

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No. 154 of 2003

~~Monday~~, this the 3rd day of October, 2005.

C O R A M :

HON'BLE MR. K.V. SACHIDANANDAN, JUDICIAL MEMBER
HON'BLE MR. N. RAMAKRISHNAN, ADMINISTRATIVE MEMBER

G. Parameswaran Pillai, IPS,
S/o. Gopala Pillai,
Sivam, Ithikkara,
Mylakkad P.O.,
Kollam.

... Applicant.

(By Advocate Mr. P.K. Madhusoodhanan)

V e r s u s

1. Senior Accounts Officer,
Indian Audits and Accounts Department,
Accountant General (A&E), Kerala,
P.B. No. 5607,
Thiruvananthapuram – 39.
 2. State of Kerala represented by its
Chief Secretary,
Thiruvananthapuram.
 3. Secretary,
Ministry of Personnel, Public Grievances & Pensions,
New Delhi.
 4. Union of India represented by its
Secretary, Ministry of Home Affairs,
New Delhi.
- ... Respondents.

(By Advocate Mr. TPM Ibrahim Khan, SCGSC for R-3 & R-4 and Mr. Renjith A, Government Pleader for R-1 and R-2.)

O R D E R
HON'BLE MR. K.V. SACHIDANANDAN, JUDICIAL MEMBER

The claim of the applicant is that his pay should be refixed in the IPS cadre protecting his pay drawn in the State Service in the post of Superintendent of Police (non-IPS). His claim was rejected by the impugned order A7 by the first respondent and aggrieved by the same, the applicant has filed this OA seeking the following main reliefs:

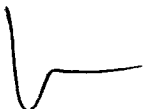
"Call for the entire records leading to Annexure A7 and set aside the same;

Declare that the applicant is entitled to have his pay fixed in the IPS cadre on the basis of 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 and entitled to have his pensionary benefits refixed accordingly;

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 it should not be enforced for fixation of the pay of the applicant in the IPS cadre with effect from 1.6.1994;

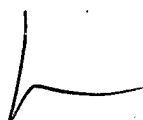
"Declare that the definition of 'higher scale' of pay contained in clause (iii) of Schedule II of the Indian Police Service (Pay) Rules is unconstitutional, unreasonable and void ab initio;

Issue necessary directions to the respondents to refix the pay of the applicant in the IPS Cadre as on 1.6.94 without applying the definition of 'Higher Scale' of pay contained in clause (iii) of Schedule II of the IPS (Pay) Rules and consequently refix the pensionary benefits legally due to the applicant and grant and disburse at



the earliest the differences in arrears of pay fixation and pensionary benefits and grant monthly pension accordingly."

2. The undisputed facts of the case are that the applicant was joined as Sub Inspector of Police on 2.4.1965, promoted as Circle Inspector of Police on 1.6.73, as Deputy Superintendent of Police on 28.3.1983, as Superintendent of Police on 1.2.1993 and confirmed in the said post with effect from 1.2.94 vide G.O.(Rt) 1844/95 dated 23.8.95. On promotion as Superintendent of Police, his basic pay was fixed at Rs. 3815 + Special pay of Rs. 100/- in the scale of Rs. 2640-3815 and his basic pay was revised to Rs. 3815 + Stagnation increment of Rs. 140/- + special pay of Rs. 100/- with effect from 1.7.1993 by the first respondent. In the meantime, on selection by Union Public Service Commission, the applicant was appointed to Indian Police Service (hereinafter referred to as IPS) with effect from 1.6.94 as per G.O. (Rt) No. 3732/95 dated 25.4.95. Vide G.O. (P) No.600/93/Fin dated 25.9.93, pay equalisation order was issued introducing revised scale of pay to State Government employees from 1.3.1992 in scale of Rs. 3900-125-4775-150-5075. The grievance of the applicant is that on the date of promotion to IPS, he was drawing a basic pay of Rs. 4400/- + Personal Pay of Rs. 30/- + Special Pay of Rs. 100/- (total Rs. 4530/-) and Rs. 4525/- + Personal Pay of Rs. 45/- + Special Pay of Rs.100/- (total Rs. 4670/-) from 1.7.94. But on granting promotion to IPS cadre, his basic pay was fixed at Rs. 4000/- from 1.6.94 to 30.6.94 and at Rs. 4125/- from 1.7.94 onwards by the first



respondent. Thus, there is a shortfall of Rs.530/- and 545/- in his pay as on 1.6.94 and 1.7.94 respectively. It was also urged on behalf the applicant that his juniors, who though competed but not selected to IPS cadre alongwith him, were getting higher pay than the applicant. The applicant brought the anomalies in pay fixation before the notice of the respondents, but his request for protection of pay drawn by him in the State Service was rejected vide impugned order A/7. The applicant was retired from service on 31.1.1998.

