

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K. SURENDRA MOHAN

&

THE HONOURABLE MR. JUSTICE SHAJI P. CHALY

TUESDAY, THE 22ND DAY OF DECEMBER 2015/1ST POUSHA, 1937

OP (CAT).No. 172 of 2015 (Z)

AGAINST THE ORDER IN OA 180/01110/2014 of CENTRAL ADMINISTRATIVE
TRIBUNAL, ERNAKULAM BENCH DATED 08-09-2015.

PETITIONER/APPLICANT:-

P. RADHAKRISHNAN,
SUPERINTENDENT OF POLICE (NON IPS CADRE), RETIRED
THAYYAPARAMBIL HOUSE, KODUNGALLUR, THRISSUR DISTRICT
PIN - 680 664, PRESENTLY RESIDING AT 5A
SUNDALE APARTMENTS, KIZHAKKUMPATTUKARA, THRISSUR
PIN - 680 005.

BY ADVS. SRI. P. CHANDRASEKHAR
SRI. P. SREEKUMAR
SRI. S. PRASANTH
SRI. SOORAJ T. ELENJICKAL
SRI. P. A. MOHAMMED SHAH
SMT. UMA
SRI. K. NANDAKUMAR
SMT. V. A. HARITHA
SMT. MARY RESHMA GEORGE
SMT. P. M. MAZNA MANSOOR

RESPONDENTS:-

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1. THE UNION OF INDIA
REPRESENTED BY ITS SECRETARY
MINISTRY OF HOME AFFAIRS, NEW DELHI - 110 012.
 2. THE UNION PUBLIC SERVICE COMMISSION
REPRESENTED BY ITS SECRETARY, SHAJAHAN ROAD
NEW DELHI - 110 069.
 3. THE SELECTION COMMITTEE FOR INDIAN POLICE SERVICE
REPRESENTED BY CHAIRMAN
UNION PUBLIC SERVICE COMMISSION, SHAJAHAN ROAD
NEW DELHI - 110 069.
 4. THE STATE OF KERALA
REPRESENTED BY THE CHIEF SECRETARY
GOVERNMENT SECRETARIAT
THIRUVANANTHAPURAM - 695 001.

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5. THE STATE POLICE CHIEF
POLICE HEAD QUARTERS, THIRUVANANTHAPURAM - 695 001.

R1 BY ADV. SRI.P.K.RAMKUMAR, CGC
ADV. SRI.THOMAS MATHEW NELLIMOOTTIL, SC UPSC
SRI.N.NAGARESH, ASSISTANT SOLICITOR GENERAL OF INDIA
GOVERNMENT PLEADER SRI. RINNY STEPHEN CHAMAPARAMBIL

THIS OP (CAT) HAVING BEEN FINALLY HEARD ON 22-12-2015, ALONG WITH
OPCAT. 173/2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

OP (CAT).No. 172 of 2015 (Z)

APPENDIX

PETITIONER'S' EXHIBITS :

P1. A TRUE COPY OF O.A.180/01110/2014 ALONG WITH ANNEXURE BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL, ERNAKULAM BENCH.

P2. A TRUE COPY OF THE REPLY STATEMENT.

P3. A TRUE COPY OF THE REJOINDER.

P4. A TRUE COPY OF THE NOTIFICATION DATED 17.03.2015 OF THE 1ST RESPONDENT.

P5. A TRUE COPY OF THE ORDER DATED 8TH SEPTEMBER, 2015 IN OA NO.180/01110/2014 OF THE CENTRAL ADMINISTRATIVE TRIBUNAL, ERNAKULAM BENCH.

RESPONDENTS' EXHIBITS : NIL

//TRUE COPY//

P.A. TO JUDGE

smv

**K. SURENDRA MOHAN
&
SHAJI P. CHALY, JJ.**

O.P.(CAT) Nos.172 & 173 of 2015

Dated this the 22nd day of December, 2015

JUDGMENT

Shaji P. Chaly, J.

