

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.No.483/2001.

Tuesday, this the 20th day of May, 2003.

CORAM:

HON'BLE MR.T.N.T NAYAR, ADMINISTRATIVE MEMBER
HON'BLE MR.K.V.SACHIDANANDAN, JUDICIAL MEMBER

Thomas Mathew, IPS,
Son of Mathew,
Superintendent of Police,
Crime Branch,
Criminal Investigation Department,
Ernakulam.

Applicant

(By Advocate Shri. P.K.Madhusoodhanan)

Vs.

1. Senior Accounts Officer,
Indian Audit and Accounts Department,
Accountant General (A&E), Kerala,
P.B.No.5607, Thiruvananthapuram.
2. Accountant General (A&E) Kerala,
Post Box No.5607, M.G.Road,
Thiruvananthapuram-39.
3. State of Kerala, rep. by its
Chief Secretary,
Kerala Government Secretariat,
Thiruvananthapuram.
4. Secretary,
Ministry of Personnel,
Public Grievances and Pensions,
New Delhi.
5. Union of India, rep. by its
Secretary, Ministry of Home Affairs,
New Delhi.

Respondents

(By Advocate Shri A.Renjith, GP (R.1-3)

(By Advocate Shri C.Rajendran, SCGSC (R4&5)

O R D E R

HONBLE K.V.SACHIDANANDAN, JUDICIAL MEMBER

The applicant started his career under the third respondent as Sub Inspector of Police on 3.4.1963. He was promoted as Circle Inspector of Police on 17.8.1971, as Deputy Superintendent of Police on 21.5.1980 and as Superintendent of Police on 30.7.1991. He was confirmed in the post of Superintendent of Police on 23.9.1992. On selection by the Union

Public Service Commission, the applicant was promoted to Indian Police Service (IPS, for short) Cadre and was appointed in IPS Cadre with effect from 1.1.1995 by G.O.(Rt) No.3732/95/GAD dated 25.4.95 of the 3rd respondent and by Notification No.1-14011/53/93-IPS.I dated 12.5.95 of the 5th respondent. The applicant was drawing the salary with the basic pay of Rs.4400/w.e.f. 1.8.94 at the time of his entry into IPS Cadre on 1.1.1995. The applicant's basic pay in the IPS Cadre was fixed at Rs.4125/- with effect from 1.1.1995 in the pre-revised scale of Rs.3000-4500 and sanctioned the special allowance of Rs.500/in order to rectify the disparity arising out of the implementation of Central Scales for State Government employees. This is evident from the pay slip dated 4.10.95 (A1). Consequent to the pay revision order of 1997 dated 17.10.97, the basic pay of the applicant was fixed at Rs.12,600/- with effect from 1.10.97, in the revised scale of Rs.10,000-15,200 instead of fixing it with effect from 1.1.96. The pay slip dated 20.11.1997 is A-3. True copy of the Pay Slip as on 1.1.96 is A4. The applicant was sanctioned the basic pay of Rs.12,925/- w.e.f. 1.1.1998 till 1.1.2000 on which date he was promoted to the Junior Administrative Grade of IPS in the scale of pay of Rs.12000-15,500 by G.O.(Rt) No.159/2000 GAD dated 6.1.2000. The applicant averred in the O.A. that while fixing the pay of the applicant in IPS Cadre and implementing the pay revision Order of 1997, the protection of pay envisaged to officers promoted and appointed to IPS Cadre by IPS (Appointment by promotion) Regulation, 1955, were erroneously denied to him and thereby there occasioned the anomaly of juniors getting higher pay than the applicant. He submitted a representation dated 10.11.99 to the 2nd respondent requesting him to rectify the same and stepping up his pay vide Annexure A-5. By letter dated 23.12.99 the first respondent replied that the matter of anomaly in fixation of pay in IPS has been referred to the 4th respondent.

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The anomaly of juniors getting higher pay than the applicant is evident from the gradation lists of IPS Kerala Cadre Officers as on 1.1.97, 1.7.98 and 1.1.2000, the relevant extracts of which are A-6, A7 and A-8 respectively. In A-6 the applicant's juniors, Sri.KG.Somasundara Menon and K.R.Purushothaman Pillai were getting lesser pay whereas in A-7 they were getting higher pay than the applicant. The anomaly was occasioned due to erroneous implementation of the pay revision due to the callous negligence and default of the respondents and not due to any default of the applicant. The action on the part of the respondents is discriminatory, arbitrary, and illegal for denying atleast the pay to that of his juniors. Therefore, it is violative of Articles 14 and 39(d) of the Constitution of India.

