

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.No.365/2001.

Thursday, this the 30th day of January 2003.

CORAM:

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

K.R.Varijkshan IPS,
S/o late K.K.Ramankutty,
Commandant, Kerala Armed Police
Vth Battalion,
Ramavarmapuram, Thrissur,
Kerala State.

Applicant

(By Advocate Shri P.K.Madhusoodhanan)

Vs.

1. Senior Accounts Officer,
Indian Audit and Accounts Department,
Accountant General (A&E) Kerala,
P.B.No.5607, M.G.Road,
Thiruvananthapuram.
2. Accountant General (A&E) Kerala,
Post Box No.5607,
M.G.Road, Thiruvananthapuram.
3. Secretary, Ministry of
Personnel, Public Grievances and Pensions,
New Delhi.
4. Union of India, rep. by
its Secretary, Ministry of Home Affairs,
New Delhi. Respondents

(By Advocate Shri A.Renjith, GP.(R.1&2).

(By Advocate Shri C.Rajenran, SCGSC(R.3&4)

O R D E R

HON'BLE MR.K.V.SACHIDANANDAN, JUDICIAL MEMBER

The applicant was working as Superintendent of Police (Non-IPS) in Kerala Government Service since 16.12.1992. He was confirmed in the post of Superintendent of Police w.e.f.17.12.1993. On selection by the union Public Service commission in consonance with the Indian Police (Appointment by Promotion) Regulation, 1955, the applicant was conferred Indian Police Service cadre (IPS for short) and was appointed in IPS



cadre with effect from 1.12.1995 by G.O.(Rt) 11202/95/GAD dated 30.11.95 of the Government of Kerala and by Notification No.22/95(PS) dated 31.12.95 of the 3rd respondent. The applicant was drawing salary with basic pay of Rs.4650/- w.e.f.1.7.95 and at the time of his entry into IPS cadre on 1.12.95 as is evident from the salary slip dated 11.7.95. His pay in the IPS cadre was fixed with basic pay of Rs.4250/- plus the special allowance of Rs.500/- with effect from 1.12.95, and at Rs.4375/- plus the special allowance of Rs.500/- with effect from 1.12.96 in the pre-revised scale of Rs.3000-4500, as evident from the letter of pay fixation dated 7.8.97. Vide A3 the basic pay of the applicant was fixed at Rs.11,950/- w.e.f.1.1.96, at Rs.12,275/- with effect from 1.12.1996, and at Rs.12,600/- with effect from 1.12.97 in the pay scale of Rs.10,000-15,200/- as evidenced by A-4 the pay slip dated 20.11.1997. The applicant has been sanctioned the basic pay of Rs.12,925/- w.e.f.1.12.1998 in the scale of pay of Rs.10,000 - 15,200 till 1.1.2000 the date on which he was promoted in the Junior Administrative Grade of IPS in the scale of Rs.12,000-16,500/-. It is averred in the O.A. that while fixing the pay of the applicant the protection of pay sanctioned to IPS officers appointed by IPS (Appointment by Promotion) Regulations, 1955 and the relevant provisions contained in the Indian Police Service (Pay) Rules, 1954 and in the Indian Police Service (Pay) seventh Amendment Rules, 1997 were erroneously denied to the applicant and thereby there occasioned the anomaly of juniors getting higher pay while seniors like the applicant were getting only lesser pay. A representation was submitted vide A-5 dated 27.10.99 pointing out his grievance regarding erroneous pay fixation in his case while