These Original Petitions are filed by the applicants against the common order of the Central Administrative Tribunal, Ernakulam Bench in O.A. Nos.1110 of 2014 and 211 of 2014 dated 8.9.2015, whereby the Tribunal dismissed the applications filed by the petitioners seeking to confer them with the Indian Police Service (IPS). The Tribunal has considered the Original Applications along with other Original Applications and passed a common judgment. Since the subject matter of the Original Petitions under consideration is of a similar nature, we also propose to dispose of these two petitions by a common judgment.

2. The common question that arises in these Original Petitions is whether the petitioners are entitled to be conferred with Indian Police Service (IPS) by relaxing the rules and regulations provided for conferring Indian Police Service. The

basic facts in these Original Petitions are recited hereunder separately, for convenience and appreciation of the question in a proper manner.

3. O.P.(CAT) No.172/2015

Petitioner is a retired Superintendent of Police (Non IPS) in the Kerala State Police Service on 30th April, 2014. Petitioner started his career in Kerala State Police service as a direct recruit in the post of Sub Inspector of Police through Public Service Commission in August 1985 and thereafter he was promoted to Circle Inspector of Police in the year 1996. While continuing so, petitioner was recommended for promotion to the post of Deputy Superintendent of Police (Dy.S.P.) by the Department Promotion Committee (DPC) which met on 25.8.2003 and 26.8.2003, evident from Annexure A1. Accordingly a select list was prepared for 48 vacancies which were to be filled up during 2003 as per Annexure A2. According to the petitioner, Annexure A2 select list was for the year 2003. Annexure A3 list was prepared for selection of officers to the post of Dy.S.P. for the year 2002 and the same was for existing and anticipated 34 vacancies. Accordingly all of them were appointed during the year 2002 itself. It is the case of the

petitioner that, the DPC for the year 2003 should have been convened on or before 9.4.2002. But the DPC meeting was delayed due to no fault of the petitioner and other similarly situated persons. It is contended by the petitioner that if the DPC had met in April, 2003, the petitioner would have got promotion to the post of Dy.S.P. much earlier and having filled all the vacancies for the year 2002, petitioner could have been appointed in any of the vacancies in the year 2003. It is also the case of the petitioner that subsequent DPCs for the year 2004 were held on 8.4.2005 and selected 57 candidates for the vacancies of 2004 and anticipated vacancies of 2005 as evident from Annexure A4.

4. It is contended that, petitioner could have been appointed as Dy.S.P. from 26.08.2003, but for the willful and deliberate action on the part of the 4th respondent, the petitioner was not responsible for the delay caused in convening the DPC. It is also contended that, being confronted with the said factual circumstance, petitioner made representation dated 17.2.2014 requesting the 4th respondent to grant him notional promotion as Dy.S.P. w.e.f. 25.9.2003 and include his name in the zone of consideration for appointment to the Indian Police Service (IPS).

But the same was rejected by the 4th respondent as per Annexure A5 order dated 28.10.2014. It is contended that even according to Annexure A5 the total vacancies existing and anticipated for which the DPC had met in 2003 were 48 and out of which 6 were said to be anticipated vacancies and therefore, 42 vacancies existed in the year 2003 and the petitioner was entitled for appointment in one of the said 42 vacancies since his rank in the select list was 40. Therefore, petitioner contends that the delay in appointing him in spite of his eligibility for appointment in 2003, is highly arbitrary, unreasonable and illegal and therefore, petitioner is entitled to be appointed as Dy.S.P. w.e.f. 25.9.2003.

5. It is the further case of the petitioner that if he had been promoted in 2003 he would have come within the zone of consideration for appointment to Indian Police Service in terms of Rule 4 of Indian Police Service Recruitment Rules 1954 (hereinafter referred to as “the Rules” for short) and the Indian Police Service (Appointment by Promotion) Regulations 1955 (hereinafter referred to as “the Regulations” for short). Regulation 3 of the Regulations provides that there shall be constituted for a State cadre specified in column 2 of the Schedule, a committee consisting of the Chairman of the

Commission or where the Chairman is unable to attend, any other member of the Commission representing it and other members specified in corresponding entry of column 3 of the Schedule. Sub Regulation (1) of Regulation 5 of the Regulations provides that 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.

