

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

ORIGINAL APPLICATION Nos. 514/13, 516/13, 349/14, 407/14,
639/14, 650/14 and 923/14

Thursday this the 7th day of January, 2016

CORAM

**Hon'ble Mr. Justice N.K.Balakrishnan, Judicial Member
Hon'ble Mrs. P. Gopinath, Administrative Member**

OA 514/2013

K.G.SomasundaraMenon, IPS (retd)
S/o PN Gopala Pillai, aged 71 years
Archana,Siva Temple Road,
Thottakkatukara, Aluva-683108.

...Applicant

[By Advocate Mr. P.K. Madhusoodhanan)

Versus

1. The Senior Accounts Officer, Indian Audit and Accounts Department, Office of the Accountant General (A&E), Kerala, MG Road, PB No.5607, Thiruvananthapuram.39.
2. The Accountant General (A&E), Kerala, Indian Audit and Accounts Department, MG Road, PB No.5607, Thiruvananthapuram.39.
3. The State of Kerala represented by the Chief Secretary, Kerala Government Secretariat, Thiruvananthapuram.
4. The Secretary, Ministry of Personnel, Public Grievances and Pensions, (Department of Personnel & Training), Government of India, New Delhi-110 001.
5. Union of India, represented by its Secretary, Ministry of Home Affairs, New Delhi-110 001.

...Respondents

(By Advocate Mr. K.I. Mayankutty Mather for R 1&2 (No representation)
Advocate Mr. M.Rajeev, GP for R.3
Advocate . Kesavankutty, ACGSC for R. 4&5 (No representation)

OA 516/2013

K.R.Purushothaman Pillai, IPS (Retd), S/o S.Raman Pillai,
aged 71 years, "Sreekovil", Keerthi Nagar, Elamakkara,
Ernakulam-682026.Applicant

(By Advocate Mr. P.K.Madhusoodhanan)
Vs.

1. The Senior Accounts Officer, Indian Audit and Accounts Department, Office of the Accountant General (A&E), Kerala, MG Road, PB No.5607, Thiruvananthapuram.39.
2. The Accountant General (A&E), Kerala, Indian Audit and Accounts Department, MG Road, PB No.5607, Thiruvananthapuram.39.
3. The State of Kerala represented by the Chief Secretary, Kerala Government Secretariat, Thiruvananthapuram.
4. The Secretary, Ministry of Personnel, Public Grievances and Pensions, (Department of Personnel & Training), Government of India, New Delhi-110 001.
5. Union of India, represented by its Secretary, Ministry of Home Affairs, New Delhi-110 001.

....Respondents

(By Advocate Mr. K.I. Mayankutty Mather for R 1&2 (No representation)
Advocate Mr. M.Rajeev, GP for R.3
Advocate Mr.Thomas Mathew Nellimootil for R. 4&5)

OA 349/2014

P. Venugopal, IAS, aged 53 years, S/o P.N.Parameswaran Nair, Devaswom Commissioner, Travancore Devaswom Board, Thiruvananthapuram, residing at SABARI, C11(1) Sankar Lane, Sasthamangalam PO, Thiruvananthapuram.

..Applicant

(By Advocate Mr. P.V. Mohanan)
Vs.

1. Union of India, represented by the Secretary to Government, Ministry of Personnel, Public Grievances and Pensions, (Department of Personnel & Training), North Block, New Delhi-110 001.
2. The State of Kerala represented by the Chief Secretary to Government, Government Secretariat, Thiruvananthapuram.1
3. The Accountant General (A&E), MG Road, Thiruvananthapuram, Kerala-695001.

...Respondents

(By Advocate Mr. M.Rajeev, GP for R. 2&3
No representation for R.1)

OA 407/2014

T.K.Rajmohan, IPS (Retired) son of T.K.Kunhiraman, last employed as Superintendent of Police in the office of CBCID, HHW-III Kozhikode residing at Thejaswini, House No.38/2208A, Edakkad PO, Kozhikode.5.

..Applicant

(By Advocate Mr. Ashok M. Cherian)

Vs.

1. Union of India, represented by the Secretary, Home Department, Ministry of Home Affairs, New Delhi-110 001.
2. The Accountant General (A&E), Kerala, Indian Audit and Accounts Department, Office of the Accountant General (A&E), Thiruvananthapuram.1.
3. State of Kerala represented by the Secretary, General Administration (Special-C) Department, Government of Kerala, Secretariat, Thiruvananthapuram.
4. State Police Chief and Director General of Police, Kerala, Police Headquarters, Thiruvananthapuram.14.
5. The National Investigating Agency represented by its Director General, 6th/7th NDCC-II Building, Jai Singh Road, New Delhi-110 001.

