

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No. 318 of 1990
T.A. No.

DATE OF DECISION 31-1-1992

K Ramachandra Panicker Applicant (s)

M/s P Santhalimgam, & K Usha Advocate for the Applicant (s)
& NS Aravindakshan
Versus

Union of India & 10 others Respondent (s)

Mr AA Abul Hassan, ACGSC Advocate for the Respondent (s) 1

CORAM: Mr N Nandakumara Menon - Advocate for R-6

Mr G Sivarajan - Advocate for R.9&10

Mr MR Rajendran Nair - Advocate for R-11

Mr TV George - Advocate for R-4

The Hon'ble Mr. SP MUKERJI, VICE CHAIRMAN

&

The Hon'ble Mr. AV HARIDASAN, JUDICIAL MEMBER

1. Whether Reporters of local papers may be allowed to see the Judgement? *Yes*
2. To be referred to the Reporter or not? *No*
3. Whether their Lordships wish to see the fair copy of the Judgement? *No*
4. To be circulated to all Benches of the Tribunal? *No*

JUDGEMENT

(Mr AV Haridasan, Judicial Member)

The applicant is a Senior Grade Deputy Superintendent in the General Executive Branch of the Kerala State Police Service. As he had completed 8 years of continuous service as Dy.S.P. as on 26.5.1988, he was eligible to be included in the list of officers for being considered for promotion to the Indian Police Service (I.P.S.) cadre. The procedure to be followed in preparing list of suitable officers for appointment by promotion to the I.P.S. is laid down in Rule 5 of the Indian Police Service (Appointment by Promotion) Regulation, 1955.

The third proviso to Sub Rule 2 of this rule reads as follows:

"Provided also that the Committee shall not consider the case of a member of the State Police Service unless, on the first day of January of the year in which it meets he is substantive in the State Police Service and has completed not less than eight years of continuous service (whether officiating or substantive) in the post of Deputy Superintendent of Police or in any other post or posts declared equivalent thereto by the State Government:"

According to the definition in the IPS (Appointment by Promotion) Regulation Rule 2(j), "State Police Service" means, the principal police service of a State, a member of which normally holds charge of a sub-division of a district for purposes of police administration and includes any other duly constituted police service functioning in a State which is declared by the State Government to be equivalent thereto. The Government of India had vide Government of India Decision 2.1. below Regulation 5 clarified that when equivalence is declared, it is for the State Government to determine the service in ranks or categories of posts which will be equivalent in service to the post of Deputy Superintendent of Police. The Kerala Police Service Special Rules

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has classified the Kerala Police Service into 3 categories, namely, Branch I - General Police Service, Branch II- Armed Police and Branch III- Miscellaneous (Technical). The posts of Dy.S.Ps (Telecommunications) have been included in the sub rules as category 1 under Branch III Miscellaneous. / accordance with the provisions of Regulation 2(j) of the IPS (Appointment by the State Government Promotions) Regulations/declared services in M.S.P. and Special Armed Police (S.A.P) in 1965 Armed Reserve in 1973 and Police Telecommunication in 1979 as services equivalent to the Principal

Police Service of the State. The post of Assistant Commandant in M.S.P and SAP and Armed Police and the Dy.S.Ps in Telecommunication Units were also declared to be equivalent to Dy.S.P.s in the Principal Police Service for the purpose of appointment to the I.P.S. by promotion. The 6th respondent was a Superintendent of Police, Telecommunication, the 7th respondent Deputy Commandant, Armed Police Training Centre, 8th respondent Deputy Commandant, KAP, the 9th respondent, Commandant, Special Armed Police, 10th respondent Deputy Commandant, Armed Reserve Police and the 11th respondent Assistant Commandant, Armed Reserve, Trivandrum. The grievance of the applicant is that by declaring the services in the Telecommunication Armed Police Unit and KAP as equivalent to the Principal Police Service of the State for the purpose of appointment to the I.P.S. under Regulation 2(j) of the I.P.S. (Appointment by Promotion) Regulation ineligible persons have been made eligible for consideration for promotion to the I.P.S. thereby causing a diminution of chances of the members of the General Executive Wing of the Police for the promotion to the I.P.S. cadre on account of the enlargement of the field of choice. It is averred by the applicant that the Telecommunication wing, Armed Police Unit, Armed Reserve and KAP are branches of service which are not engaged in the police functions of the State. The equation of officers of these branches to Dy.S.P in the Principal Police Service of the State is unscientific, unjust and arbitrary. The respondents 6 to 11 have been impleaded as persons belonging to the above branches

