

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

Original Application No. 118 of 2009
Original Application No. 1041 of 2010

Friday, this the 05th day of August, 2011

CORAM:

Hon'ble Mr. Justice P.R. Raman, Judicial Member
Hon'ble Mr. K. George Joseph, Administrative Member

1. Original Application No. 118 of 2009 -

1. M. Padmanabhan IPS, aged 58 years,
S/o. Gopalakrishnakurup, Superintendent of Police,
Malappuram, residing at Padmaragam, Subhash Road,
Kannur.
2. AM Mathew Polycarp IPS, aged 59 years,
S/o. Mathai, Commandant, KAP Battalion, residing at.
3. C. Sherafuddeen IPS, aged 58 years, S/o. Kunhamad,
Superintendent of Police, Wayanad, residing at Cholakkulath
House, Perinthalmanna, Malappuram.
4. Kuttappai IPS, aged 57 years, S/o. Kochucherukkan,
Superintendent of Police, Idukki, residing at SP Quarters, Idukki.
5. Sreesukan IPS, aged 57 years, S/o. Kunhappa Nair,
Superintendent of Police, VACB Northern Range, Kozhikode,
residing at Sreechithiram, Chirackal,
Kannur.

..... **Applicants**

(By Advocate – M/s. P.C. Sasidharan & R. Sreeraj)

V e r s u s

1. Union of India, represented by its Secretary to
Government of India, Ministry of Home Affairs, New Delhi.
2. The State of Kerala, represented by its Chief Secretary
to Government, Government Secretariat, Thiruvananthapuram.
3. The Accountant General (A&E) Kerala, Indian Audit and
Accounts Department, Office of the Accountant General (A&E)
Kerala, MG Road,

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Thiruvananthapuram-695 039.

..... Respondents

[By Advocates – Mr. Sunil Jacob Jose, SCGSC (R1),
Mr. N.K. Thankachan, GP (R2) &
Mr. V.V. Asokan (R3)]

2. **Original Application No. 104 of 2010 -**

1. M. Padmanabhan IPS, aged 59 years,
S/o. Gopalakrishnakurup, Superintendent of Police,
CBCID, Kannur, residing at Padmaragam, Subhash Road,
Civil Station P.O., Kannur-2.
2. AM Mathew Polycarp IPS, aged 60 years,
S/o. Mathai, Superintendent of Police (Retired),
residing at Arackal House, Manaladi, Mannarkkad.
3. C. Sherafuddeen IPS, aged 60 years, S/o. Kunhamad,
Superintendent of Police (Retired), residing at Sandram
Housing Colony Road, Perinthalmanna.
4. Kuttappai IPS, aged 59 years, S/o. Kochucherukkan,
Superintendent of Police, Vigilance, KSEB, Trivandrum,
residing at Vrindavan, Sancharimukku, Vadakkemala P.O., Kollam.
5. Sreesukan IPS, aged 58 years, S/o. Kunhappa Nair,
Superintendent of Police, VACB Northern Range, Kozhikode,
residing at Sreechithiram, Chirackal PO,
Kannur-670 011.

..... Applicants

(By Advocate – Mr. R. Sreeraj)

V e r s u s

1. Union of India, represented by its Secretary to
Government of India, Ministry of Home Affairs, New Delhi.
2. The State of Kerala, represented by its Chief Secretary
to Government, Government Secretariat, Thiruvananthapuram.
3. The Accountant General (A&E) Kerala, Indian Audit and
Accounts Department, Office of the Accountant General (A&E)
Kerala, MG Road,
Thiruvananthapuram-695 039.

..... Respondents

[By Advocates – Mr. Sunil Jacob Jose, SCGSC (R1),
Mr. N.K. Thankachan, GP (R2) &
Mr. V.V. Asokan (R3)]

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These applications having been heard on 14.7.2011, the Tribunal on 05-08-11 delivered the following:

ORDER

By Hon'ble Mr. K. George Joseph, Administrative Member-

The applicants and facts being common these two Original Applications were heard together and are disposed of by this common order.

2. OA 118 of 2009 is filed for stepping up of pay of the applicants to that of their juniors. OA 1041 of 2010 is filed for the following reliefs:-

"I) To declare that the inaction on the part of the respondents in removing the anomaly consisting in the reduction of pay in the Indian Police Service Cadre vis-a-vis the pay in the State Police Service Cadre which the applicants were drawing at the time of their promotion to the Indian Police Service is illegal, arbitrary, unjust, unreasonable, irrational and the same violates Articles 14 and 16 of the Constitution of India.