..Respondents

(By Advocate Mr. M.Rajeev, GP for R 3&4
Advocate Mr. Thomas Mathew Nellimootil for R 1&5
None for R.2)

OA 639/2014

M.S. Jaya, IAS, aged 55 years, W/o T.K.Rajasekharan, District Collector, Thrissur, residing at Collector's Bungalow, permanently residing at Pranavam, Saint Mary's Sonoro Church Road, Elamkulam, Cochin-20.

...Applicant

(By Advocate Mr. PV Mohanan)

Vs.

1. Union of India, represented by the Secretary to Government, Ministry of Personnel, Public Grievances and Pensions, (Department of Personnel & Training), North Block, New Delhi-110 001.

2. The State of Kerala represented by the Chief Secretary to Government, Government Secretariat, Thiruvananthapuram.1
3. The Accountant General (A&E), MG Road, Thiruvananthapuram, Kerala-695001.

...Respondents

(By Advocate Mr. N.Anilkumar, Sr.PCGSC for R.1
Advocate Mr. M.Rajeev, GP for R. 2&3)

OA 650/2014

Jacob P. Thomas, IPS (Retired), Parackel House, 19, KKP Nagar, Aluva-683102, Ernakulam District.

.....Applicant

[By Advocate Mr. P.K. Madhusoodhanan)

Versus

1. The Senior Accounts Officer, Indian Audit and Accounts Department, Office of the Accountant General (A&E), Kerala, MG Road, PB No.5607, Thiruvananthapuram.39.
2. The Accountant General (A&E), Kerala, Indian Audit and Accounts Department, MG Road, PB No.5607, Thiruvananthapuram.39.
3. The State of Kerala represented by the Chief Secretary, Kerala Government Secretariat, Thiruvananthapuram.
4. The Secretary, Ministry of Personnel, Public Grievances and Pensions, (Department of Personnel & Training), Government of India, New Delhi-110 001.
5. Union of India, represented by its Secretary, Ministry of Home Affairs, New Delhi-110 001.

...Respondents

(By Advocate Mr. M.Rajeev, GP for R. 1 to 3
Advocate Mr Thomas Mathew Nellimootil for R4&5)

OA 923/2014

G. Somasekhar, IPS S/o K.Govinda Pillai, aged 57 years, Superintendent of Police, District Police Chief, Palakkad residing at Qtr.No.5, Bhakthi Vilasom, DPI Junction, Vzhuthacaud, Thiruvananthapuram-14.

....Applicant

(By Advocate Mr. P. Nandakumar (no representation)

Vs.

1. Union of India, represented by Secretary to Government, Ministry of Home Affairs, Room No.59, North Block, Central Secretariat, New Delhi-110 001.
2. State of Kerala represented by its Chief Secretary, Government Secretariat, Thiruvananthapuram.
3. The State Police Chief, Police Headquarters, Velayamblam, Thiruvananthapuram.10.
4. The Accountant General (A&E), Kerala, M.G.Road, Thiruvananthapuram-39
5. The Secretary, Department of Expenditure, Ministry of Finance, New Delhi. (5th respondent impleaded *vide order dated 29.10.2014*)

(By Advocate Mr. N. Anilkumar, Sr.Panel Central Govt. Counsel for R. 1&5
Advocate Mr. M.Rajeev, GP for R. 2-4)

The above applications having been finally heard on 16.12.2015, the Tribunal on 07.01.2016 delivered the following:

O R D E R

Per: Justice N.K.Balakrishnan, Judicial Member

Since the issues involved in all the above cases are identical, all these cases are disposed of by this common order.

