

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

DATE OF DECISION

: 28.11.1989

P R E S E N T

HON'BLE SHRI S.P MUKERJI, VICE CHAIRMAN

&

HON'BLE SHRI A.V HARIDASAN, JUDICIAL MEMBER

ORIGINAL APPLICATION NO.329/89 &

ORIGINAL APPLICATION NO.380/89

In O.A.329/89

R.Velayudhan

.. Applicant

v.

1. State of Kerala, represented by the Chief Secretary, Secretariat, Trivandrum.
2. Union of India, represented by the Secretary to the Government of India, Home Affairs, New Delhi.
3. The Section Committee, (for I.P.S. Selection of Kerala Constituted under Regulation 3 of the I.P.S.(Appointment by Promotion Regulation 1955) represented by the Convenor the Chief Secretary to Kerala, Secretariat, Trivandrum, Kerala State.
4. Union Public Service Commission, represented by its Secretary, Office of the U.P.S.C., Shahjahan Road, New Delhi-110 011.
5. N.I. David
6. Babu Cyriac
7. R.Viswanatha Pillai
8. Balakrishnan K.
9. A.Mohammed Khan
10. Harry Xavier
11. Paul Lessly
12. G.Babu Raj
13. P.G Varghese
14. T.O Jacob

.. Respondents

Mr. S.James Vincent

.. Counsel for the applicant

Mr.N.Nandakumara Menon
M/s. C.P Sudhakara Prasad,
Baby Mathew & P.Joseph
Mr.Thomas John, ACGSC
Mr.K.Vijayan

.. Counsel for R1

.. " for R-14
.. " for R2 & 4
.. " for R5 & 7

M/s. S.Sreekumar & J.R Rajeev
M/s. Sukumaran & Usha
M/s. B.S Krishnan & Associates
Mr. P.V Mohanan, Govt. Pleader

.. Counsel for R9
.. Counsel for R8
.. Counsel for R12
.. Counsel for R1

In O.A No.380/1989

S.K Viswambharan

.. Applicant

V.

1. Union of India represented by the Secretary to Government of India, Home Affairs, New Delhi.
2. The State of Kerala represented by the Chief Secretary, Secretariat, Trivandrum.
3. The Selection Committee (for selection to the Indian Police Service) constituted under Regulation 3 of the Indian Police Service(Appointment by promotion) Regulation, 1955 represented by the Chairman to the Union Public Service Commission, Office of the U.P.S.C, Shahjahan Road, New Delhi.
4. N.I.David
5. Babu Cyriac
6. R.Viswanatha Pillai
7. Balakrishnan K.
8. A.Mohammed Khan
9. Harry Xavier
10. Paul Lessly
11. G.Babu Raj
12. P.G.Varghese
13. T.O Jacob
14. Union Public Service Commission, represented by its Secretary, Office of the U.P.S.C., Shahjahan Road, New Delhi-110 011.

.. Respondents

M/s.S.Venkitasubramonia Ayyar & Giri V.

.. Counsel for the applicant

Mr.K.Narayana Kurup, ACGSC

.. Counsel for R-1

M/s. K.Vijayan & P.K Madhusoodhanan

.. Counsel for R-4 & 6.

M/s.Sukumaran & Usha

.. Counsel for R7

M/s.S.Sreekumar

.. Counsel for R8

Mr.N.Nandakumara Menon

.. Counsel for R10

Mr. P.V Mohanan, Govt.Pleader

.. Counsel for R2

O R D E R

Shri S.P Mukerji, Vice-Chairman

Since in these two applications common questions of fact and law and common relief are involved and the

respondents are identical, they are being disposed of by a common judgment as follows.

2. In the first application(OA 329/89) dated 2.6.1989 filed under Section19 of the Administrative Tribunals Act, the applicant who is a member of the State Police Service of the State of Kerala has challenged the select list of the State Police Service officers, prepared for promotion to the Kerala Cadre of the Indian Police Service on 7.12.88 as divulged by him at Annexure-V. He has also prayed that the respondents 1 to 4 be directed to prepare a fresh select list giving proper place to the applicant considering his seniority and eligibility for promotion to the I.P.S against the vacancies arising in 1989. In the second application(OA380/89) the applicant who is also a member of the State Police Service of Kerala has also challenged the select list of the State Police Service officers for promotion to the Kerala Cadre of the Indian Police Service prepared on 7.12.88 and has prayed that the entire proceedings of the Selection Committee for the year 1988 are illegal and that the respondent 3(Selection Committee) be directed to conduct the process of de novo selection. In both the applications the interim order was passed to the effect that any appointment made on the basis of the impugned select list will be subject to the outcome of these cases. We take up the first application(OA 329/89) first.