of the Police service. The applicant had made a representation to the Government of Kerala on 5.7.1989 requesting for a review of the orders equating the services in the Armed Police Battalion etc. and Telecommunications Units/with Principal Police Service of the State for the promotion to the I.P.S. He had also filed an O.P. 9509/89 before the High Court of Kerala ~~xxx/xx/xx/xx/xx/xx~~ for having the above orders quashed. The OP was disposed of by the High Court of Kerala by order dated 15.3.1990 with a direction to the State Government to pass a final order on the representation after giving opportunities to all concerned to be heard in the matter. The State Government has disposed of this representation by order dated 24.1.1991 at Annexure-12 turning down the request of the applicant to review the orders on the ground that on a consideration of all the relevant facts and circumstances, no change was felt necessary. According to the applicant, the equation of posts in the branches of State Police Service which are not engaged in police functions under Regulation 2(j) is arbitrary and unsustainable and the decision 2.1 contained in the Ministry of Home Affairs letter No.28/38/64 AIS III dated 5.1.1965 authorising the State Government to determine the services in ranks of categories of posts which would be equivalent in services to the post of Dy.S.P is improper and ultra vires. Therefore the applicant has filed this application under Section 19 of the Administrative Tribunals Act, praying for the following reliefs:

"i) To call for the records relating to the preparation of the select list, and quash the inclusion of ineligible persons like respondents 6 to 9 in the list.

- ii) to declare that Deputy Superintendents of Police and above Telecommunication Wing, Armed Police Battalion and Armed Reserve are not holding equivalent posts, and cannot be equated with the Deputy Superintendent of Police of Principal Police Service.
- iii) to declare that decision 2-1 vide Ministry of Home Affairs letter No.28/38/64 AIS III dated 5.1.1965 is ultra vires and is beyond the competence of Central Government to delegate this power to the State Government.
- iv) direct the respondents not to consider respondents 6 to 9 for appointment by promotion to IPS.
- v) Any other appropriate order or direction as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case.
- vi) To quash Annexure-12 order as arbitrary and discriminatory."

2. The 4th respondent, the State of Kerala, respondent 6 9 and 10 have filed reply statement opposing the application.

These respondents have in their reply statement contended that the declaration issued by the Government of Kerala was in accordance with the rules and that the Government of India has rightly given the State Government the authority to make such declarations.

3. We have heard the arguments of the learned counsel on either side and have also carefully gone through the documents.

4. The main ground on which the applicant attacks the declaration of equivalence of posts in Armed Police Battalion, Armed Reserve and the Telecommunication to those of Dy.S.Ps in Principal Police Service are that this was not done in any other State than Kerala, that in doing so the motive was only to give undue benefit to a favoured few and that this declaration of equivalence has brought about an equation of dissimilar and unequal persons equals for the purpose of consideration for promotion to the Indian Police Service. The definition of State

Police Service contained in the Indian Police Service (Appointment by Promotion) Regulation, 1955 Rule 2(j) is as follows:

"(i) For the purpose of filling vacancies in the Indian Police Service Cadre for the Union territories under rule 9 of the Recruitment Rules, any of the following services, namely:-

- a) the Delhi and Andaman and Nicobar Islands Police Service;
- b) Goa, Daman and Diu Police Service.
- c) Pondicherry Police Service.
- d) the Mizoram Police Service
- e) the Arunachal Pradesh Police Service;

(ii) in all other cases, the principal police service of a State, a member of which normally holds charge of a sub-division of a district for purposes of police administration and includes any other duly constituted police service functioning in a State which is declared by the State Government to be equivalent thereto:"

In Government of India instruction MHA letter No.14/23/65-AIR (III) dated 8.6.1965, a letter No.14/23/65-AIR(III) dated 28th July 1965 and paragraph 2.1 it has been stated as follows:

"A State Government is competent to declare any duly constituted Police Service in the State as equivalent to the Principal Police Service of the State for the purpose of regulation 2(j) and rule 2(g) of the I.P.S.(Recruitment)Rules, 1954. Where equivalence so declared, it is for the State Government to determine the service in ranks or categories of the posts which will be equivalent in service to the post of Deputy Superintendent of Police."

