

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.Nos.442/2000,496/2000 & 876/2000

Thursday this the 19th day of July,2001.

CORAM:

HON'BLE SHRI A.V.HARIDASAN, VICE CHAIRMAN
HON'BLE SHRI T.N.T.NAYAR, MEMBER (A)

O.A.No.442/2000

V.N.Rajan I.P.S.
Retired Inspector General of Police,
residing at KPRP Estate, P.O.Kongad,
Palakkad District-678 631.

..Applicant

(By Advocate Shri M.R.Rajendran Nair)

vs.

1. The Accountant General(A&E),
M.G.Road,Trivandrum-695 039.
2. Union of India represented by its Secretary,
Ministry of Personnel, Public Grievances and
Pensions,
New Delhi.
3. The Senior Accounts Officer,
Indian Audit and Accounts Department,
Trivandrum.

.. Respondents

(By Advocate Sri T.C.Krishna,ACGSC)

O.A.No.496/2000

A.Hassankutty,
Retired Chief Conservator of Forests,
Arakkal Manzil,
Chalappuram,
Calicut-673 002.

..Applicant

(By Advocate Mr.P.Ravindran)

vs.

1. Union of India, rep. by its Secretary,
Ministry of Personnel,
Public Grievances and Pensions,
New Delhi.
2. Accountant General(A&E),Kerala,
Accountant General's Office,
M.G.Road, Thiruvananthapuram.
3. State of Kerala,
represented by its Chief Secretary,
Government Secretariat,
Thiruvananthapuram.

.. Respondents

(By Advocate Sri R.Prasanthakumar(R1)
Sri C.A.Joy (R2-3)

O.A.No.876/2000

V.Subramanian, I.P.S.
Retired Inspector General of Police,
residing at 229, Harikripa, 5th Main,
13th Cross, Indira Nagar, II Stage, Bangalore-560 038.

(By Advocate Sri Premjit Nagendran)
vs.

1. The State of Kerala, represented by its
Chief Secretary to Government,
Government Secretariat,
Thiruvananthapuram.
 2. Union of India represented by Secretary,
Ministry of Personnel, Public Grievances &
Pension, New Delhi.
 3. The Accountant General(A&E), Kerala,
P.B.No.5607, M.G.Road,
Thiruvananthapuram.
 4. The Accountant General(A&E),
Karnataka,
Bangalore-560 001.
- .. Respondents

(By Advocate Sri C.Rajendran, SCGSC(R2&4)
Sri C.A.Joy(R1&3)

The Applications having been heard on 12.6.2001, the
Tribunal on 19.7.01 delivered the following:

O R D E R

HON'BLE SHRI A.V.HARIDASAN, VICE CHAIRMAN:

Since common questions of law is involved in all these three cases, they are being heard and disposed of by this common order. The facts of the individual cases necessary for understanding the dispute are stated as hereunder:

O.A.No.442/2000

2. The applicant retired on superannuation from the Kerala cadre of the Indian Police Service('IPS' for short) on 1.6.1982 while holding the post in the rank of Inspector

General of Police. On the basis of the order of the second respondent F.No.45/10/98 P&PW(A) dated 17.12.98 which prescribed that pension of all Central Government pensioners with effect from 1.1.96 should not be less than 50% of the minimum in the revised scale or respective of the dates of their retirement, the applicant's pension was refixed at Rs.12025/- plus dearness allowance reckoning the scale of pay of Director General and Inspector General of Police('DGP' for short). The apex post in the Kerala State cadre of IPS became that of DGP with effect from 16.7.1982. The grievance of the applicant is that pursuant to a clarificatory letter issued by the second respondent on 3.2.2000 stating that pension of pre-1986 pensioners should be fixed at 50% of the replacement scale of post last held by the pensioner as revised w.e.f. 1.1.96 and not the upgraded scale, the third respondent issued Annexure A2 notice dated 9.3.2000 proposing to revise the pension of the applicant and to recover excess payment and immediately thereafter issued Annexure A3 order dated 16.3.2000 reducing the applicant's pension to Rs.9200/- and informing that communication regarding recovery of excess would follow. The applicant has alleged that as the I.G. of Police was the Head of the Police Department in the State of Kerala till 16.7.1982 discharging all the duties which the DGP after 16.7.1982 was discharging the change being only in the nomenclature, the stand taken by the respondents that the applicant was not entitled to pension reckoning the scale of pay of D.G.P. is unreasonable. It is further alleged that the impugned orders issued without notice to the applicant

is vitiated for non-compliance of natural justice. The applicant prays that the impugned orders may be set aside declaring that the applicant is entitled to the monthly pension of Rs.12025/-and the respondents be directed not to reduce his pension.