2. Vide A-9 dated 22.5.2000, applicant's claim for stepping up of pay with that of his juniors was rejected. This was done on the basis of the letter dated 27.3.2000 of the Government of India stating that it would not be possible to rectify the anomaly if the same arises consequent to the state pay revisions effected after the said seniors have been confirmed in the respective All India Services and the benefit of refixation cannot be extended for an indefinite period. This letter was not communicated or served to the applicant. The stand taken in A-9 is irrational, perverse and illegal. The applicant preferred O.A.863/00 before this Tribunal. In the reply statement filed by the respondents 1 & 2 in that case, it is stated that the pay drawn by the applicant in the scale of pay with effect from 1.3.1992 was not reckoned for the fixation of pay on promotion to IPS and that anomaly was brought to the notice of the 4th respondent. It is further stated that the existing provisions in AIS Manual do not provide for stepping up of pay and, therefore,

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the respondents 1 & 2 are not in a position to consider the request of the applicant. The anomaly has arisen due to his earlier confirmation.

3. Annexure A-10 is a copy of the letter annexed as R/1 to the reply statement filed in O.A. 808/00, which is similar to A-9 in this OA. According to Rule 4(5) of the IPS (Pay) Rules 1954 "the initial pay of an Officer of the State Police Service who has been appointed to hold a cadre post in an officiating capacity in accordance with Rule 9 of the Indian Police (Cadre) Rules, 1954 shall be fixed in the manner specified in Section III of Schedule II. As per G.O.(P)No.600/93/Fin. dated 25.9.1993 introducing revised scale of pay to State Government employees from 1.3.1992 the scale of pay of Superintendent of Police (non-IPS) was revised to Rs.3900-125-4775-150-5075 + special pay of Rs.100. The special pay of Rs.100 was part of the scale of pay and hence, that special pay has to be treated as part of the actual pay for the purpose of fixation of pay in the senior time scale of IPS. On 30.7.94, the applicant had completed 3 years in the post of Superintendent of Police (non-IPS) and hence under Sub Section (1) of Section I of Schedule II of the Rules his pay has to be fixed as follows:

Actual pay on 1.8.94 -	Rs.4400 + Special Pay of Rs. 100.
One increment in the IPS scale for	
3 years service in the non-IPS post,	
subject to a minimum of Rs.150/-	Rs.150
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Total	--Rs.4550 + special pay of Rs.100.

Since the maximum pay in the IPS cadre was Rs.4500/- and the pay to which the applicant was entitled on fixation of his pay in the IPS cadre on 1.1.1995 was Rs. 4550 + special pay of

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Rs. 100, his pay has to be fixed at Rs.4500 + personal pay of Rs.100 with effect from 1.1.1995. The personal pay under the Rules has to be absorbed in future increase in pay.

4. Under Sub Rule (2) of Section 1 of Schedule II of the Rules the initial pay of a promoted officer who is holding substantive appointment in the higher scale of the State Police Service shall be fixed at the stage of the senior time scale of the Indian Police Service next above his actual pay in the higher scale. As per the above rule, fixation has to be made as follows:

Actual pay on 1.1.1995 in the higher scale (substantive Supdt. of Police, Non-IPS) .--Rs.4550 + special pay of Rs.100

Stage of the senior time scale of the IPS next above the actual pay in the higher scale, non-IPS .--Rs.4550 + special pay of Rs.100

As per the proviso to Sub Section (2) of Section 1 of Schedule II of the Rules, the pay of the applicant has to be fixed at Rs.4550 + Rs.100 as personal pay with effect from 1.1.1995. Thus, it is clear that if a fixation is made in accordance with the provisions contained in Section 1 of Schedule II of the Rules the pay of the applicant has necessarily to be fixed at Rs.4500 + personal pay of Rs.100 in the IPS cadre with effect from 1.1.1995.