3. The respondents have filed a detailed reply statement rebutting the contention made by the respondents and contending that in view of specific clarification offered by the Government of India in the matter, pay drawn by the State Service Officers as per 1992 revision cannot be protected. The OA does not have any merit and is liable to be rejected.

4. The applicant has filed rejoinder reiterating the contentions made in the OA and further contending that he is entitled to the reliefs as prayed for in view of various orders of this Tribunal (OA Nos. 1152/98, 1106/2000 and 365/2001).

5. We have heard Mr. P.K. Madhusoodhanan, learned counsel for applicant and Mr. Renjith A, Government Pleader for respondents 1 & 2 and Mr. Ibrahim Khan, SCGSC, appearing for respondents 3 and 4.



6. We have given due consideration to the arguments advanced by the respective parties and have perused the material placed on record.

7. Learned counsel for the applicant argued that since the maximum pay in the IPS cadre (Rs.3000-4500) was Rs. 4500/- and the pay to which the applicant was entitled on fixation of his pay in the I.P.S. Cadre on 1.6.94 was Rs. 4530/-, his pay has to be fixed at Rs. 4500/- + Personal Pay of Rs. 30/- with effect from 1.6.94 which has to be absorbed in future increase in pay. The applicant was entitled to have his pay in the IPS cadre fixed at Rs. 4530/- by the provisions for fixation of pay contained in Section 1 of Schedule II of the Rules. This right available to the applicant under the above pay fixation Rules cannot be taken away on the basis of unreasonable definition regarding 'Higher Scale' of pay contained in clause (iii) of Schedule II of the Rules. Learned counsel for the respondents on the other hand submitted that fixation of promoted officers are done as per Clause 2 of Section 1 of Schedule II of IPS (Pay) Rules, 1954. Any decision to fix his pay based on 1992 pay revision orders of State Government will be against the IPS (Pay) Rules which the Government of India framed in exercise of the powers conferred by sub Section (1) of Section 3 of the All India Service Act, 1951 after consultation Government of the States concerned. If the relevant rules are strictly followed, the position would be the same as it



now exists. The IPS (Pay) Rules 1954 as amended from time to time do not provide for fixation of pay based on pay consequent on State pay revision, 1992. As per existing rules and orders issued by the Government of India, the pay he was drawing as per 1992 Pay Revision which is the second pay revision after 1.1.1986 cannot be reckoned for fixation of pay on promotion to IPS. The pay revisions of Central Government were with effect from 1.1.1973, 1.1.1986, 1.1.1996 and the Government of Kerala revised the scale of pay of the State Government employees with effect from 1.7.1973, 1.7.1978, 1.7.1983, 1.7.1988, 1.3.1992 and 1.3.1997. With reference to increased number of State pay revision and the varying dates of confirmation of officials promoted from Superintendent of Police to IPS cadre, the anomaly of juniors drawing more pay than their seniors in SPS occurs with reference to pay of seniors in IPS cadre. There is nothing wrong in the fixation of pay of the applicant, therefore, the OA deserves to be dismissed.

8. When the matter came up for hearing, learned counsel for applicant submitted that in OA Nos. 1552/98, 1106/2000 and 365/2001 decided on 22.2.2002, 1.11.2002 and 30.1.2003 respectively, this Tribunal dealt with the case of similarly situated IPS officers and granted the reliefs. Learned counsel for the applicant further submitted that all those matters had taken before the Hon'ble High Court which were ultimately dismissed. It is profitable to quote the relevant paras of the order in OA No. 365/2001,

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as under:

"9. In the pleadings it has brought to our attention that the Central Government is conferred with the powers for removing unreasonableness in the Rules under clause (6) of Section III of the Rules which reads as follows:

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

10. The contention that if such an anomaly is noticed the applicant should have referred the matter to the Central Government and got the anomaly removed by getting suitable relaxation of rules. Instead, the respondents rejected the applicant's request by A/12. Rejecting his contentions A/12 has been passed which is a very short order, reads as follows:

"Indian Audit and Accounts Department,
Accountant General (A&E), Kerala,
P.B.No. 5607, M.G. Road,
Thiruvananthapuram : 695 039

No.GE1/C/V-G (IPS)274

Date: 22.5. 2000.

