

**BEFORE THE HONOURABLE CENTRAL ADMINISTRATIVE
TRIBUNAL
ERANAKULAM BENCH**

O.A.NO. 409 OF 2003

Applicant:-

M. Wahab, aged 55 years,,
S/o A. Mytheenkunju,
Superintendent of Police, Vigilance &
Anti-Corruption Bureau, (Southern Range),
Thekkummoodu, Thiruvananthapuram,
'AYISHAS', Kankathumukku, Kollam - 12.

Vs.

Respondents:-

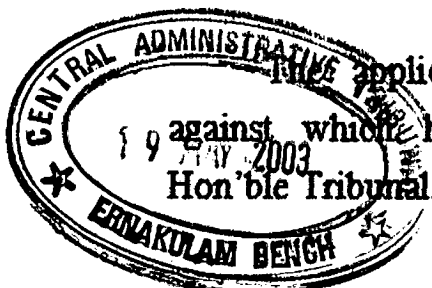
1. Union of India Represented by its Secretary,
Ministry of Home Affairs, New Delhi.
2. The selection committee to Indian Police Service constituted
Under Regulation 3 of Indian Police Service
[Appointment by Promotion] Regulation 1955,
represented its Secretary, Union Public Service
Commission, Shajahan Road, New Delhi.
3. State of Kerala represented by Chief Secretary
Government Secretariat, Thiruvananthapuram
4. Director General of Police
Thiruvananthapuram

**ORIGINAL APPLICATION FILED UNDER SECTION 19 OF THE
ADMINISTRATIVE TRIBUNAL' S ACT,1985**

DETAILS OF APPLICATION

[1] Particulars of the order against which the application is made : Nil

[2] Jurisdiction of the Tribunal:



The applicant declares that the subject matter of the orders
against which he wants redressal is within the jurisdiction of the
Hon'ble Tribunal.

[3] Limitation:

The applicant further declares that the application is within the limitation period prescribed in section 21 of the Administrative Tribunal Act, 1985.

[4] FACTS OF THE CASE.

1. The applicant commenced service as Sub Inspector of Police in the Kerala Police General Executive service on 2.4.1971. He was thereafter promoted as Circle Inspector of police in the year 1981. He was promoted to the substantive post of Deputy Superintendent of Police on 26-12-1990 and later promoted as Superintendent of Police on 17-08-2000. the applicant was born on 17-05-1948. He is to retire on superannuation from state police service on 31-05-2003. He has rendered 32 years of qualifying service.

2. The applicant has got as many as 24 good service entries and two appreciation letters from the senior officers. In the C.R. dossiers of the applicant, it has been recorded as out-standing till the year 2002. No departmental proceeding is contemplated or pending against the applicant. There are no adverse entries in the confidential reports of the applicant. Succinctly stated, the applicant is entitled to be considered for selection and appointment to the Indian Police Service to the vacancies that had arisen for year 2000, 2001 and 2002 under provisions of Indian Police Service [Appointment by promotion] Regulation 1955.



The selection committee for promotion of state police service officers to Indian Police Service was met on 13.12.2000 to fill up the vacancies which arose during the period from 1.1.1999 to 31.12.1999. The

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selected candidates for year 1999 approved by Union Public Service Commission were appointed to Indian Police Service by notification dated 25.1.2001. No selection committee was met thereafter to fill up the vacancies that had arisen in the cadre from 1.1.2000 to 31.12.2000; 1.1.2001 to 31.12.2001 and 1.1.2002 to 31.12.2002 respectively. It is submitted that in view of the declaration of law by the Apex Court in Syed Khalid Rizevi's case [1993 [3] suppl. S.C.C. page 575] and Vipin Chandra's case [1996[6] S.C.C page 721], the committee when it meets prepare a separate list of each year keeping in view the number of vacancies in the year after considering the officers who were eligible and fell in the zone of consideration for selection in that year. However, this Hon'ble Tribunal by order dated 13-12-2003, in O.A. 762 of 2002 filed by P.M. Janardhanan, a retired state police service officer, directed to have the meeting of the select committee convened for drawing up the select list for the vacancies of the year 2000 and 2001 for appointment to the Kerala Cadre of I.P.S., within a period of four months from 13-2-2003. A true copy of the order is produced herewith and marked as Annexure A-1. The applicant understands that steps are being taken to convene selection committee on 12-6-2003. If the Committee meets before 30-5-2003, the applicant would have been selected and appointed to I.P.S. cadre before his superannuation on 31-5-2003. The delay in convene the selection Committee will prejudicially effect the service conditions of the applicant. Therefore justice demand that the superannuation of the applicant from the state police service may be extended till the selection Committee meet as directed in Annexure A-1.

