

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No.180/00235/2016

Monday, this the 29th day of October, 2018

C O R A M :

**HON'BLE Ms.P.GOPINATH, ADMINISTRATIVE MEMBER
HON'BLE Mr.ASHISH KALIA, JUDICIAL MEMBER**

P.Chandrasekharan,
S/o.late Shri.P.A.Mannadiar,
Indian Police Service,
Retired Director General of Police,
Director General (Fire Force).
Residing at Pallath, TC No.42/2276,
Green Street, Sasthanagar, Pangode,
Thirumala, Thiruvananthapuram – 695 006. ...Applicant

(By Advocate – Mr.Manu Govind)

V e r s u s

1. The State of Kerala represented by its Chief Secretary,
Government Secretariat, Thiruvananthapuram – 635 031.
2. The Union of India represented by its Secretary (Home),
New Delhi – 110 001.
3. The Accountant General,
Office of the Principal Accountant General (A&E),
Thiruvananthapuram, Kerala – 635 031. ...Respondents

(By Advocates Mr.M.Rajeev, GP [R1&3] & Mrs.Mini R Menon [R2])

This Original Application having been heard on 25th October 2018,
the Tribunal on 29th October 2018 delivered the following :

O R D E R

HON'BLE Ms.P.GOPINATH, ADMINISTRATIVE MEMBER

The applicant is an officer of the Indian Police Service who was cleared for promotion as Director General in the year 2013. There are four sanctioned post of DGP in the State. Three posts were being operated.

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Applicant was not promoted to the available fourth post of DGP. To enable the promotion of applicant the respondents sought approval of the Central Government under the second proviso to Rule 4(2) of the IPS Cadre Rules. Despite the clearance by the Screening Committee for promotion as DGP, applicant was not granted the pay applicable to DGP.

2. The fourth vacancy in the rank of DGP occurred on 1.10.2014 by virtue of deputation of the then Director General, Vigilance and Anti Corruption Bureau (VACB). Instead of promoting the applicant to the said post, an officer junior to the applicant, who was also cleared for promotion subsequent to applicant, was promoted to the said post.

3. The 2nd respondent created a temporary post of Director General (Fire Force) in the grade of DGP under the second proviso to Rule 4(2) of the IPS Cadre Rules and nomenclatured the same as Director General (Fire Force). Despite the promotion of the applicant to the post of DGP he was not given the pay scale of the post as the Accountant General objected to the fact that there was no prior sanction by the Central Government for creation of the post of DG (Fire Force) as required under Rule 4(2) of the IPS Cadre Rules. Hence the applicant continued to draw the pay of ADGP.

4. The Screening Committee had found the applicant qualified for promotion to the post of DGP in 2013 and he was cleared for promotion. The vacancy position was not in dispute. Whereas the applicant could have been promoted to the post of Director General (VACB) which was available

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from 10.2.2014, the same was not done. The decision of the respondents to not promote the applicant against the above post cannot be made to operate against him. Since the post of Director General (VACB) in the scale of DGP was available and the applicant was available for promotion, being cleared by the Screening Committee, he was due for promotion from the date his junior was promoted as Director General, VACB. The applicant's grievance is that juniors of the applicant who were not cleared by the Screening Committee of the 2013 when he was cleared, had been promoted over and above him and appointed as DGP despite the fact that he had been cleared for promotion as DGP and was awaiting posting.

5. The applicant argues that having worked in the higher post by creating a temporary post of DG (Fire Force) and having discharged the duties thereof he cannot be refused the pay and consequential pensionary benefits applicable to the said post. The applicant also argues that since he was cleared by an earlier select list he should have been promoted prior to his juniors Shri.Vinson M Paul and Shri.Krishnamoorthy who were cleared subsequently by a later select list.

6. The prayer of the applicant is to declare that he is entitled to be appointed as DGP with all consequential benefits of pay and allowances and subsequent pensionary benefits.

7. The respondents in their reply statement submit that as per IPS Cadre Schedule, the State Government could operate four DGP level posts in the

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ration of 1:1 (2 cadre plus 2 ex-cadre). On the relief of Shri.Maheshkumar Singla from the State Cadre to take up the assignment of Director General, BSF on central deputation Shri.Vinson M Paul, ADGP (Vigilance) was given the charge of Director, VACB. The post of Director, VACB was kept vacant to accommodate Shri.Vinson M Paul on promotion as it was a sensitive post and officer with an outstanding service record was proposed to be accommodated in the said post. As a consequence of this decision, the State Government was operating only three posts in the DGP grade out of the sanctioned strength of four. In order to accommodate the applicant the post of Director General (Fire Force) in the grade of DGP in HAG + Rs.75500-80000 was created for a period of one year and this post was declared as equivalent in status to the cadre post of Director, VACB. The applicant who was ADGP, Home Guards, Civil Defence and Fire Services was promoted to the grade of DGP in the scale of pay HAG + Rs.75500-80000 and posted as Director General, Fire Force. By so doing the incumbency position of DGP is cited by the respondents as follows :