3. The first respondent has filed a reply. It is contended that the applicant having not held the post of Director General and Inspector General of Police which was created only w.e.f. 16.7.1982 what has been done by the impugned a orders was only rectification of error and therefore the applicant is not entitled to the relief.

O.A.876/2000

4. The applicant in this case also was an officer of I.P.S. ,Kerala cadre. He retired on 31.12.1980 while holding the post of, Inspector General of Police which was the apex post in the Department. Pursuant to the order of the Government of India , Ministry of Personnel, Public Grievances and Pension, New Delhi letter dated 17.12.1998 , the applicant's pension was also revised and refixed at Rs. 12025/- with effect from 1.1.96 reckoning the pay of D.G.P. The present grievance of the applicant is that on the basis of the direction contained in the letter of the Government of India, Ministry of Personnel,Public Grievances and Pensions, Department of Personnel and Training dated 2/2/2000, to revise and refix the pension of pre 1986 pensioners reckoning only the pay of the posts which they

last held and not in the upgraded scale, the third respondent issued a letter dated 9.3.2000 to him informing him that his pension would be reduced and recovery of overpayment made in consultation with the State Government, and had issued Annexure A6 letter dated 20.3.2000 to the 4th respondent refixing the applicant's pension at Rs.9200/w.e.f. 1.4.2000, indicating that regarding recovery of overpayment separate communication would follow and that the 4th respondent had issued orders dated 12.4. 2000 reducing the applicant's pension to Rs.9200/-w.e.f. 1.4.2000. It is alleged in this application that in 1980 or even earlier the Govt. of India had decided that the Head of the Police Department of the State should be redesignated as D.G.P, that the State of Karnataka has created one post of Director General of Police by order dated 15th December,1981, that because of the inaction of the State of Kerala, the applicant had to retire from service on 31.12.1980 with the designation of Inspector General of Police, that the Kerala Government issued order dated 18.11.81 only creating a post of DGP ,that for the inaction of the State Government in upgrading the post, the applicant should not be made to suffer and that as the applicant as the I.G. of Police was the highest officer of the Police Department in the State discharging the same duties and responsibilities which the D.G.P. after creation of that post was discharging , the respondents' action in not reckoning the pay of the post of D.G.P. for revising the applicant's pension is arbitrary, unreasonable and in violation of Article 14 and 16 of the Constitution. With

these allegations, the applicant prays that the impugned communication Annexure A4 to A7 may be set aside and the respondents be restrained from reducing his pension to Rs.9200/- declaring that he is entitled to have his pension fixed at Rs.12025/- .

5. The third respondent has filed a reply statement. The impugned orders are sought to be justified on the ground that they have been issued to rectify an error which occurred in fixation of applicant's pension at Rs.12025/-wrongly reckoning the minimum of the pay scale of the Director General and Inspector General of Police which was created only w.e.f. 16.7.1982 after the retirement of the applicant.

O.A.496/2000

6. The applicant who was a member of the Kerala cadre of Indian Forest Service retired on superannuation on 30.4.84 holding the solitary post of Chief Conservator of Forests which was the apex post in the cadre then. Thereafter the 1st respondent issued notification dated 4.9.1988 substituting "Principal Chief Conservator of Forests" in the place of Chief Conservator of Forests in the Schedule III to the Indian Forest Service Pay Rules, 1968. The Principal Chief Conservator of Forests after creation of the post was discharging the same duties as were performed till then by Chief Conservator of Forests. Pursuant to O.M. dated 17.12.98 and notification dated 14.1.99 the