6. 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 first day of January in which the meeting is held, in the posts available for them under Rule 9 of the Recruitment Rules. Sub Regulation (2) of Regulation 5 stipulates that the Committee shall consider for inclusion to the said list, the cases of members of the State Police Services in the order of seniority in that service of a number which is equal to three times the number referred in sub-regulation (1). It has also been 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 the committee shall consider all the eligible officers.

However proviso to Regulation (2) of Regulation 5 provides as follows:

“Provided also that the committee shall not consider the case of 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.”

Sub Rule 3 of Regulation 5 of the Regulations provides as follows:

“The Committee shall not consider the cases 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 for which the select list is prepared.”

7. The case of the petitioner is that, he is not having the minimum of 8 years service and further that he has crossed the age of 54 years. But it is contended that had he been given promotion to the post of Dy.S.P. in the year 2003 from the select list, petitioner would have come within the zone of consideration for appointment to Indian Police Service for the year 2012 since

he would have completed 8 years residency period in the post of Dy.S.P. and he would not have crossed 54 years as on 1.1.2012. In that situation, it is also contended by the petitioner that his promotion to the post of Dy.S.P. was deliberately and illegally delayed till 1.7.2004 and therefore, he was taken out of the zone of consideration as on 1.1.2012.

8. It is thereupon that the petitioner challenges Regulation 5 of the Regulations 1955 in so far as it provides 8 years service as Dy.S.P. in the State cadre without providing any provision for relaxation of the said residency period for meritorious officers like the petitioner being arbitrary, unreasonable, unconstitutional and violative of Articles 14 and 16 of the Constitution of India. Petitioner further challenges Regulation 5 also on the ground that the stipulation of the age of 54 years was violative of Articles 14 and 16 of the Constitution of India apart from being void and inoperative and therefore, liable to be struck down. Petitioner also contends that several, persons who are included in the select lists of Indian Police Service have either crossed 54 years or has not completed 8 years of minimum service and who have also stigmatic entries in the service records and against whom vigilance and CBI investigation were

pending. Petitioner further contends that he has excellent and outstanding service record and has received several awards and good service entries. Therefore, petitioner contends that he is entitled to be appointed in preference to the persons who are already included in the select list and who are having stigmatic service in the State Police.

9. O.P.(CAT) No.173 of 2015

In the Original Applications, there were two two applicants and the petitioner was the first applicant. Petitioner joined in the service of the State Police on 2.12.1985 as Sub Inspector and thereafter was promoted as Circle Inspector during November 1996 and later promoted and appointed as Deputy Superintendent of Police (Dy.S.P) in the month of July, 2004. Petitioner got promoted as Superintendent of Police (Non IPS) in the month of April 2011 and continued in service in that post till his retirement. Petitioner completed 8 years in the State Police Service in the post of Deputy Superintendent of Police/Superintendent of Police in the month of July 2012 and thus became eligible to be considered for appointment by promotion to Indian Police Service as per the provisions of Regulations 1955.

10. It is the case of the petitioner that the Selection Committee for preparing select list of State Police Officers of Kerala for promotion to IPS for the year 2012 was convened at New Delhi, but the petitioner was not included in the zone of consideration in spite of his eligibility. Petitioner contends that the exclusion of the petitioner from the zone of consideration was on account of the stipulations in Rule 5(2) and 5(3) of the IPS (Appointment by Promotions) Regulations 1955 and therefore, he contended that these stipulations are unjust, unfair, unreasonable and violative of Article 14 of the Constitution of India. Like the case of the petitioner in the other Original Petition (supra), it is the case of the petitioner that he was provided with promotion to the post of Dy.S.P. in the year 2004 only, whereas the same was actually notified in September 2003. He would have completed the required service and would have been included in the select list of IPS officers for the year 2012 and it was not due to the fault of the petitioner that the promotion was delayed. Even though Annexure A2 representation was submitted, the same was not considered by the State Government. But quite contrary to the expectation of the petitioner, he came to know about the decision to confer IPS

