with special reference to their performance during the years preceding the order by which the select list was prepared. The committee deliberated on the quality of the officers as indicated in the various columns recorded by the reporting/reviewing officer/accepting authority in the ACRs for different years, and then, after detailed mutual deliberations and discussions finally arrived at a classification assigned to each officer. While doing so the Selection Committee also considered the over all grading recorded in the C.Rs to ensure that it was not inconsistent with the grading/remarks vide various specific parameters or attributes. The Selection Committee also took into account the orders regarding appreciation for the meritorial service done by the officers concerned and also kept in view the orders awarding penalties or any adverse remarks duly communicated to the officers which even after due consideration of his representation by a specified forum are not expunged. They have therefor,

denied any violation of the provisions of Regulations 5(4) and 5(5) of the Regulations.

7 As regards the applicant was concerned as there were only 4 vacancies for the select list year 2001 his name did not fall in the zone of consideration and therefore he was not considered. For the year 2002, there were ten vacancies and the applicant's name was included at Sl.No.21 of the zone of the consideration comprising 31 officers. On an over all relative assessment of his service records, the committee graded him as 'very good', but his name could not be included in the select list due to the statutory limit. Respondents 10-13 were considered by the Committee at Sl.No.6,7,8 and 10 of the Select List respectively as they were all senior to the applicant and were assessed as 'very good' along with him. The applicant was not considered for the year 2003 as his name did not fall in the zone of consideration.

8 The respondents 4&5 have denied the contention of the applicant that some officers against whom disciplinary proceedings were pending were included in the select list, even though officers on whom disciplinary proceedings are pending can also be included in the select list in accordance with Regulation 5(4) and 5(5) of the Regulations. In the instant case there were no such officers who have been included provisionally in the select list of 2001,2002 and 2003 subject to clearance of disciplinary proceedings/criminal proceedings pending against them or whose integrity certificates have been withheld by the State Government. As regards the methoddology adopted by the Selection Committee for assessing the relative merit of the eligible officers, it was uniform and consistent as applied to all selections of IAS/IPS/IFS of the various

State/UTs and it was upheld by the Hon'ble Supreme Court.

9 In **R.S.Das Vs. Union of India and others, AIR 1987SC 593** the Apex Court held as under:

> "The selection committee is constituted by high ranking responsible officers presided over by Chairman or a Member of the Union Public Service Commission. There is no reason to hold that they would not act in fair and impartial manner in making selection. The recommendations of the Selection Committee are scrutinized by the State Government and if it finds any discrimination in the selection it has the power to refer the matter to the Commission with its recommendations. The Commission is under a legal obligation to consider the views expressed by the State Government along with the records of officers, before approving the select list. The Select Committee and the Commission both include persons having requisite knowledge, experience and expertise to assess the service records and ability to adjudge the suitability of officers. In this view, we find no good reason to hold that in the absence of reasons the selection would be made arbitrarily.
>
> The amended provisions of Regulation 5 have curtailed and restricted the role of seniority in the process of selection as it has given priority to merit. Now the committee is required to categorize the eligible officers in four different categories viz., "outstanding", "very good', "good" or "unfit" on over all relative assessment of their service records. After categorization is made, the committee has to arrange the names of the officers in the select list in accordance with the procedure laid down in Regulation 5(5). In arranging the names in the Select List, the Committee has to follow the inter see seniority of officers within each category. If there are five officers who fall within "outstanding" category, their names shall be arranged in the order of their inter see seniority in the State Civil Service. The same principle is followed in arranging the list from amongst the offices falling in the category of "Very Good and "Good"."

Similarly in **Ms.Anil Katiyar Vs. UPSC (1997(1) SLR 153)** the Apex Court held as under:

> "The question is whether the action of the DPC in grading the appellant as "Very Good" can be held to be arbitrary. The learned Senior Counsel appearing for UPSC has placed before us the confidential procedure followed by the DPCs in the UPSC for given over all gradings, including that of "outstanding" to an officer. Having regard to the said confidential procedure which is followed by the UPSC we

> are unable to hold that the decision of the DPC in grading the appellant as "very good" instead of "outstanding" can be said to be arbitrary."

In **UPSC Vs. H.L.Dev and others, AIR 1988 SC 1069** the Apex Court held as under:

> "How to categorize in the light of the relevant records and what norms to apply in making the assessment are exclusively the functions of the Selection Committee."

10 In the rejoinder to the reply of Respondents 4&5, the applicant has submitted that there was absolutely no reason for the committee to grade him as 'very good' if his over all performance, the appreciation letters and his meritorious service were taken into consideration. According to him, he was bound to be graded as 'outstanding'. The applicant has also disputed the statement of the Respondents 1-6 that Respondent 10,11 and 13 were assessed 'very good' on the basis of their performance and they were included in the select list. The allegation of the applicant is that the respondents have not actually followed the Regulation 5(4) and (5) of the Regulations and the grading was done not as per the norms. According to him, if the norms were followed the Respondents 7 to 13 would never have found a place in the select of 2002 as they had adverse remarks in the CR and PR. The applicant pinpointed some of the adverse remarks against the 7th, 8th, 10th and 11th respondents which were ignored as under:

> **"7th Respondent Sri Vijayasree Kumar:**
>
> As per memo No.251 dated 25.8.1990 issued by the Supdt. Of police, which is approved by the DIG, he has been seriously reprimanded for evading law and order problems during the period from 2.6.90 to 1.9.90. During 92 also, he was accused of very poor performance. He could not detect any case nor could he arrest any accused in any case as per the C.R. Written about his performance.

8th Respondent; Mr.Varghese George:

The DIG reported in his C.R during 91 that his performance was unsatisfactory.

