

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No. 113 of 2007

.....FRIDAY..., this the 13th day of November, 2009.

CORAM:

**HON'BLE Dr. K.B.S.RAJAN, JUDICIAL MEMBER
HON'BLE Ms. K. NOORJEHAN, ADMINISTRATIVE MEMBER**

1. V.V. Ammini,
W/o. Late Kittu,
Thejas House,
Thiruvankulam.
2. Asha K.K.,
D/o. Kittu,
Thejas House,
Thiruvankulam.
3. Rajesh K.K.,
S/o. Late Kittu,
Thejas House,
Thiruvankulam.
4. Sethulakshmi,
D/o. Late Kittu,
Thejas House,
Thiruvankulam.

... Applicants.

(By Advocate Mr. T.C. Govindaswamy)

versus

1. Union of India represented by
The Secretary,
Department of Personal Pension &
Petitions, Government Secretariat,
New Delhi.
2. The State of Kerala represented by
Chief Secretary, Secretariat,
Thiruvananthapuram.
3. The Accountant General,
(AIF), Kerala State, Thiruvananthapuram.

... Respondents.

(By Advocates Mr. Sunil Jacob, SCGSC (R1),
Mr. R. Prem Shanker, GP (R2)
Mr. P. Nandakumar (R3)

The Original Application having been heard on 05.11.09, this Tribunal on
13-11-09 delivered the following :

O R D E R
HON'BLE DR. K B S RAJAN, JUDICIAL MEMBER

O.A. No. 113/2007 had been filed with an application for condonation of delay in filing the OA, vide M.A. No. 128/2007. The M.A. was allowed and delay condoned by a separate order dated 26-02-2007. During the pendency of the O.A., the applicant K.A. Kittu having expired, his legal heirs, V.V. Ammini and three others had filed substitution application and the same was allowed, vide order dated 18-01-2008 in M.A. No.70/2008. However, for the purpose of this order, the original applicant shall be referred to as the applicant.

2 Brief facts of the case as per the applicant : The applicant was drawing Rs 1680/- in 1982 in the State Civil Service when he took charge of IAS Post of Cardamom Settlement officer on 08-10-1982. The pay fixed in the IAS cadre was Rs 1420/-. Thus there was a reduction in the pay by Rs 260/-. In fact, the pay, according to the applicant, at the time of joining the IAS cadre should have been fixed by grant of one notional increment in the lower post and placing the pay at the next stage in the pay scale of I.A.S. Thus, according to the applicant, the pay at the time of joining the I.A.S. cadre being Rs 1680/-, by granting the notional increment of Rs 60, the resultant pay of Rs 1740/- should have been fixed at the nearest higher stage in the scale of pay of Rs 1200-60-1600-80-2000, which would be at Rs 1740/- in which event the difference between the pay that ought to have been fixed (1740) and the pay actually fixed (Rs 1420) worked out to Rs 340/- per month. The applicant was kept under suspension from 10-10-1985 and reinstated on 13-01-1987 and he superannuated w.e.f. 31-10-1987. At the time of his retirement his pay in the IAS Grade was Rs 1540/- only which was the pay drawn by him as early as in 1979 as Sr. Grade Deputy Collector in the State Service. The pension was based on the last pay drawn. Against a penalty order passed against the applicant, the applicant took up the matter before the Tribunal in OA No. 956/1994 and the Tribunal by its order dated 31.12.1996 quashed the finding of the enquiry commission and

ordered payment of full pension to the applicant. The applicant filed representation which was disposed of by the impugned order dated 27th September 2005. The version of the respondents in regard to the claim for pay fixation vide the impugned order is as under:-

"The Government of India had clarified that the pay of SCS officers appointed to the IAS should be fixed with reference to their substantive pay in the State Scale as revised for the first time after 01-01-1973 and that SCS Scale introduced in 1975 cannot be taken into account for the purpose of fixation of pay in the IAS scale. Hence your pay was fixed in the Senior Scale of the IAS based on the substantive pay of Rs 1200/- in the post of Deputy Collector in the scale revised with effect from 01-07-1973."

3. The applicant has come up against the above mentioned order of the respondents and has claimed the following:-

(a) Call for the entire records leading to Annexure A1 and quash the same;

(b) Issue appropriate orders directing the respondents to fix and pay the arrears of salary and revised pay and pension as per the relevant rules.