3. The applicant rose from the rank of a Sub-Inspector to that of Deputy Superintendent of Police which is the feeder category for promotion to the I.P.S. According to him he had earned outstanding reports during 1986 and 1987 and had won a number of rewards. Having been promoted

as Dy.S.P in 1977 he was eligible to be considered for promotion to the I.P.S. He was not included in the select list for promotion to the I.P.S which was prepared in 1987 while his juniors were included. He did not object to the promotion of his juniors nor did he challenge the 1987 select list. The Selection Committee met again on 7th December, 1988, prepared a select list of 10 officers, but again excluded him while three of his juniors were included. Since the applicant is to retire on 31.1.1990 he lost his last chance of promotion to the I.P.S. The applicant has challenged the select list of 1988 at Annexure-V, generally on the ground that it includes an overwhelming number of officers belonging to a particular community and thus indicative of a bias on the part of the Selection Committee, and specifically on the inclusion of respondents 5 to 14, who according to him, whether junior or senior to him in the State Police Service, were either less meritorious or ineligible to be included in the select list. He accepts that the Selection Committee chaired by a Member of the U.P.S.C comprises the Chief Secretary and the Home Secretary to the Govt. of Kerala, the Director General of Police and a senior Inspector General of Police, but still he says that they were biased and no proper grading has been made by them. According to him, of twentyfour State Police Service officers, who were considered for inclusion in the select list, eight belong to a particular community and out of these eight, as many as six of that community have been included in the select list. He has thus implied that the selection has been made with a communal bias. By styling himself as an outstanding officer by his own assessment, he has alleged

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that the Selection Committee has erred in proper assessment of the merits of the eligible candidates by excluding him and including respondents 5 to 14. In regard to respondent 5, he has alleged that he had messed up a murder case investigation which had to be taken over by the CBI and ^{which} ended in [&] conviction. Therefore, according to him, respondent 5 even though senior to him, should not have been included in the select list. Against respondents 6 and 7 he has stated that even though they are senior to him, they should not have been included in the select list as their performance ~~were~~ ^{was} not outstanding as his has been. He has challenged the inclusion of the names of respondents 8 and 9 in the select list on the ground that some vigilance enquiries had been going on against them. Against respondent 10 he has stated that since he was not included in the 1987 select list, the Selection Committee of 1988 should not have included him in the select list of 1988. Against respondent 11 he has alleged that since he comes from the Police Telecommunication Wing and has no experience in other branches of the Police Department, he could not be included in the I.P.S even though he is senior to him. Against respondent 12 he has stated that though he is senior to the applicant, since that respondent was directly recruited as a Scheduled Caste ^{candidate} ~~he~~ [&] cannot be having an outstanding record like the applicant's. In respect of respondent 13

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he has alleged that since he did not work as a Dy.S.P for eight years continuously as required under Regulation 5 of the Indian Police Service (Appointment by Promotion) Regulations, he was not eligible to be considered for promotion to the I.P.S much less ^{for} inclusion in the select list. He also, according to him, cannot be as outstanding as the applicant. Against respondent 14, the applicant states that since he was found unfit in 1987, he should have not ~~been~~ included in 1988 select list.

2. As against the averments made by the applicant, respondent 4, i.e, the Union Public Service Commission has stated that the applicant's name could not be included in the select list because on the basis of overall relative assessment of his service record, he was assigned lower grading than those included in the select list. The Commission contended that the Selection Committee being constituted by high ranking responsible officers presided over by the Chairman or a Member of the Union Public Service Commission, there is no reason to hold that they would not act in ^a fair and impartial manner. The Selection Committee which met on 7th December, 1988 considered the cases of 25 State Police Service officers including the applicant and in accordance with Regulation 5(4) and 5(5) of the Promotion Regulations, classified them as 'Outstanding', 'Very Good', 'Good' or 'Unfit' on an overall assessment of their service records. With ⁱⁿ each

category in accordance with the Regulations they had to be graded on the basis of their seniority. In that process junior officers with higher grading may go higher in rank in the select list. The Commission have clarified that since the officers with higher grading were available, the name of the applicant could not be included due to the statutory limit on the size of the select list. Referring to the observations of the Supreme Court in R.S Dass v. Union of India, AIR 1987 SC 593, they have stated that in the preparation of the select list merit gets precedence over seniority and the junior being placed above his senior in the select list does not amount to supersession. The Commission has urged that the applicant cannot substitute his own judgment for that of the Selection Committee regarding his merit and suitability for promotion to the I.P.S. It has been affirmed that the members of the Selection Committee minutely perused the service records of eligible officers while grading them. Respondents 5,6 and 7 were given higher grading. Respondents 8 and 9 were included in the select list subject to clearance of enquiries pending against them. Respondent 10 could not be included in the 1987 select list not because he was unsuitable, but because of the statutory limit on the size of the select list. It has been clarified that the Selection Committee of 1988 is not bound by the recommendations of the Selection Committee of 1987. Quoting from the judgment of the Supreme

Court in the case of R.S Dass v. Union of India, the Commission has pointed out that in accordance with the amended Regulations, the Selection Committee need not record the reasons for the supersession of the officers, nor is it required to give a notice to the superseded officers before superseding them or excluding them.