2. The applicants in O.As 349/2014 and 639/2014, are retired IAS officers, while the applicants in other cases are retired IPS officers. All these applications have been filed for a declaration that these applicants are entitled to get the benefit of the decision rendered by the Hon'ble Supreme Court in *Union of India Vs. TM Somarajan and others* - (2010) 1 SCC 129. The learned counsel for the applicants in all these cases submit that the applicants are denied the benefit in Somarajan's case (supra) on the ground that these applicants were not parties to that case. In Somarajan's case (supra) the original application was filed

seeking the following reliefs:

- (i) "Call for the records leading to Annexure A1 and A2 and set aside the same.
- (ii) Issue a direction to the respondents to fix the basic pay of the applicant in the post of Superintendent of Police (IPS cadre) at Rs. 4500+ personal pay of Rs. 400 with effect from 9.12.1995 and disburse the arrears of salary due to the applicant.
- (iii) 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 1 of Schedule II of the Indian Police service (Pay) Rules without giving effect to the unreasonable definition of higher scale of pay contained in clause (iii) of Schedule II of the said Rules.
- (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 unreasonable and unworkable and hence should not be enforced for fixation of the pay of the applicant in the IPS cadre with effect from 9.12.1995.
- (v) 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 and ab initio void.
- (vi) To call for the records leading to Annexure A16 ad Letter No.20015/1/2000-AIS(II) dated 27.3.2000 of the Government of India, Ministry of Personnel, Public Grievances and Pensions referred to in Annexure A16 and set aside the same."

In that case the Tribunal held that the applicant therein is entitled to get 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 9.12.1995 without applying the restrictive definition of the expression "higher scale of pay" occurring in definition clause (iii) of Schedule II of the Indian Police Service (Pay) Rules, 1954. In that case the Tribunal referred to the peculiar anomaly pointing out that a number of juniors to the applicant therein were getting more pay than the applicant though the applicant therein was inducted to IPS cadre earlier to his juniors. A declaration was

also granted to the applicant in that case that the anomaly in the applicant's initial pay fixation in IPS is to be removed by applying the provisions of Clause (vi) of Schedule II of the Indian Police Service (Pay) Rules, 1954. The decision rendered by the Tribunal was affirmed by the Hon'ble High Court. Confirming that decision it was held by the Hon'ble Supreme Court:

"In our opinion, after entering into the IPS cadre from the state cadre service, the pay of such an officer should not be reduced. With these observations, we feel that there is no infirmity in the orders of the Tribunal and the High Court."

The appeal preferred by the Union of India was ultimately dismissed by the Supreme Court.

3. The learned counsel for the applicants would submit that the position in all these cases is also exactly identical to the facts dealt with in Somarajan's case.

4. The applicant in OA 514/2013 was promoted as Superintendent of Police (SP) on 15.7.1993 in the scale of Rs. 3900-5075. He was confirmed in that post w.e.f 1.9.1994. He was promoted to Indian Police Service (IPS) w.e.f. 9.4.1996 and was further promoted in the Junior Administrative Grade of IPS w.e.f. 1.1.2001. The applicant contends that while granting promotion his pay was fixed at a lower stage without protecting the pay he was drawing in the State Police Service as a confirmed SP (Non IPS). Thus the applicant claims that he is entitled to the benefit of the decision rendered by the Apex Court in Somarajan's case.

5. The applicant in OA 516/2013 was promoted as Superintendent

of Police (SP) by order dated 22.2.1995 in the scale of pay of Rs. 3900-5075 and he took charge as SP on 3.3.1995. He was promoted to IPS w.e.f. 3.6.1997 and was later promoted to Jr. Administrative Grade in IPS w.e.f. 1.1.2001. He also contends that his pay on promotion to IPS cadre was fixed at a lower stage.

6. The applicant in OA 407/2014 was promoted to IPS from State Police Service and later he was deputed to work as SP with the 5th respondent National Investigation Agency of the Government of India. He joined NIA on 2.11.2009. His pay at the time of joining in the NIA on deputation was Rs. 26000/- and his pay was fixed at Rs. 26600 in PB 3 of Rs. 15600-39100 with Grade Pay of Rs. 7600/-. The applicant retired from service on 31.3.2010 from the State Police Service on attaining the age of 55 years and later he retired from the cadre of IPS w.e.f. 31.5.2014. The first respondent had approved the continuation of the applicant in the post of SP in NIA till the age of superannuation in Central Govt. Service vide Annexure A5. While so the pay of the applicant was provisionally fixed at Rs. 21900 reducing the pension granted to the applicant on retirement from the pay already fixed by Annexure A3 order. The applicant was drawing basic pay of Rs. 49740 in the pay scale of Rs. 42640-58640 w.e.f. 1.7.2009 as SP (non IPS) in the State Police Service. On promotion to the cadre of IPS his pay was fixed at Rs. 36200/- in the pay band Rs. 15600-39100 with a GP of Rs. 7600/-, and later it was fixed at Rs. 46100/- in PB Rs. 37400-67000 with GP of Rs. 8700/-. Consequent to his promotion to IPS cadre there was reduction in pay and allowances than his juniors in the

State Police Service, some of whom were not even fit for promotion to IPS cadre. Annexure A12 representation submitted by the applicant was turned down by Annexure 13 stating fallacious reasons, the applicant contends.