II) To direct the 1st respondent to pass appropriate orders and ensure removal of the anomaly in the pay fixation of the applicants if necessary by invoking Rule 6 of Section III of Schedule II of Indian Police Service (Pay) rules and as was done in the case of Shri T.M. Somarajan, IPS pursuant to the directions of this Hon'ble Tribunal in OA 1552 of 1998 which was confirmed both by the High Court and the Hon'ble Supreme Court (2010 (1) SCC (L&S) 15 = 2010 (1) SCC 129).

III) Such other relief as may be prayed for and this Tribunal may deem fit to grant.

IV) Grant the cost of this Original Application."

3. The applicants while holding the rank not below the rank of Deputy Superintendent of Police or equivalent in the State Police Service were appointed in the IPS from the 2004 select list and were given the year 2000 as their year of allotment. On their respective dates of appointment to the

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IPS they were drawing a basic pay of Rs. 15,225/- in the pay scale of Rs. 12,600-375-15,600/-. On their appointment to the IPS the pay of the applicants was fixed to Rs. 12,925/- in the pay scale of Rs. 10,000-325-15,200/-. Aggrieved by the reduction in pay they submitted representations to the Secretary to Government of India seeking protection of pay which have not yielded any positive result so far.

4. The anomaly in the fixation of pay of the applicants in the IPS is further aggravated by the higher basic pay allowed to be drawn by some of their juniors and persons who were not found fit for promotion along with them and who were given promotion to the IPS subsequently.

✓ 5. The applicants submit that the issue relating to anomaly in fixation of pay was considered by this Tribunal in OA No. 1552 of 1998 and the order in favour of the applicant therein, Shri T.M. Somarajan, IPS has been implemented after the Apex Court affirmed the same in 2010 (1) SCC (L&S) 15. The applicants are similarly situated as the applicant in the aforesaid OA and the respondents are duty bound to extend the benefits of the said order/judgment to the applicants also. In the light of the judgment of the Hon'ble High Court of Kerala in Kamala Devi Vs. KSFE Limited, 2002 (1) KLT 157 the respondents cannot be heard to contend that the anomaly in fixation of their pay after promotion to the IPS from the State Police Service is the natural consequence of fixation as per rules and that the same does not constitute anomaly and that no redress is possible in law. The respondents are duty bound to invoke rule 6 of Section III of Schedule

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II of IPS (Pay) Rules to solve the problem. A senior must normally draw more pay than his junior. All material ingredients for stepping up of pay have been satisfied in the case of the applicants.

6. The respondents in their reply statement submitted that under Rule 8 Schedule II of IPS (Pay) Rules the basic pay of a promoted officer in IPS time scale shall not at any time exceed the basic pay he would have drawn in the IPS time scale as a direct recruit on that date if he had been appointed to the IPS on the date on which he was appointed to the State Police Service. There was no error of rules in the fixation of pay of the applicants. The anomaly occurred as the applicants were inducted and confirmed in the IPS before 1.1.2006 whereas their junior Shri K.K. Joshwa had been appointed and confirmed in the IPS after 1.1.2006. The higher pay to Shri Joshwa was also due to the fact that he was drawing higher pay than his seniors even in the non-IPS grade. In fact he got double advantage of fixation of pay in the revised scale as also protection up to Junior Administrative Grade. The question of applicability of the judgment of the Apex Court does not arise since the judgment dated 21.10.2009 of the Apex Court in T.M. Somrajan's case was against the statutory provisions of the IPS (Pay) Rules. Its implementation is limited to the petitioner's case only.

7. In the reply statement filed by the 3rd respondent it is submitted that the Central Government is empowered under the All India Service Act, 1951 to make rules and regulations to govern the recruitment and conditions of service of persons appointed to the All India Services. Thus the

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rectification to remove the anomaly by resorting to a judgment of this Tribunal in OA No. 1552 of 1998 cannot be done without the concurrence of the Government of India. The Hon'ble Supreme Court's judgment in T.M. Somarajan's case is mainly for the protection of last pay drawn by the officers before their induction into the IPS as also for corresponding revision of pay in the IPS cadre and not for rectification of any anomaly with reference to juniors (Shri K.K. Joshwa, IPS) pay as sought by these applicants. It is further submitted that the Ministry of Home Affairs have already been requested to consider the applicability of the aforesaid Hon'ble Supreme Court's judgment for fixation of pay of the applicants in the instant case.