on 7 others. Petitioner also contended that he had meritorious service in the State Police and therefore, he is more competent than any of the persons selected to confer with IPS. It is also contended by the petitioner that, ratio of direct recruits and promotees should be raised from 33 1/3 % to 50%. With the above said contentions petitioner challenges the minimum qualifying service of 8 years prescribed under the Regulations and the 54 years age limit fixed to include in the zone of consideration being unreasonable classification without any nexus sought to be achieved.

11. It is also contended that by fixing the above said criteria efficient and meritorious police officers in the State Police are overlooked. It is also contended that undesirable and incompetent persons are included in the select list. Therefore, the petitioner seeks to strike down 5(2) and 5(3) of Regulations 1955 which fix the basic minimum criteria to be included in the zone of consideration and seeks conferment of IPS to the petitioner.

12. Respondents, i.e. State and the Officers representing the State have filed reply statement refuting the allegations in the Original Applications and further contended that there is no

laches, negligence or other illegality on their part in appointing the petitioners to the post of Dy.S.P. as they claim. It is also contended that to the representation submitted by the petitioners in both the cases suitable replies were issued showing reasons why they were not promoted during the year 2003 and if they were aggrieved by the order passed by the State, they should have approached the suitable forum rather than approaching the Central Administrative Tribunal to redress their grievance. It is also contended that the grievance voiced by the petitioners before the Central Administrative Tribunal is not maintainable for want of jurisdiction. Apart from the same, it is contended by the State Government that the Regulations 1955 envisages distinct roles in respect of State Government, the Union Public Service Commission and the Central Government. The State Government have the exclusive role for drawing up the list of eligible State Police Officers who come within the zone of consideration in accordance with the seniority and the merit of officers in the State Police Service.

13. It is also contended that the Select Committee ordinarily meets every year to prepare a list of members of the State Police Service suitable for promotion to IPS cadre. It is the

normal practice that the Committee will 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 in a substantive post in the State Police Service and has completed not less than eight years of continuous service in the post of Dy.S.P. or in any other post or posts declared equivalent thereto by the State Government. The Committee also does 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 for which the select list is prepared. Since the petitioners have not attained the mandatory service of 8 years as on 01.01.2012 and further that during the current year of consideration he should not have attained 54 years as on the first day of January of that year, petitioners could not be considered for selection. Since the petitioners were lacking the aforesaid basic qualification to be considered within the zone of consideration for conferring IPS, they are not legally entitled to make any claim for conferment of IPS. It is also contended that the petitioners are not entitled to the relief sought for.

14. We heard learned counsel Sri.P.Chandrasekhar appearing for the petitioners and learned counsel

Sri.P.K.Ramkumar appearing for respondents 1 to 3 and learned Senior Government Pleader appearing for the State and its officers.

15. The foremost contention advanced by the learned counsel for the petitioners is that, Regulation 5 of the Regulations 1955 fixing minimum 8 years residency period for appointment by promotion to Indian Police Service without providing relaxation of the residency period in respect of officers having meritorious service as has been provided in other Central Government Recruitment Rules is highly arbitrary, discriminatory and therefore, violative of Articles 14 and 16 of the Constitution of India. So also it is contended that the stipulations in Regulation 5 of Regulations 1955 to the effect that officers who have crossed 54 years shall not be considered for appointment to Indian Police Service is also discriminatory, arbitrary, oppressive and against the purpose and intent of the Rules and Regulations. It is also contended that by fixing such stipulations in Regulation 5 no reasonable nexus is sought to be achieved, nor such a classification has any rationality, for the reason that by making such classification the Indian Police Service is losing meritorious and competent officers who have

unblemished service in the State Police. It is also contended that one of the persons included in the select list have not attained 8 years and so also many of the officers included in the list have crossed the age of 54 years and also facing disciplinary action. Therefore, it is contended that the petitioners who are having meritorious service, excellent track record, many good service entries in the service record and recipient of many awards are not included in the zone of consideration for want of qualification prescribed under Regulation 5 of Regulations 1955. Therefore, learned counsel contended that Regulation 5 so far as concerning the minimum qualifying service of 8 years and fixation of 54 years to be included in the zone of consideration as at the year of consideration is liable to be struck down and further issue directions to respondents to confer on the petitioners, the Indian Police Service (IPS).

