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**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No.180/00869/2018

Friday, this the 9th day of August, 2019

CORAM:

**HON'BLE Mr.E.K.BHARAT BHUSHAN, ADMINISTRATIVE MEMBER
HON'BLE Mr.ASHISH KALIA, JUDICIAL MEMBER**

Shri A.Anilkumar,
S/o the late Arumughan Pillai,
Aged 58 years,
Superintendent of Police (Retired from State Service),
Internal Security Investigation Team Kerala,
Hill Palace, Thripunithura,
residing at 'Sreepadam',
East Kadungalloor, UC College PO,
Aluva, Ernakulam – 683 102.Applicant

(By Advocate O.V.Radhakrishnan, Sr. along with Mrs.K.Radhamani Amma)

V e r s u s

1. The Union of India,
represented by its Secretary,
Ministry of Home Affairs,
New Delhi – 110 001.
2. The State of Kerala,
represented by its Chief Secretary,
Secretariat, Thiruvananthapuram – 695 001.
3. The Union Public Service Commission,
represented by its Secretary,
Shajahan Road,
New Delhi – 110 069.
4. The Selection Committee
for Selection to the Indian Police Service
constituted under Regulation 3 of the IPS
(Appointment by Promotion) Regulation, 1955,

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represented by its Chairman,
Union Public Service Commission,
Shajahan Road,
New Delhi – 110 069.

5. The State Police Chief,
Kerala Police Headquarters,
Thiruvananthapuram – 695 001.

6. Shri C.K.Ramachandran,
Superintendent of Police (Retired),
residing at 'Krishna Kripa', Mavilchuvadu,
Mukkattukara, Mannuthy,
Thrissur District – 680 651.

...Respondents

**(By ACGSC, Shri M.T.Muraleedharan for Respondent-1, Shri M.Rajeev,
GP for Respondents-2&5, SCGSC, Shri Thomas Mathew Nellimoottil for
Respondents-3&4 and Shri Mr.P.Mohandas for Respondent-6)**

This application having been heard on 6th August, 2019 the Tribunal on
9th August, 2019 delivered the following :

ORDER

HON'BLE MR.E.K.BHARAT BHUSHAN, ADMINISTRATIVE MEMBER

OA No.869/2018 is filed by Shri A.Anilkumar, Superintendent of Police
(Retired from State Police Service) against exclusion of his name from the list
of officers selected for promotion to the IPS, Kerala Cadre for the vacancies of
2016. Thirteen officers were selected for IPS by promotion from SPS officers
to be accommodated in the 13 vacancies determined for 2016. The applicant
challenges the proceedings on the ground that Respondent-6, Shri
C.K.Ramachandran was not eligible to be included in the zone of consideration
and subsequent selection owing to the criminal proceedings instituted against
him and also due to the fact that he did not possess 8 years of continuous

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service in the rank of Deputy Superintendent of Police. The relief sought in the OA are as follows:

- i) to call for the records leading to Annexure A14 Minutes of the Selection Committee and Annexure A-15 Select List for the year 2016 prepared by the 4th respondent-Selection Committee at its meeting held on 04.07.2018 under Regulation 5(1) and 5(5) for the vacancies of the year 2016 and to set aside the same to the extent it included the 6th respondent illegally;
- ii) to issue appropriate direction or order directing the respondents to hold a review Selection Committee for selection to IPS against the vacancies of the year 2016 and to direct respondents 1 to 4 to include the name of the applicant in the Select List of the year 2016 by removing the name of the 6th respondent and placing at the 13th position in the Select List and to appoint him by promotion to the post of Indian Police Service from the date of his entitlement with all consequential benefits including arrears of pay and allowances within a time-frame that may be fixed by this Hon'ble Tribunal;
- iii) to grant such other reliefs which this Hon'ble Tribunal may deem fit and proper in the circumstances of the case;

And

- iii) to allow the above O.A with costs to the applicant.