As regards respondent 11, the Commission stated that he could not be included in the select list of 1987 not because he was ineligible, but because his position in the seniority list was very low as compared to the limited size of the select list. Regarding respondent 12, a Scheduled Caste officer, the Commission affirmed that he was correctly included on the basis of his grading strictly in accordance with the Promotion Regulations. On respondent 13 they have affirmed that the State Govt. of Kerala had certified that he was continuously officiating as Dy. Superintendent of Police or against equivalent post since 9.11.76 and having been confirmed in the State Police Service on 25.1.81, he was correctly considered and included in the select list. As regards the last respondent 14 the Commission has stated that even though he was not included in the 1987 select list the Selection Committee which met on 7.12.88 assigned a de novo grading taking into account one additional C.R. and included him in the select list in accordance with the Promotion Regulations. The Commission has concluded

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by stating that the applicant has made baseless allegations against almost all the select list officers of 1988 and his averments have no rationale. Respondent 5 in his counter affidavit has indicated that he did not conduct the murder case investigation referred to by the applicant. Respondent 7 has by referring to his performance indicated that he has an outstanding report. Respondent 8 has vindicated his selection by mentioning that he was the only Kerala Police Service officer included in the select list who got the President's Police Medal in 1988 and that he had very good reports during 1978-82 and outstanding reports between 1983-87. He has averred that no notice about the vigilance enquiry had been given to him and that the State Government had issued the integrity certificate and that no disciplinary proceedings are going on against him. Respondent 9 has indicated in his counter affidavit that the vigilance enquiry referred to by the applicant which has been initiated on an anonymous complaint has since been closed. He has referred to Annexure-III(a) produced by the applicant. Giving the assessment done by the Selection Committee in 1987 in which he had been assessed as 'Very Good' while the applicant had been assessed as only 'Good', he has argued that the vigilance enquiry does not disqualify him from being included in the select list. In regard to respondent 10 the U.P.S.C have stated that he was not included in 1987 because of lack of vacancies. A similar statement has been made in regard to respondent 11 who was not included

in the 1987 select list because of lack of adequate number of vacancies. In respect of respondent 12 the U.P.S.C have stated that he was included in the select list as a Scheduled Caste candidate on the basis of the grading given to him by the Selection Committee. In respect of respondent 13 who did not file any counter affidavit the U.P.S.C have referred to the State Government's communication by which it was stated that he was confirmed as Dy.S.P on 25.1.81 and has been officiating as Dy.S.P or equivalent post from 9.11.76. Respondent 14 has stated that he is senior to the applicant, that he was adjudged to be the best cadet as Sub Inspector and won first place in Scientific Aids competition in 1975. He has argued that he was not included in the 1987 select list perhaps because of lack of communication of the fact that his supersession in 1985 had been reviewed and he was selected with original seniority.

5. To start with, in order to assure ourselves about the actual state of performance of the applicant as recorded in his C.R, we went through the Confidential Roll of the applicant. We found that in 1987 he was adjudged to ^{be} an outstanding officer. For part of 1986 ^{his} performance was indicated to be 'Good' and 'Satisfactory' and for a part as 'Outstanding'. In 1985 he earned 'Good' and 'Very Good' entries. In 1984 also he was given 'Good' and 'Very Good' entries. There is an order dated 10.9.85

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which shows that he was placed under suspension in 1983 and was reinstated in 1984, chargesheeted in May 1984 and an Enquiry Officer was appointed by that order.

In 1983 he earned only a 'Satisfactory' report. He earned 'Very Good' in 1982. In 1981 the report about him was between 'Good' and 'Satisfactory'. From these reports it cannot be concluded that the assessment of the Selection Committee as 'Good' was either biased or unreasonable.

5. The allegation of the applicant that merely because there was a good number of officers belonging to a particular community included in the select list of 1988, the selection was biased in favour of that community deserves to be rejected summarily. The Selection Committee was presided over by a Member of the Union Public Service Commission and had ^{on it} the Chief Secretary and Home Secretary of the State Government, besides the Director General of Police and a nominee of the Government of India not below the rank of a Joint Secretary, it cannot even be imagined that all these high ranking officials would be inclined to favour candidates belonging to a particular community with the ^{singular mission} to elbow out the applicant from the select list. The applicant himself has conceded that he did not figure even in the select list of 1987 when his juniors were included. It is not his case that even in the 1987 select list that community had been favoured to the exclusion of the applicant. His exclusion from the