4. The State Government (Respondent No. 2 and 3) filed their version. According to them the fixation of pay of the applicant on promotion to the IAS cadre was done strictly in accordance with the directions/guidelines of Government of India. Vide letter No. 11030/29/78/AIS II dated 24-10-1979, it has been clarified that the pay of State Civil Service officers appointed to IAS should be fixed with reference to the their substantive pay in the State Scale as revised for the first time after 01/01/1973 which is the effective date of Central Pay Revision. Further in letter No. 20015/1/86 AIS II dated 23.04.1984, it was clarified that fixation of pay based on the substantive pay in the higher State Civil Service Scale was not in order as per clause (1) of Section 1 of Schedule II of IAS Pay Rules and that State Civil Service Scale which was introduced in 1975 (Sr. Gr. Deputy Collector) could not be reckoned for the purpose of fixation of pay in the IAS Scale. Precisely when a State Civil Service Officer is conferred

with IAS, his pay in the IAS cadre should be fixed with reference to the substantive pay he had drawn in the State Scale as revised for the first time after a Central Pay Revision. Accordingly, pay of the applicant was fixed in the Senior Scale of IAS based on the substantive pay of Rs 1,200/- drawn by him in the scale of Rs 600-1200, of the post of Deputy Collector revised w.e.f. 01-07-1973. Re-fixation of pay in the IAS Cadre either on the basis of pay drawn in the scale of Senior Grade Deputy Collector which was given to him after 01-07-1973 or on the basis revised scale of pay of Deputy Collector introduced with effect from 01.07.1978 or 01-07-1983 State Pay Revisions is not admissible in this case as per the Government of India orders mentioned above. The pay which was fixed at Rs 1420/- on 08-12-1982 in the scale of Rs 1200 – 1800 in the IAS cadre was increased to Rs 1480/- w.e.f. 01-12-1983 and Rs 1540/- w.e.f. 01.12.1984 and consequent to his suspension and reinstatement, he had been authorized increment on 01-12-1985 at Rs 1600/-. Consequent on the Central Pay Revision 1986, his pay was fixed at Rs 3,700/- w.e.f. 01-01-1986 in the scale of Rs 3200 – 125 – 4700. He was authorized increment due on 01-12-1986 raising his pay to Rs 3,825/- and the applicant superannuated on 31-01-1987. Pension which was fixed on the basis of the above pay, was revised by the third respondent w.e.f. 01-01-1996.

5. The Third respondent had filed his reply, which goes in tandem with the above mentioned facts and figures of the State Government.

6. The applicant has filed his rejoinder, in which he had prayed for calling for the two references i.e. letter dated 24-10-1979 and 23-04-1984. His other averments and contentions have been reiterated in the rejoinder and the contentions of the respondents denied.

7. The Third respondent, as directed by the Tribunal, made available a copy of the afore said documents, of which the former is a notification, redefining certain terms of the Pay Rules, while the latter document i.e. of 1984 clarified the

method of fixation of pay at the time of joining IAS from State Cadre. In addition, the entire service record was made available by the respondents.

8. Counsel for the applicant took us through the details of pay of the Applicant in the State Services as a confirmed Sr. Grade Dy. Collector and stated that the same was Rs 1620/. Confirmation orders were issued on 01.02.1981. As such, the same ought to have been the basis to work out the pay fixation in the I.A.S. Grade.

9. Counsel for the State Government and the third respondent argued that the pay in the State Service that could be taken into account is only that revised pay scale which was close to 01-01-1973 and not the ones which were available for the second or subsequent time. And, as the pay scale was revised on 01-07-1973, the same was taken into account and the pay rightly fixed.

10. Arguments were heard and documents perused. From the service records, it is observed that the applicant was placed in the pay scale of Rs 600 – 1200 in July 1973 and he opted for the said scale w.e.f. 8-7-1973. Again, there had been an upward revision of pay scale of Rs 800 – 1550 in 1978 and the applicant opted for the same w.e.f. 01-07-1978. The contention of the respondents is that the pay of the applicant was fixed taking into account the revised pay scale of 1973 and not the higher pay scale of 1978 and they have relied upon the two documents as stated in their reply. Of the two documents relied upon one happens to be the re-defined definition of certain terms, such as assumed pay, actual pay, lower pay scale and higher pay scale, while the other a clarification as to how to fix the pay when higher pay scale is taken into account. The latter had been issued with reference to two individuals, in respect of whom no further details are available. Thus, the second communication cannot be taken into account. However, the Ministry of Home Affairs had brought a clarification in general, as contained in their letter dated 11th February, 1982 which inter alia states as under:-