applicant's pension was revised by order dated 15.10.99 (Annexure A11) at Rs.12025/- we.f. 1.1.96 . The arrears of pension deducting income tax at source was disbursed to the applicant. The present grievance of the applicant is that accumulation(Annexure A1V) was received by him from the second respondent based on a clarification issued by the first respondent in its letter dated 8.2.2000 that pension of pre 1986 retirees w.e.f. 1.1.96 is to be fixed at 50% of the minimum of the replacement scale of the post last held by them and not the upgraded scale, his pension would be reduced and excess payment recovered and a revised pension order (Annexure AV) was issued reducing his monthly pension by nearly Rs.3000/-. The applicant has filed this application seeking to set aside Annexures AIV and AV and for a direction to the respondents to pay him pension as fixed by AIII order. It is alleged in the application that the impugned orders are unsustainable having been issued violating the principles of natural justice, that the applicant having held the post of Chief Conservator of Forests the then apex post in the cadre, his pension should be refixed reducing the scale of pay of the post of Principal Chief Conservator of Forests, which was the apex post after redesignation.

7. The respondents 1 and 2 have filed separate reply statement. The material contention is that as the applicant retired in the year 1984 from the post of Chief Conservator of Forests and has never occupied the post of Principal Chief Conservator of Forests encadred only with effect from

6.4.1988, the fixation of his pension at Rs.12025/- by Annexure AIII reckoning the pay scale of the post of Principal Chief Conservator of Forests having been found to be erroneous, especially in the light of the clarificatory order dated 3.2.2000, the mistake is being rectified by the impugned order and therefore the applicant does not have any legitimate grievance.

8. We have gone through the pleadings in these cases and have heard the learned counsel appearing for all the parties.

9. The applicant in O.A. 442 of 2000 and O.A.876 of 2000 are ex members of the Indian Police Service and the applicant in O.A.496 of 2000 is an ex Member of the Indian Forest Service. The issues involved in these cases is whether the refixation of the pensions of the applicants limiting the pension to 50% of the minimum of the scale of pay of the posts held by them prior to their retirement and not fixing their pension reckoning the upgraded posts in their respective services without even giving them notice of refixation and reduction, is sustainable in law. From the pleading it is clear that the applicants in O.A.442 of 2000 and O.A.876 of 2000 retired from service of I.P.S,Kerala cadre holding the post of Inspector General of Police when the apex post in the cadre was that of Inspector General of Police on 1.6.1982 and 31.12.80 respectively.It is also not disputed as is evident from Annexure A8 in O.A.876 of 2000(Govt. of India, Ministry of Home Affairs, Department

of Personnel & Administrative Reforms notification published in Part II, Section 3 (i) of Gazette of India Extra Ordinary dated 16th July 1982 that the post of Director General and Inspector General of Police was included in Schedule III to the Indian Police Service(Pay) Rules 1954 in the case of Kerala with prospective effect. It is also not disputed that while the apex post in the cadre was designated as Director General and Inspector General of Police, the post of Inspector General of Police continued in the Schedule. The applicants in these two cases have no case that they had ever occupied the post of Director General and Inspector General of Police although they claim that as Inspector Generals of Police, they had been discharging the same duties and responsibilities as the highest official in the cadre as was discharged by the Director General and Inspector General of Police after the encadrement of such a post at the apex of the cadre.

10. Sri Hassankutty, the applicant in O.A.496/2000 retired on superannuation on 30.4.1984. The post of Principal Chief Conservator of Forests was incorporated in Schedule III of the Indian Forest Service (Pay) Rules 1968 by Indian Forest Service(Pay) Second Amendment Rules, 1988, a copy of which is at Annexure A1 in O.A.496/2000. It is specifically provided in the rules that the rules would come into force on the date of their publication the Official Gazette. Therefore it is evident that prior to the notification of the Indian Forest Service(Pay) Rules Second Amendment Rules 1988, the post of Principal Chief Conservator of Forests in the scale of Rs.7300-100-7600 was

not there in the cadre. The applicant held only the post of Chief Conservator of Forests which was in a lower pay scale and which post continued in the cadre even after incorporation of the post of Principal Chief Conservator of Forests in the Schedule and encadrement of such a post in 1988.