10th Respondent: Mr.M.Wahab:

There was a disciplinary inquiry ordered against him by order dated 5.12.1994. Another inquiry was ordered against him as per G.O. Dated 24.9.1991. Alleging laxity in the investigation in crime No.104/87 of Kollam East Police Station, another inquiry was also pending against him.

11th Respondent; Shri P.T.Nandakumar:

Gross dereliction of duty resulting in inordinate delay in an inquiry, was found against him in G.O(Rt) No.2726/96 dated 12.12.1996. disciplinary action was taken against him and was closed with a censure vide Order dt.223.1997. Again disciplinary action was initiated and closed with a punishment of censure as per order dated 31.5.1997. There was adverse remarks against him in 95. During January to March, 1995, his performance was only just satisfactory as per the C.R."

Vide MA 335/06 in the OA, the applicant has also sought a direction to the respondents 2and 3 to produce the list of officers who are in the zone of consideration for conferring IPS for the years as on 1.1.2001, 1.1.2002 and 1.1.2003, prepared and forwarded by them to the respondents 3 to 5 and also for a direction to the 5th respondent to produce the minutes prepared by the Selection Committee for including the candidates ultimately selected for the year 2002.

11 The Respondents 9&13 vide MA 46/06 in the present OA, have prayed for dispensing with notice to them as they were not parties before the Hon'ble High Court in the Writ Petition No.20230/04 filed by the applicant and also in view of the observation of the High Court in para 6 of its order referred to above.

<u>OA 858/04:</u>

12 This OA was field after the OA 432/04was remitted to this

Tribunal by the Hon'ble High Court of Kerala. Whereas the applicant in OA 432/04 has claimed for his inclusion in the select list of 2001 and made three of the selected officers of the said select list and 4 selected officers of select list 2002 as respondents, the applicant in the present OA is claiming promotion only against 2002 select list and he has made only the ten selected officers of the select list of 2002 as private respondents. The basic arguments in this OA are also not very different from those in OA 432/04 (supra). His contention is that he had an impeccable and exemplary service record and he has been consistently graded as "outstanding" in his ACR and all other records maintained by the department. He had claimed that he had the following grades in the C.Rs for the period from 1.1.94 to 31.12.2003.

Period	Grading by the assessing Officer	Grading by the reviewing Officer
1.1.94-7.8.94	Outstanding by IG	Outstanding by DGP
8.8.94-31.12.94	Outstanding by DGP	Outstanding
1.1.95-31.12.95	Outstanding by SP	Outstanding by DIG&IG
1.1.96-3.7.96	Outstanding by SP	Very Good by DIG
3.7.96– 31.12.96	Outstanding by DIG	Outstanding by ADGP
1.1.97-22.10.97	Excellent by SP	Outstanding by DIG&ADGP
23.10.97-31.12.97	Outstanding by DIG	Outstanding by ADGP
1.1.98-15.4.98	Outstanding by DIG	Outstanding by DGP
16.4.98-14-5-98	SP Assessed him as officer with exception	DIG& ADGP concurred
14.5.98-31.12.98	Outstanding by C.P.	Outstanding by DIG
1.1.99-14.7.99	Outstanding by SP	Outstanding by DGP
14.7.99-18.1.99	Outstanding by DIG	Outstanding by DGP
1.1.00-31.12.00	Excellent by IG	....
1.1.01-31.1.01	Outstanding by IG	....
1.1.02-31.12.02	Outstanding by IG	....
1.1.03-31.12.03	Outstanding by Director VACB	.....

According to him when there were only very few officers with the 'Outstanding' records other than him, the Selection Committee refused to classify them as 'Outstanding' and instead classified them also as "Very Good" along with others. The applicant's case is that such classification of

the eligible officers by the Select Committee equating the officers with 'Outstanding' grades with 'Very Good' or 'Good' is arbitrary and illegal. He has specifically stated that the respondents 7&12 were not having 'Very Good' gradation as per their ACRs for the immediately preceding relevant years which were considered. He has, therefore, challenged the impugned action of the Selection Committee selecting such candidates with inferior gradations after excluding the applicant which amounts to malice in law and perversity and the committee has given a go by to the statutory mandate of Regulations 5(4) and 5(5) and have included persons in the impugned select list based on the seniority of the incumbents in the field of choice, after excluding only those candidates against whom punishment proceedings or vigilance case proceedings are pending.

13 The applicant relied upon the judgment of the Apex Court in the case of **Badrinath V. Govt. of Tamil Nadu and others (2000(8) SCC 395)** in which the Hon'ble Supreme Court has categorically held that under Article 16, right to be considered for promotion is a fundamental right and it is not the mere consideration for promotion that is important, but that the consideration must be fair according to established principles governing service jurisprudence. Further, in the case of **Delhi Jal Board V. Mahinder Singh(2000) 7 SCC 210**, the Apex Court held that right to be considered by the DPC is a fundamental right guaranteed under Art.16, for an incumbent who is eligible to be included in the zone of consideration. He has also placed his reliance on he judgment of the Hon'ble High Court of Kerala in **Narayanan Vs. State of Kerala (1993)1 KLT 461** wherein it was held that it is a legitimate expectation of every officer in the department to be promoted and posted as per the rules. According to the applicant,

the impugned decision of the Selection Committee denying selection is illegal, unsustainable also in view of the law laid down by Lord Greene, Master of the Rolls, in **Associated Pictures Houses Ltd. Vs. Wednesbury Corporation (1947(2) All E.R. 680)** wherein it has been held as under:

> "The exercise of such a discretion must be a real exercise of the discretion. If, in the statute conferring the discretion, there is to be found, expressly or by implication, matters to which the authority exercising the discretion ought to have regard, then, in exercising the discretion, they must have regard to those matters. Conversely, if the nature of the subject matter and the general interpretation of the Act make it clear that certain matters would not be germane to the matter in question, they must disregard those matters.....Bad faith, dishonestly – those of course, stand by themselves-unreasonableness, attention given to extraneous circumstances, disregard of public policy and things like that have all been referred to as being matters which are not relevant for the consideration. In the present case we have heard a great deal about the meaning of the word "unreasonable". It is true the discretion must be exercised reasonably. What does that mean? Lawyers familiar with the phraseology commonly used in relation to the exercise of statutory discretions often used the word "unreasonable" in a rather comprehensive sense. It is frequently used as a general description of the things that must not be done. For instance, a person entrusted with a discretion must direct himself properly in law. He must all his own attention to the matters which he is bound to consider. He must exclude from his consideration matters which are irrelevant to the matter that he has to consider If he does not obey those rules, he may truly be said, and often is said, to be acting "unreasonably". Similarly, you may have something so absurd that no sensible person could ever dream that it lay within the powers of the authority. Warrington, L.J. I think it was, gave the example of the red-haired teacher, dismissed because she had red hair. That is unreasonable in one sense. In another sense it is taking into consideration extraneous matters. It is so unreasonable that it might almost be described as being done in bad faith. In fact, all these things largely fall under one head.....the court is entitled to investigate the action of the authority with a view to seeing whether it has taken into account mattes which it ought not to take into account, or, conversely, has refused to take into account or neglected to take into account. Once that question is answered in favour of the local authority, it may still be possible to say that the local authority, nevertheless, have come to a conclusion so unreasonable that no reasonable authority could ever have come to it. In such a case, again, I think the court can interfere."

He has also relied upon the judgment in **Anisminic Ltd Vs. The Foreign Compensation Commission and another, 1969(1) All E.R. 208 p.213) Short V. Poole corporation (1926 all E.R. 74)** and the Apex Court judgment in **Tata Cellular Vs. Union of India 1994(6) SCC 651** following the law laid down by the British Court in the aforesaid judgment.

14 The reply of the Respondent No.1 (State of Kerala) is on similar lines as that of OA 432/04. The respondents 2&3 in its reply submitted that for the year 2002, the applicant's name was included at Sl.No.30 of the eligibility list and he was duly considered by the Selection Committee. On an over all relative assessment of his service records, the committee graded him as only "Very Good" and on the basis of this assessment, his name could not be included in the select list due to its statutory limit as there were officers with higher seniority available for inclusion as per Regulation 5(5). The applicant was not eligible for consideration in the year 2003 as he did not come up within the zone of consideration for the four vacancies. The other submissions in the reply are the same as those in OA 432/04.

15 The Respondents 6,13 and 14 denied the various allegations and insinuations against them advanced by the applicant in the OA. Advocate P.V.Mohanan on their behalf specifically denied the allegation that the respondent No.14 who has been included in the select list has no clean record of service and his service records are tainted by adverse remarks during the relevant years preceding the selection and his appointment is illegal. According to him the service records of all the three answering respondents are outstanding and there no adverse remarks in their C.Rs during the relevant period nor any departmental proceedings

were pending or contemplated against them during the said period. As far as Shri V.V.Mohanan (Respondent R6) was concerned, he got as many as 27 good service entries for outstanding performance and appreciation letters from the senior officers. He was the recipient of the police medal awarded by the Hon'ble President of India on the event of Independence day of 2002. In his CR dossiers it was recorded that he is an outstanding officer. In the case of Shri P.I.Varghese, (R.13) it was submitted that he secured as many ad 35 good service entries and appreciation letters from senior officers. He was the recipient of President Medal for his meritorious service in the year 1997. His service records were outstanding. Similar is the claim of Respondent No.14 Shri K.Balakrishna Kurup. He secured 13 good service entries and appreciation letters from the senior officers and received police medal awarded by the Hon'ble President of India on the Independence Day of 2001 for meritorious service rendered by him.

In the rejoinder to all the replies of the respondents, the applicant had reiterated his earlier submissions and grounds for challenging the impugned orders.

16 The Respondents 6, 13 and 14 have filed an additional reply enclosing a copy of the orders of this Tribunal in OA 230/04 and connected cases filed by Shri V.V.Mohanan and others. The prayer in this O.A was to consider their names for inclusion in the select list of IPS Kerala cadre of 2001 and 2002 de hors their superannuation from the State Police Service and the same was granted by the order dated 23.12.2005. The respondents have submitted that the said order cannot be challenged collaterally in a parallel proceedings. The Respondents 6,13 and 14 have also filed an argument note summarizing their arguments before this

Tribunal and urged that this Tribunal may not interfere with the impugned order in view of the various judgments of the Apex Court They particularly relied upon the judgment in the case of **UPSC Vs. K.Rajaiah and others , 2006(10) SCC 15** wherein the Apex Court has interpreted the guidelines issued by the UPSC in the matter of selection procedure to IPS declaring that the judicial review of selection process by an expert body is impermissible. In the case of **Nutin Arvind Vs. Union of India and others, (1996) 2 SCC 488)** the Supreme Court held "When a high level committee had considered the respective merits of the candidates, assessed the grading and considered their cases for promotion, this Court cannot sit over the assessment made by the DPC as an appellate authority". In **Durgadevi and another Vs. State of Himachal Pradesh and others, 1997 SCC L&S 922** the Apex Court held as under:

> "In the instant case, as would be seen from the perusal of the impugned order, the selection of the appellants has been quashed by the Tribunal by itself scrutinizing the comparative merits of the candidates and fitness for the post as if the Tribunal was sitting as an appellate authority over the Selection Committee. The selection of the candidates was not quashed on any other ground. The tribunal fell in error in arrogating to itself the power to judge the comparative merits of the candidates and consider the fitness and suitability for appointment. That was the function of the Selection Committee. The observations of this Court in Dalpat Abasaheb Solunke case are squarely attracted to the facts of the present case. The order of the Tribunal under the circumstances cannot be sustained. The appeal succeeds and is allowed. The impugned order dated 10.12.1992 is quashed and the matter is remitted to the Tribunal for fresh disposal on other points in accordance with the law after hearing the parties.