Sl. No.	Post	Name of Officer	Cadre/Ex-cadre/SD
1	Director General of Police (Head of Police Force)	Shri.K.S.Balasubramanian (KL:78)	Cadre
2	Chairman & Managing Director, Kerala Police Housing Construction Corporation	Shri.Alexander Jacob (KL:82)	State Deputation
3	Director General of Police (Prisons)	Shri.T.P.Senkumar (KL:83)	Ex-cadre
4	Director General (Fire Force)	Shri.P.Chandrasekharan IPS (KL :1983)	Rule 4(2) of IPS (Cadre) Rules, 1954.

8. When this matter came to the notice of Accountant General, he submitted that as the officer at Sl.No.1,2 & 3 occupied cadre/ex-cadre post and one post had been kept aside to accommodate Shri.Vinson M Paul, the post of Director General Fire Force created for the applicant did not adhere to sanctioned strength of DGP in the State Police Force and the post had to be created as per Rule 4(2) of the IPS Cadre Rules, 1954 by the 2nd respondent, Home Ministry. Further only such posts with a particular designation/nomenclature as exists in the cadre and having the corresponding scale of pay can be created/added temporarily to the cadre. They objected to the creation of the post of DG Fire Force as it did not adhere to Rule 4(2) of the IPS Cadre Rules, 1954. This objection was raised despite the fact that the applicant had been promoted to the grade of DGP and was entitled to hold the post of DGP, being the next in the order of seniority to Shri.T.P.Senkumar who was posted as DGP (Prisons).

9. Though the applicant an 1983 IPS cadre was not posted to a regular post of DGP, his juniors Shri.M.N.Krishnamurthy, IPS 1984 and Shri.Vinson M Paul, IPS 1984 were promoted to DGP grade vide order dated 28.10.2014 marked as Annexure R-1(e). The applicant opposed the promotion of his juniors to regular DGP posts without accommodating him, a senior in the post of DGP. The incumbency position of DGP was raised from 4 to 6 as on 28.10.2014 wherein two officers held cadre post, two officers held ex-cadre post and two officers including the applicant are shown as holding a post under Rule 4(2) of IPS Cadre Rules, 1954.

10. The incumbency position of DGP as on 12.3.2015 consequent to the retirement of Shri.M.N.Krishnamurthy and voluntary retirement of the applicant was restored to four, two cadre and two ex-cadre posts.

11. The State Government as per letter dated 24.6.2015 Exhibit R-1(i) had addressed the 2nd respondent Ministry of Home Affairs and informed them that the State Government had created a temporary post by invoking the second proviso of Rule 4(2) of IPS Cadre Rules for a short period and since officers have retired/taken voluntary retirement, if the promotion of the officers are regularized by the Government of India it will enable them to draw pay and allowances in the DGP rank and subsequent pensionary benefits also in the DGP grade. The Ministry of Home Affairs did not act upon this letter of the State Government. The respondent submits that in the absence of directions and approval from the Government of India, Ministry of Home Affairs, the State Government was constrained to grant the pay of ADGP grade to the applicant.

12. The controversy of promotion of the applicant to the post of DGP when he was screened as early as in 2013 arose on account of the fact that his juniors in service were appointed to the cadre post and the applicant who was the fourth senior most officer was not given the DGP rank in the State. Whereas the post of DG (VACB) was kept vacant to accommodate Shri.Vinson M Paul on his promotion, a temporary post of DG Fire Force was created for a period of one year to accommodate the applicant under the second proviso of Rule 4(2) of IPS Cadre Rules without necessary approval

of 2nd respondent. Applicant cannot be held responsible for this aberration of the respondents or made to face the consequences thereof. That this post was created without seeking the concurrence of the 2nd respondent cannot be allowed to reflect adversely on the applicant, who was senior to Shri. Vinson M Paul and was cleared by an earlier Screening Committee. Due to this non-approval from the 2nd respondent, the applicant continued to draw the pay scale applicable to ADGP only. Whereas we do not dispute the fact that the State Government wanted to exercise a choice in the officer posted to the post of DG (VACB), the same could have been done after pursuing the matter with the 2nd respondent for allowing the applicant to occupy a temporarily created post of DGP till his retirement. The State Government appears to have played a fraud on the applicant by creating the post of DGP Fire Force without the necessary concurrence from the 2nd respondent so that they could post an officer of their choice as DG VACB.