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granting higher pay to his junior Sri. Purushothaman Pillai specifically pointing out the differences in pay and the discriminatory treatment against the applicant in spite of relevant provisions contained in A3. No reply was received. The applicant was constrained to submit another representation to the 2nd respondent on 16.12.1999 vide A-7 requesting to take urgent steps to rectify the anomaly in the fixation of pay at the earliest in view of the retirement on superannuation from service on 30.6.2001. His juniors Sri Purushothaman Pillai and Sri. Somasundaramenon who had entered the IPS cadre only on 3.6.96 and 9.4.1996 respectively are getting higher basic pay whereas the applicant who had been appointed to IPS cadre as early as on 1.12.95 was getting only lesser basic pay. No advance increments were awarded to both the juniors and there is no punishment awarded against the applicant so as to enable the juniors to get higher pay in IPS cadre. Therefore, applying Rule 38, Notes 4 & 6 in A-3 the pay of the applicant would have been fixed protecting the same at least with that of his juniors, stepping up his pay as clarified in Note 4 and 6 of Rule 38 of A-3. A true copy of the fixation of pay of Sri KR Purushothaman dated 7.9.99 is A-8. Annexures A-9 and A-10 are the true relevant extract of the gradation lists of the IPS officers, Kerala Cadre as on 1.1.97 and 1.7.98. Vide A-12 dated 22.5.2000 his representation was rejected. Aggrieved by A-12, the applicant preferred O.A.808/2000 before this Tribunal in which the respondents filed a reply statement contending that it is not possible to refix the pay of the applicant or to remove the anomaly of the pay etc. for the IPS officers confirmed in IPS with respect to their juniors who joined IPS from the state service after getting one more enhancement in State pay scale or

in whose case State pay scale were enhanced before their confirmation to IPS. It was contended that as per Section 1 of Schedule II of IPS(Pay) Rules, the pay reckoned for the purpose of fixation of pay in IPS is the pay they were drawing in the State Police service in the lower/higher scale which was in force as on 1.1.86. In these circumstances the applicant withdrew the O.A. to enable him to challenge A-13 as well and the relevant provisions in the IPS(Pay) Rules, 1954 which denies proper fixation of pay to the applicant and this Tribunal vide order dated 10.4.2001 was pleased to grant leave and dismissed the same. Taking various grounds and pointing out the anomaly the applicant filed this O.A. for proper fixation of his pay seeking the following reliefs.:

- "1. Call for the entire records leading to Annexure A12 and A13 and set aside the same;
- ii. 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 I 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;
- iii 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 1.12.1995.
- iv. to declare that the definition of higher scale of pay contained in clause (ii) of Schedule II of the Indian Police Service (Pay) Rules is unconstitutional and ab initio void;
- v Issue necessary directions to the respondents to step up his pay to that of his juniors Sri.KG Somasundara Menon or KR Purushothaman Pillai and disburse the arrears of salary arising therefrom to him and also grant him pension; according to the pay fixation and consequential increase in his pay on his retirement from service on superannuation.



vi. grant such other and further reliefs as this Hon'ble Tribunal may deem fit and proper in the circumstances of the case including costs."

2. The respondents had filed a reply statement contending that the O.A. is not maintainable. The applicant was appointed to IPS on 1.12.1995, his pay was fixed at Rs.4250/-from that date. Consequent on revision of scale of pay of All India Service Officers (AIS) his pay was revised and fixed at Rs.11950/from 1.1.96 in the Senior scale of IPS that is Rs.10,000-325-15200 and subsequent increments authorised to him till 1.1.2000 that in his date of promotion to Junior Administrative Grade. Shri K.R.Purushothaman Pillai and Sri.K.G.Somasundara Menon were promoted to IPS on 3.6.1996 and 9.4.1996 respectively. While fixing their pay in the revised scale of IPS, they became eligible for pay at a higher rate than the applicant. The rules for fixation of pay of Superintendent of Police Officers on their appointment to IPS are laid down in section 1 of Schedule II of IPS Pay Rules 1954. According to this, the pay that is reckoned for the purpose of fixation of pay in IPS is the pay they were drawing in the State police Service in the Lower/Higher scale which was in force on 1.1.86 or any date subsequent thereto, the subsequent date being the date on which the scales of pay applicable to the State Police Service were revised for the first time after 1.1.86. The scales of pay of State Police Service Officers were revised with effect from 1.7.88 on the pattern of central revision as on 1.1.86. As Shri K.R.Varijakshan was confirmed in the higher scale of Superintendent of Police (non-IPS) with effect from 17.12.93, his pay was fixed applying Clause (2) of Section I of Schedule 2 which says that "the initial pay of the officer who is *****



substantive in the higher scale of State Police Service shall be fixed at the stage of the seniors scale next above his actual pay in the higher scale of State Police Service". As per the aforesaid provision pay of the officer was fixed as hereunder:

3815 +	
140 (First stagnation increment)	
140 (2nd stagnation increment)	
100(Special Pay)	
Total	4195

3. The next stage in the senior scale of IPS i.e.Rs.3000-100-3500-125-4500, is Rs.4250/- and hence his pay was fixed at Rs.4250/- w.e.f.1.12.95. Pay drawn in the scale of pay which came into force with effect from 1.3.92 was not reckoned for the fixation of pay on promotion to IPS in accordance with the specific clarification issued by Government of India. The pay of Rs.4650+100 which the applicant was drawing as on 1.7.95 is the pay in the scale of pay effective from 1.3.92, consequent on second revision after 1.1.86 and this could not be reckoned for purposes of fixation of pay in IPS in view of the specific clarification of Government of India . The Government of India vide IPS (Pay) Seventh Amendment Rules 1997 issued orders revising the scales pay of IPS Officers with effect from 1.1.96. Pursuant to these orders, pay of Shri K.R.Varijakshan was revised and fixed as Rs.11950/- in the scale of Rs.10000-325-15200 w.e.f.1.1.96. subsequent increments with effect from 1.12.96, 1.12.97, 1.12.98 and 1.12.99 were also authorised to him in the above scale raising his pay to Rs.12275/-, Rs.12,600/-, Rs.12925/- and Rs.13,250/- respectively. He was promoted to XXX



Junior Administrative Grade with effect from 1.1.2000 in the scale of pay of Rs.12000-375-16500/- Pay on promotion in this scale was fixed at Rs.13500/- with date of next increment on 1.1.2001. It is further contended that the existing provisions in AIS Manual do not provide for stepping up of pay in such cases. The Ministry of Personnel, Public Grievances and pensions in their letter dated 27.3.2000 clarified that though the seniors would be eligible to get the benefit of State Pay Revisions if the same have occurred during the period of their probation, it would not be possible to rectify the anomaly if the same arises consequent to the State Pay Revision effected after the said seniors have been confirmed in IPS. The earlier order in O.A.808/2000 filed by the applicant has been dismissed as withdrawn. In the circumstances, the respondents contended that there is no merit in the case.

4. The applicant filed a rejoinder contending that the respondents had not stated and substantiated how the senior meritorious employee similarly situated as that of their juniors in the same cadre, under the same respondents doing the same job or identical duty and the responsibility in the same department can be denied at least equal pay as that of his juniors in view of the settled law of equal pay for equal work rendered in the various decisions reported. The Government of India letters dated 28.6.94 and 23.11.94 are internal correspondences within the department and the applicant is not aware of its contents, not informed of the same nor were given copies of the same and the same were not notified as well and therefore, the said letters cannot be relied on to deny equal pay to the applicant as that of his juniors. As the respondents themselves have admitted



the anomaly occasioned in fixing the pay of the applicant in IPS cadre, it is only just and proper to rectify the anomaly granting atleast equal pay with that of his juniors as envisaged in Article 39(d) of the Constitution of India without any discrimination against him.

5. Shri P.K.Madhusoodhanan argued the case on behalf of the applicant and Shri C.Rajendran , SCGSC appeared for the respondents. Learned counsel for the applicant submitted that the applicant has admittedly got lesser pay than that of his juniors only on the ground that their pay have been fixed in IPS cadre after State Pay Revision in 1997 and as they were not confirmed in IPS on the implementation of the State Pay Revision w.e.f.1.3.97, is an anomaly which is to be rectified.