8. In the rejoinder statement filed by the applicants it was submitted that the issue involved in OA No. 118 of 2009 is covered by the judgment of the Hon'ble High Court of Kerala in Kamala Devi Vs. KSFE Limited reported in 2002 (1) KLT 157. It was submitted that the case of the applicants is not confined to a comparison with Shri K.K. Joshwa alone but their case has to be considered with reference to M/s. Ramdas Pothan & P.K. Madhu also.

9. We have heard the learned counsel for the applicants Mr. R. Sreeraj, Mr. Sunil Jacob Jose, SCGSC for respondent No. 1, Mr. N.K. Thankachan, GP for respondent No. 2 and Mr. V.V. Asokan for respondent No. 3 and perused the records.

10. The undisputed facts in these OAs are that pay of the applicants got

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reduced upon their induction to the IPS and that they are drawing less pay than their juniors in the IPS. As a rule, senior should draw more pay than junior. Senior drawing less pay than junior is an anomaly. The applicants rely on the order of this Tribunal in OA No. 1552 of 1998 which was upheld by the Hon'ble High Court of Kerala and the Apex Court. In the aforesaid order this Tribunal considered protection of pay on induction to the IPS as well as removal of anomaly of drawing less pay than juniors. The relevant part from the aforesaid order is extracted as under:-

"7. We have examined the enormous bulk of pleadings made by the rival parties. The main question is how the pay of the applicant, a State Police Service officer, is to be fixed on his induction on promotion into the All India cadre, viz, IPS, before his confirmation in the State cadre came and after his confirmation orders with retrospective effect were issued. Admittedly, the applicant was yet to be confirmed in the post of Superintendent of Police (Non-IPS) when he was selected to and joined the IPS on 8.12.95 (Afternoon). So it was necessary to fix his pay with effect from 9.12.95 with reference to his actual pay on that date in the State cadre at the appropriate stage in the IPS as applicable at the relevant point of time. He was permanently appointed to the IPS cadre with effect from 31.12.95. More than 18 months thereafter, by order dated 5.7.97, the applicant was confirmed in the State Police Service with retrospective effect from 4.5.94. Thus, the applicant's pay was required to be recalculated from 9.12.95 taking note of the fact that he was confirmed in the post of Superintendent of Police (Non-IPS) with effect from 4.5.94. That takes us to the rules regarding pay fixation relevant to the applicant's case. Indian Police Service (Pay) Rules 1954 (referred to as Rules) governed these matters. Rule 4(5) is the relevant Rule that deals with the type of cases under which the applicant comes. Rule 4(5) states as under:

"The initial pay of an officer of a 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 Service (Cadre) Rules, 1954, shall be fixed in the manner specified in Section III of Schedule II.

Now, one has to see Section III of Schedule II of the Rules to understand the manner in which the applicant's initial pay in the IPS is to be fixed. Section III of Schedule II reads as follows:

"The initial pay of a member of the State Police Service appointed to officiate in a cadre post shall be fixed in

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accordance with the principles enunciated in Section I of the Schedule.

Thus it becomes necessary to fix the initial pay of the applicant by going back to Section I of Schedule II. Section I of Section II is extracted below:

“Section I : Fixation of initial pay of promoted officers falling under Rule 4(3).

(1) 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 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 Police Service for every three years of service in the State Police Service. The resultant increase shall be subject to a minimum of Rs. 150 and a maximum of Rs. 200 over his pay in the State Police Service:

Provided that:

(i) Where, however the amount arrived at after the addition of such minimum or maximum increase corresponds to a stage in the senior time scale of the Indian Police Service, the initial pay shall be fixed at that stage; and where it does not correspond to a stage in the senior time scale of the Indian Police Service, the initial pay shall be fixed at the next higher stage of the scale; and

(ii) for the purpose of this Clause, service in the State Police Service shall include such service in a former State, now merged in the State concerned, as may be equated to service in the State Police Service by the Central Government in consultation with the State Government concerned.

Explanation: In the case of a promoted officer whose actual pay in the lower scale of the State Police Service is equal to or above the minimum of the senior time scale of the Indian Police Service, the rates of increment shall be equal to the rates admissible in the senior time scale of the Indian Police Service at the stage to which the actual pay corresponds or if there is not such stage, the next lower stage.

(2) The initial pay of a promoted officer who is substantive 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.

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Provided that in a case where the pay in the senior time scale of the Indian Police Service calculated in accordance with clause (1) is higher than that admissible under this Clause, the promoted officer shall be entitled to such higher pay.