Seeking the extension of service the applicant submitted representation dated 17-5-2003 to the 3rd respondent, a true copy of which is produced herewith and marked as Annexure A-2.



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4. The total number of substantive vacancies arowse in Indian Police Service Cadre from 1.1.2000 to 31.12.2000 are 8, which remained unfilled. The following are the vacancies arowse namely;

Rank . No.	Name	Date of birth	Date of retirement
31	G. Surendran	26.3.1940	26.3.2000.
58.	Thankappan pillai	20. 12. 1940	30.12.2000.
60.	M. Abdul Hameed	21. 3. 1940.	21. 3. 2000.
61	P. G. Varghese	27. 2. 1940	20. 2. 2000.
72.	G. Parameswaran	9. 1. 1940.	31. 1. 2000
	Pillai		
87.	P. K Lambodaran Nair	20. 9. 1940.	30. 9. 2000.

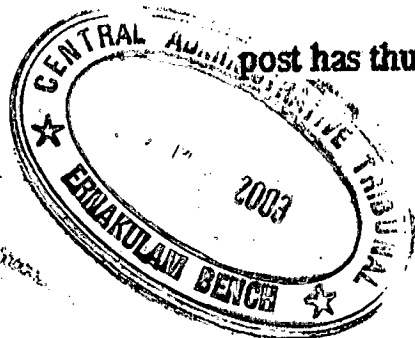
Removed from service

48.	Viswanathan Pillai	20. 10. 2000.
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The following are the retirement vacancies which arowse in the year 2001, namely, .

66.	A. Gopinathan	31. 5. 2001.
76.	Thomas Mathew	31. 10. 2001.
81.	K. R. Varijakshan.	31. 6. 2001.
82.	P. K. Manoharan	31. 4. 2001.
83.	S. R. Gopalkrishnan Nair.	31. 4. 2001
88.	K. R. Puroshothaman Pillai	30. 6. 2001.

5. Government of India by notification No. 11052/9/ 2000 AIS [11] A dated 23.3.2001 enhanced the authorized strength of the Kerala Cadre of Indian Police Service, as per which the total authorized strength have been enhanced from 121 to 139 effective from 22.3.2001. The promotion post has thus been enhanced from 30 to 42.

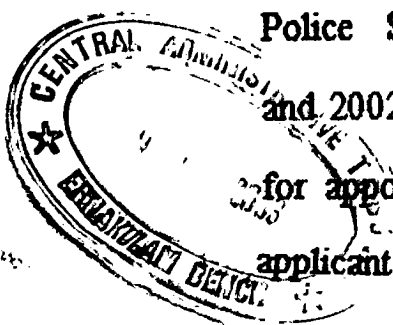


6. The present strength of the promoted cadre in position as on October 2002 was 23. 19 substantive vacancies in the I. P. S. Cadre remain unfilled.

7. The Director General of Police had sent a T. P. Message to applicant as No. 29566/ 2001 dated 24.5. 2001 requesting to forward undertaking for (1) unconditional appointment to I. P. S. [if selected], (2) consent for termination of lien in the State Police Service in the event of appointment and subsequent confirmation to I. P. S. and (3) declaration of marital status. A true copy of the message dated 24.5.2001 is produced and marked as Annexure A3.

8. In Annexure A3 the name of the applicant is shown as item No 17. As soon as annexureA3 is received, the applicant has submitted a declaration and also undertaking as required to the Director General Police for consideration of selection. Annexure A3 message had been sent to the applicant with a view to considering his name in the field of choice for selection to the Indian Police Service against the vacancies that had arisen in the year 2000. Though the applicant had sent declaration and undertaking in terms of Annexure A3, no selection committee met for selection and the applicant will be retired on superannuation 31-5-2003 with out considering for selection to Indian Police Service.