Again in the case of **UPSC Vs. HL Dev and others, AIR 1988 SC 1069** the Supreme Court held as under:

> "How to categorize in the light of the relevant records and what norms to apply in making the assessment are exclusively the functions of the Selection Committee. The jurisdiction to make the selection is vested in the Selection

Committee."

In the case of **State of Madhya Pradesh Vs. Shrikant Chapekar, JT 1992 (5) SC 633** the Apex Court held as under:

> "We are of the view that the Tribunal fell into patent error in substituting itself for the DPC. The remarks in the ACR are based on the assessment of the work and conduct of the official/officer concerned for a period of one year. The Tribunal was wholly unjustified in reaching the conclusion that the remarks were vague and of general nature. In any case, the Tribunal out stepped its jurisdiction in reaching the conclusion that the adverse remarks were sufficient to deny the respondent his promotion to the post of Dy.Director. It is not the function of the Tribunal to assess the service record of a Government servant, and order his promotion on that basis. It is for the DPC to evaluate the same and make recommendations based on such evaluation. This court has repeatedly held that in a case where the Court/Tribunal comes to the conclusion that a person was considered for promotion or the consideration was illegal then the only direction which can be given is to reconsider his case in accordance with law. It is not within the competence of the Tribunal, in the fact of the present case, to have ordered deemed promotion of the respondent."

In **Dalpat Abasaheb Solunke Vs. B.S.Mahajan, AIR 1990 SC 434.** the Hon'ble Supreme Court held that "it is needless to emphasize that it is not the function of the court to hear appeals over the decisions of the Selection Committee and to scrutinize the relative merits of the candidates. Whether a candidate is fit for a particular post or nor has to be decided by the duly constituted Selection Committee which has the expertise on the subject." He has also relied upon the judgments in Anil Katiar's case (supra) and R.S.Das's case (supra) relied upon by the respondents in OA 432/04.

O.A.No.146/05 & 251/05:

17 Shri K.Ramabhadran is the applicant in both these O.As. He is one of the officers included in the zone of consideration for the Select List year 2002 for filling up the ten vacancies of that year. He filed the O.A. 146/05 on 28.2.2005 ie., the date of his retirement seeking a declaration that he is entitled to be appointed by promotion to Indian Police Service in

accordance with the Regulations and in case he is included in the Select List year 2004 to be published or in the select list of the previous year and also for a direction to the respondents to appoint him to IPS, in case he is included in the Select List of the year 2004 or in the select list of the previous year in case of his inclusion on review or as per the directions of this Tribunal notwithstanding his retirement from the State Police Service on 28.2.2005 subject to the final outcome of W.P(C) No.32810of 2004 pending before the Hon'ble High Court of Kerala (details of which are mentioned later in this order). His grievance was that the respondents did not prepare separate eligibility lists for the years 2001,2002 and 2003 taking into account the respective number of vacancies identified for each year and the Annexure.A2 list contained the names of 54 officials for the 4,10 and 2 vacancies respectively identifying for the select list years 2001,2002 and 2003. He also challenged the Anenxure.A3 notification dated 8.4.2004 which according to him was prepared by the Respondents on the basis of the said eligibility list which is also under challenge before this Tribunal in OA 432/04 and OA 858/04 (supra) filed by two officials included in the zone of consideration of the Select List years 2002. He has further submitted that the State Government (Respondent No.1) has already forwarded the list of 24 persons for the 6 vacancies identified for the period from 1.1.2003 to 1.1.2004 but his name has not been included in the said list as he has already crossed the age of 54 years as on 1.1.2004. According to him he was allowed to continue in service and he did not attain the age of 54 years as on 1.1.2004 on the basis of the corrected Date of Birth. However, Shri P.K.Madhu who is immediate junior to the applicant filed W.P(C) No.32810/2004 before the Hon'ble High Court of

Kerala seeking a direction to the first Respondent (State of Kerala) and the UPSC not to grant any service benefits to the applicant who was arrayed as 3rd Respondent in the said Writ Petition based on his corrected date of birth as 21.2.1950 annexed with this OA as Annexure.A6. The aforesaid Writ petition is still pending. Meanwhile the Selection Committee for the year 2004 was held on 30.12.2004 but the Select List was not published so far and the applicant superannuated on 28.2.2002.

18 In OA 251/05 the challenge is against the Annexure.A6 Revised List of 54 officers who are included in the field of choice for conferring IPS vacancies 2001,2002 and 2003 which was also impugned as Annexure.A2 list in OA 146/05. The other document under challenge in this OA is the Annexur.eA7 notification dated 8.4.04 which was under challenge in both the O.As 432/04 and 858/04 (supra). The applicant in this OA has impleaded all the ten officers included in the Select List for the year 2002 as Respondents 5 to 14. He repeated his submissions in OA 146/05 that the selection and appointment of the said respondents 5 to 14 are illegal, arbitrary, discriminatory and in contravention of the mandatory provisions contained in Regulation 5(1)(2) and (4) of Regulation and hence violative of Articles 14 and 16 of the Constitution of India as no separate list of eligible officers for the year 2002 was made as required under under Sub Regulation(2) of Regulation 5 but the Anenxure.A6 contained eligibility list of officers so prepared for making selection for the vacancies of the year 2001, 2002 and 2003 which is patently illegal and ultra vires. The second proviso to Regulation (2) directs that in computing for number of vacancies in the field of consideration, the number referred to in sub regulation (3) shall be excluded. The Sub Regulation (3) provides that the