5. It is submitted that when an anomaly was noticed in the case of the fixation of pay of the applicant, the correct action was that the 2nd respondent necessarily should have referred the matter to the Central Government and got the anomaly removed by



getting suitable relaxation of the Rules. But instead of doing so, the Ist respondent rejected the request of the applicant in an arbitrary manner. Aggrieved by the said impugned orders A-9 and A-10 the applicant has filed this O.A. seeking the following reliefs:

- "i) call for the entire records leading to Annexures A/9 and A-10 and set aside the same.
- ii) to declare that the applicant is entitled to have his pay fixed in the IPS Cadre on the basis of the pay drawn by him in the non-IPS Cadre as a confirmed Superintendent of Police applying the provisions contained in Section I of Schedule II of the Indian Police Service (Pay) Rules without giving effect to the unreasonable definition of higher scale of pay contained in the clause (iii) of Schedule II of the said Rules;
- iii) to declare that the definition of higher scale of pay contained in clause (iii) of Schedule II of the Indian Police Service (Pay) Rules is unreasonable and unworkable and hence should not be enforced for fixation of the pay of the applicant in the IPS Cadre with effect from 1.1.1995;
- iv) to declare that the definition of higher scale of pay contained in clause (iii) of Schedule II of the Indian Police Service (Pay) Rules is unconstitutional, irrational and ab initio void;
- v) issue necessary directions to the respondents to step up his pay to that of his juniors Sri K.G.Somasundara Menon or K.R.Purushothaman Pillai and disburse the arrears

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of salary arising therefrom to him and also grant him pension according to the revised pay fixation and consequential increase in his pay on his retirement from service on superannuation;

vi) grant such other and further reliefs as this Hon'ble Tribunal may deem fit and proper in the circumstances of the case including costs."

6. The respondents 1,2 and 5 have filed separate reply statements contending that A-9 and A-10 do not call for any interference and the pay has been fixed applying the provisions contained in Section I of Schedule II of the IPS (Pay) Rules without giving effect to the unreasonable definition of higher scale of pay contained in Clause III of Schedule 11 of the said rules. The applicant was appointed in the IPS on 1.1.1995 and his pay was fixed at Rs.4250/- from that date and his pay was revised consequent on the revision of the scales of pay of AIS officers and his pay was revised and fixed at Rs.12275/- from 1.1.1996 in the senior scale of IPS, i.e. Rs. 10000-15200 and subsequent increments were authorised to him till 1.1.2000 i.e. the date of promotion to the grade of Junior Administrative Grade. Shri K.R.Purushothaman Pillai and Shri K.G.Somasundara Menon were promoted to IPS on 3.6.1996 and 9.4.1996 respectively. They became eligible for pay at a higher rate than the applicant by virtue of the fact that Shri K.R.Purushothaman Pillai and Shri K.G.Somasundara Menon were on probation as on 1.3.1997 and therefore, entitled to the State Pay revision effective from 1.3.1997. The claim for stepping up of the pay of the applicant with that of the juniors were considered by this Bench of the Tribunal and dismissed since the regulation of pay was made strictly as per Manual provisions and clarifications issued by the Government of India. His contention that he was confirmed as

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Superintendent of Police (SP, for short) on his selection to IPS cadre and, therefore, the substantive pay of Rs.4450/- + Special Pay Rs.100/- that was drawn by the applicant from 1.8.1994 has to be reckoned for fixation of pay in the IPS cadre, cannot be acceded to. The rules for fixation of pay of State Police Service Officers on their appointment to IPS are laid down in Section 1 of Schedule 11 of IPS Pay Rules, 1954. Accordingly, the pay that has reckoned for the purpose of fixation of pay in IPS is the pay they were drawing in the State Police Service in the lower/higher scale which was in force as on 1.1.1986 or any date subsequent thereto. The scales of pay of State Police Service Officers were revised with effect from 1.7.1988 on the pattern of Central revision as on 1.1.1986. and the applicant's pay was fixed at Rs.4125/- from 1.1.1995. and since Shri Thomas Mathew was subsequently confirmed in the higher scale of SP with effect from 23.9.1992, his pay was fixed by reckoning the special pay of Rs.100/- also, attached to the post, applying clause (2) of Section 1 of Schedule 11 which says that "the initial pay of the officer who is substantive in the higher scale of State Police Service shall be fixed at the stage of the senior scale next above his actual pay in the higher scale of State Police Service". As per the above provisions, his pay was fixed as below:

Pay as Superintendent of Police in the scale of Rs.
2640/3815 + 100 Spl. Pay (i.e. revised scales effective
from 1.7.1988)

3815 +

140 (first stagnation inct.)