6. Learned counsel for the respondents submitted that 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 scale of the IPS next above his actual pay in the higher scale and therefore, the fixation of pay is not faulted and there is no merit in the O.A.

7. We have heard the arguments advanced by the learned counsel of the parties, perused the documents and material placed on record.

8. We have examined the pleadings made by the rival parties. The main question is, how the pay of the applicant, a State Police Officer is to be fixed on his induction on promotion to All India Cadre i.e.IPS. He became a confirmed Superintendent of



Police on 17.12.1993 and as on 1.12.95 when the applicant came to the IPS Cadre he was a confirmed Superintendent of Police (non-IPS) and the scale of pay of the applicant was next to IPS, Superintendent of Police as on 1.12.95, has necessarily be taken into account as a criterion for fixation of his pay in the IPS cadre. Therefore, the relevant scale of pay of non-IPS cadre in the confirmed post was drawing on 1.12.95 and therefore, the definition of 'higher scale' contained in the Rules that the pay revision effected on 1.7.1988 should be the basis for fixation of the applicant's pay in the IPS Cadre on 1.12.1995 is said to be discriminatory and 1.7.88 should be taken as the basis for fixing the pay of IPS cadre on 1.12.95 is said to be discriminatory, unreasonable and therefore, illegal.

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.

[Handwritten signature/initials over the bottom right corner]

"Indian Audit and Accounts Department
Accountant General(A&E), Kerala,
P.B.No.5607, M.G.Road,
Thiruvananthapuram-695039

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

Date: 22.5.2000.

To

Shri K.R.Varijkshan IPS,
Commandant, KAP Vth Battalion,
Thirssur.

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 prior to 1/3/97-clarification regarding.

Ref:1. Your letter dated, 27/10/99.

2. Letter No.20015/1/2000-AIS(II) dated 27/3/2000 from Govt. of India, Ministry of Personnel, Public Grievances and Pensions, New Delhi.

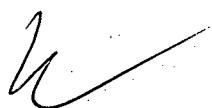
Please refer to your letter cited. This Office is in receipt of Govt. Of India Services provide the benefit of refixation of AIS pay to the concerned promoted officers till they are confirmed in the AIS and this benefit cannot be extended for an indefinite period, even though the State Government Officers promoted to the All India Services on later dates after getting their pay refixed everytime in the revised state scales, are drawing more pay than their seniors who had been inducted into the AIS before such pay revisions. Govt. 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 the 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)."

(I) 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.

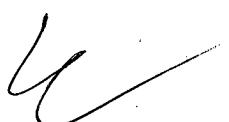
(2) The initial pay of a promoted officer who is substantive in the higher scale of the State Police Service shall be fixed at the stage of the senior time scale of the Indian Police Service next above his actual pay in the higher scale.

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.

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(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."

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 w.e.f. 1.12.95, 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 a 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 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 applicant's actual pay on 1.12.1995 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 Section I of the Rules. In other words, his pay should have been fixed as follows:

"Actual pay on 1.12.95 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 Scheduled 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 xxxxx



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 w.e.f. 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 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 O.A.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 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 applicants 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 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 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 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

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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 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."

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.1106/00 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 matter is identical to that cases.

19. We are in respectful agreement with the finding recorded in the aforesaid O.As and accordingly we dispose of this application with the following order/directions.

i) The impugned orders A-12 dated 22.5.2000 and A-13 dated 28.3.2000 are 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 in the Non-IPS cadre as a confirmed Superintendent of Police as on 1.12.95 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.

20. 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.

21. In the circumstances, we direct the parties to bear their own costs.

(Dated, 30.1.2003)



K.V. SACHIDANANDAN
JUDICIAL MEMBER



G. RAMAKRISHNAN
ADMINISTRATIVE MEMBER