According to the instructions of the Govt. of India in this regard quoted above, the State Government is competent to declare any duly constituted Police Service as equivalent to the Principal Police Service for the purpose of promotion to the I.P.S. When the post of Commandant of Armed Police Battalions were encadred in the State cadre of IPS, the question of equivalence of services in the Armed Police Battalion was

considered by the State Government. As senior posts in Armed Police Battalion were ^{en} cadered for the purpose of providing opening for the Armed Police officers ^{for} promotion, it was felt necessary by the State Government to declare equivalence post of the Dy.S.Ps to the post to Dy.S.Ps in the Principal Police Service of the State. As on appointment to the I.P.S. have officers to be posted to other wings also, the Government before ordered that ^{they should} ~~in~~ appointment to the I.P.S. ⁱⁿ undergo the course of training covering a period of 18 months. Similarly, posts when senior ⁱⁿ the Telecommunications Wing were held by I.P.S. as officers ⁱⁿ ex-cadre posts, it was felt necessary that the post of Dy.S.Ps, Telecommunications should also be declared equal to the posts of Dy.S.Ps in the Principal Police Service of the State. While issuing the impugned orders at VII, VIII & IX declaring the posts in the Armed Police Battalion, ^{etc.} Telecommunications Wing of the Kerala State Police Service, the State Government has taken into consideration the qualification of the officers and the propriety of their being ~~maxxexxixakxxa~~ ⁱⁿ equated with the Dy.S.Ps of the Principal Police Services. As of the State, ⁱⁿ the State Government are competent to decide about the equivalence, the fact that in other states the post in the Telecommunications Wing and Armed Police Battalions have not been declared equal to the post of Dy.S.Ps in the Principal Police Service of the State cannot be held out as a ground for canvassing for the position that the action taken by the State of Kerala in declaring the post in the Armed Police Battalion

and the Telecommunication Wing of the Kerala State Police Service as equal to the post of Dy.S.Ps in the Principal Police Service of the State is arbitrary or irrational. The contention of the applicant that the decision was taken only with a view to confer undue benefit on a favoured few, does not appear to be *prima facie* tenable because the equation was done in 1965, 1973 and 1979 and as this system have been found by the State Government as well as the Union of India to be quite satisfactorily working. The contention of the applicant that the Dy.S.Ps of Telecommunications Wing and the Deputy Commandant of the Armed Police Battalion are not equal to the Dy.S.Ps in the General Executive Wing of the State Police Service also does not appear to be well founded. According to the Kerala Police Act, Telecommunications Wing and Armed Police Battalions are also integral part of the State Police Service. Though in different branches the officers in these branches of the service are performing functions of the police department. The officers of the Armed Police Battalions are also discharging the police functions in maintaining law and order in emergent situation. The officers of the Telecommunications Wing also being members of the Police Service are conversant with the police functions and the decision of the State Government to equate the posts in these services with the post of Dy.S.Ps in the Principal Police Service of the State cannot therefore be faulted. Therefore we do not find any merit in the contention of the applicant that the equation of the post in the Telecommunications and Armed Police Battalions

etc. to the post of Dy.S.Ps of the Principal Police service of the State is arbitrary and irrational has to be rejected. As the State Government would be competent to decide which cadre in which service in which branch can be equated to the post of Dy.S.Ps in the Principal Police Service of the State, the decision of the Government of India impugned in this application has to be upheld. On anxious consideration of the facts brought out in the pleadings and the circumstances of the case, we are of the view that the applicant ~~does not~~ have any legitimate grievance.

5. In this circumstances, finding no merit in the application, we dismiss the same without any order as to costs.


31.1.92
(AV HARIDASAN)
JUDICIAL MEMBER


31.1.92
(SP MUKERJI)
VICE CHAIRMAN

31-1-1992

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