committee shall not consider the case of the members of the State Police Service who have attained the age of 54 years on the Ist day of January of the year in which it meets. Further he has pointed out that S/Shri P.M.Janardhan, K.O.Mathew, P.C.George, T.Rajan, Tom Joseph, Rajasekharan Nair, Subhash Babu and T.K.Khalid appearing at Sl.Nos.6,8,10,11,12,14,20 and 33 respectively were not eligible for inclusion in the field of choice for the year 2002 as they crossed the age of 54 years as on 1.1.2002. Shri M.P.Sreedharan at Sl.No.24 of the list is ineligible for consideration as he has been reverted to the post of Circle Inspector of Police. The applicant has also alleged that the selection and appointment of respondents 5 to15 were made without observing the mandatory procedure and mode of selection provided in sub-regulation (4) of regulation 5 of the Regulation and for that reason their selection and appointment are to be held illegal, ultra vires and inoperative. As in OA 32/04 the definite case of the applicant was that the Respondents, 7,12 and 13 were having tainted service records during the relevant period of five years preceding the selection for the year 2002. The service records of Respondents 8,12 and 14 were stigmatized either due to poor performance or due to imposition of penalty. Therefore, according to him the selection of those respondents on the basis of their seniority over looking the outstanding record of service of the applicant is liable to be branded as highly discriminatory, unreasonable and vitiated by illegal malafides and wednesbury rule falling within the mischief of Articles 14 and 16 of the Constitution of India. He has also relied upon the judgment of the Apex Court in R.S.Das (supra) wherein it was held that the validity of the scheme contained in the promotion Regulations by pointing out that if any

dispute arises with regard to the arbitrary exclusion of a member of the State Service the matter can always be investigated by perusing his service records and comparing the same with the service records of officers and that would certainly disclose the reasons for the exclusion and that if the selection is made on extraneous consideration, in arbitrary manner, the courts have ample power to strike down the same and that is an adequate safeguard against the arbitrary exercise of power. The applicant has therefore prayed for setting aside Annexure.A6 proposal and Annexure.A7 select year and the orders appointing respondents 6 to 15 to IPS against the vacancies of the year 2002 and for a direction to the respondents 1 to 5 to make selection for appointment by promotion for the year 2002 strictly delimiting the field of choice in accordance with Sub-regulations (1) to (3) of Regulation 5 of the Regulations, 1955 and to make categorize the officers on the basis of merit as revealed from the service records of each officer in the field of choice on the basis of entries available in their character roll and thereafter arrange their names in the proposed list in accordance with the principles laid down in Regulation 5 categorizing them as 'outstanding' 'very good' and 'good' by making selection afresh.

19 The reply of the official respondents to O.As 146/05 and 251/05 are almost identical. The allegation of the applicant that no separate list of eligible officers for different Select List years were made as required under Sub Regulation (2) of Regulation 5 was straightaway refuted by the applicant by giving names of officers included in the zone of consideration for the years 2001,2002, 2003 and 2004 which are as under:

Selection Year 2001:

1 Vijayasreekumar
2 A.T.Jose

3 Varghese George
4 M.V.Somasudnaram
5 T.Chandran
6 P.M.Janardhanan
7 V.V.Mohanan
8 K.O.Mathew
9 K.Vijayasankar
10 P.C.George
11 Tom Joseph
12 T.V.Kamalakshan
13 M.Wahab

Selection Year 2002

1 T.Chandran
2 V.V.Mohanan
3 K.Vijayasankar
4 T.V.Kamalakshan
5 M.N.Jayaprakash
6 M.Wahab
7 P.T.Nandakumar
8 T.P.Rajagopalan
9 V.Ramakrishna Kurup
10 P.I.Varghese
11 M.G.Chandramohan
12 V.R.Reghuverma
13 K.Balakrishna Kurup
14 P.Radhakrishnan Nair
15 M.Sugathan
16 P.M.Aboobacker
17 N.S.Vijayan
18 K.G.James
19 A.Mohanan
20 K.K.Chellappan
21 T.C.Khalid
22 M.Padmanabhan
23 K.N.Jinarajan
24 A.M.Mathew Polycarp
25 P.Ramadasan Pothen
26 K.SReedharan
27 C.Sharafudeen
28 P.K.Kuttappai
29 T.Sreesukan
30 K.K.Joshwa
31 K.Ramabhadran

Selection Year 2003

1 V.R.Reghuverma
2 P.Radhakrishnan Nair
3 M.Sugathan
4 P.M.Aboobacker

5 K.G.James
6 A.Mohanan
7 K.K.Chellappan
8 M.Padmanabhan
9 K.N.Jinarajan
10 A.M.Mathew Polycarp
11 P.RAmadasan Pothen
12 C.Sharafudeen

Selection year 2004

1 V.R.Reghuverma (SC)
2 P.Radhakrishnan Nair
3 A.Mohanan (SC)
4 M.Padmanabhan
5 A.M.Mathew Polycarp
6 P.Ramadasan Pothen
7 C.Sharafudeen
8 P.K.Kuttappai (SC)
9 T.Sreesukan
10 K.K.Joshwa
11 K.Ramabhadran
12 P.K.Madhu
13 N.Chandran (SC)
14 R.Radhakrishnan (sC)
15 K.J.Devasia
16 V.C.Soman (SC)
17 E.Divakaran (SC)
18 K.C.Elamma