16. On the other hand, learned counsel for respondents 1 to 3 contended that, they are liable to consider the petitioners for conferment of IPS only if the State Government included them in the select list for the zone of consideration. Having not done so, respondents 1 to 3 are not liable to consider the case of the petitioners.

17. Learned Senior Government Pleader contended that petitioners did not acquire minimum qualification during the year 2012 and therefore, they could not have been considered to the select list prepared for zone of consideration. There was no laches, willful negligence or deliberate attempt as alleged by the petitioners on the part of the State Government to provide due promotions to them to the post of Dy.S.P. Since the petitioners were not having minimum qualification as provided under Regulations 1955, the State Government could not have included the petitioners in the zone of consideration. Moreover, it is vehemently contended that when representations were filed by the petitioners appropriate reply was given by the State Government and if they were aggrieved, they ought to have approached the appropriate forum and rectified the mistake if any caused by the State Government. Having not done so, the Central Administrative Tribunal is not the forum for correcting the mistake alleged to be committed by the State Government. It is also contended that the Central Administrative Tribunal was lacking jurisdiction to entertain the claim raised by the petitioners.

18. Having considered the rival submissions, perusal of

pleadings and evidence on record, we are of the considered opinion that the sole question to be considered is whether the petitioners were eligible to be included in the list of candidates coming within the zone of consideration. Even according to the petitioners, they were not eligible to be considered for want of qualification prescribed under Regulation 5 of Regulations 1955 wherein a minimum qualifying service of 8 years is prescribed for the post of Dy.S.P. and further that the petitioners should not have crossed the age of 54 as on 1st January of the year of the select list prepared for consideration to the zone. The contention raised by the petitioners is that had they been given promotion against vacancies existing in 2012 to the post of Dy.S.P., they would have been entitled to be included in the select list. First of all the selection to the post of Dy.S.P. is absolutely under the power of the State Government. If the petitioners were not considered to the post of Dy.S.P. in accordance with the rules of the State Government, the remedy available to the petitioners was to approach the suitable forum and get it rectified. Petitioners are not having a case that they have challenged the action of the State Government before the appropriate forum. Having not done so, petitioners cannot be

heard to say at this distance of time that, had they been promoted in the year 2012 they would have been included in the select list of IPS officers. It is also equally unsustainable and unrealistic to contend before the Central Administrative Tribunal that, due to the laches on the part of the State Government they could not secure the minimum qualification prescribed under Regulation 5 of Regulations 1955.

19. In our view, having not rectified, if at all any defect consequent to the inaction of the State Government in not providing promotion to the petitioners to the post of Dy.S.P., petitioners are not entitled as of right to contend before the Central Administrative Tribunal that if they had been included in the select list in 2012, they would have been entitled to get promotion to the Indian Police Service. Petitioners have not acquired the basic qualification as provided under Regulation 5 of Regulations 1955 and therefore, they are not entitled to make any claim for conferment of Indian Police Service.