2. The applicant retired from service on 31.08.2016 after attaining the age of 56 years. He had joined the post of Deputy Superintendent of Police on 09.10.2006 and subsequently was promoted as Superintendent of Police (Non IPS) on regular basis as per GO dated 08.05.2014 (Annexure A3). The applicant was substantive in the State Police Service and had completed 8 years of continuous service in the post of Deputy Superintendent of Police by 09.10.2014 and thus was fully eligible to be considered for appointment by promotion to Indian Police Service against the vacancies for 2015 onwards.

3. The applicant was not included in the field of choice for the vacancies of

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the year 2015 for appointment by promotion to IPS. The applicant retired from SPS on attaining the age of 56 years on 31.08.2016. Owing to the fact that there was considerable delay in convening the Selection Committee for appointment by promotion to IPS in respect of the vacancies for 2016, he filed OA No.1009/2016 before this Tribunal for a direction to urgently convene the Selection Committee meeting for appointment by promotion to IPS against the vacancies for the years 2015 and 2016. He had also sought a direction that his retirement from the SPS on 31.08.2016 will not prejudicially affect his right for being considered for promotion to IPS for the year 2016. The OA was disposed of by order dated 02.12.2016 ordering that the factum of retirement of the applicant from SPS from 31.08.2016 will not preclude the respondents from considering him for selection and appointment to IPS for the vacancies of 2016, if he is otherwise eligible.

4. The first respondent had determined the number of vacancies for promotion to the SPS, Kerala cadre, as 13 for the year 2016. In pursuance to this, a panel of 33 names of State Police Officers was formulated for being considered for appointment by promotion for the year 2016, the applicant being placed at Sl.No.16. Thereafter, the State Government forwarded a list of 29 eligible candidates included in the zone of consideration as at Annexure A9. However, in Annexure A9 statement itself, it is mentioned that the 6th Respondent had been placed under suspension from service on 20.05.2010 in connection with his involvement in a custodial death and he was

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reinstated only on 28.11.2011. It is also mentioned that his period of suspension had not been regularised yet. Annexures A10, A11 and A12 relate to the criminal case relating to the custodial death in which 6th Respondent is an accused. In consequence to these proceedings, the applicant understands that Respondent-6 was denied integrity certificate.

5. The Selection Committee meeting to prepare the select list of the year 2016 for promotion of SPS officers to IPS, Kerala Cadre was held on 04.07.2018 for filling up the 13 posts. The applicant through the RTI route has obtained a copy of the minutes of Selection Committee meeting, which is at Annexure A14. It is mentioned therein that the committee had selected 13 officers as suitable for promotion to the IPS and the 6th Respondent was included as at Sl.No.7 with the remarks that he was being included provisionally subject to clearance in the disciplinary proceedings/criminal proceedings pending against him and grant of integrity certificate by the State Government. The minutes also mention that all the officers included in the select list possess satisfactory records except Sl.No.7 (Respondent-6). The applicant particularly has consistent 'Very Good' record. The point made here is that "In case, 6th Respondent is excluded from the Select List on the ground that he did not have continuous service of 8 years in the post of DySP and in view of the fact that he is facing the criminal case and disciplinary proceedings and also that he is out on bail in connection with the criminal proceedings, the applicant would take his place at Sl.No.13 and

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would be included in the Select List to be promoted to the IPS. (emphasis supplied)

The gazette notification dated 30.08.2018 containing the names of 13 State Police Officers including Respondent-6 is at Annexure A15. Again, it is stated therein that Respondent-6 is being provisionally included subject to clearance in disciplinary proceedings/criminal proceedings pending against him and grant of integrity certificate by the State Government.

6. It is maintained in the OA that the respondents failed to take note of the fact that 6th Respondent did not have 8 years of 'continuous' service in the post of DySP, as he had remained under suspension from 20.05.2010 to 28.11.2011. The period of suspension had also not been regularised till date. The IPS (Appointment by Promotion) Regulation, 1955 provides as below:

“.. 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 [for which the select list is prepared] 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.” (emphasis supplied)

The applicant submits that the State Government had erred in forwarding the name of 6th Respondent to the UPSC and the Selection Committee meeting perpetuated that mistake by including the name of the 6th Respondent on provisional basis, although there was not even a remote

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possibility of the criminal case pending against him being closed in the near future. Further he did not possess 8 years of continuous service in the DySP grade. The period of suspension need not necessarily be regularised as duty for all purposes and in case the period of suspension is directed to be treated as period not-spent on duty, the above said period cannot be taken into account for any purpose. As per the Regulation 7(4) of the Regulations, 1955, it is stipulated that the Selection Committee having been held on 04.07.2018, with the UPSC approving the Select List on 30.08.2018, latest date of expiry of the Select List falls on 29.10.2018.