7. The applicant in OA 650/2014 was promoted as SP on 7.4.1986 and he was confirmed as SP (non IPS) w.e.f 4.10.87. He was drawing a substantive pay of Rs. 3955/- plus special pay of Rs. 100 w.e.f. 1.7.1990. The applicant was later promoted to IPS and he was inducted in the IPS cadre pursuant to an order passed by this Tribunal in MP No. 238/1991 in OA 138/1991. The pay of the applicant in the IPS cadre was fixed at a lower stage due to an error in the application of relevant rules. The pay of the applicant drawn in the State Police Service was not protected while he was granted promotion to IPS.

8. The applicant in OA 923/2014 claims that he was promoted as SP (Non IPS) as per order dated 1.1.2009. His pay as on 1.1.2013 was then fixed at Rs. 50840/- in the scale of pay of Rs. 42640/- - 58640/-. The applicant was promoted to IPS and was appointed as per Annexure A2 order dated 16.8.2013 but his basic pay on his induction to IPS was fixed at Rs. 36950/- with a GP of Rs. 7600/- which was much lower than what he was drawing while in State Police Service. The applicant also points out the anomaly in fixing the pay in IPS cadre.

9. The applicant in OA 639/2014 was appointed to IAS cadre vide notification dated 16.3.2009. His year of allotment was 2002. The applicant was denied fixation of pay by ~~protecting the pay drawn by~~ him in

the state service at the time of induction to IAS cadre. The applicants juniors who were recruited in the year 2008 and whose allotment year was 2003, 2004 and 2005 were granted higher pay. The pay of the applicant has not been stepped at par with the pay of his juniors in the cadre. Hence the applicant also points out the anomaly in the pay fixed by the respondents. Though the applicant was granted Junior Administrative Grade with effect from 1.1.2013 his pay was fixed as on 1.5.2015 at 36580/- plus GP of 7600 in the scale of pay of Rs. 15600-39100, whereas Shri K.Ramachandran who was appointed/promoted to IAS on 25.3.2011 and granted year of allotment as 2005 was drawing the pay of Rs 37910/- plus GP of Rs. 8700/-. That anomaly has to be set right by stepping up the pay of the applicant, he contends.

10. The applicant in OA 639/2014 was a non-State Civil Service officer. She was selected and appointed to IAS on promotion quota w.e.f. 16.3.2009. According to her at the time of induction to IAS cadre she was drawing a pay of Rs. 26600 w.e.f. 1.4.2008 in the cadre of Senior Town Planner in the State Service in the scale of Rs. 20700-26600 (pre revised scale). As per IAS (Pay) Rules 2007 the applicants pay has to be fixed in the IAS cadre in the Senior Time scale protecting the State Service at the time of induction to IAS cadre. Without protecting the pay drawn by her in the state pay scale, the pay of the applicant has been slashed down, she contends. The applicant was granted the year of allotment in IAS as 2004. Juniors to the applicant who were inducted in the cadre on 25.3.2011, (the year of allotment as 2005) was granted the pay of Rs. 48070 with a grade

pay of Rs. 8700/- whereas the applicant who was promoted to Jr. Administrative Grade vide Annexure A11 order dated 10.9.2013 w.e.f. 1.1.2013 was fixed at Rs. 36580 with Grade pay of Rs. 7600/- w.e.f, 1.1.2013 (Rs. 39280 plus GP of Rs. 7600 with effect from 1.7.2014). Thus the applicant herein also, projects the anomaly and prays for re-fixation of her pay.

11. In the reply statement filed by the third respondent in OA 639/2014 it is inter alia stated that as per the provisions contained in Schedule I of IAS (Pay) Rules for the purpose of fixation of pay of promoted officers in the revised pay structure the State Pay Revision after 1.1.1996 alone was taken into account and the second revision in State Pay Scale in 2004 was ignored. Hence the third respondent addressed the 1st respondent for clarification as per letter dated 5.1.2011 but the first respondent did not choose to respond to the same and so Annexure A7 was issued by the third respondent. It is stated that since no reply was received, again the 1st respondent was addressed as per Annexure A9 seeking clarification on that point. Though letters were addressed to the 1st respondent no clarification was issued, the third respondent contends.