To:

Shri K.R. Varijakshan, IPS
Commandant, KAP Vth Batallion,
Thrissur.

Sir,

Sub:- Revision of scales of pay of State Government employees of Kerala with effect from 1.3.92 and 1.3.97 - rectification of anomaly in respect of State Civil Service, State Police Service and State Forest Service officers appointed to All India Services

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prior to 1/3/97 - clarification regarding.

Ref: 1. Your letter dated 27.10.1999.

2. Letter No. 20015/1/2000-AIS(II) dated 27.3.2000 from Government of India, Ministry of Personnel, Public Grievances and Pensions, New Delhi.

Please refer to your letter cited. This office is in receipt of Govt. of India Services provide the benefit of refixation of AIS pay to the concerned promoted officers till they are confirmed in AIS and this benefit cannot be extended for an indefinite period, even though the State Government officers promoted to the All India services on later dates after getting their pay refixed every time in the revised State scales, are drawing more pay than their seniors who had been inducted into the AIS before such pay revisions. Government of India further clarifies that though seniors in such cases would be eligible to get the benefit of such State pay revisions if the same have come through during the period of their probation, it would not be possible to rectify the anomaly if the same arises consequent to the State pay revisions effected after the said seniors have been confirmed in the respective All India Services.

In view of the above, your request for rectification of anomaly cannot be acceded to.

Yours faithfully,
Sd/-
(Sr. Accounts Officer)"

11. In the above said order, it is made clear that it would not be possible to rectify the anomaly if the same arises consequent to the State pay revisions effected after said seniors have been confirmed in the respective All India Services. In this context, the respondents submitted that the applicant's pay was fixed as per Section 1 of Scheduled II of IPS (Pay) Rules, 1954. For better elucidation, the said Rule is reproduced as under:

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

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(1) The initial pay of a promoted officer shall be fixed at the stage of the senior time scale 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. 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.

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 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."

12. It is also an admitted fact that the applicant's pay was fixed reducing the pay from the pay which he was drawing as a confirmed Superintendent of Police (non-IPS) on coming to IPS cadre. It is clear that the applicant has become a confirmed Superintendent of Police w.e.f. 7.12.93 and while so, he was holding a substantive post of Superintendent of Police (non-IPS). Since his appointment to the IPS cadre was with effect from 1.12.1995, it is an undisputed fact that he was holding a substantive appointment in the post of Superintendent of Police (non-IPS) on 1.12.1995 and so, his substantive pay in the post of SP (non-IPS) was Rs. 4650 + special pay + personal pay. Therefore, it is clear that he was drawing a pay in the higher scale in the State Police Service as on 1.12.1995. In accordance with Rule 2 of Section 1 of Schedule II of the Rules, the applicant's pay should be fixed at the stage of the Senior Time Scale of IPS, next above his actual pay in the higher scale. Since the applicant was holding a post in a substantive capacity in the higher scale in the State Police Service as on 1.12.1995. In accordance with Rule 2 of Section 1 of Schedule II of the Rules, the applicant's pay should be fixed at a stage of senior time scale of IPS, next above his actual pay in the higher scale. Since the applicant was holding a post in a substantive capacity in the higher scale in the State Police Service at the time of his appointment in IPS on 1.12.95, his actual pay has to be fixed in the higher scale as per Rule 2 of Section 1 of Schedule II of the Rules and the proviso therein. The

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applicant's actual pay on 1.12.95 was Rs. 4650 + special pay and personal pay, but the pay calculated as per clause 1 as is admissible under clause 2. Therefore, in accordance with the proviso to Rule 2 of Section (1) of Schedule II of the Rules, the applicant should be entitled to such higher pay as is calculated in terms of sub Section I of of Section I of the Rules. In other words, his pay should have been fixed as follows :-

"Actual pay on 1.12.95 : Rs.4650 + Special Pay + Personal Pay

One increment in the IPS Scale for 3 years Service in the non-IPS post, subject to a minimum of Rs. 150/- "

Since the maximum pay of IPS cadre was Rs. 4,425/- and the pay to which the applicant is entitled for fixation of pay in IPS as on 1.12.1995 was Rs. 4650 + Special Pay + Personal Pay + Special Allowance, if any. He is entitled to have that pay protected and a minimum, increment of Rs. 150/- was given to him when he came to the IPS cadre on 1.12.95.