(3) A promoted officer, who, at the time of his appointment to the Indian Police Service was officiating in the higher scale of the State Police Service and whose initial pay in the senior time scale of the Indian Police Service is fixed in accordance with Clause (1), shall, in case his officiating pay in the higher scale is higher than the initial pay so fixed in the senior time scale of the Indian Police Service, be entitled to a personal pay equal to the difference provided that the State Government certifies that the promoted officer would have continued to officiate in the higher scale but for his appointment to the Indian Police Service. The personal pay shall be absorbed in future increments and increases in his pay, if any, including special pay, additional pay and any other form of pay.

8. It is quite clear that the applicant became a confirmed Superintendent of Police in the State Police Service (i.e. Non-IPS) with effect from 4.5.94. There cannot be any controversy about the position that when the applicant was appointed to the cadre of IPS with effect from 8.12.95 afternoon, he was holding the substantive post of Non-IPS Superintendent of Police. His substantive pay as Superintendent of Police (Non-IPS) as on 9.12.95 was Rs. 4650 per month plus Special Pay of Rs. 100/-. Needless to say, he was drawing pay in the higher scale of the State Police Service as on 9.12.95 when he was appointed to the All India Cadre (IPS). In Accordance with Clause 2 of Section I of Schedule II, the applicant's pay should be fixed at the stage of the senior time scale of the IPS next above his actual pay in the higher scale. Actual pay in the higher scale is Rs. 4650/- plus Special Pay of Rs. 100/- as has already been seen. However, the pay calculated as per Clause 1 is higher than that admissible under Clause 2. Therefore, in accordance with the proviso to Clause 2 of Section I of Schedule II, the applicant should be entitled to such higher pay as is calculated in terms of Clause 1. In other words, the applicant would be entitled to get his initial pay in IPS fixed at Rs. 4900/- per month in accordance with the proviso to Clause 2 Section I of Schedule II. 'Actual pay' is defined as the pay whether in the lower scale or in the higher scale to which a member of the State Police service is entitled by virtue of his substantive position in the State Police Service. In view of the above, the applicant's pay in his substantive post being Rs. 4650/- plus Special Pay of Rs. 100/- has to be reckoned for purposes of pay fixation. The claim of initial pay at Rs. 4900/- to be fixed in the light of the above, therefore appears to have reasonable basis.

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9. Now turning our attention to the restriction taken recourse to by the respondents, apparently, in view of the definitions of the expressions "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 attributed to these two expressions as appearing in the definitions need to be taken as such unless the context otherwise requires. (emphasis supplied). In our considered opinion, the context in which the applicant's pay fixation is to be considered does require the expression "higher scale" to be understood in its most natural and unrestricted meaning.

10. In the case of State Government officers, the first pay revision after 1.1.1986 took place with effect from 1.7.88. However, it was only after the next pay revision which was brought into force with effect from 1.3.92 as per G.O.(P) No. 600/93/Fin. Dated 25.9.93 that the applicant became a confirmed Superintendent of Police (Non-IPS) and then got into the All India cadre (IPS) on 9.12.95. We are inclined to agree with the applicant's view that if the definition of 'higher scale' contained in the rules is taken as the basis for fixation of the applicant's initial pay in the IPS cadre on 9.12.95, it would bring about unreasonable result and cause unintended hardship to the applicant. It is in this connection, that Clause (6) of Section III of the Rules whereby specific power is conferred on the Central Government for removing the unreasonableness in the rules is expected to be called in aid. Clause (6) of Section III of Schedule II is as follows:

"Notwithstanding anything contained in any clause in the 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 it may consider necessary for dealing with the case in a just and equitable manner."

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 as it is clear from A-8 and A-9 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 with effect from 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. We have also examined the applicant's submission that the maximum basic pay that could be drawn by a promotee IPS officer could be pegged at Rs. 5700 p.m. being the maximum of the basic pay of the Selection Grade Superintendent in the IPS cadre. The applicant relies

on A-11 dated 14.7.95 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. It would appear that the necessary amendment made to this effect in the Department's notification G.F.R. No. 437(E) dated 9.5.94 provide for the protection of State Police Officers' pay to the extent of Rs. 5700, i.e. the maximum of the Senior Scale of the IPS and that the amendment would be effective from the date of its publication i.e. 9.5.94. However, the hardship that was caused from the date of effect of the said notification was taken note of and it was, accordingly, decided to make the amendments notionally effective from 1.1.86 on which date the revised pay scale in respect of All India Services came into effect on the recommendations of the Vth Central Pay Commission. One of the important aspects of the said notification is that while the promoted officers would get their pay fixed in the light of the amendment with effect from 1.1.86, no arrears of pay on account of the same period from 1.1.86 to 8.5.94 would be admissible. It would, therefore, be clear that the respondents' averment in the reply statement to the effect that the definition of higher scale was necessary to limit the maximum pay to the State Police Officers on promotion to the IPS cadre vis-a-vis their direct recruit counterparts is unsound.