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two successive select lists is a reflection on his own merit than on the impartiality of the Selection Committee, the membership of which could have been different between 1987 and 1988. The learned counsel for the applicant made a feeble attempt to question the objectivity of the Selection Committee by referring to certain observations made by Hon'ble Justice Sabyasachi Mukharji in his concurring judgment in R.S Dass v. Union of India and others, 1986(Supp)SCC 617, in which he was pleased to state that " it cannot be said nowadays if one is aware of the facts and currents of life that simply because categorisation and judgment of the service record of officers are in the hands of senior officers it is a sufficient safeguard. There has been considerable erosion in the intrinsic sense of fairness and justice in the senior officers by all concerned. From the instances of conduct of many, some of senior officers and men in high position, it cannot be said that such erosion is not only unjustified." The aforesaid observations were made by His Lordship in support of his suggestion that some objective basis for the categorisation of officers as 'Outstanding', 'Very Good', 'Good' or 'Unfit' should be laid down. This was in the context of the Promotion Regulations for the I.A.S which are at pari materia with the Promotion Regulations for the I.P.S. His Lordship, however, hastened to add that "justice has been done in accordance with the rules to the officers concerned".

In the main judgment rendered by His Lordship Mr Justice
✓ of the IPS(Appointment by Promotion)Regulations
K.N.Singh the unamended version of Regulation 5(5)/was
considered. That version was as follows:-

"(5) If in the process of selection, review or revision it is proposed to supersede any member of the State Civil/Police Service the Committee shall record its reasons for the proposed supersession."

and replaced

The above was amended/in June, 1977 in following terms:-

" 5(4) The Selection Committee shall classify 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 amongst the officers finally classified as "Outstanding", then from amongst those similarly classified as "Very Good" and thereafter from amongst those similarly classified as "Good" and the order of the names inter se within each category shall be in the order of their seniority in the State Civil Police Service".

Dispelling the doubt raised by the learned counsel that in absence of reasons the Selection Committee may act in an arbitrary manner in violation of Articles 14 and 16 of the Constitution, the Supreme Court held as follows:-

" We find no merit in the submission. Article 16 ensures equality in matters relating to appointment and promotion to an office or post under the State. It enjoins State not to practise discrimination in matters relating to appointment and promotion. A member of the State Civil Service eligible for selection for promotion to the IAS has right to be considered alongwith others for selection for promotion. If eligible officers are considered on merit, in an objective manner no government servant has any legal right to insist for promotion nor any such right is protected by Article 14 and 16 of the Constitution. Article 16 does not insist that reasons should be recorded for the non-selection of a member of a State Service."

It was also further held that no notice to the superseded officer need be given and the principle of 'audi alteram partem' is not applicable in supersessions or assessment involved in

the preparation of the select list.

3. Dealing with the apprehension of bias in the preparation of the select list under the amended Regulations where no reasons need be recorded, the Court observed as:-

"It is true that where merit is the sole basis of promotion, the power of selection becomes wide and liable to be abused with less difficulty. But that does not justify presumption regarding arbitrary exercise of power. The machinery designed for preparation of Select List under the regulations for promotion to All India Service, ensures objective and impartial selection. 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 scrutinised by the State Government and if it finds any discrimination in the selection it has 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 Selection 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 reasons to hold that in the absence of reasons the selection would be made arbitrarily. Where power is vested in high authority there is a presumption that the same would be exercised in a reasonable manner and if the selection is made on extraneous considerations, 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." (Emphasis added)

The Supreme Court relying upon their earlier decision in *Parvez Qadir v. Union of India*, (1975) 2 SCR 432 found no fault in the assessment of the merits of the candidates on the basis of the Character Roll entries with all their drawbacks. The Supreme Court again in *Union Public Service Commission v. Hiranyalal Dev and others*, (1988) 7 ATC 72 relied on the aforesaid case of *R.S Dass* while considering as in this case the select list prepared

under the I.P.S Promotion Regulations. It upheld the select list and repelled the argument that non-recording of reasons vitiates it. The following observations from that judgment would be relevant:-

" The Selection Committee was making a selection and when someone was selected in preference to the other, it could not be said that it amounted to supersession of a junior by a senior. The concept of supersession is relevant in the context of promotion and not in the context of selection. Besides, the Tribunal has also committed an error in taking the view that the law enjoined the Selection Committee to record the reasons and failure to do so would vitiate the selection. It appears that the Tribunal did not properly realise the effect of the relevant provision having been amended at the time when the Selection Committee made its selections and that so far as the amended provision is concerned, the question is concluded by the decision of this Court in R.S Dass v. Union of India (1986 Supp SCC 617) wherein this Court, while dealing with the provisions of Indian Administrative Service (Appointment by Promotion) Regulations, 1955 which are in pari materia with Indian Police Service (Appointment by Promotion) Regulations, 1955 applicable in the instant case, has taken the view that it is not necessary to record the reasons for not selecting a person who is in the arena".