12. The first respondent has filed reply statement contending as follows:

The judgment in Somarajan's case deals with the fixation of pay of promoted IPS Officers under IPS (Pay) Rules, 1954. That Rule has been amended and replaced by IPS (Pay) Rules, 2007. The judgment in Somarajan's case was against the statutory provisions. Its implementation

is limited to the petitioner therein only. Government of Kerala as per letter dated 14.3.2014 had requested to rectify the anomaly in fixation of pay of IPS officers on promotion to IPS from State Police Service in the light of the judgment in Somarajan's case. The matter is under consideration in consultation with Department of Personnel & Training (DoP&T) and Ministry of Law. The subject matter of fixation of officers promoted to the IPS from the State Police Service falls within the purview of the State Government.

13. The claim made by the applicant in OA 639/2014 that she is similarly placed as Shri Gopalakrishna Bhatt, K.Ramachandran and Smt. CA Latha is denied stating that the applicant is not similarly placed as the officers mentioned above. It is further stated that the claim made by the applicant that her pay in the State Service should be protected can be redressed only by the 1st respondent under Rule 4(4) of the IAS (Pay) Rules. It is also stated that the benefit of the decision in Somarajan's case was not extended to the applicant in view of Annexure R3(a) letter dated. 1.3.2011 of the Ministry of Home Affairs, Government of India (1st respondent)

14. In the reply statement filed by 2nd and 3rd respondents in OA 349/14 also the contentions as referred to above have been raised.

15. An additional reply statement is seen filed by the third respondent which also is similar to the statement filed in OA 639/14. Similar reply statements are seen filed in all other O.As as well.

16. The point for consideration is whether the applicants are entitled

● to get the benefit of the decision rendered by the Hon'ble Supreme Court in TM Somarajan's case (supra) and the consequential benefits flowing therefrom?

17. Learned counsel for the applicants in OAs 349/2014 and 639/2014 (where the applicants are retired IAS officers) has made reference to Indian Administrative Service (Pay) Rules, 2007. It shows the scale of pay and appointment in the grade and also the pay attached to the junior scale, senior scale, junior Administrative grade, selection grade, super time scale etc.. It is profitable to quote Rule 4(4) of the Rule mentioned above which reads:

"4(4) The initial pay of an officer appointed by selection to the Service or on appointment to a cadre post in an officiating capacity, in accordance with rule 9 of the Indian Administrative Service (Cadre) Rules, 1954, as the case may be, shall be fixed by the Central Government in consultation with the State Government concerned, in the manner specified in Schedule I. Further pay and incremental benefits shall accrue to him under the other relevant provisions."

After giving the definition of 'actual pay' and 'assumed pay' in clause (i) and (ii) of Schedule I (vide Sub Rule (3) & (4) of Rule 4), it is further stated in Clauses (1) and (2) as under:-

"(1) Notwithstanding anything contained in the first proviso to sub-rule (1), of rule 3, and the Notes thereunder, the initial pay of a promoted officer or an officer appointed by selection, as the case may be, shall be fixed in the pay band 3 or pay band 4 by adding one increment equal to 3% of the sum of the pay in the pay band and the grade pay applicable which will be rounded off to the next multiple of 10. In addition, the grade pay of Senior Time Scale or Junior Administrative Grade or Selection Grade, corresponding to pay scale or grade pay in the State Service, shall be granted.

Provided that the grade pay attached to Selection Grade shall

be granted with the pay in running pay band - 4 only.

Referring to what have been quoted above the learned counsel for the applicants submits that the pay has to be fixed in Pay Band 4 by adding one increment equal to 3% of the sum of the pay in the Pay Band.

18. It is not disputed that subsequent to 1.1.2006 there was a revision of pay in the State of Kerala and consequently there was enhancement of pay in the State Civil Service/State Police Service. Consequently and as such the pay of the applicants has to be recalculated in accordance with the principles laid down in the Schedule mentioned above ie., on the basis of enhanced pay in the State Civil Service or non State Civil Service, as the case may be, the applicants contend.