20. Even though petitioners have challenged Regulation 5 of the Regulations, so far as concerning the minimum qualification of 8 years and the age of 54 years contained thereunder, the challenge cannot be sustained firstly due to the

fact that the Regulation was in vogue from the year 1955 onwards and tested against the time. That the suitability by fixing a minimum qualifying service of 8 years and age of 54 years cannot be said to be unreasonable or arbitrary. The conferment of Indian Police Service is a selection and it is only just and reasonable that reasonable parameters are stipulated in order to find out suitable candidates for promotion taking into account their meritorious service in the State Police. It is also reasonable that by fixing 8 years of service in the feeder post, the character, conduct, competency, efficiency, dependability, intelligence, responsibility etc. of a Police Officer could be discerned. That is the reason why a reasonable period of 8 years is fixed as a basic requirement to be eligible for consideration for conferment of IPS. So also maximum age limit of 54 years is fixed for the reason that the State Government should get the service of such superior officers for a minimum future period of at least six years. Therefore, the fixing of 54 years as a basic requirement under Regulation 5 cannot also be said to be arbitrary or unreasonable stipulation so as to interfere with the fundamental rights guaranteed to the petitioners under Articles 14 and 16 of the Constitution of India.

21. Learned counsel has brought our attention to Ext.P4 gazette notification dated 17.03.2015, by which Regulation 5(3) as it existed was substituted and the age limit prescribed is enhanced to 56 years. It is contended that even now there are vacancies remaining without sufficient qualified candidates and therefore, taking into account the amendment cited supra, the petitioners can be considered for the post of IPS. We do not propose to make any finding on that issue but such matters are left open to the respondents, for consideration if and when suitable applications are made by the petitioners.

22. Learned counsel for the petitioners taking into account the contentions raised in the Original Applications as well as in the Writ Petition, contended that several unqualified persons who have not satisfied the minimum eligibility criteria provided under Regulation 5 as well as incompetent persons who are facing disciplinary proceedings are given IPS selection and therefore, the petitioners who are meritorious candidates, even though they do not satisfy the minimum eligibility criteria, are entitled to get similar treatment, which thus means negative equality is pressed into service by the learned counsel for the petitioners in order to secure the reliefs sought for. First of all

in order to canvass any proposition of law based on Article 14 of the Constitution, it must be established that equal treatment is sought for on a similar legal foothold. This is the law laid down by the Apex Court in **Union of India v. International Trading Co. and others** reported in [(2003) 5 SCC 437] and also in **Kastha Niwarak G.S.S Maryadit, Indore v. President, Indore Development Authority** reported in [(2006) 2 SCC 604]. Paragraph 13 of the first among the judgments is extracted to consider the questions so posed by the learned counsel for the petitioners.

“What remains now to be considered, is the effect of permission granted to the thirty two vessels. As highlighted by learned counsel for the appellants, even if it is accepted that there was any improper permission, that may render such permissions vulnerable so far as the thirty two vessels are concerned, but it cannot come to the aid of the respondents. It is not necessary to deal with that aspect because two wrongs do not make one right. A party cannot claim that since something wrong has been done in another case direction should be given for doing another wrong. It would not be setting a wrong right, but would be perpetuating another wrong. In such matters there is no discrimination involved. The concept of equal treatment on the logic of

Article 14 of the Constitution of India (in short "the Constitution") cannot be pressed into service in such cases. What the concept of equal treatment presupposes in existence of similar legal foothold. It does not countenance repetition of a wrong action to bring both wrongs on a par. Even if hypothetically it is accepted that a wrong has been committed in some other cases by introducing a concept of negative equality the respondents cannot strengthen their case. They have to establish strength of their case on some other basis and not by claiming negative equality."

Therefore, petitioners are not entitled to secure any relief on the basis of such negative equality, which is also deprecated by the Apex Court in the decision cited supra. Such contentions sans merit also.

23. Having appreciated the pros and cons, we are of the considered opinion that the Tribunal has taken into account the factual and legal circumstances involved in the case and has arrived at a right conclusion that the petitioners are not entitled to any reliefs sought for. Petitioners have also not made out a case for our interference, much less any illegality or other legal infirmities are brought to our notice warranting our interference in the order passed by the Tribunal, invoking the jurisdiction

conferred on this Court under Article 227 of the Constitution of India.

Resultantly, Original Petitions fail and they are accordingly dismissed.

Sd/-
K. SURENDRA MOHAN
JUDGE

Sd/-
SHAJI P. CHALY
JUDGE

//true copy//

P.A. To Judge

smv
27.10.2015