In the same judgment the Supreme Court held that "how to categorize in the light of relevant records and what norms to apply in making the assessment are exclusively the functions of the Selection Committee".

8. On the question of judicial intervention on ground of arbitrariness and ^{questionable} propriety of assessment or of bias, another Bench of this Tribunal in Sahib Bhambani v. Union of India, I(1988)ATLT (CAT)285, held that it is for the Selection Committee to adopt a particular mode or criteria of judging the candidates and this Tribunal

cannot question the propriety of the same unless the rules prescribes a particular mode which has not been followed by the Selection Committee. It also held that in absence of the allegation and proof of malafide on the part of any member of the Selection Board it would not be proper for this Tribunal in judicial review to interfere in the assessment of the interviewing body. In Ramgopal v. Union of India, 1972 SLR 258, the Delhi High Court held that the High Court does not sit as a Court of appeal on the deliberation and recommendation of the Departmental Promotion Committee. In the absence of any malafide or violation of the rules, the decision of the Departmental Promotion Committee in recommending the appointment in the order in which they have been made is not open to scrutiny by the High Court. In State Bank of India and others v. Mohd. Mynuddin (Civil Appeal No.1387 of 1987, page 401 of Supreme Court Services Law Judgments 1950-1988 Vol.I) it was held by the Supreme Court that whenever promotion to higher posts is to be made on the basis of merit, no officer can claim promotion as a matter of right on the basis of seniority alone. The assessment should ordinarily be left to be done by the expert individual or committee and that "the court is not by its very nature competent to appreciate the abilities, qualities or attributes necessary for the task, office or duty of every kind of post in the modern world and it would be hazardous for it to undertake the responsibility of assessing whether a person is fit for being promoted to a higher post which is to be filled up by selection". Still in another case, Karam Pal etc. v. Union of India and others (Writ Petition Nos. 9323 to 9333 of 1982, page 338 of Supreme Court Services Law Judgements 1950-1988 Vol.2), the Supreme Court held that "In fact, unless the Rules and Regulations are successfully assailed, the select lists are not at all disputable". In the circumstance of the case and in view of the above rulings, therefore, we do not find it either necessary or expedient to question the

assessment made by the Selection Committee, nor to make a de novo comparative assessment of respondents 5 to 14 with the applicant. The other contentions raised by the applicant in respect of certain respondents are discussed below.

9. Respondents 7 and 12 who have been included in the select list are members of Scheduled Castes. The applicant seems to argue that since they were recruited against reserve vacancies, they cannot have better record than the applicant's. The U.P.S.C have stated that they have been adjudged and included in the select list on the basis of the grading given to them by the Selection Committee. We have no reason to question this averment. The applicant has stated that respondents 8 and 9 were not eligible to be considered for inclusion in the select list as there were vigilance enquiries going on against them. Respondent 8 stated that he was never given any notice about the enquiry and respondent 9 has stated that the enquiry started on an anonymous complaint has been closed. Be that as it may, a preliminary enquiry on a complaint does not disqualify a person to be considered for promotion. Even where preliminary enquiry has been completed and on a prima facie case it has been decided to initiate disciplinary proceedings, until the chargesheet is served on the officer he is to be treated at par with others in the matter of his entitlement to be considered for promotion. A Full Bench of this Tribunal in K.Ch.Venkata Reddy and others v. Union of India and others, ATR 1987(1) 547 held that notwithstanding the pendency of the departmental or criminal proceedings against a Government servant, he is to be considered for promotion along with other eligible persons is by now well-established. Even the instructions issued by the Government of India recognises the right of an employee to be considered for promotion as per rules along with others, if he is duly qualified for the higher post.

It was held that to ensure uniformity and certainty, the date of initiation of disciplinary proceedings for applying the special procedure of putting the assessment in the sealed cover, is the date when the charge-memo is served on the official. In cases of respondents 8 and 9, not to speak of charge-sheet, even the disciplinary proceedings were not contemplated when the Selection Committee met in December, 1988. The Union Public Service Commission have stated that their promotion would be subject to their clearance in the enquiries. As such, we see no illegality in their being ^{conditionally} included in the select list. Respondents 10 and 11 were not included in the 1987 select list because of absence of vacancies and not because of their being unfit. In respect of respondent the applicant 13/has challenged his eligibility on the ground that having been appointed as Dy.S.P on 29.6.81 he did not have continuous service of eight years on the 1st of January, 1988 and therefore he was not eligible for being included in the select list. The eligibility criterion for being considered for promotion to the I.P.S is given in third proviso to Regulation 5 of the I.P.S (Appointment by Promotion) Regulations, which reads as follows:-

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"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."