11. While refixing the pension of the applicants in these cases at Rs. 12025/- ,the refixation of pension was made on the basis of the minimum of the scale of pay of the post of Director General and Inspector General of Police in the case of applicants in O.A. 442/2000 and 876/2000 and of the post of Principal Chief Conservator of Forests in the case of applicant in O.A.496/2000 and not with reference to the minimum of the revised scale of pay with effect from 1.1.96 of the posts of Inspector General of Police and Chief Conservator of Forests respectively i.e. the posts last held by the applicahts. The mistake having come to light, in the light of the clarification issued by the Ministry of Personnel, Public Grievances and Pension in their letter dated 3.2.2000, the impugned orders were issued refixing the pension of the applicants at Rs.9200/-, i.e., 50% of the pay of the minimum in revised scale w.e.f. 1.1.96 of the posts last held by the applicants. Since the applicants are entitled to have their pension refixed as per the Presidential order dated 17.12.1998 with reference to the revised scale attached to the posts last held by them, we are of the considered view that the impugned action of the respondents in refixing the pension of the applicants cannot be faulted. Learned counsel of the applicants in these

cases with considerable vehemance argued that as the refixation and retrospective reduction of pension having adverse civil consequences on the applicants, should not have been passed without giving them a notice and an opportunity of being heard. We are of the considered view that the principles of natural justice have not been violated in these cases because what has been done is only rectification of an obvious mistake in fixation of pension. The Presidential sanction contained in the memorandum dated 17.12.98 very clearly states that the pension has to be refixed irrespective of the dates of retirement at not less than 50% of the minimum in the scale of pay of the posts last held by the pensioners. Therefore the earlier refixation of the pension of the applicants in these cases at Rs.12025/- on the basis of the minimum in the revised scale of pay of the post of D.G.P. and Principal Chief Conservator of Forests which posts the applicants never held was obviously by mistake. The applicants did not acquire any vested right to receive pension at the rate of Rs.12025/- which was fixed on account of a mistaken understanding by the authorities. We are of the considered view that for rectification of such an obvious mistake, a prior notice is not required. Further no communication regarding recovery had yet been issued and in the impugned orders in all these cases, it has been specifically stated that the communication regarding recovery of excess payment

would be separately made. The applicants would be free to challenge the communication regarding recovery, as and when made.

12. In the light of what is stated above, we find no force in these applications and therefore we dismiss the applications leaving the parties to bear their own respective costs.

Sd/-
(T.N.T.NAYAR)
ADMINISTRATIVE MEMBER

Sd/-
(A.V.HARIDASAN)
VICE CHAIRMAN

/njj/

List of Annexures referred to in the Order:

O.A.442/2000

1. Annexure A2 True copy of the letter no.GE I/C/IPS/1166 dated 9/10.3.2000 issued by the 3rd respondent.
2. Annexure A3 True copy of the letter No.PA/6/PR 98/50/8/6680 dated 16.3.2000 issued by the 1st respondent.

O.A.876/2000

1. Annexure A4 True copy of the letter No.25014/1/2000-AIS II. dated 2.2.2000 issued by the 2nd respondent to the 3rd respondent.
2. Annexure A5 True copy of the letter No.GE/1/C/IPS/1165, dated 9.3.2000 sent to the applicant by the 3rd respondent.
3. Annexure A6 True copy of the letter No.PA3/H/PR98/37/99-00/1236 dated 20.3.2000 issued by the 3rd respondent.
4. Annexure A7 Photocopy of the letter No.PA/Revision/A/2000-2001/7, dated 12.4.2000 of the 4th respondent.

O.A.496/2000

1. Annexure AII True copy of the Notification No. 14012/5/98-AIS II dated 14.1.1999.
2. Annexure AIII True copy of the communication No.PR1/RR98/106/AA/99 -2000/820 dated 15.10/99.
3. Annexure AIV True copy of the communication received by the applicant from the 2nd respondent dated 8.3.2000.
4. Annexure AV True copy of the revised pension order issued to the applicant dated 16.3.2000.