7. A reply statement has been filed on behalf of the first Respondent, in which it has been maintained that the promotion Regulations envisage distinct roles in respect of the State Government, the Union Public Service Commission and the Central government with specific mandates relating to the process of preparation of Select List and final submission of list of selected candidates falling within the realm of the State Government and the UPSC. The State Government has exclusive role in regard to drawing up the zone of eligible State Police Service officers to be placed before the Selection Committee, the UPSC is concerned with reference to the Select List prepared and approved under Regulation 7(3) on the basis of the grading made by the Selection Committee. The Central Government is the authority for making appointments. Hence no specific relief is sought by the applicant over and above what is sought from Respondents-2, 3, 4 & 5, who are the

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State Government and the Union Public Service Commission. It finds no deviation from procedures and regulations in including 6th Respondent in the Select List on provisional basis.

8. A reply statement has been filed on behalf of the Respondents-3&4, Union Public Service Commission and SCM. Due attention is invited to the provisions of IPS (Appointment by Promotion) Regulations, 1955 and it is maintained that all procedures adopted in the case are with due regard to the provisions of the above. Relevant part of Regulations 5(4) and 5(5) are extracted as below:

“5(4) The Selection Committee shall classify the eligible officers as 'Outstanding', 'Very Good', 'Good' and '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 names inter-se within each category shall be in the order of their seniority in the State Police Service.

Provided that the name of an officer so included in the list shall be treated as provisional if the State Government withholds the integrity certificate in respect of such an officer or any proceedings, departmental or criminal are pending against him or anything adverse against him which renders him unsuitable for appointment to the service has come to the notice of the State Government.

Provided further that while preparing year wise select lists for more than one year pursuant to the 2nd proviso to sub regulation (1), the officer included provisionally in any of the Select List so prepared shall be considered for inclusion in the Select List of subsequent year in addition to the normal consideration zone and in case he is found fit for inclusion in the suitability list for that year on a provisional basis such inclusion shall be in addition to the normal size of the select list determined by the Central Government for such year.

EXPLANATION I: The proceedings shall be treated as pending only if a charge-

sheet has actually been issued to the officer or filed in a Court as the case may be.

EXPLANATION II: The adverse thing which came to the notice of the State Government rendering him unsuitable for appointment to the service shall be treated as having come to the notice of the State only if the details of the same have been communicated to the Central Government and the Central Government is satisfied that the details furnished by the State Government have a bearing on the suitability of the officer and investigation thereof is essential.

With regard to the alleged ineligibility of 6th Respondent, it is maintained that he possessed the eligibility as having completed 8 years of service as on 01.01.2006. A representation from the applicant was received and communicated to the State Government as per the Commission's letter dated 23.04.2018 for necessary action, but the Commission did not receive any reply from the State Government till the approval of Select List. When the SCM took place on 04.07.2018, 6th Respondent was included having been assessed as 'Very Good' on the basis of service record, but he was included provisionally subject to clearance in the disciplinary/criminal proceedings pending against him and grant of integrity certificate by the State Government. The applicant also possessed 'Very Good' service record, but he could not be included in the Select List as officers of similar grade were available and due to the statutory limit on the size of the Select List.

9. A reply statement has been filed on behalf of the 2nd Respondent, in which the contentions in the OA have been countered. As regards the eligibility of the 6th Respondent, the following is stated:

“It is submitted that the date of birth of the 6th respondent is 01.06.1961. The date of his continuous officiation in the post of DySP is 11.01.2006. Therefore, as on 01.01.2016 the age of the 6th respondent was below 56 years and he had 8 years completed service in State Police Service excluding the period of suspension of One year and Six months (which was not regularised). Hence he was eligible to be included in the zone of consideration as per Regulation 5 of the IPS (Appointment by Promotion) Regulations, 1955. While forwarding the proposal for the Selection Committee meeting the State Government furnished the details of disciplinary proceedings/criminal proceedings pending against the respondent No.6 and also his integrity was withheld due to the pendency of the disciplinary and criminal proceedings. The details of non regularization of the suspension period of the 6th respondent was also informed the Union Public Service Commission.”