140 (second stagnation inct.)

100 (Special Pay)

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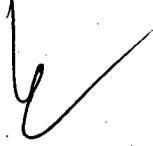


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Next stage in the Senior Scale of IPS i.e. Rs.3000-4500
= Rs.4250 from 1.1.1995.

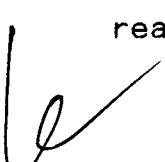
7. Government had also sanctioned a special allowance of Rs.500/- to all Senior Scale Officers and Junior Administrative Grade Officers in order to rectify the disparities arising out of implementation of Central Scales of pay for the State Government employees. Thus though the pay was fixed at Rs.4250/- only whereas he was drawing Rs.4450/- on 1.3.1992, revised scale of pay as on the date of his promotion to IPS Cadre, by the grant of Rs.500/- in addition, there was no drop in emoluments as a result of regulation of pay in the IPS cadre scale of pay. Pay drawn in the scale of pay which came into force with effect from 1.3.1992 was not reckoned for the fixation of pay on promotion to IPS in accordance with the specific clarifications issued by Government of India in letter No.11030/4/94/AIS II dated 28.6.1994 and 11030/4/94/AIS II dated 23.11.1994. The pay of Rs.4400/- which the applicant was drawing as on 1.8.1994 is the pay in the scale of pay effective from 1.3.1992, consequent on second revision after 1.1.1986 and this could not be reckoned for purposes of fixation of pay in IPS in view of the specific clarification of Government of India mentioned above.

8. The pay of IPS officers were revised with effect from 1.1.96 as per IPS (Pay) Seventh Amendment Rules 1997. Government of Kerala, merging 1510 points of All India consumer Price Index, have revised the scales of pay of State Police Service Officers with effect from 1.3.1997 on the same pattern as the Central revision. Therefore, by virtue of the definition of Higher scale as provided for in IPS (Pay) Rules, in the case of of those IPS officers who were promoted or confirmed in IPS after 1.3.1997, the scales of pay to be reckoned for the fixation of pay in IPS



will be the one which came into effect in the State with effect from 1.3.1997. The juniors obtained the benefit of two State Pay revisions in between the Central Revision from 1.1.86 and 1.1.97, whereas the applicant could get the benefit of only one state revision with effect from 1.7.88 as per Section 1 of Schedule II of IPS Pay Rules 1954 as the existing provisions in AIS Manual do not provide for stepping up of pay in such cases. This position was brought to the notice of the Government of India, Ministry of Personnel, Public Grievances and Pensions, who in turn, informed that it is not possible to rectify the anomaly if the same arises consequent to the State Pay Revision effected after the said seniors have been confirmed in IPS in view of the specific clarification issued by Government of India. This position has been communicated to the applicant. It is further submitted that the respondents while fixing the pay of the applicant, had followed the Manual provisions and clarifications issued by the Government of India, Ministry of Personnel, Public Grievances and Pension which is the authority competent to frame Rules for fixation of pay of AIS Officers. The 5th respondent contended that it is wrong to say that it is the statutory function of the respondents to remove the anomalies alleged in the O.A. The promoted officer is confirmed only in the lowest scale of the State Service, which is not applicable in the case of the applicant.

9. The applicant filed a rejoinder contending that the respondents erred in not judiciously examining the anomaly that really existed. The respondents also filed an additional reply statement contending that Clause 6, Section III Schedule II of the IPS (Pay) Rules is only discretionary and the Government is not duly bound to necessarily allow a relaxation specially in the cases where it finds that the relaxation is not justified or reasonable or is likely to lead repercussion else where.



10. We have heard Shri P.K.Madhusoodhanan, learned counsel for the applicant and Shri Renjith, G.P. appearing for the respondents 1 to 3 and Shri C.Rajendran, SCGSC appearing for R/4 & R/5. Counsel for the applicant submitted that the applicant is entitled for fixation of pay in IPS cadre with reference to their State pay. The respondents on the other hand submitted that the relevant rules and instructions are framed as the guiding principles and not to take care of the anomalies.