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

14. In view of the expression 'Higher Scale' and 'Lower Scale' contained in definition Clauses (iii) and (iv) of Schedule II of the IPS (Pay) Rules, we find that the meanings should be attributed to the expressions appeared in the definitions in the plain meaning. One cannot read between the lines and expression of 'higher scale' that equated to be in its most natural meaning/nomenclature. Hence, the contention of the applicant that much prejudice has been caused to him by reducing the pay of Rs. 4650/- to Rs. 4250/- and it may be considered as a genuine grievance.

15. It is a case of State Government Officers, the first pay revision after 1.1.86 took place with effect from 1.7.1988. It was from next pay revision which was brought into force w.e.f. 1.3.92 as per G.O.(P) No. 600/93/Fin. Dated 29.5.93 only when the pay equalisation order has taken place. On a perusal of this G.O it is clear that it is

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a pay equalisation order and not a pay revision order and the benefit of this G.O also should be extended to the applicant.

16. Therefore, it appears that the definition of higher scale has been considered in a narrow sense in A-12, to limit it to the maximum pay to the State Police Officers on promotion to the IPS cadre vis-a-vis his direct recruit counterparts seems to be unsound.

17. In a similar matter and issue in 1552/98 vide order dated 22.2.02, this Bench of the Tribunal has passed an order, the operative portion of which is reproduced as under:-

"As has been observed earlier, there existed a serious anomaly. According to us, the anomaly in the fixation of initial pay of the applicant in the IPS is further accentuated by the higher basic pay allowed to be drawn by some of his juniors who were not found fit for promotion alongwith him and who were given promotion to the IPS cadre on subsequent date or dates. A12 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 rules makers, we have reason to believe, have apprehended that in the implementation of the rules there might be inequities or anomalies. Wherever such unintended injustice is done and hardship is caused, law provides for administrative remedy. If no such remedy is provided, Courts can interfere. It is this remedy that is provided for in clause (6) of Section III of Schedule II quoted supra. The applicant endeavoured to persuade the

respondents to remove the anomaly and, as we have observed, the second respondent recognised at one stage that there indeed was an anomaly. We do not know why this anomaly was not removed. We are afraid, the respondents have failed in their duty to apply their mind judiciously in the matter of removing the anomaly. The applicant has been unjustly left in the lurch drawing less salary than those who received promotion later than himself in the same cadre. Dealing with a fairly similar situation, the Hon'ble High Court of Kerala, in the case of Madhavan Assan v. Kerala SSI & E. Corpn. Ltd., 1990 (2) KLT 871, after referring to concept of equal pay for equal work being an aspect of the doctrine of equality enshrined in Articles 14 and 16 of the Constitution, a surveying a body of case law including several Supreme Court decisions like those reported in AIR 1982 SC 879 and AIR 1988 SC 1504, made the following observations:

"7. The question involved is a fundamental one, in that a senior in a category is made to draw basic pay less than that drawn by his junior for the simple fortuitous circumstance that he stood promoted earlier than his junior and the pay revision for the junior was effected in the lower category in the interregnum. I should think that it is a fundamental principle of service law that when everything else is equal, a senior in service should receive a salary higher than, or atleast equal to, that drawn by his junior. To relegate him to a lower pay is arbitrary and negation of the rule of equality enshrined in Article 14 of the Constitution. It looks obnoxious and revolting to good sense that a senior should get lower pay merely because he was promoted earlier.

8. It is true that the principle adopted by the first respondent that the pay drawn in the lower category should be protected on promotion is valid, but then it is equally incumbent on them to see that the interests of the senior who was already in a higher category are protected by appropriate revision of his pay, so that he does not stand in a worse position than his junior in relation to the pay drawn by him. The payment of lesser salary for an admitted senior, who is similarly situated, than his junior, amounts to an unequal treatment meted out to equals, thereby

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violating Article 14 of the Constitution. The fact that the respondents 2 and 3 were promoted after the pay revision on 1.7.80 does not put them in a separate or different category. Such a differential between persons promoted before or after 1.7.1980 has no rational basis in so far as it relates to fixation of salary."

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

18. Then again in another O.A. 1106/2000 vide order dated 1.11.2002, this Bench of the Tribunal has adopted the same finding of the above O.A and granted the same relief. We do not find any reason to differ the view already taken, since the present case is identical to that case."