It is further stated that the Select List for appointment of State Police Service Officers to IPS for 2016 has already been notified and 12 officers have been appointed to IPS and 6th Respondent has been included as 'provisional'.

10. A rejoinder has been filed on behalf of the applicant stating that the State Government had committed grave illegality by including the name of 6th Respondent inspite of pending criminal investigation and also due to his ineligibility to fulfill the condition of 8 years 'continuous' service in the post of DySP. Another rejoinder was also filed by the applicant to the reply statement of Respondents-3&4, disputing the decision taken by the SCM to the extent that an “ineligible” person has been included in the select panel on provisional basis. There is no purpose or sense in including a person's name provisionally in the final list which only results in blocking off one of the available vacancies and thereby denying an opportunity of promotion to the eligible candidate just below. Also disputed is the fact that an officer

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who does not have 8 years continuous service has been entertained in the zone of consideration and even included in the Select List, although provisionally.

11. We have heard Shri O.V.Radhakrishnan, learned Senior Counsel on behalf of the applicant. He argued at length that suspension of an employee from service, amounts to a rupture in the relationship between employer and employee. He calls to his assistance the judgment of Hon'ble Supreme Court in **The Vice-Chancellor, Jammu University and another, Appellants V. Dushinant Kumar Rampal, Respondent -AIR 1977 Supreme Court 1146**, wherein it has been stated that:

“..... the order of suspension was a valid order, it suspended the contract between the respondent and the University and neither the respondent was bound to perform his duties under the contract nor was the University bound to pay any salary to him.”

Again in the case of **V.P.Gindroniya, Appellants v. State of Madhya Pradesh and another, Respondents – AIR 1970 Supreme Court 1494**, the same principle postulate was emphasized. Referring to **State of Gujarat v. Natvarlal Motilal Chavda** reported in **(2014) 15 Supreme Court Cases 499**, the Hon'ble Apex Court considered an identical situation in the following manner:

8.2. According to the Government of India's decision under Regularization 3, the Chief Secretary to the State Government, who is the sponsoring authority in respect of all eligible officers whose cases are placed before the Selection Committee for consideration, is required to record an

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integrity certificate, with reference to the entries in annual confidential reports of the officer concerned. Even after such certificate being recorded, the Selection Committee is required to consider the question of suitability of the officers for selection with reference to their integrity and specifically record in their proceedings that they were satisfied from the remarks in the confidential reports of the officers, selected by them for inclusion in the select list, that there was nothing against their integrity. Thereafter, a list of such members of the State Civil Service as are held by the Selection Committee to be suitable for promotion has to be prepared.

12. The Central premise of Shri O.V.Radhakrishnan, Senior Counsel was that the 6th Respondent was ineligible on two counts for being included in the zone of consideration and subsequent Select list. He did not possess 8 years of continuous service as provided under 5(2) of 4th proviso of Regulations, 1955, as having remained under suspension for over a year during the period. The integrity certificate had not been issued by the State in respect of that candidate as he was facing criminal action and had been incarcerated for over 61 days. There was no possibility of his being absolved in the criminal case which has not happened till date and by including an ineligible candidate, the applicant who was next in the order of merit was overlooked despite his blemishless record.

13. Shri Thomas Mathew Nellimoottil, learned Standing Counsel for UPSC appeared on behalf of 3rd and 4th Respondent. He was of the view that the zone of consideration of eligible candidates is formulated by the State Government and the Union Public Service Commission, Respondent-3, arranges for convening the SCM in accordance with Regulations, 1955. As can be seen at Annexure A14 a detailed analysis was made taking into

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consideration all aspects of selection and individual eligibility of officers in the zone of consideration. Respondent-6 had been included as provisional in view of the fact that State Government had not provided him an integrity certificate and the name was included in the final Select List also on the same basis. No impropriety can be attributed to this action. In so far as the Respondent-6 not having 8 years of continuous service is concerned, the UPSC had received a representation in this regard which had been forwarded to the State Government on 23.04.2018, but no response was received from the State Government till the approval of the Select List.