11. We have given anxious consideration to the arguments advanced by the parties, perused the documents and material placed on record. We have also examined the pleadings and averments submitted by the rival parties. The main question is, how the pay of the applicant, a State Police Officer, is to be fixed on his induction on promotion to All India Cadre i.e., IPS. Applicant became a confirmed Superintendent of Police on non-IPS on 23.9.92 and as on 1.1.95 when he was promoted to the IPS Cadre he was a confirmed Superintendent of Police (non-IPS) and therefore, according to the applicant, the scale of pay which he was drawing as on 1.1.95 has necessarily to be taken into account as a criterion for fixation of his pay in the IPS cadre applying the provisions contained in Section I of Schedule II of Indian Police Service (Pay) Rules, without giving effect to unreasonable definition of higher scale of pay contained in clause (iii) of Schedule II of the said Rules. The fixation of pay of the applicant in IPS cadre as on 1.1.95 is said to be discriminatory, unreasonable and therefore, illegal.

12. Our attention is also drawn to the fact that the Central Government is conferred with the powers for removing unreasonableness in the rules under Clause (6) of Section III of the Rules which reads as follows:



"Notwithstanding anything contained in any clause in this Section, where the Central government is satisfied that the operation of any clause or clauses of this Section causes undue hardship in any particular case, it may, by order, dispense with or relax the requirements of that clause or clauses, as the case may be to such an extent and subject to such exceptions and conditions, as it may consider necessary for dealing with the case in just and equitable manner."

13. The contention of the applicant that if such an anomaly is noticed, the respondents should have referred the matter to the Central Government and got the anomaly removed by getting suitable relaxation of rules. Instead, the respondents rejected the applicant's request by A-9 and A-10 orders.

14. It is also an admitted fact that the applicant's pay was fixed reducing the pay which he was drawing as a confirmed Superintendent of Police (non-IPS) on coming to IPS cadre. It is clear that the applicant has become a confirmed Superintendent of Police w.e.f. 23.9.92 and while so, he was holding a substantive post of Superintendent of Police (non-IPS). Since his appointment to the IPS cadre was w.e.f. 1.1.95, it is an undisputed fact that he was holding a substantive appointment in the post of Superintendent of Police (non-IPS) on 1.1.1995 and so, his substantive pay in the post of SP (Non-IPS) was Rs. 4550 + Rs.100 as personal pay which was to be drawn by the applicant on 1.8.1994. Therefore, it is clear that he was drawing a pay in the higher scale in the State Police Service as on 1.1.1995. In accordance with Rule 2 of Section 1 of Schedule II of the Rules, the applicant's pay should be fixed at a stage of the Senior Time scale of IPS, next above his actual pay in the higher scale.

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Since the applicant was holding a post in a substantive capacity in the higher scale in the State Police Service at the time of his appointment in IPS on 1.1.1995, his actual pay has to be fixed in the higher scale as per Rule 2 of Section 1 of Schedule II of the Rules and the proviso therein. The applicant's actual pay on 1.1.1995 was Rs.4500/- + Personal pay of Rs.100/-, but the pay calculated as per clause 1 is higher than the admissible under clause 2. Therefore, in accordance with the proviso to Rule 2 of Section (1) of Schedule II of the rules, the applicant should be entitled to such higher pay as is calculated in terms of clause (1) of Section I of the Rules. In other words, his pay should have been fixed as follows:

Actual pay on 1.8.1994	Rs.4400 + Special Pay of Rs.100
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One increment in the IS scale
For 3 years Service in the non-IPS
Post, subject to a minimum of Rs.150/- Rs.150

Rs.4,550 + Special pay of
Rs.100

Since the maximum pay of IPS cadre was Rs.4,500/- and the pay to which the applicant is entitled for fixation of pay in IPS cadre as on 1.1.1995 was Rs.4550 + special pay of Rs.100, his pay has to be fixed at Rs.4500 + personal pay of Rs. 100 w.e.f. 1.1.95. The personal pay under the Rules has to be absorbed in future increase in pay. Besides, special allowance of Rs.500/- being the part of the scale of pay in the non-IPS, Superintendent of Police, he is entitled to have that pay protected and a minimum increment of Rs.150/- was given to him when he came to the IPS cadre on 1.1.95.

15. But the hindrance in granting him higher fixation happened to be due to Pay Fixation Rule contained in Section (1) of Schedule II in Clause (iii) of IPS regarding higher scale of pay and the definition thereof.