"It has been brought to the notice of the Central Government that in a number of cases, although the members of the State Civil Service, at the time of their appointment to the IAS have been holding the post in the 'higher scale' of State Civil Service on a long term basis, they are unable to get the benefit of the fixation of pay under Clause (2) of Section 1 of Schedule II because the State Governments are not in a position to confirm those officers, for want of permanent vacancies in the relevant grades. Consequently, the officers face the hardship of having to stagnate at the stage of officiating pay drawn by them in the State Civil Services at the time of their promotion to IAS for a number of years. It has been felt that the benefit of pay drawn in the 'higher scale' of the State Civil Services in an officiating capacity can be given in the matter of fixation of pay of SCS officers promoted to IAS subject to a certificate from the State Government that they would have continued to officiate in the 'higher scale' of State Civil Service but for appointment to the Indian Administrative Service.

2. *In the case of an officer who is officiating in the 'higher scale' of State Civil Service on the date of his appointment to IAS and in whose case the requisite certificate cannot be given, his pay in the IAS would be regulated in accordance with the existing provisions of Clause (3) of Section 1 which corresponds to clause 3(ii) of the enclosed draft notification of Schedule II.*

....."

11. Clause 3(ii) of the draft notification as referred to above reads as under:

"(ii) A promoted officer who, at the time of his appointment to the Indian Administrative Service was officiating in the higher scale of the State Civil Service and whose initial pay in the senior time scale of the Indian Administrative Service cannot be fixed under sub-clause (i) above, shall, in case his officiating pay in the higher scale is higher than the initial pay fixed in the senior time scale of the Indian Administrative Service in accordance with clause (1) above be entitled to a personal pay equal to the difference. The personal pay shall be absorbed in future increments and increase in his pay, if any, including special pay, additional pay and any other form of pay."

12. The above letter as well as draft notification had been taken from the website of Personnel Ministry. It is presumed that the draft notification came into force.

13. Neither the State Government could give the requisite certificate nor did the applicant take any step to obtain the same. As such, the above provisions could be safely applied to the case of the applicant. The pay scale in the SCS applicable at the time of promotion to the IAS Cadre is not the first revised pay

and the first revised pay scale was as of 01-07-1973 as stated by the State Government in their reply (600 – 1200) on the basis of which the pay was fixed at Rs 1420/- . However, in view of the above notification, the pay could have been fixed taking into account the higher pay scale but the difference is to be rendered as only personal pay, which is absorbed in future increments.

14. In fact, an identical situation has been dealt with by the Apex Court in the case of *Yukti Nath Jha v. Union of India, 1998 SCC (L&S) 1751* wherein the Apex Court has held as under:-

"1. The appellants were members of the Bihar Administrative Service. They were promoted to the Indian Administrative Service on different dates between April 1981 to March 1982. It is not disputed that in consequence of their promotion to the Indian Administrative Service, their salary stood reduced. We do not consider it necessary to deal with various submissions advanced by the learned counsel for the parties nor is it necessary to consider applicability of various letters issued by the Government and the Rules dealing with fixation of salary as clause (3) of Section 1 of Schedule I of the Pay Fixation Rules provides for fixation of personal pay to be paid in suitable cases to mitigate hardship. Even though learned counsel for the Union of India urged that no hardship was caused to the appellants but the hardship is writ large on the face of it as the pay of the appellants in consequence of their promotion to higher posts instead of going up got reduced.

2. Therefore, we are of opinion that the appellants were entitled to personal pay. The appeal is, therefore, disposed of by directing the respondents to fix personal pay under the Rules from the date the appellants were promoted so as to neutralize the reduction suffered by the appellants. This exercise may be done and the amount due may be paid within three months from the date a copy of this order is produced."

15. Interest of justice would be served in this case as well, if on the above lines, the OA is disposed of, as sufficient time has elapsed and the decision by the Apex Court sure serves as an invaluable precedent.

16. In view of the above, this OA is disposed of with a direction to the respondents ~~respondents~~ to fix personal pay under the Rules from the date the appellants were promoted so as to neutralize the reduction suffered by the appellants. This exercise may be done and the amount due may be paid to the legal heirs within three months from the date a copy of this order is produced.

Any upward revision in pension arising out of the above would also accrue to the legal heirs. Though normally such a payment is not permitted if the claim is stale, in view of the fact that the impugned order is of 2005 which alone gave full details of the pay fixation, payment of arrears of pay and allowance * on the above lines is ordered.

17. Under the circumstances, there shall be no orders as to costs.

(Dated, the 13th November, 2009)



K. NOORJEHAN

ADMINISTRATIVE MEMBER



Dr. K B S RAJAN

JUDICIAL MEMBER

CVR.