- ✓ 11. 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 IPS 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 applicant's 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
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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 circumstances 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 at least 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, there by 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 differentia between persons promoted before or after 1.7.1980 has no rational basis in so far as it relates to fixation of salary.

12. 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

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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.

13. Accordingly, we dispose of this application with the following orders/directions:

- i) The impugned order A-1 dated 2.9.97 is set aside.
- ii) The impugned order A-2 dated 4.2.98 which practically reiterates the interpretation of the Rules as given in A-1 and the conclusions drawn therein is set aside.
- iii) The impugned order A-16 dated 22.5.2000 of the DOPT is set aside.
- iv) 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 9.12.95 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 date of his promotion to the IPS.
- v) 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.

14. The parties shall bear their respective costs."

11. The Hon'ble Supreme Court in 2010 (1) SCC (L&S) 15 – Union of



India Vs. T.M. Somarajan & Ors. upholding the order of this Tribunal held as under:-

"14. We have considered the order of the Tribunal in detail. We are in agreement with the Tribunal's well considered order as also of the High 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. We do not see any merit in this appeal which is, accordingly, dismissed."

- ✓ 12. In the instant cases there is no error in the application of Rules in fixation of pay. The anomaly of the applicants drawing less pay than their juniors has arisen directly from the application of the relevant rules. The applicants and their juniors have held identical scales before and after induction into the IPS. The applicants and their juniors belong to the same cadre and the posts to which they have been appointed are identical. As per Annexure A-2 in OA No. 118 of 2009, the applicants were senior to Shri K.K. Joshwa in the seniority list of Dy. S.P. As on 4.8.2003. The applicants are seniors to Shri Ramdas Pothen, Shri K.K. Joshwa and Shri P.K. Madhu, in the IPS seniority list. Thus all the material ingredients for stepping up of pay of the applicants to that of the juniors have been satisfied. There is no justification not to do so.

13. The induction of an officer of the State Police Service into the IPS is a prestigious promotion. Normally a promotion fetches a raise in the pay. It is therefore, quite unreasonable that the applicants upon their induction into the IPS get a reduction in pay instead of a raise.



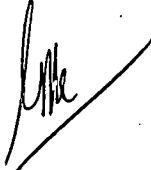
14. ✓ The application of rules of pay fixation, the revision of pay scale and the benefit of protection up to Junior Administrative Grade have resulted in the anomalies of reduction of pay upon promotion and less pay than their juniors. The Central Government is empowered to remove unreasonableness and hardship to the applicants under Clause 6 of Section III of the Schedule II of the Indian Police Service (Pay) Rules, 1954. This Tribunal in OA No. 1552 of 1998 (supra) has given clear findings with regard to the issues of protection of pay upon induction into the IPS and stepping up the pay of senior at par with the pay of junior and allowed the prayers of the applicant therein. The order of this Tribunal was confirmed by both the Hon'ble High Court of Kerala and the Hon'ble Supreme Court. The ratio of the decision of this Tribunal in OA No. 1552 of 1998 squarely covers the instant OAs. The applicants herein are similarly situated as Shri T.M. Somarajan and are entitled to get the benefits granted to him. Not granting the same violates the fundamental rights to equal protection of the laws and equality of opportunity enshrined in Articles 14 and 16 of the Constitution of India. The stand of the respondents that the application of the judgment of the Apex Court in T.M. Somarajan's case is limited to the petitioner's case only is beside the point. Therefore, the instant OAs are liable to be allowed.

15. Accordingly, we direct the first respondent to pass appropriate orders removing the anomaly of the reduction of pay in the IPS cadre vis-a-vis the pay in the State Police Service cadre which the applicants were drawing at the time of their promotion to the IPS and also to step up the pay of the applicants to that of their junior Shri K.K. Joshwa, IPS with effect from 25.1.2007 with all consequential benefits including arrears by invoking



Clause 6 of Schedule 2 of IPS (Pay) Rules as was done in the case of T.M. Somarajan, IPS within a period of three months from the date of receipt of a copy of this order.

16. The OAs are allowed as above. No order as to costs.



(K. GEORGE JOSEPH)
ADMINISTRATIVE MEMBER



(JUSTICE P.R. RAMAN)
JUDICIAL MEMBER

“SA”