The Union Public Service Commission in their counter

affidavit have indicated as follows:-

"10. With reference to the averments in para 4(15) it is submitted that Respondent No.1, the State Government of Kerala, furnished the information regarding the eligibility of officers and the list stated that the date of continuous officiation as Deputy Supdt. of Police Officer or equivalent post of Respondent No.13 Shri P.G Varghese as 9.11.1976 and date of confirmation in State Police Service as 25.1.1981 which qualified him for consideration. It is submitted that the name of Respondent No.13 Shri P.G.Varghese was considered and included in Select List prepared on 7.12.88 in accordance with the provisions of the Promotion Regulations".

It will thus be clear that respondent 13 had put in more than eight years of service as Dy.S.P or equivalent post on 1.1.88 and stood confirmed as Dy.S.P on that date. He is thus squarely eligible for being included in the select list. The applicant in his rejoinder to the aforesaid averment made by the U.P.S.C mixed up the date of confirmation with the date of commencement of officiation as Dy.S.P or equivalent post. According to him even if the State Government had assigned 9.11.1976 as the date of confirmation, ^{on 7.12.88} he had less than eight years of continuous service with effect from 29.6.81. ^{This also} cannot be accepted.

If the respondent 13 was really confirmed as Dy.S.P with effect from 9.11.76, as the applicant would have us to believe, it fortifies the position of respondent 13 still further. A person with confirmed service as Dy.S.P from 1976 cannot by any stretch of imagination be dismissed as having less than 8 years of service as Dy.S.P as on 1.1.88. The last contention of the application worth considering is that respondent 11 having been recruited in the Telecommunication Wing of the State Police is not

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eligible as a member of the State Police Service.

The learned counsel for respondent 11 referred to Rule 1 of the Kerala Police Service Rules in which the Telecom Wing of the Police is included in the Kerala Police Cadre. The learned counsel for the applicant did not seem to press the point further.

10. The facts of the second application(OA 349/89) are as follows. The second applicant joined the Kerala Police Service as a Sub-Inspector in 1963 and was promoted as Dy.S.P in 1977 and started officiating as a Superintendent of Police in 1988. According to him he has got a brilliant record of service with 28 rewards, 2 advance increments and 2 outstanding entries during 1986 and 1987. No adverse entry had been communicated to him. Unlike the first applicant who was not included in the 1987 select list, the second applicant was included at Sl.No.14 at the bottom of the select list prepared for the I.P.S for 1987. He could not be appointed to the I.P.S on the basis of that select list because the last candidate who was promoted to the I.P.S from that select list was at the 9th position and there were no more vacancies. Again in that select list, though the second applicant was at Sl.No.14, respondent 4 Shri N.I.David, respondents 5, 6 and 7 of the second application had also been included in the 1987 select list, but they also could not be appointed for lack of vacancies. It also transpires that respondents 8 and

9 who were junior to the second applicant were also considered for promotion to the I.P.S in 1987 and like the applicant was assessed as 'Very Good' , but they were not included in the ¹⁹⁸⁷ select list because of the statutory limitation on the size of the select list. In the 1988 select list respondents 4 to 7 who were senior to the second applicant and had also been included in the select list of 1987 were also included. The applicant has no grievance so far as these respondents are concerned. His grievance is particularly against respondents 8 and 9 who were included in 1988 select list ^{to his exclusion,} even though they were not included in 1987 select list, even though they were junior to him and even though they got the same assessment as 'Very Good' as the applicant in 1987(Annexure-II). The main contention of the second applicant is that after this assessment in 1987, the applicant got an outstanding entry and there is no reason why respondents 8 and 9 should have been included in the 1988 select list and he was not included. This, according to the applicant, is irregular and arbitrary. His grievance against respondent 10(Shri Paul Lessly) who is respondent 11 in the first application is the same as has been raised by the first applicant to the effect that he was not included in the 1987 select list and being recruited for the Telecommunication

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Wing of the State Police, was not a regular member of the State Police Service and hence not eligible for consideration. He has also indicated that respondent 11's record of service could not be as brilliant as his.

He has also challenged the inclusion of respondent 12

(Shri P.G Varghese), respondent 13 in the first application)

on the same ground as taken by the first applicant that

he had not completed 8 years of service as on 1.1.1988.

(Shri T.O. Jacob)

He has challenged inclusion of respondent 13 in the

select list of 1988 on the ground that he was assessed

as 'Unfit' (Annexure-II) by the Selection Committee in

1987. Respondents 2, 4, 6, 7 and 8 who have filed the

counter affidavit have taken more or less the same plea

as was taken in the first application. Respondents 8 and

9 in particular have stated that since the Selection

Committee consists of highly placed officers, their

assessment cannot be challenged as suffering from

prejudice, that they were assessed as 'Very Good' in

1987 but were not included in the select list of that

year because of lack of vacancies.