19. It is submitted by the learned counsel for the applicants that the Accountant General has got constraints to implement the judgment of the Hon'ble Supreme Court in **Somarajan's case** (supra) in similar other cases as no clarificatory order thereof was issued by the Ministry of Home Affairs, New Delhi. The implementation of **Somarajan's case** was limited only to the petitioner therein and that was why the Accountant General is not in a position to extend the same benefit to all similarly placed officers of IAS and IPS, it is argued by the applicants' counsel . It is contended that the Govt. of India clarified, as per letter dated 11.1.2012 and 14.8.2012, that the anomaly on account of fixation of pay on promotion, including the promotion from State Service to IAS, can be solved by stepping up the pay of the senior member of service at par with the pay of the junior in the

cadre from the date when the anomaly arose. Annexures A8 and A9 are the two letters referred to above. The learned counsel for the applicants would submit that with respect to the claim made by some of the IAS officers, when they raised the question of pay anomaly, it was settled in respect of those officers only, by refixing the pay by stepping up the pay at par with the pay of their juniors. Therefore, according to the learned counsel, it is not a case where the dictum laid down by the Supreme Court in Somarajan's case was not at all made applicable to other officers in the IPS and IAS. But since the Government has not issued any order in respect of such claims, it appears individual representations had to be made and orders had to be passed thereon. That difficulty could have been obviated if an order had been passed by the Government clarifying the position that the dictum laid down in Somarajan's case is applicable to similarly placed officers of IPS and IAS.

20. As has been said earlier the initial pay of the promoted officer to IAS has to be fixed at the stage of Sr. Time scale of Indian Administrative Service equal to his actual pay in the lower scale or his assumed pay in the lower scale increased at the rate of one increment in the scale of pay in IAS. The rates of increment shall be equal to the rate admissible to Senior Time Scale of IAS at the stage to which the actual pay corresponds. Since Rule 4 of the amended Rule of 2007 makes the position clear, it would be a futile exercise on the part of the respondents to contend that the claim made by the applicants is unsustainable. When Schedule I (5) says that the pay of a promoted officer or an officer appointed by selection, as the

case may be, shall not, in any case, be fixed below the minimum of the Senior Time Scale and when it is also stated that initial pay on substantive post shall be fixed at the stage next above his actual pay in the higher scale, the objection raised by the respondents is to be found untenable.

21. Annexure. R.3 (a) in OA 650/14 is the reply which the 2nd respondent received from 1st respondent. Similar letters are seen produced in other cases as well. In the letter so sent by the 1st respondent it is stated that the judgment dated 21.10.2009 of the Supreme Court in TM Somarajan's case was against the statutory provisions of IPS (Pay) Rules and so its implementation is limited to the petitioners in that case only. The first respondent contends that the judgment in Somarajan (supra) was rendered interpreting IPS (Pay) Rules 1954. The first respondent further contends that IPS (Pay) Rules has been amended in 2007 and what is now in vogue is IPS (Pay) Rules, 2007. But that does not mean that the principle laid down in Somarajan (supra) is inapplicable to these cases. It could not be explained by the respondents how and why the decision rendered by the Apex Court is to be limited to the petitioner therein only and why the principle enunciated by the Apex Court in that case is not applicable to similarly placed officers namely, the applicants herein as well. Simply by saying that the judgment was against the statutory provisions, the respondents cannot avoid finding a solution to the anomaly by extending the benefit of that judgment to the applicants herein. The respondents could not say which is the specific statutory provision that is being offended or violated. In other words, the

respondents could not satisfactorily explain how the judgment in Somarajan's case is against the statutory provisions as stated by the 1st respondent in the letters addressed to the 2nd respondent. In the absence of any such tangible material it would be illogical and unreasonable to contend that Somarajan's decision is inapplicable. True, the applicants herein were not parties to that case. But it is trite law that when an issue has been decided, and it has attained finality, that too when it is so decided by the apex court, other similarly placed officers are also entitled to the same benefit. Policy of the Government is to minimize litigation and not to drive the parties to litigation. As the Hon'ble Supreme Court has decided the issue after considering the contentions raised by the parties it would be improper to resist the claim by raising such untenable contentions. There can be no doubt regarding the position that on getting promotion an employee/officer has a legitimate expectation to get higher pay. This expectation does not envisage any reduction with reference to last pay drawn, in addition to enhancement of official position occupied within which such an expectation is tied. After entering into IAS/IPS cadre from the State Service the pay of such officers cannot be reduced. The plea so raised by the applicants could not be controverted by the respondents by pointing out any relevant rule. So much so, the contention raised by the applicants that while granting promotion to IPS/IAS the pay drawn in the State Police Service or State Civil Service, as the case may be, is to be protected is well founded and well merited.

