

**CENTRAL ADMINISTRATIVE TRIBUNAL,
LUCKNOW BENCH,
LUCKNOW.**

Original Application No. 170 of 2010

Reserved on 7.7.2015
Pronounced on 20th July, 2015

Hon'ble Mr. Navneet Kumar, Member -J
Hon'ble Ms. Jayati Chandra, Member-A

Smt. Anita Chatterji, aged about 59 years, D/o late J.S. Goel, R/o A-104, CSI Towers, Vipin Kand, Gomti Nagar, Lucknow at present working as Secretary, Government of U.P.

.....Applicant

By Advocate : Sri Surendran P.

Versus.

1. Union of India through the Secretary, Ministry of Personnel, Public Grievances & Pensions (Department of Personnel & Training), New Delhi.
2. State of U.P. through the Chief Secretary, Secretariat, U.P., Lucknow.
3. The Principal Secretary, Appointment (Section-1), Government of Uttar Pradesh, Secretariat, Lucknow.
4. Principal Secretary to Chief Minister, Chief Minister's Secretariat, 5th floor, Lucknow.
5. Joint Secretary, IRLA Chequers Section, Government of Uttar Pradesh, Lucknow.

.....Respondents.

By Advocate : Sri Subhash Bisaria for R-1 and Sri Sudeep Seth for R-2 to 5.

O R D E R

Per Ms. Jayati Chandra, Member-A

The applicant has filed this O.A. under Section 19 of Administrative Tribunals Act, 1985 seeking following relief:-

"Wherefore, it is most respectfully prayed that this Hon'ble Tribunal may kindly be pleased to quash the order dated 12.2.2010 contained in Annexure no. 1 and issue a direction to pay the applicant her original basic pay of Rs. 19,100/- at the time of appointment of the applicant in IAS cadre, re-fix her pay accordingly and give arrears with interest as per Rules."

2. The facts of the case are that the applicant joined Provincial Civil Services (PCS) on 30.3.75. She was appointed to Indian Administrative Service (IAS) under IAS (Recruitment) Rules, 1954 read with sub-regulation (i) of Regulation 9 of IAS (Appointment by Promotion)

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and Rule 3 of IAS (Probation) Rules, 1954 vide order dated 21.2.2005. By the order dated 22.2.2005 (Annexure no.3) all the officers who were appointed alongwith her were to ask to send certificate to the effect of having taken charge in the Senior Scale of the IAS w.e.f. forenoon of 21.2.2005. She complied with the directions (Annexure no.4). At the time of her appointment in the IAS cadre, the applicant was drawing Basic pay of Rs. 19,100/- in the pay scale of Rs. 16,100-20,000/-. Initially, she was issued the pay slip dated 4.3.2005 in which her pay was provisionally fixed as Rs. 15900/- plus Rs. 3200/-as compensatory pay. Thus, total pay to be drawn by her was Rs. 19,100/-. Thereafter, the revised pay slip was issued by the respondent no.5 on 5.7.2005 reducing her basic pay from Rs. 19,100/- (Rs. 15900 + 3200) to Rs. 18,300/-. She moved an application on 28.1.2006 seeking for restoration of her earlier pay of Rs. 19,100/- by way of Basic pay plus compensatory pay in order to ensure that she drew the same pay at the time of appointment in IAS cadre as she was drawing in the PCS cadre. It is relevant to state that on the basis of instructions on the subject of pay protection on appointment to IAS cadre from PCS cadre, has been issued by the respondents vide their O.M. dated 1.12.1994, 6.2.1995, 8.9.2006 and 3.12.2008 (Annexure nos. 12 to 15). Accordingly, other officers, who were similarly promoted to IAS cadre alongwith her by order dated 21.2.2005 and who were variously in the pay scale of Rs. 18400-22400/- have been given pay protection. However, as she was working in the pay scale of Rs. 16400-20000/- with basic pay of Rs. 19,100/- at the time of her promotion to the IAS, similar pay protection was not extended to her. She had earlier filed O.A. no. 449 of 2009 before this Tribunal, which was disposed of by means of order dated 12.2.2010 with a direction to decide her representation. The respondents have decided the same by means of impugned order denying her pay protection. Hence, this O.A.