11. We have heard the arguments of the learned counsel for the applicant in great detail. The main plank of his argument has been that the second applicant having been included in the select list of 1987 the Selection Committee which met in 1988 could not dislodge him from the select list especially when he had obtained

an outstanding report. The learned counsel argued that in accordance with Sub-Regulation 6 of Regulation 5 of Indian Police Service (Appointment by Promotion) Regulations, 1955(hereinafter referred to as 'Promotion Regulations'), "the list so prepared shall be reviewed and revised every year". The learned counsel, therefore, argued that the Selection Committee of 1988 had only a peripheral role to play in the sense that on the basis of the outstanding report, they should have continued to maintain the name of the second applicant in the select list of 1988. The process of review and revision referred to in the aforesaid Sub-Regulation does not admit of de novo assessment by the Selection Committee every year. The following contention made in ground A in the second application would faithfully reflect the burden of the argument propounded by the learned counsel for the second applicant:-

"A. Sub regulation 6 of Regulation 5 provides for that the list prepared in accordance with the provisions contained in Regulation 5 shall be reviewed and revised every year. Thus, a list once prepared in accordance with the provisions contained in Regulation 5 does not cease to be operative or in efficacious when the select committee meets after an interval not exceeding one year. On the contrary a list once prepared by the select committee forms the basis on which a process of review or revision is actually done by the select committee in the subsequent year. Such a review and revision would naturally entail the inclusion of officers who did not find a place in the previous list. The number of officers so included is also governed by the provisions contained in sub-regulation 1 of regulation 5. But, the exclusion of a person who has already been included in the list for a particular year in the process of reviewing

or revising the current list as contemplated by sub-regulation 6 could be justified only in circumstances where the career of the particular officer and the consequent grading in the intervening period has been bad, or of such a nature so as to supersede so to say or nullify the grading which has been accorded to him, on an overall assessment of his record, such grading good enough to justify his inclusion in the list in force immediately before the date of the meeting of the committee. In the instant case, the applicant was included in the select list for the year 1987. His service records for the period from the time of preparation of the select list for the year 1987 to the date of the meeting of the committee for the year 1988 (roughly one year from the end of 1987 to the end of 1988) was 'outstanding'. Applicant's confidential record would reveal the outstanding nature of his career during the said period. In such circumstances the exclusion of the applicant from the select list for the year 1988, cannot be justified under any circumstances. The applicant submits that the conclusion in the circumstances which irresistably flows, is to the effect that selection made for the year 1988 by the committee constituted under the Regulation has not been in conformity with the provisions contained in the Regulations. The process of selection has been vitiated. Extraneous considerations have come into play in the process of selection. Relevant considerations have not been taken into account while the select list has been prepared. The entire proceedings of the committee for the year 1988 has been vitiated on the said account."

On the same basis, according to the learned counsel respondent 13 who was found 'Unfit' in 1987 could not be included in the select list of 1988. On the same basis if respondents 8 and 9 junior to him were included, the second applicant could not be dislodged from the select list by virtue of his inclusion in the select list of 1987. Fortunately this very question fell for consideration by the Supreme Court in Union of India v. Mohan Lal Capoor and ors, 1973(2) S.L.R 824 in connection with the interpretation of an identical provision in the Indian Administrative Service(Appointment by Promotion)

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Regulations. Paras 40 to 42 of that judgment puts the position beyond the pale of any doubt:-

"40. Now, Regulation 5(4) makes it clear that, as far as possible, there should be a revision or review of the select list every year. The purpose of an annual revision or review is to make an assessment of the merit and suitability of all the then eligible candidates from among them. In other words, the purpose of the annual review or revision of the select list is to prepare a list and to include therein the required number of the most suitable persons from among all the then eligible candidates.

" Proviso to Regulation 4(2) makes it abundantly clear that there must be a fresh select list every year by making a review or revision of the previously existing select list. By Regulation 4(2), a person who has attained the age of 52 years shall not be considered as an eligible candidate notwithstanding the fact that he is a substantive member of the service. Then the proviso to Regulation 4(2) says that if his name has been entered in the select list for the previous year, he might be considered for inclusion in the fresh select list for the next year, even if he has passed the age of 52 years. When Regulation 5(4) says that the list prepared in accordance with Regulation 5(1) shall be reviewed or revised every year, it really means that there must be an assessment of the merit and suitability of all the eligible members every year. The paramount duty cast upon the Committee to draw up a list under Regulation 5(1) of such members of the State Civil/Police Service as satisfy the condition under Regulation 4 and as are held by the Committee to be suitable for promotion to the service would be discharged only if the Committee makes the selection from all the eligible candidates every year.