They have also refuted the allegation of the applicant that Sub Regulation (3) of Regulation 5 has been violated by including officers of the State Police Service who have attained the age of 54 years on the Ist of January of the year in which the Selection Committee was to meet. In the Select List year 2001 the name of Shri K.O. Mathew who crossed the age of 54 years as on 1.1.01 was considered in addition to the normal zone because there was a direction to that effect by this Tribunal dated 14.1.2003 in OA 776/02. Similarly Shri T.C.Khalid was included in the Select List year o 2002 in accordance with the directions of this court. Again in the eligibility list of 2004 in additional to the normal zone of consideration the applicant's name itself was included on the directions of the Hon'ble High Court of

Kerala. As regards Shri P.M.Janardhanan, Shri K.O.Mathew, Shri P.C.George, Shri T.Rajan, Shri Tom Joseph, Shri Rajaekharan Nair, Shri Santhosh Babu and Shri N.P.Sreedharan, they were not considered by the Selection Committee which prepared the Select List of 2002 as contended by the applicant. As regards the other contention that the mandatory provisions in the promotion regulations 5(4) and 5(5) were not followed by the Committee, they have repeated the same reply given in OA 432/04.

O.A.100/06 & 144/06:

20 Both these O.As are identical. The applicants in these O.As seeks to quash the Annexure.A4 revised list (Annexure.A6 in OA 251/05), Annexure.A5 notification dated 8.4.2004 (in all these O.As), Annexure.A5 (a) communication dated 30.7.04 by which S/Shri K.G.James and K.K.Chellappan of the Kerala Police Service were appointed to the IPS on probation, Annexure.A10 list of eligible officers as on 1.1.2003 and the Annexure.A10(A) notification appointing S/Shri M.Padmanabhan, A.M.Mathew Polycarp, C.Sharafudeen, P.K.Kuttappai and T.Sreesukan on probation. He has further sought a direction from this Tribunal to the Respondents 1 to 4 to consider his case for conferment of IPS for the year 2004 forthwith.

21 The main contentions of the applicants in these O.As were the following:

(i) That the IPS Promotion Regulations, 1955 enjoins the method and procedure relating tot he conferment of the IPS to the Principal police Service and Regulation 5 states that the number of members of the State Police Service to be included in the list shall be calculated as the number of substantive vacancies anticipated in the course of the period of twelve months commencing from the date of preparation of the list. Regulation 5(2) states that such annual list shall be of a number, which is equal to three times the vacancies. The 3rd proviso to Sub Regulation 2 specifically states that the committee shall not consider the case of a member of the State police Service unless, on the first day of April 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. However, this provision is colossally violated in he matter of preparation of eligibility lists for the years 2001, 2002, 2003 and 2004.

(ii)That the committee shall not consider the case 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. In order to select candidates for the years 2000,2001 , 2002 and 2003, persons who have crossed the age of 54 in the respective years, have been included in the zone of consideration and therefore on any stretch of imagination can it be said that Annexure.IV is made in accordance with the said provisions, on the other hand it is in colossal violation of the said provisions.

(iii)That the action on the part of the respondents in clubbing the three years vacancies together and preparing a consolidated list of eligible officers is unmindful of the restrictions and qualifications imposed by Rule 5 o by the State "Special Rules. Instead of preparing list of qualified officers for each year a list of 54 officers for 18 vacancies (2000,2001 & 2003) was prepared by the State Government and sent to the Ministry of Home Affairs and zone was thus enlarged.

(iv)That respondents 22 (Shri KG James) and 23 (KK Chellappan) who have been selected are not even eligible to continue in the feeder category of Circle of Inspectors of Police because he has not passed the prescribed test under the special Rules of Kerala Police Service relating to Schedule Caste/Schedule Tribes to the post of Circle Inspectors in the Police Department, 1980. Therefore, respondents 22 and 23 ought not have been recommended by the State government nor should have they been found a place in the Select List of IPS officers eligible for promotion from the State Service.

(v) That most of the offices included in Annexure.IV,V and X have not passed the prescribed test under the Special Rules of Kerala Police Service which relates to the appointment to various branches and categories of Kerala Police Service ,which relates to Branch I Executive Officers. Hence their names ought not have appeared in the list prepared by the State Government or in the Select List made by the selection Committee constituted under Regulation 3 of the IPS Promotion Regulations.

22 They have also alleged that Respondents 22 and 23 have been selected by the KPSC on the basis of Special Recruitment Rules, 1980 framed for the purpose of providing adequate representation for SC/ST. The applicants have contended that their selection was in violation of Rule 8 of the Special Rules in respect of Special Recruitment from

among members of SC/ST to the post of Circle Inspectors in the Police 1980 which reads as under:

8 Test(a) A person appointed by direct recruitment as Circle Inspector of Police shall pass at or before the fifth examination held after such appointments, an examination in the following subjects:

	Marks	
	Maximum	Minimum
A. 1. The Indian Penal Code and Special and Local Criminal Law including the police Act.	120	96
2. The code of Criminal Procedure	120	96
B. The Indian Evidence Act	100	40
C. Medical jurisprudence and Texicology	100	40
D.1.Police Department Orders.	100	60
2. Scientific Aids to Investigation	100	40

Note: The Examinations will generally be conducted half yearly by the Kerala Public Service Commission.
(b) No person shall be eligible for increments in his time-scale of pay or appointment as a full member of the Service unless and until he has passed the examination in all the subjects in Sub-rule(a)
(c)If any person has satisfactorily completed the prescribed period of probation and has passed the examination in all the said subjects within the period prescribed by sub-rule(a) he shall count his service for increments and be deemed to have become a full member of service on and from the date of which he has completed the period of probation or passed the said examination whichever is later.
(d)If any person fails to pass the examination in any of the said subjects which the period prescribed by sub-rule (a) he shall, by order, be discharged from the service; and
(e)Every person appointed by direct recruitment to the post of Circle Inspectors of Police shall pass the Account test for the Executive Offices of Kerala or the Account test (Lower) within the prescribed period of probation.