3. Notices were issued to both the respondents i.e. Government of India and State Government of U.P. By a statement made on behalf of respondent no.1 that the respondent no.1 is only proforma party, there is no need to file any Counter Reply. The respondent nos. 2 to 5 have filed their Counter Reply. They have not disputed the facts of the case, but have pointed out their

inability to accede the relief as prayed for in view of IAS Pay Rules, 1954. Their case is that vide notification dated 6.5.1994, the Government of India amended Rule 4 of IAS (Pay) Rules, 1954 and inserted proviso in sub-rules 3, 4 and 5 respectively. Through the amendment, it was provided that if pay is fixed at a stage that is common to any two grades of the senior scale, the officer shall be placed in the lower of those grades. In Rule 5, the word "senior timescale" was substituted with "senior scale". In compliance of aforesaid amendment, the State Government issued a notification on 1.12.1994 wherein it has been provided that the officers, who are promoted from PCS to IAS cadre and are working in the pay scale higher than commensurate IAS scale, would have to bear certain financial loss. However, it was provided that the salary exceeding Rs. 5700/- was directed to be protected in anticipation of approval of Government of India. Subsequently by order dated 6.2.1995, the aforesaid order was partially amended and the protection given to the pay scale were withdrawn. The State Government vide Government order dated 1.4.1998 modified its earlier order dated 1.12.1994 and 6.2.1995 in accordance with the recommendations of 5th CPC and the benefit of pay protection was directed to be continued in the new pay scale also. Vide notification dated 8.9.2006 the existing system of granting pay protection was directed to continue for a period of three more years. Vide Government order dated 31.12.2008, subsequent to the revision of pay scales in accordance with recommendations of 6th CPC, the existing system of pay protection of the officers working in the pay scale of Rs. 18400-22400/- was continued, but no such similar protection was given working in the pay scale of Rs. 22400-24500/-. After coordinate deliberation, vide order no. 196/do-1-2009-19/1(10)/89 dated 3.6.2009, it was decided to extend pay protection to those working in the higher grade of Rs. 22400-24500/- (Annexure no. C-13). However, since the applicant was working in the pay scale of Rs. 16400-20400/- and she was drawing Rs. 19,100/- at the time of her induction to IAS cadre in the pay scale of Rs. 15,100-18300/- her pay was fixed at Rs. 18,300/-, which was highest in the senior scale of the IAS.

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4. The applicant has filed Rejoinder through which she once again addressed on the point of discrimination in treatment with regard to pay protection given to the persons working in the two pay scales higher than her, but not extended to her.

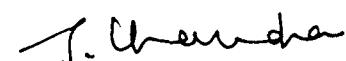
5. We have heard the learned counsel for the parties at length and have also perused the pleadings available on record.

6. The respondents have very eloquently and in great detail narrated the history of pay fixation of those officers who were working on higher pay scales in the PCS, but on promotion to the IAS were placed in the senior and lower scale of the IAS. By such placement, they stood to suffer a financial loss. The State Government sought to give them pay protection by the way of compensatory pay. This decision of the State Government was variously discussed (and saw a-see -saw ~~fake~~^{1. u.}) with the Government of India. But the bottom line is that the persons who were drawing higher pay scale i.e. Rs. 18400-22400 and Rs. 22400-24500/-by virtue of order dated 3.6.2009 are given pay protection on induction^{to} IAS.

7. The only reason the applicant has not been accorded similar protection is because she was in the pay scale of Rs. 16400-20400/-, which is not included in the G.O. dated 3.6.2009. The facts of the case are that by order dated 21.2.2005, the applicant was appointed to the IAS in the select list of 2002 alongwith S/Sri Dileep Sahay, Ram Sajeevan, Ajay Kumar Upadhayay, Jai Prakash-II, Rakesh Kumar Goel, Rajeshwar Prasad Singh, Dr. Jitendra Bihari Sinha, Tirath Tripathi. Allthese officers were directed to provide copies of their handing over/taking over certificates by order dated 22.2.2005 (Annexure no.3). This order also placed them in the senior scale of the IAS. The list of officers who are getting pay protection as disclosed in Annexure no.16 includes S/Sri Dileep Sahay, Rakesh Kumar Goel, Dr. Jitendra Bihari Sinha, Tirath Tripathi, who were all shown to have been given the allotment year as 1993, which is the same year as given to the applicant. The respondents while granting pay protection to similarly situated persons have denied the same to the applicant. It is to be noted that she is not seeking parity in pay, but only parity in the matter of protection of earlier emolument, a denial of

which would, in our view, be tantamount to discrimination under Article 14 & 16 of Constitution of India.

8. In view of the aforesaid, the O.A. succeeds. Order dated 12.2.2010 is quashed. The respondents are directed to fix the applicant's pay at Rs. 19,100/- and not Rs. 18,300/- at the time of induction into IAS cadre. Her pay may be calculated afresh treating her pay as Rs. 19,100/- at the time of induction into IAS cadre. She is entitled to all consequential benefits accordingly including payment of all arrears. The above exercise shall be paid within a period of four months from the date of receipt of copy of this order. No costs.



(Ms. Jayati Chandra)
Member-A


(Naveen Kumar)
Member-J

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