14. Shri Rajeev, GP appearing on behalf of the State Government also followed the same arguments. It was maintained that the zone of consideration had been decided upon after considering all aspects of the service of the individual officers included. The fact that 6th Respondent was facing a criminal proceeding was not overlooked while preparing the zone of consideration, as also the fact of his remaining under suspension for the period from 20.5.2010 to 05.12.2011. The SCM considered all these facts and took a decision in favour of including 6th Respondent in the Select List. So far as the applicant's eligibility is concerned, it is stated that despite the officer having satisfactory record, the SCM could not include him in the Select list due to statutory limit on the number of vacancies.

15. Dr.K.P.Satheesan, Senior Counsel entered appearance on behalf of the

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6th Respondent. The fact that the 6th Respondent having been under suspension does not amount to a rupture in a service and for this he invited our attention to the provision under FR 13 which states as follows:

“F.R.13. A Government servant who has acquired lien on a post retains the lien on that post;

- (a) while performing the duties of that post;**
- (b) while on foreign service, or holding a temporary post, or officiating in another post;**
- (c) during joining time on transfer to another post, unless he is transferred along with his title to a post on lower pay, in which case his lien is transferred to the new post from the date on which he is relieved of his duties in the earlier post;**
- (d) while on leave; and**
- (e) while under suspension.”**

He invited our attention to the judgment of the Hon'ble Supreme Court in **S.Partap Singh v. State of Punjab** reported in **1964 KHC 415**, wherein it has been stated:

“..... Suspension of a Government servant, during the course of his service, simply means that no work is to be taken from him during the period of suspension. The Government servant does not work on a post during the period of his suspension. The Government servant, during suspension or on leave holds a lien on his permanent post in view of R.3.13 unless his lien is suspended or is transferred under the appropriate rule and so has a title to hold that post when under suspension or on leave.”

16. The issue before us is clearly defined. The applicant presses the point that the 6th Respondent is ineligible for consideration for two reasons (1) on

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the ground that he does not possess continuous service of 8 years in the rank of DySP and (2) that he is facing criminal proceedings and has been denied integrity certificate by the State Government. It is admitted that 6th Respondent was suspended from service from 20.05.2010 to 05.12.2011 and the State Government has not so far regularized his period of suspension as duty. From this perspective, he does not possess 'continuous' service of 8 years in DySP rank. The learned Senior Counsel representing the applicant put before us the contention that by remaining under suspension, the officer does not lose his lien in the department, but it is not the lien which the Regulations insist upon. It is continuous service of 8 years and clearly 6th Respondent did not possess it.

17. In the reply statement filed on behalf of the Respondents-3&4, it is stated that the Union Public Service Commission received a representation relating to this issue with respect to the 6th Respondent. But they sent it to the State Government who did not respond. We wish the Commission had treated this matter with more rigour and seriousness. Whether 8 years of service truncated by a period of suspension would fulfill the required eligibility norm, is a matter which the Commission/SCM would have been best equipped to answer. Unfortunately, required diligence was found missing in this aspect.

18. On the question of whether an officer whose integrity certificate has

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not been supplied by the State Government is to be considered for final selection and included in the Select List is an issue which requires closest examination. The ready answer in favour of such a step would be to point out that if the officer is absolved of the charges before the Select List is brought out, denying him consideration on the ground that he is facing action would amount to injustice to the individual. But including him as a provisional candidate in the Select list itself subject to the final outcome in the departmental proceedings/criminal proceeding and subject to the State Government according him an integrity certificate appears to be irrational. It clearly uses up a vacancy when another eligible hand could have been considered for the same.