13. The 2nd respondent in the reply statement argued the sanctity of the strength and position of the cadre constituted under Rule 4 and the fact that at no point of time the number of members of the service appointed to hold posts other than cadre posts referred to in sub rule (1) and sub rule (4) except with the prior approval of the Central Government. That the applicant had been cleared by a Screening Committee for promotion to the post of DGP as early as in 2013 and he had a right to hold the post and draw the pay of the post is not addressed by the State Government or the 2nd respondent. If the 2nd respondent held the view that the admissible strength of four posts in DG grade should not be exceeded, then they should have

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ensured that the applicant, who had been cleared earlier by the Screening Committee for promotion than Shri.Vinson M Paul, was promoted to the available post. By allowing the juniors of the applicant to be promoted to the DG grade post overlooking the applicant, appears to have been a cause of injustice to the applicant.

14. On the date of clearance of the post of DGP by the Screening Committee, the post of DG VACB was vacant. The applicant being senior to Shri.Vinson M Paul and having been cleared for promotion earlier, has a right to be promoted and draw the pay of the post of DG. The applicant is now retired. Hence we allow the O.A by directing that the applicant be notionally promoted to the post of DG, which had been kept vacant for the promotion of ADGP Shri.Vinson M Paul, and be given the salary of the post from the date of his promotion to the date of his voluntary retirement and thereafter the same shall also be reckoned for pension and pensionary benefits with all consequential benefits.

15. The order shall be complied with, within a period of three months from the date of receipt of a copy of this order. No costs.

(Dated this the 29th day of October 2018)

**ASHISH KALIA
JUDICIAL MEMBER**

**P.GOPINATH
ADMINISTRATIVE MEMBER**

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List of Annexures in O.A.No.180/00235/2016

1. **Annexure A1** - A true copy of the G.O No. dated 15.5.2014.
2. **Annexure A2** – A true copy of the letter dated 2.6.2014 issued by the third respondent.
3. **Annexure A3** – A true copy of the G.O dated 12.3.2015.
4. **Annexure A4** - A true copy of the representation dated 25.3.2015 submitted by the applicant to the first respondent.
5. **Annexure A5** - A true copy of the G.O dated 16.11.2015.
6. **Annexure A6** - A true copy of the representation dated 8.12.2015 made by the applicant before the first respondent.
7. **Annexure R1(a)** – G.O(Rt) No.1923/2014/GAD dated 6.3.2014.
8. **Annexure R1(b)** – G.O.(Rt) No.3751/14/GAD dated 15.5.2014.
9. **Annexure R1(c)** – GE1/C/IPS/Gen/2014/296 dated 3.6.2014 of the Accountant General, Kerala.
10. **Annexure R1(d)** – State Government letter No.21769/Spl.C3/2014/GAD dated 1.4.2014.
11. **Annexure R1(e)** – G.O.(Rt)No.8319/2014/GAD dated 28.10.2014.
12. **Annexure R1(f)** – Ministry of Home Affairs letter No.1-11012/8/2014-IPS.I dated 10.12.2014.
13. **Annexure R1(g)** – G.O.(Rt) No.1783/2015/GAD dated 12.3.2015.
14. **Annexure R1(h)** – D.O.Letter No.37866/Spl.C3/2014/GAD dated 24.3.2015 from the Chief Secretary.
15. **Annexure R1(i)** – D.O.Letter No.37866/Spl.C3/2014/GAD dated 24.6.2015 from the Chief Secretary.
16. **Annexure R1(j)** - D.O.Letter No.37866/Spl.C3/2014/GAD dated 20.11.2015 from the Chief Secretary.
17. **Annexure R1** - A true copy of the order No.8981/Spl.C3/2013/GAD dated 5.12.2013.
18. **Annexure R2** - A true copy of the order No.1.11012/8/2014-IPS.I dated 4.3.2014.
19. **Annexure R3** - A true copy of the G.O.(Rt) No.3751/2014/GAD dated 29.4.2014.

- 20. Annexure R4** - A true copy of the order No.1.11012/8/2014-IPS.I dated 15.5.2014.
- 21. Annexure R5** - A true copy of the order No.1.11012/8/2014-IPS.I dated 3.11.2014.
- 22. Annexure R6** - A true copy of the order GE1/C/IPS/Gen/2014-15/2177 dated 17.12.2014.
- 23. Annexure R7** - A true copy of the letter No.GE1/C/IPS/Gen/2014-15/2177 dated 17.12.2014.
- 24. Annexure R8** - True copy of the D.O letter No.37866/Spl.C3/2014/GAD dated 24.3.2015.
- 25. Annexure R9** - True copy of the order No.1.11012/8/2014-IPS.I dated 19.5.2015.
- 26. Annexure R10** - True copy of the D.O letter No.37866/Spl.C3/2014/GAD dated 24.6.2015.
- 27. Annexure R11** - True copy of the order No.1.11012/8/2014-IPS.I dated 13.7.2015.
- 28. Annexure R12** - True copy of the letter No.37866/Spl.C3/2014/GAD dated 7.8.2015.
- 29. Annexure R13** - True copy of the letter No.1.11012/8/2014-IPS.I dated 26.2.2016.