9. The applicant satisfies all conditions provided under Indian Police Service [Appointment by Promotion] Regulation 1955 for selection to Indian Police Service cadre for the vacancies which arouse in the year 2000, 2001 and 2002 respectively. But it is not likely to finalize the selection process for appointment by promotion to Indian Police Service cadre before the applicant retires from service. Thus applicant's right for consideration for



selection and appointment to the Indian Police Service cadre as enshrined under Article 16[1] of the Constitution of India is impaired due to the lethargy and indifferent attitude adopted by the respondent. In the seniority list of the Deputy Superintended of Police who are in position, the applicant would be Rank No.8. Therefore his chance of getting inducted to I.P.S. cadre before his retirement is bright. The Hon'ble High Court of Kerala by judgment dated 4-4-2003 in O.P. No. 28995/2001 and connected matter declared that the Assistant Commandant in Armed Police Battalion are not equivalent to the category of Deputy Superintendent for the purpose of selection to I.P.S. The above judgment has been confirmed by the Apex Court in S.L.P. No. 9141-46/2003 dated 12-3-2003.

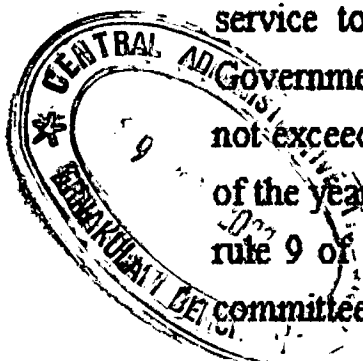
[5] GROUND FOR RELIEF WITH LEGAL PROVISIONS:

[A]. The applicant is eligible and qualified to be considered for selection and appointment to Indian Police Service cadre against the vacancies which had arisen for the year 2000, 2001 and 2002 respectively. Rule 2[g] of Regulation defined the 'year' means the period commencing on the 1st January and ending on 31st day of December of the same year..

[B]. Rule 5 of the Regulation reads thus;

"5. Preparation of a list of suitable officers"

Each committee shall ordinarily meet every year and prepare a list of such members of the state police service as are held by them to be suitable for promotion to the service. The number of members of the state police service to be included in the list shall be determined by the Central Government in consultation with the state Government concerned, and shall not exceed the number of substantive vacancies as on the 1st day of January of the year in which the meeting is held in the posts available for them under rule 9 of the recruitment Rules. The date and venue of the meeting of the committee to make selection shall be determined by the Commission.



Provided that no meeting of the committee shall be held , and no list for the year in question shall be prepared when.

Explanation :- In case of joint Cadre a separate select list shall be prepared in respect of each state police service, the size of each Select list being determined in the manner indicated above

[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 the that service of a member which is equal to three times the number referred to in sub-regulation [1];

provided that such restriction shall not apply in respect of a state where the total number of eligible officers is less than three times the maximum permissible size of the Select list and in such a case committee shall consider all the eligible officers;

Provided further that in computing the number for inclusion in the field of consideration, the number of officers referred to in sub-regulation [3] shall be excluded;

Provided also that the committee shall not consider the case of a member of the state police service unless on the [first day of January] of the year in which.

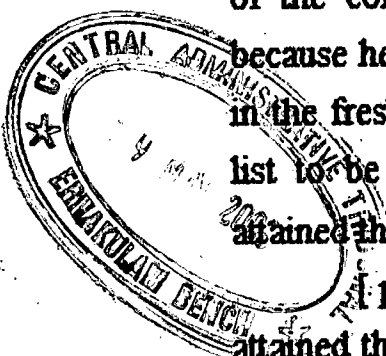
It meets he is substantive in the state police service and has completed not less than eight years of continuous service [where officiating or substantive] in the post of Deputy Superintendant of police or in other post or posts declared equivalent thereto by the state Government .

Explanation; The powers of the state Government under the third proviso to this Sub-Regulation shall be exercised in relation to the members of the state civil service of a constituent state, by the Government of the state.

[3]. The 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;

[provided that a member of the state police service whose name appears in the select list in force immediately before the date of the meeting of the committee and who has not been appointed to the service only because he was included in the select list shall be considered for inclusion in the fresh list to be prepared by the committee even if he has in the fresh list to be prepared by the committee even if he has in the meanwhile, attained the age of fifty four years.]

[provided further that a member of the state police service who has attained the age of fifty four years on the first day of January of the year in



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which the committee meets shall be considered by the committee if he was eligible for consideration on the [first day of January] of the year or of any of the years immediately preceding the year in which such meeting of the committee was held during such preceding year or years]

[[3-a] The committee shall not consider the case of such member of the state police service who had been included in an earlier select list and;-

[a] Had expressed his unwillingness for appointment to the service under Regulation 9;

Provided that he shall be considered for inclusion in the select list, if before the commencement of the year, he applies in writing, to the state Government expressing his willingness to be considered for appointment to the service

[b] was not appointed to the service by the Central Government Regulation 9[a].