9. Hon'ble High Court in O.P. No.12610 of 2003 (filed against the decision of this Tribunal in OA No. 1106/2000) has passed the following order :

"7. Learned counsel for the parties have been heard. Mr. Shenoy, appearing for the petitioners, has contended that the fixation of pay is governed by the provision of the Rules. The pay a fixed by the petitioners is in conformity with the provisions contained in the Indian Police Service (Pay) Rules, 1954. The fixation of initial pay is governed by the provisions of Rule 4 read with Schedule II. Since the action was in conformity with the provision contained in the Rules, the Tribunal had erred in upholding the claim of the respondents. He further submits that the relief granted by the Tribunal is really in excess of what had been actually



claimed by the respondents. On the other hand, Mr. Madhusoodanan, learned counsel for the respondent-officers has submitted that the action of the Department in fixing the pay was not in conformity with the Rules. It was violative of Article 14. The Tribunal has merely granted the prayer for higher pay. It is not beyond what had been actually claimed by the officers.

8. It is the admitted position that the two respondents were senior to the M/s. K.G. Somasundara Menon and K.R. Purushothaman Pillai in the State Service. It is also the admitted position that both the officers have maintained their seniority vis-a-vis M/s. Somasundara Menon and K.R. Purushothaman Pillai in the IPS while the respondents in these cases have been assigned 1990 and 1991 as the years of allotment, the two officers junior to them belong to the year 1992. Thus, it is clear that the two respondents are even today senior to the officers of the 1992 batch. Still further, it is also the admitted position that the respondents in these cases were selected and promoted to the IPS earlier than their juniors and on the eve of their promotion they were drawing higher pay than the persons who were subsequently selected and promoted. Despite this factual position, the respondents were given a lower pay than their juniors. This has happened only on account of the fact that the pay scales of the State Service officers had been revised vide order dated March 1, 1997. Since the junior persons had been confirmed with effect from April 9, 1997 and June 3, 1997, their lien had continued to exist in the State Service till then. Resultantly, even though they were in the IPS since April, 1996, their pay was notionally fixed in the State Service and protected in the IPS. As against this, the respondents in these two cases having been confirmed in the year 1995 and 1996 were not given the benefit of revision of pay. It was in this situation that junior persons were given a higher pay than their seniors. Was this action fair?

9. Articles 14 and 16 guarantee equality before law and equality of opportunity. This guarantee is not only at the time of entry into the service but all subsequent stages of the service. As a result, a senior member of the service is entitled to all these benefits which a junior gets. Denial of higher pay to a senior member while is granted to a junior person would be per se denial of equality. When everything else is equal, a senior member of service should normally

get pay at a higher or at least equal to that of his junior.

10. Mr. Shenoy points out that the statutory rules lay down the norms by fixation of pay. Under these norms, the pay drawn by an officer in the State Service is protected. Since the junior officers were drawing a higher pay, they were given the protection under the rules. In doing so, the petitioners had not acted in violation of the law.

11. Apparently, the contention appears to be attractive. However, it is the admitted position that the officers junior to the two respondents had been actually appointed to the IPS in April and June 1996. Despite that they were given the benefit of the notional fixation of pay in the State Service as the State Government had revised the pay scale with effect from March 1, 1997. A similar benefit was not given to the two respondents despite the fact that they were senior to the officers appointed in the year 1996. Mr. Shenoy submits that the benefit was not admissible as both the officers had been confirmed with effect from July 1, 1995 and December 31, 1996. Since the date was prior to March 1, 1997, the benefit could not have been given.

12. The contention cannot be accepted. It is the admitted position that the orders of confirmation were passed in January 2000. Till then, the two officers had not, technically speaking, lost their lien in the State Service. Thus, they were entitled to the benefit of revision of the pay scales in the State Service. Their claim has all the more stronger in view of the fact that persons junior to them had been given such a benefit. The denial was violation of the right to equality. The authority had failed to ensure parity of treatment. There was no legal or justifiable basis for treating the two respondents differently from the officers junior to them. Thus, we find that the view taken by the Tribunal is absolutely just and fair. It calls for no interference."

10. We are in respectful agreement with the orders passed by this Tribunal mentioned above which has also been confirmed by Hon'ble High Court and, therefore, we dispose of this application with the following order/directions:



(i) The impugned order A/7 dated 14.1.2003 is set aside and quashed.

(ii) We declare that the applicant is entitled to have his initial pay fixed in the IPS cadre on the basis of the pay drawn by him as a confirmed Superintendent of Police as on 1.6.94 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 alongwith him and hence were considered for promotion on subsequent date or dates. We also declared 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.

11. 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 a copy of this order.

12. In the circumstances, there will be no order as to costs.

(Dated, this the 3rd October, 2005)


N. RAMAKRISHNAN
ADMINISTRATIVE MEMBER


K.V. SACHIDANANDAN
JUDICIAL MEMBER

cvt.