22. The learned counsel for the applicants in OA 349/2014 and OA

639/2014 has pointed out that the IPS (Pay) Rules 1954 is in pari materia with IAS (Pay) Rules 1954. Rule 4(3) of IPS (Pay) Rules reads thus:

"The initial pay of a promoted officer who prior to the date of his appointment to the Indian Police Service had not held a cadre post in an officiating capacity shall be fixed in accordance with the principles laid down in Section 1 of Schedule II"

Rule 4(4) of IAS Pay Rules which is in pari materia with IPS (Pay) Rules reads thus:

"4(4) The initial pay of an officer appointed by selection to the Service or on appointment to a cadre post in an officiating capacity, in accordance with rule 9 of the Indian Administrative Service (Cadre) Rules, 1954, as the case may be, shall be fixed by the Central Government in consultation with the State Government concerned, in the manner specified in Schedule I. Further pay and incremental benefits shall accrue to him under the other relevant provisions."

23. Section 1 of Schedule II of IPS Pay Rules says "the initial pay of a promoted officer shall be fixed at the stage of the Senior Time Scale of the Indian Police Service equal to his actual pay in the lower scale of his assumed pay in the lower scale as the case may be, increased at the rate of one increment in the Senior Time Scale of the Indian Police Service for every three years of service in the State Police Service"

24. Actual pay is defined in Clause 1 of Schedule I to IAS (Pay) Rules, 2007 as:

"actual pay' means the pay to which a member of the State Civil Service/Non-State Civil Service, as the case may be, is entitled by virtue of his substantive position in the cadre of that Service or by virtue of his having continuously worked in a temporary or officiating capacity in a higher post for a period of three years or more after following the prescribed procedure, provided the State Government have not revised the scales of pay applicable to the State Civil Service or Non-State Civil

Service, as the case may be, after the 1st day of January, 2006. If the pay scales have been revised subsequent to the 1st day of January, 2006, the dearness allowance, dearness pay, interim or additional relief sanctioned by the State Government after the 1st day of January, 2006 and merged in the revised pay scales, shall be excluded."

There is a non obstante clause in Schedule I (1) which reads

"Notwithstanding anything contained in the first proviso to sub-rule(1) of rule 3, and the Notes thereunder, the initial pay of a promoted officer or an officer appointed by selection, as the case may be, shall be fixed in the pay band 3 or pay band 4 by adding one increment equal to 3% of the sum of the pay in the pay and and the grade pay applicable which will be rounded off to the next multiple of 10. In addition, the grade pay of Senior Time Scale or Junior Administrative Grade or Selection Grade, corresponding to pay scale or grade pay in the State Service, shall be granted."

Clause 2 to Schedule I says:

"(2). In the case of a promoted officer or an officer appointed by selection, as the case may be, appointed to the Indian Administrative Service on probation, on any enhancement of his actual pay or assumed pay either as a result of a pay revision or on becoming eligible for an increment or in the event of confirmation in the higher scale of the State Civil Service or the non-State Civil Service, as the case may be, during the period of probation, unless the probation is extended within the meaning of sub-rule (3) of rule 3 of the Indian Administrative Service (Probation) Rules, he shall be entitled to have his pay recalculated in accordance with the principles laid down in this Schedule on the basis of his enhanced pay in the State Civil Service or the non-State Civil Service, as the case may be, as if he was promoted to the Indian Administrative Service with effect from the date of such enhancement. "

The term actual pay in IPS (Pay) Rules Schedule I is explained as: "actual pay means the pay to which a member of the State Police service is entitled by virtue of his substantive position in the cadre of that Service or by virtue of his having continuously worked in a temporary or officiating capacity in a higher post for a period of three years or more after following

the prescribed procedure, provided the State Government have not revised the scales of pay applicable to the State Police Service after the 1st day of January, 2006. If the pay scales have been revised subsequent to the 1st day of January, 2006, the dearness allowance, dearness pay, interim or additional relief sanctioned by the State Government after the 1st day of January 2006 and merged in the revised pay scales, shall be excluded.”

25. The non obstante clause (i) and (ii) in Schedule I referred to above was substituted by the DOPT notification No.14021/3/2008-AIS (II) dated 3.3.2010. Sub clause (v) of Schedule I makes it clear that the pay of a promoted officer shall not in any case be fixed below the minimum of the Senior Time Scale. In IAS (Pay) Rules 2007 also, in Schedule I (v), it is made clear that the pay of a promoted officer or an officer appointed by selection, as the case may be, shall not in any case be fixed below the minimum of the Senior Time Scale. Clause (iii) in Schedule II of IPS (Pay) Rules states “higher scales means any scale of pay higher than the “lower scale” prescribed for the State Police Service and in force on the 1st day of January, 1986 or any date subsequent thereto, the subsequent date being the date on which the scales of pay applicable to the State Police Service revised for the first time after the first day of January, 1986”