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16. In view of the expression 'Higher scale' and 'lower scale' contained in definition Clauses (iii) and (iv) of Schedule II of the IPS (Pay) Rules, we find that the meanings should be attributed to the expressions appeared in the definitions in the plain meaning. One cannot read between the lines and expression of 'higher scale' that equated to be in its most natural meaning/nomenclature. Hence, the contention of the applicant that much prejudice has been caused to him by reducing the pay of Rs. 4800 to Rs.4125 and it may be considered as a genuine grievance.

17. It is a case of State Government Officers, the first pay revision after 1.1.86 took place w.e.f. 1.7.1988. It was from next pay revision which was brought into force w.e.f. 1.3.92 as per G.O.(P) No.600/93/Fin. dated 25.9.93 only when the pay equalisation order has taken place. On a perusal of this G.O. it is clear that it is a pay equalisation order and not a pay revision order and the benefit of this G.O. also should be extended to the applicant.

18. The respondents stand that the special allowance of Rs.500/- sanctioned by the State Government to the promoted IPS officers like the applicant was intended to remove the pay disparity is incorrect and it is clear from th documents that the special pay of Rs.500/- was by way of rectifying the disparity arising out of the implementation of the Central scale for the State Government employees w.e.f 1.3.92 and not as a protection against the drop in the basic pay of non-IPS officers of the State Police Service appointed to IPS after 1.3.92 and that it had no bearing on the fixation of pay in the IPS post based on the principles mentioned in Schedule II of the rules. They stated that the clarifications were sought from the Government of India, Ministry of Personnel, Public Grievances and Pensions and



as per their instructions, it is not possible to rectify the anomaly if the same arises consequent to State Pay Revision effected after the said seniors have been confirmed in IPS in view of the specific clarifications issued by the Government of India. Respondents thus contended that the representation of the applicant has rightly been rejected.

19. We have examined the applicant's submission that the maximum basic pay that could be drawn by a promotee IPS officer being/is the maximum of the basic pay of the Selection Grade Superintendent in the IPS cadre. Reliance is made on a letter dated dated 14.7.95 (Annexure A/11 in OA 1552/92) which provides for protection of pay of officers belonging to the State Police Service appointed to the Indian Police Service under the IPS (Appointment by promotion) Regulations, 1955. However, the hardship that was caused is on account of the notification effecting the pay scale from 1.1.1986 in respect of All India Services which came into being on the recommendations of the Fourth Central Pay Commission. The anomalous disadvantage position for the applicant and similarly situated officers is that while the promoted officers would get their pay fixed in the light of the amendment w.e.f. 1.1.86, no arrears of pay on account of the same period from 1.1.86 to 31.12.95 would be admissible.

20. Therefore, it appears that the definition of higher scale has been considered in a narrow sense in the impugned orders, to limit it to the maximum pay to the State Police Officers on promotion to the IPS cadre vis-a-vis his direct recruit counterparts seems to be unsound.



21. In a similar matter and issue in O.A.1552/98 , this Bench of the Tribunal has passed an order granting the reliefs, the operative portion of which is reproduced as under.

"As has been observed earlier, there existed a serious anomaly. According to us, the anomaly in the fixation of initial pay of the applicant in the IPS is further accentuated by the higher basic pay allowed to be drawn by some of his juniors who were not found fit for promotion along with him and who were given promotion to the IS cadre on subsequent date or dates. A-12 Pay Slip in respect of Shri M Sethuraghavan inducted into the IPS in 1997 illustrates this. Pay fixations allowed to other juniors like S/Shri Somasundara Menon, Shamsudeen, Vijayan etc. who were inducted into the IPS much after the applicant are other cases in point. This anomalous situation was not lost even on the second respondent for in his communication dated 3.12.99 (A-15), he admits that his office was not in a position to rectify the anomaly as pointed out by the applicant. The above communication (A-15) was in reply to the applicants detailed representation in A-14 whereby he had highlighted not only the anomaly in his initial pay fixation in the IPS per se but also the anomalous position arising out of higher pay and allowances being given to his juniors who were promoted to the IPS cadre later than himself. In our considered opinion, the rules would have never intended to produce such a result. But the rule makers, we have reason to believe, have apprehended that in the implementation of the rules there might be inequities or anomalies. Wherever such unintended injustice is done and hardship is caused, law provides for administrative remedy. If no such remedy is provided, courts can interfere. It is this remedy that is provided for in Clause (6) of Section III of Schedule II quoted supra. The applicant endeavoured to persuade the respondents to remove the anomaly and, as we have observed, the second respondent recognised at one stage that there indeed was an anomaly. We do not know why this anomaly was not removed. We are afraid, the respondents have failed in their duty to apply their mind judiciously in the matter of removing the anomaly. The applicant has been unjustly left in the lurch drawing less salary than those who received promotion later than himself in the same cadre. Dealing with a fairly similar situation, the Hon'ble High Court of Kerala, in the case of Madhavan Assan V. Kerala SSI & E. Corp. Ltd. 1990(2) KLT, 871, after referring to the concept of equal pay for equal work being an aspect of the doctrine of equality enshrined in Articles 14 and 16 of the Constitution, and surveying a body of case law including several Supreme Court decisions like those reported in AIR 1982 SC 879 and AIR 1988 SC 1504, made the following observations:

"7.. The question involved is a fundamental one, in that a senior in a category is made to draw basic pay less than that drawn by his junior for the simple fortuitous circumstance that he stood promoted earlier than his junior and the pay revision for the junior was effected in the lower category in the interregnum. I should think that it is a fundamental principle of service law that when everything else is equal, a senior in service



should receive a salary higher than, or atleast equal to, that drawn by his junior. To relegate him to a lower pay is arbitrary and negation of the rule of equality enshrined in Art. 14 of the Constitution. It looks obnoxious and revolting to good sense that a senior should get lower pay merely because he was promoted earlier.

8. It is true that the principle adopted by the first respondent that the pay drawn in the lower category should be protected on promotion is valid, but then it is equally incumbent on them to see that the interests of the senior who was already in a higher category are protected by appropriate revision of his pay, so that he does not stand in a worse position than his junior in relation to the pay drawn by him. The payment of lesser salary for an admitted senior, who is similarly situated, than his junior, amounts to an unequal treatment meted out to equals, thereby violating Art. 14 of the Constitution. The fact that respondents 2 and 3 were promoted after the pay revision on 1.7.1980 does not put them in a separate or different category. Such a differentiation between persons promoted before or after 1.7.1980 has no rational basis in so far as it relates to fixation of salary."

Respectfully following the ratio of the findings of the High court's decision cited above, we are inclined to hold that the respondents erred in not judiciously examining the anomaly that really existed and highlighted by the applicant in his various representations, particularly, with reference to the provision of clause (6) of Section III of Schedule II which are on the statute book precisely for the purpose of removing anomalies of this type."

.22. We are in respectful agreement with the above finding of the O.A. That order was also followed by this Bench in O.A. 1106/2000 as well and it is reported that reliefs were granted by the department in these cases. In the result, we dispose of this application with the following order/directions.

- i) The impugned orders A-9 and A-10 are set aside and quashed.
- ii) We declare that the applicant is entitled to have his initial pay fixed in the IPS cadre on the basis of the pay drawn by him in the Non-IPS cadre as a confirmed Superintendent of Police as on 1.1.1995 without applying the restrictive definition of the expression 'higher

scale' occurring in definition Clause (iii) of Schedule II of the Indian Police Service (Pay) Rules, 1954. We further declare that in the applicant's case, the context requires such interpretation of the meaning of expression 'higher scale of pay' that should not cause the anomalous situation of the applicant deriving less pay and allowances than his juniors some of whom were not even found fit to be promoted to the IPS along with him and hence were considered for promotion on subsequent date or dates. We also declare that the anomaly in the applicant's initial pay fixation in the IPS is to be necessarily removed by applying the provisions of Clause (6) of Schedule II of the Indian Police Service (Pay) Rules, 1954. The first respondent is directed to pass appropriate orders and ensure removal of the anomaly in the applicant's initial pay fixation in the IPS by applying the provisions of Clause (6) and fixing the applicant's initial pay in the IPS on the basis of his actual pay in the higher scale of Superintendent of Police (non-IPS) as on the the date of his promotion to the IPS."

23. The above orders and directions shall be carried out and the consequential benefits including arrears, if any, flowing therefrom granted to the applicant at an early date and in any case, within a period of four months from the date of receipt of copy of this order. No costs.

Dated, the 20th May, 2003.



K.V. SACHIDANANDAN
JUDICIAL MEMBER



T.N.T. NAYAR
ADMINISTRATIVE MEMBER