19. However, the primary question before us is whether the ineligibility of 6th Respondent, if established, would enable the applicant to occupy a place in the Select List. On an examination of the list titled "Assessment for the Select List, 2016" attached as Annexure A14, which is the minutes of the SCM, the applicant is at Sl.No.15 with the selection having stopped at Sl.No.14. If Sl.No.8, who is 6th Respondent in this case is excluded, applicant's claim is that he would get into the list of 13 selected candidates. This claim according to us is not established. The final list approved by the SCM has only 13 names and in the assessment of all 29 officers figuring in the zone of consideration, the applicant has a remark 'Very Good' in overall relative assessment, but so have eight other candidates figuring below his

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name. From the minutes also it is clear that no relative assessment was made in respect of candidates from Sl.No.15 to Sl.No.29 and it is presumptuous on the part of the applicant to claim that the next slot would have been his. Besides it is averred on behalf of the respondents that the validity of the list is only till 31st December of the year, which is behind us. For the above reasons the OA fails and is dismissed. No costs.

(ASHISH KALIA)
JUDICIAL MEMBER

(E.K.BHARAT BHUSHAN)
ADMINISTRATIVE MEMBER

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List of Annexures in O.A. No.180/00869/2018

1. **Annexure A1** – Copy of the GO(Rt) No.2274/2006/Home dated 05-10-2006 of the Under Secretary to Govt.
2. **Annexure A2** – Copy of the GO dated 29.11.2011 of the Additional Secretary to Government.
3. **Annexure A3** – Copy of the GO dated 08.05.2014 of the Additional Secretary to Government.
4. **Annexure A4** – Copy of the GO dated 14.10.2015 of the Deputy Secretary to Government.
5. **Annexure A5** – Copy of the relevant pages of GO dated 12.02.2016 of the Deputy Secretary to Govt.
6. **Annexure A6** – Copy of the GO dated 04.09.2015 relevant pages of the Seniority List of Deputy Superintendent of Police (General Executives) as on 01.03.2013 of the Additional Chief Secretary to Government.
7. **Annexure A7** – Copy of the Order dated 02.12.2016 in OA No.1009 of 2016 of this Hon'ble Tribunal.
8. **Annexure A8** – Copy of the communication dated 29.11.2016 of the Junior Superintendent for 5th respondent.
9. **Annexure A9** – Copy of the Letter dated 05.10.2018 with Enclosure V (Revised) Particulars of State Police Service Officers who are eligible for consideration for promotion to the IPS their Order of Seniority as on 1st January of the Select List Year of the Under Secretary & State Public Information Officer, Thiruvananthapuram.
10. **Annexure A10** - Copy of the GO dated 20.05.2010 of the Additional Chief Secretary - 2nd respondent.
11. **Annexure A11** - Copy of the Order dated 28.11.2011 of the Deputy Secretary to Government.
12. **Annexure A12** - Copy of the Order dated 27.05.2011 on Bail Application No.3786 of 2011 of the Hon'ble High Court of Kerala.
13. **Annexure A13** - Copy of the representation dated 13.02.2018 of the applicant.
14. **Annexure A14** - Copy of the Minutes of the Selection Committee

along with the covering letter dated 04.10.2018 of the Deputy Secretary & State Public Information Officer.

15. **Annexure A15** - Copy of the Notification dated 30.08.2018 and published in the Weekly Gazette of India September 15 - September 21, 2018 of the Under Secretary to the Government of India.

16. **Annexure A16** - Copy of the Notification dated 30.08.2018 of the Under Secretary to Government of India.

17. **Annexure A17** - Copy of the GO dated 07.09.2018 of the Additional Secretary to Government.

18. **Annexure A18** - Copy of the Government of India MHA letter No.28/38/64-AIS (III) dated 05.01.1965.

19. **Annexure A19** - Copy of the OM No.22011/4/91-Estt.(A) dated 14.09.1992 Government of India, Department of Personnel and Training.

20. **Annexure R1** - Copy of Circular No.18517/B3/91/Law dated 27.11.1991.

21. **Annexure A20** - Copy of the decision of the Central Administrative Tribunal, Allahabad Bench reported in (1988) 8 ATC 16.

22. **Annexure A21** - True copy of the Government of India (Authorisation of officers for verification of pleadings and other documents to be filed in the Central Administrative Tribunal Rules, 1993.