26. Clause (iii) of Schedule II of IAS (Pay) Rules defines higher pay scale as similar to the provision in IPS (Pay) Rules, 1954. Section I of Schedule II of IAS (Pay) Rules states ”higher scale as similar in IPS (Pay) Rules 1954. Section 1 of Schedule II of IAS (Pay) Rules, 1954 states that “the initial pay of a promoted officer shall be fixed at the stage of the Senior

● Time Scale of the Indian Administrative Service equal to his actual pay in the lower scale or his assumed pay in the lower scale, as the case may be, increased at the rate of one increment in the Senior Time Scale of the Indian Administrative Service for every three years of service in the State Civil Service."

27. There can be no doubt that IPS (Pay) Rules 1954 as amended in 2007 and IAS (Pay) Rules, 1954 as amended in 2007 are identical. So much so, the principle laid down in **Somarajan's** case is equally applicable to officers promoted to IAS as well. In other words, the principle laid down in **Somarajan case** will apply in all the fours for fixation of pay of IAS personnel as well. It is not disputed that IAS (Pay) 2nd Amendment Rules 2008 was brought into force w.e.f. 1.1.2006. In Schedule I of the IAS (Pay) Rules which has been in force from 1.1.2006 the following paragraphs were substituted namely :

"(1) Notwithstanding anything contained in the first proviso to Sub Rule (1) of Rule 3 and the Notes thereunder, the initial pay of a promoted officer or an officer appointed by Selection, as the case may be, shall be fixed at the pay drawn by the officer in the Pay Band 3 or Pay Band 4 in the State Service in addition to one of the Grade Pays admissible for the three components, Senior Scale as per the eligibility of the officer in the following manner:

<u>Pay in Pay Band</u>	<u>Grade Pay</u>
Officers with pay upto Rs. 29490/- in pay band 3	Rs. 6600/-
Officers with pay between s. 29491 to Rs. 30690 in pay band 3	Rs. 7600/-
Officers with pay Rs. 30691 or above in pay band 3 and py band 4 Grade pay	Rs. 8700/-

In case the pay of officer in State Service has not been revised to the new pay structure with effect from the first January, 2006, the same shall be revised in terms of

provisions contained in Rule 3A".

Identical amendments were made in IPS/IFS (Pay) Rules 2007 as well as per gazette notification dated 27.9.2008, the learned counsel for applicants submits. It is also pointed out that by GSR 253(E) notification dated 15.4.2009, Schedule I of IAS (Pay) Rules, 2007 has been further amended w.e.f. 1.1.2006 substituting the following paragraph for paragraph I:

"(1) Notwithstanding anything contained in the first proviso to sub-rule (1), of rule 3, and the Notes thereunder, the initial pay of a promoted officer or an officer appointed by selection, as the case may be, shall be fixed in the pay band 3 or pay band 4 by adding one increment equal to 3% of the sum of the pay in the pay band and the grade pay applicable which will be rounded off to the next multiple of 10. In addition, the grade pay of Senior Time Scale or Junior Administrative Grade or Selection Grade, corresponding to pay scale or grade pay in the State Service, shall be granted.

Provided that the grade pay attached to Selection Grade shall be granted with the pay in running pay band - 4 only. "

Identical amendment was made in the IPS (Pay) Rules 2007 by inserting similar provision by notification No.14021/3/2008-AIS)II) dated 3.3.2010 w.e.f. 1.1.2006. Therefore, IAS (Pay) Rules, 2007 as amended by Gazette Notification dated 15.4.2009 and IPS (Pay) Rules as amended by notification dated 3.3.2010 would leave no doubt that the pay of a promoted officer shall not in any case be fixed below the minimum of the Senior Time Scale. Since the amendments referred to above made the position clear, there can be no doubt that the principle laid down in **Somarajan's case** is equally applicable to all the officers of State Police Service promoted to Indian Police Service (IPS) and the non-State Civil

Service officers promoted to Indian Administrative Service (IAS). The respondents shall accordingly fix the pay of the applicants taking note of the 2007 amendment and the subsequent amendments and government notifications referred to in the preceding paragraphs and the arrears be paid within three months from the date of receipt of a copy of this order.

28. Original Applications are allowed. No order as to costs.

(P.Gopinath)
Administrative Member

(N.K.Balakrishnan)
Judicial Member

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