According to the applicants, since the above mentioned respondents have not fulfilled such conditions prescribed in Rule 8 mentioned above, they ought not have been recommended by the State Government nor their names should have found a place in the select list of officers eligible for promotion from the State Police Service as they have not passed the above test.

23 As the allegations against Respondents 22 (Shri K.G.James)

and 23 (Shri K.K.Chellappan) are the only ground which is not common from other O.As, the reply of the respondents on this issue only need be considered here. The Respondents 22 and 23 have filed a separate reply denying the allegations made against them by the applicants. They have submitted that they were directly recruited by the Kerala Public Service Commission as C.I of Police under the Special recruitment Scheme for SC/ST candidates in the Kerala Police Service. They satisfactory completed the problem on 14.6.1986 and later promoted as Superintendent of Police vide notification dated 29.5.2000. The State Government vide order dated 24.11.2003 granted them exemption from passing the mandatory departmental test for confirmation in the post of CI of Police invoking the power of relaxation under Rule 39 of Part II of the K.S.& SSR (Annexure.R.22(1) and Annexure.R.22(2). Though the above orders were challenged before the Hon'ble High Court of Kerala vide CWP 8498/2004(J), the same was dismissed on 16.6.2004 (Annexure.R.22(4). Later this Tribunal also vide order dated 14.7.2004 in OA 911/03 filed by them (Annexure.R.22(5) directed the Respondents to consider them for promotion to IPS.

24 We have extensively heard Mr.Alexander Thomas, counsel for the applicant in OA 858/04 and Shri OV Radhakrishnan, Sr.Counsel for the applicant in OA. 146/05 and 251/05 who were leading the arguments on behalf of all the applicants. The other counsels who adopted their arguments are Advocate Shri Pirappancode V.S.Sudheer in OA 432/2004 and Advocate Rajasekharan Pillai in O.As 100/2006 & 144/2006. For the respondents we have heard Adv. TPM Ibrahim Khan, SCGSC for the Union of India and Adv. Thavamony, State Govt. Pleader for the

Government of Kerala. Adv. P.V.Mohanan representing the Respondents 9 to13 in OA 432/04, Respondents 6,13 & 14 in OA 858/04, Respondents 7,14&15 in OA 251/05, Respondents 9-11, 18& 19 in OA 100/2006 and Respondents 11,18&19 in OA 144/2006. Adv. S.Sreekumar for Respondents 7,12 and 13 in OA 431/2004, Respondents 10,11 & 12 in OA 858/04, Respondents 11 & 13 in OA 251/05, Adv. R.Muraleedharan Pillai for Respondents 1&5 in OA 251/05,Adv. N.Nandakumara Menon for Respondents 22 and 23 in OA 100/2005, Adv. P.C.Sasidharan for Respondents 2124,25,26 & 28 in OA 100/06 ,Senior Advocate N.N.Sugunapalan (rep) for Respondent No.10 and Adv. George Jacob for Respondent No.7 in OA 144/2006.

25 The sum and substance of the arguments of the applicants in these O.As can be summarized as under:

A. Though the Applicants in O.As 432/2004, 858/2004 and 251/05 were some of the very few officers with "Outstanding" records yet they were equated with the selected officials who were having only "Very Good" grading and the Respondents 1-6 without following the mandates of Sub Regulations (4) and (5) of Regulation 5 of the IPS (Appointment by Promotion) Regulations, 1955 prepared the Select Lists of Indian Police Service, Kerala Cadre for the years 2001,2002 and 2003 on the basis of seniority. The selected officials were having remarks either in the Punishment Role (PR) or in the Confidential Report (CR) or both and had no achievements or assignments to their credit wheres the applicants are without any blemish and had many creditable achievements in their career.

B. According to the Applicants in O.As 146/05, 100/06 and

144/06, the official Respondents did not prepare separate eligibility lists for the years 2001,2002 and 2003 taking into account the respective number of vacancies identified for each year and the Select Lists for these years were prepared on the basis of the Annexure.A2 consolidated list of 54 officials in contravention of Regulation 5(2).

C. The names of the applicant in OA 146/05 was not included by the State Government in the list of 24 persons for the 6 vacancies identified for the period from 1.1.2003 to 1.1.2004 on the ground that he has crossed the age of 54 years as on 1.1.2004 whereas he actually did not cross the said age on 1.1.2004.

D. According to the applicants in OA 100/06 and 146/06, (i) the official respondents have violated the 3rd proviso to Sub-Regulation 2 by including ineligible officers in the field of choice., and (ii) the Select List officials of 2003, Shri K.G.James and Shri K.K.Chellappan are not eligible to continue in the feeder cadre of Circle Inspectors of Police since they have not passed the prescribed test vide the Special Rules of Kerala Police Service and, therefore, they should not have been recommended by the State Government and selected for the IPS.

26 We shall first consider B,C & D in the above paragraph. In the reply affidavit of Respondents 3&4 (UPSC in OA. 251/2005), the separate lists of 13,31,12 and 18 officers respectively who were included in the zone of consideration for preparing the Selection for the year 2001 , 2002, 2003 and 2004 have been given. The reason for exceeding the normal zone of consideration of officers, Shri K.P.Mathew for the Select Year 2001, Shri

T.C.Khalid, for the Select List Year 2002 and Shri K.Ramabhadran for the Select list year 2004, was also clearly spelt out in the reply. All of them were included in the zone of consideration on the directions of this Tribunal or the Hon'ble High Court of Kerala for valid reasons. Hence the argument at 'B has no validity. As regards the grievance of the applicant in OA 146/05 as stated in 'C' above is concerned, at the admission stage of the O.A. Itself this Tribunal had directed the Respondents that his retirement on 28.2.2005 shall not stand in his way for consideration of his name for inclusion in the Select List. Accordingly, the respondents included him at Sl.No.31 of the zone of consideration for the year 2002 and considered him for the select list of that year. Therefore this grievance would not survive any more. The first part of the allegation in 'D' above is no more valid in view of the explanation of 'C' above. As regards the eligibility of Sri K.G.James an Sri K.K.Chellappan, the respondents have given undisputed facts and this allegation also shall fall.