[4] The selection committee shall classify the eligible officers as 'out standing' 'very good' 'good' or unfit as the case may be, on an overall relative assessment of their service records.

[5] The shall be prepared by including the required number of names, first from among the officers finally classified as 'out standing' them from among those similarly classified as 'very good' and thereafter from amongst those similarly classified as 'good' and the order of names inter se within each category shall be in the order of their seniority in the state police service;

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

[6]. The list so prepared hall be reviewed and revised every. The applicant having been satisfied the conditions stipulated in Regulation 5 of the Regulation is eligible to be considered for selection.



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[C]. The applicant had rendered meritorious service. There are good service entries. There are no adverse entries in the confidential reports in the applicant.

[D]. In identical case, namely, O. A. No 762/2002, this Hon'ble Tribunal by order dated 13.2.2002 directed the respondent to convene the selection committee for selection to Indian Police Service cadre for the year 2000 and 2001 and to consider the claim of the applicant therein for selection to Indian Police Service cadre for the year 2000 and 2001 respectively. The applicant is similarly placed and is liable to be treated alike.

[6] Details of remedies exhausted

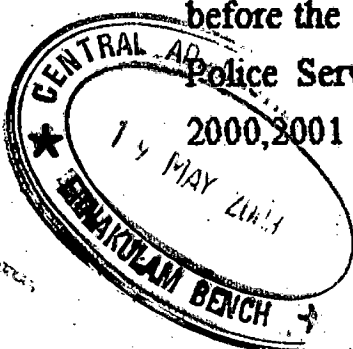
The applicant declares that he has no other remedy to approach before this Hon'ble Tribunal to redress his grievances.

[7]. Matters not previously filed or pending with any other court;

The applicant further declares that he had not previously filed any Application, Writ petition, or suit, regarding the matter in respect of which this application has made, before any court or other bench of Tribunal nor any such application, Writ petition or suit is pending before any of them.

[8] RELIEF SOUGHT

i. to direct the 3rd respondent to forward the name of the applicant before the selection committee for the consideration for selection to Indian Police Service cadre [Kerala] for vacancies that had arisen in the year 2000, 2001 and 2002.



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ii. to direct the respondents to consider the name of the applicant depending on his seniority in the cadre of Deputy Superintendent of police for selection to Indian Police Service cadre[Kerala] under rule 5 of the Indian Police Service [Appointment by Promotion] Regulation 1955 and to include his name in the select list for the vacancies that had arisen during the year 1.1.2000 to 31.12.2000; 1.1 2001 to 31.12.2001 and 1.1.2002 to 31.12 2002 respectively.

iii. to declare that the applicant is eligible and entitled to be considered for selection and appointment to Indian Police Service for the vacancies that had arisen during the year 2000,2001 and 2002 despite his superannuation from the state police service on 31-05-2003;

iv. to issue any other order or direction as this Hon'ble Tribunal deem fit in the interest of justice

✓ (v) To consider and dispose of Annex A2.

[9] Interim order if any prayed for

(i). may be pleased to issue direction to the respondents that the retirement of applicant from the state police on 31-05-2003 shall not effect the claim of the applicant for consideration for induction to Indian Police Service for the vacancies of the years 2000, 2001 and 2002, pending disposal of Original Application.

(ii). To stay the retirement of the applicant from state police service on 31-5-2003 pending disposal of the Original Application.

[10] Particulars of postal order filed in respect of Application fee

Postal order No 66 63 S456

Post office High Court

Amount 50/-

Date of issue 23-4-03

[11]. List of Enclosures

[1] Original Application along with the documents relied on by the applicant.

[2] Postal order towards application fee;

[3] Vakalath

[4] Envelopes



V E R I F I C A T I O N

I, M. WAHAB, Aged 55 years, S/o. A. Mytheenkunju, Superintendent of Police, Vigilance & Anti-Corruption Bureau (Southern Range), Thekkummoodu, Thiruvananthapuram, 'AYISHAS', Kankathumukku, Kollam - 12, do hereby verify that the contents of Paragraphs No. 1 to 4 are true to the best of my knowledge and Paragraphs No. 5 to 12 are believed to be true on legal advice and that I have not suppressed any material facts.

Ernakulam,
19.05.2003.


M. WAHAB
APPLICANT.

Counsel for the Applicant,


P.V. MOHANAN,
ADVOCATE.

To

The Registrar,
Central Administrative Tribunal,
Ernakulam.