"41. I see no reason to give the go bye to the word 'all' in Regulation 4(1) as the High Court has done. I perceive no reason, when Regulation 4(1) uses the word 'all', why I should not give effect to it. I am unable to see the anomaly which would result if the word is retained. If merit and suitability should determine the choice and that seniority should become relevant only when merit and suitability are roughly equal, it is only proper that the field of choice should include all the eligible members of the State Civil/Police Service. It is rather curious that the High Court should have thought that the use of the word 'all' in Regulation 4(1) to be "loose or inaccurate" because inapt expression, like "the fresh select list", "the list so prepared" have been used in the proviso to Regulation 4(2)

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"and in Regulation 5(4) respectively. Assuming for the moment that these expressions are inapt in the context, I do not think that sufficient reason for disgrading the effect of the word 'all' in Regulation 4(1). On the other hand, I think it would have been anomalous if the field of choice had not embraced the whole category of the eligible members of the State Civil/Police Service, as the basis of the selection for inclusion in the list is primarily merit and suitability. Nor does the fact that the number of members to be selected for inclusion in the list is limited by the number of vacancies expected to arise in the succeeding year a sufficient ground, as the High Court has thought, for limiting the field of choice.

"42. Though the words used in Regulation 5(4) are "review" and "revision", in the process of review and revision, a fresh assessment must be made of the merit and suitability of all the members remaining in the previous list and all other eligible members in the State Civil/Police Service. If the criteria for selection are merit and suitability from among all the eligible members then, the field of selection must comprise of the entire category of eligible members of the service. Otherwise, the selection will not be on the basis of merit and suitability from among all the eligible members of the State service. In other words, the inclusion of the name of a member in the select list for a year will not be an entitlement for inclusion in the select list for the succeeding year. A fortioria member who has been assigned a rank in the select list for a year can have no claim for the same rank in the next year. (Emphasis added)

The Supreme Court has unequivocally stated that the purpose of annual revision or review of the select list contemplates preparation of fresh list by fresh assessment made on the basis of merit and suitability of all eligible members of State Civil/Police Service. They have also made it clear that inclusion of the name of a candidate in one select list does not entitle him to be included in the select list of the succeeding year. In the circumstances the second applicant has no right to be included in the 1988 select list because of his inclusion in the select

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list of 1987.

12. We have already dealt with the question of this Tribunal in judgment over the assessment made by the Selection Committee and found that in the circumstances of the case this is not called for. The learned counsel for the second applicant fairly conceded that he is not alleging any malafides against the Selection Committee. In S.B Dogra v. Union of India and others, A.T.R 1989(2) C.A.T 109 the Chandigarh Bench of this Tribunal in connection with a similar case of promotion to the I.P.S held that officers included in a select list of a particular year does not create an indefensible right in him to be appointed for the vacancies arising in the subsequent years. They have further stated that "it is not within the province of the Tribunal to sit in judgment over the assessment of the Selection Committee, save in the rarest of the rare cases, where the findings of the Selection Committee may be tainted with malice or may be infractive of the criteria or the mode for preparing the Select List laid down in the statutory Rules or administrative instructions of a binding nature".

13. Apart from the above and the fact that the select list is prepared through the collective wisdom and judgment of the members of the Selection Committee presided by the Chairman/Member of the Union Public Service Commission, the possibility of even malice in law

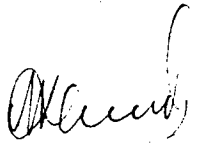
creeping in the process of preparation of the list is very remote. In accordance with the Regulation 7 of the Promotion Regulations, the list prepared by the Selection Committee is considered by the Union Public Service Commission which approves the list only after considering whether any change is necessary. Such changes are made after consulting the State Government and taking into account their comments. With so many checks at various stages the bland allegation of malice in fact or law deserves to be rejected summarily.

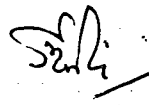
14. After all is said and done, the only point which rankled in our mind is the fact that the second applicant who was included in the 1987 select list was not only excluded from the 1988 select list, but also yielded place to two of his juniors respondents 8 and 9 who had been adjudged as 'Very Good' along with the applicant in 1987 itself. It appeared to us a little strange that being senior to respondents 8 and 9 and graded at par with them as 'Very Good' in 1987 and having been included in the 1987 select list, the applicant should have been dropped from the 1988 select list in which respondents 8 and 9 junior to him were included. To salve our judicial conscience we compared the Confidential Roll of the second applicant with those of respondents 8 and 9. Even though the applicant did get outstanding reports during 1986 and 1987 out of the six years between 1982 and 1987, respondents 8 and 9 obtained five to six outstanding ^(annual) reports during the same period. It cannot

therefore be said that inclusion of respondents 8 and 9 and the exclusion of the applicant's name from the 1988 select list was arbitrary or biased.

15. In regard to the averments made against the inclusion of individual respondents in the select list of 1988 these have already been discussed in connection with the first application earlier in this judgment.

16. In the conspectus of facts and circumstances and the law as discussed above, we see no reason to intervene in the select list for promotion to the I.P.S prepared in 1988 and dismiss these two applications without costs.


(A.V. HARIDASAN)
JUDICIAL MEMBER


(S.P. MUKERJI)
VICE CHAIRMAN

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