27 Now let us consider 'A' in the above paragraph which is probably the only controversial issue. Advocate Alexander Thomas has very forcefully tried to demonstrate that the official Respondents have given a complete go by to the mandates of Regulations 5(4) and 5(5) of the Regulations at least in the cases, of applicants in OA 432/04, OA 858/04 and OA 251/04. After hearing the counsels for the Respondents, who have contradicted and refuted all the allegations made by the applicants and considering all the relevant materials, we were inclined to dismiss these O.As following the judgment of the Apex Court in the case of R.S.Das (supra) that there is no reason to hold that the Selection Committee constituted by high ranking responsible officers presided over by Chairman

or a Member of the UPSC would not act in fair manner. The judgments of the Apex Court in UPSC Vs. H.C.Dev & othrs (supra) and Anil Katyar Vs. UPSC (supra) are also on similar terms. However, the categorical assertion of these applicants were that they were far more eligible for appointment to the IPS than those already appointed vide the Notification dated 8.4.2004 as they were the very few officers in the eligible list having "Outstanding" grading but they were downgraded as "Very Good" and equated with the selected officials after grading them also as "Very Good" even though some of them, particularly Shri Vijayasreekumar, Mr.Varghese George, Mr.M.Wahab, Mr.P.T.Nandakumar etc. were not even worthy of being graded as "Very Good". They contended that after taking into account their over all performance, the appreciation letters they have received and the meritorious service, they were bound to be regarded as nothing short of "Outstanding". The official respondents as well as the private Respondents strongly refuted the above contentions of the applicants. According to them, the Selection Committee considered the applicants as well as the private respondents uniformally on the basis of their over all assessment of the service records and then only it found them worthy to be graded only as "Very Good". When the applicants have listed their achievements and gradings they obtained in the C.Rs and denied any of the positive attributes to the private respondents, they also listed their various achievements and the details of the merit certificates and commendations they have obtained during the consideration period. Since the applicants in those O.As have taken such a strong position, this Tribunal had no other alternative but to call for the relevant records following the judgment of the Apex Court in Badrinath Vs. Govt. of Tamil

Nadu and others (supra), Delhi Jal Board Vs. Mahinder Singh (supra), Narayanan Vs. State of Kerala (supra), Associated Pictures Houses Ltd. Vs. Wednesbury corporation (supra) etc. In R.S.Das (supra) also the Apex Court held that the "validity of the scheme contained in the promotion Regulations by pointing out that if any dispute arises with regard to the arbitrary exclusion of a member of the State Service the matter can always be investigated by perusing his service records and comparing the same with the service records of officers and that would certainly disclose the reasons for the exclusion and that if the selection is made on extraneous consideration, in arbitrary manner, the courts have ample power to strike down the same and that is an adequate safeguard against the arbitrary exercise of power". We have, therefore, called for the service records of all the applicants and the private Respondents and the State Government has made them available. Since the applicants Shri T.C.Khalid, Shri K.K.Joshwa and Shri Ramabhadran have claimed that they were to be graded as 'Outstanding" and they were far more eligible to be selected than the selected officials Shri Vijayasreekumar, Shri Varghese George, Shri M.Wahab and Shri PT.Nandakumar, we have particularly perused their confidential records. No doubt the C.R dossiers of Shri K.K.Joshwa and Shri Ramabahdran show that they have maximum number of C.Rs with the final grading as 'Outstanding". Shri Khalid have almost equal numbers of C.Rs with "Outstanding" and "Very Good" grading. While Shri Varghese George,Shri M.Wahab and Shri P.T.Nandakumar have the maximum number of C.Rs with "Outstanding" grading there are C.Rs with the grading of "Very Good" and "Good" as well. In the case of Sri Vijayasreekumar, most of his C.Rs are with the grading "Very Good" and

some with "Outstanding". There are C.Rs with "Average" and 'Good" gradings also. Admittedly the Selection Committee graded all of them as "Very Good". The justification given by the Respondents is that the Selection Committee was not guided by the final grading the C.Rs alone. It has done an over all relative assessment of all the eligible officers with reference to the quality of officers as indicated in various columns recorded by Reporting/Reviewing/Accepting authority in the C.Rs for different years in order to ensure that the over all grading recorded in the C.Rs are not inconsistent with the grading/remarks under various specific parameters or attributes. The Selection Committee also took into consideration the appreciation for the meritorious work done by the officers concerned and it also kept in view the orders awarding penalties or any adverse remarks duly communicated to the officer, which,even after due consideration of his representation by a suitable forum are not expunged. The members of the Selection Committee have also mutually discussed and deliberated on each of the officers and then only they finally arrived at the classification assigned to each officer. In this process, the Selection Committee has graded the applicants only as "Very Good". Since the procedure adopted by the Selection Committee is a well recognized and time tested one, we do not find any valid reasons to interfere with its findings regarding the final gradings given by them to the officers in the zone of consideration for the respective Select List Years of 2001, 2002, 2003 and 2004.

28 In the above facts and circumstances of the case, we do not find any merit in these O.As and accordingly they are dismissed. There shall be no order as to costs.

Dated this the 3rd day of November, 2006

GEORGE PARACKEN
JUDICIAL MEMBER

SATHI NAIR
VICE CHAIRMAN