

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

Original Application No.517/93

Date of order: 8-1-1996

Ratan Lal Jain : Applicant

Vs.

Union of India & Anr. : Respondents

Mr.O.P. Sharma : Counsel for applicant.

Mr.U.D.Sharma : Counsel for Respondent No.1

Mr.B.M.Purohit : Counsel for respondent No.2

CORAM:

Hon'ble Mr.O.P.Sharma, Administrative Member

Hon'ble Mr.Ratan Prakash, Judicial Member

PER HON'BLE MR.O.P.SHARMA, MEMBER(ADM.).

In this application under Sec.19 of the Administrative Tribunals Act, 1985, Shri Ratan Lal Jain has prayed that the Tribunal may call for the records of respondent No.1 (Union of India represented by Secretary, Department of Personal) and respondent No.2 (State of Rajasthan represented by the Chief Secretary) and quash the order dated 25.2.1986 passed by respondent No.1 and fix the initial pay of the applicant at Rs.2000/- per month in the senior scale of IAS on 27.4.85 in accordance with the recommendations of respondent No.2. His alternative prayer is that his pay may be stepped up to Rs.4850/- per month on 14.6.89 at par with Shri S.S.Parnami in terms of Govt. of India's order dated 4.10.92 and further to may be stepped ^{up} as and when any of his juniors begins to draw more pay in future upto 28.2.93 which is the date of the superannuation of the applicant.

2. The facts of the case as stated by the applicant are that he was a member of the Rajasthan Accounts Service from 1.3.1958 to 26.4.1985. On 26.4.85, he was drawing substantive pay of Rs.2500/- per month in scale Rs.1920-2500. The applicant was appointed to I.A.S by selection under Rule 8(2) of I.A.S (Recruitment) Rules, 1954 (for short the Recruitment

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Rules) vide the Govt. notification dated 27.4.1985. On the applicant's appointment to IAS, respondent No.2, i.e. the State of Rajasthan made a recommendation to respondent No.1 i.e. the Union of India for fixation of the initial pay of the applicant to the effect that since he was drawing substantive pay of Rs.2500/- in scale Rs.1920-2500 and that after 1973 a sum of Rs.550/- was the D.A merged in the above scale, therefore deducting this amount from the substantive pay, the remaining substantive pay works out to Rs.1950/-. The State Govt, therefore, recommended that the applicant's initial pay on induction into IAS may be fixed at Rs.2000/- which is the next stage after Rs.1950/- in scale Rs.1200-2000. However, the Union of India, i.e. the respondent No.1 did not agree to this recommendation and conveyed on 25.2.86 (Annex.A1) that the pay of the applicant is fixed at Rs.1660/- w.e.f. 27.4.85. No reasons were recorded in this communication for rejecting the recommendation of the State Govt. The applicant made a representation on 6.3.1986 against the order dated 25.2.86 (Annex.A2) but it was rejected by respondent No.1 (Annex.A3) without recording any reasons.

3. The applicant's grievance is that nonprotection of his substantive pay has caused financial loss to him. Respondent No.2, the State of Rajasthan had proposed to respondent No.1, the Union of India, some time in June 1992 for protecting the substantive pay of some other officials promoted to IAS and respondent No.1 had agreed to this request in its communication dated 4.10.92 (Annex.A4). Pay of Shri S.S.Parnami who was appointed under Rule 8(2) of the Recruitment Rules and who was junior to the applicant was fixed at Rs.4850/- on 14.6.89, on the basis of the communication Annex.A4. The applicant also, relying on the communication dated 4.10.92, sought stepping up of his pay to Rs.4850/- vide a

representation, Anxx.A5. The respondent No.1, however, declined to accept the request of the applicant vide communication dated 30.6.93 (Anxx.A6). The applicant has reproduced Rule 4(6) of the IAS Pay Rules, 1954 (for short the Pay Rules) which governs fixation of pay of officers recruited under Rule 8(2) of the Recruitment Rules pertaining to appointment of officers other than those belonging to State Service to the IAS. Under Rule 4(6) of the Pay Rules, the pay of such officers recruited under Rule 8(2) of the Recruitment Rules is to be fixed by the Central Govt. in consultation with the State Govt. The applicant's case is that the emphasis in the Rule is on fixation of pay in consultation with the State Govt. and therefore, its recommendation in this regard is material and significant. Schedule-II of the Pay Rules lays down the principle applicable to fixation of pay of officers promoted under Rule 8(1) of the Recruitment Rules, i.e. officers who are appointed to IAS from amongst State Service officers. The government has been applying the principle relating to fixation of pay of State Service officers appointed to IAS to non-State Service officers also who are appointed to IAS, although the rules do not contemplate this situation. The applicant is aggrieved by the application of principles applicable to State Service officers appointed to IAS to non-State Service officers also appointed to IAS, in the matter of fixation of their pay on appointment to IAS.

4. Further, according to the applicant, respondent No.1 placing reliance on the definition of 'higher scales' in Schedule-II of the Pay Rules recognises the first revision of pay by the State Govt after 1.1.1973 but the State Govt. subsequently twice revised its pay scales in 1976 and 1981. Subsequently, the Central Govt. revised its pay scales on 1.1.1986 and in the definition of 'higher scales' the date

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1.1.86 was substituted for the date 1.1.73. The State Govt. thereafter twice revised its pay scales in 1986 and 1988. The Govt. of India recognised the second pay revision of 1988 made by the State Govt. to protect to substantive pay of the officer on the recommendation of the State Govt., it its order dated 4.10.92 (Annex.A4). Non-acceptance of the recommendation of the State Govt by respondent No.1 i.e. the Union of India, for protecting the substantive pay of the applicant without any reason has meant hostile discrimination against the applicant and is in violation of Articles 14 and 16 of the Constitution, as the members of the Service constitute as a class of whole. According to the applicant, the Govt. of India has itself mentioned in its letter dated 30.6.93 (Annex.A6) that the pay drawn at the time of induction in IAS is relevant and therefore, the applicant is entitled to have his pay fixed on the basis of his substantive pay of Rs.2500/- per month which was being drawn by him at the time of his induction into IAS.

5. In the reply filed on behalf of respondent No.1, i.e. the Union of India, a preliminary objection has been taken to the effect that the two reliefs claimed by the applicant are quite distinct and separate and are not consequential or related to each other and are therefore in violation of provisions of Rule 10 of the CAT (Procedure) Rules. It has been prayed that the application, therefore, deserves to be dismissed on this ground alone.

6. A further preliminary objection taken by the respondent No.1 is that the applicant has sought relief in the form of quashing the order dated 25.2.1986 (Annex.A1) and for fixing the initial pay at Rs.2000/- per month on 27.4.85 whereas the O.A has been filed in September 1993. Therefore, the said relief is barred by limitation as prescribed in Sec.21 of the Administrative Tribunals Act (for short the

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Act). Since according to respondent No.1, this is the main reliefs sought by the applicant, the O.A deserves to be dismissed on this ground alone.

7. Coming to the merits of the applicant's case, it has been stated on behalf of respondent No.1 that the State Govt, respondent No.2 had furnished information to the Union Govt. in Form-B, being the "proforma for fixation of pay of SCS officers appointed to IAS" (Annex.R1/1), on the applicant's appointment to IAS on 27.4.85, to enable the Union Govt to fix the initial pay of the applicant. The information contained therein was not in the nature of a recommendation made by the State Govt. to the Union of India. Since there was no recommendation by the State Govt, the question of its rejection by the Union Govt, while fixing the pay of the applicant does not arise. The pay of the applicant on appointment to IAS from a non-State Service is required to be fixed in the Senior Time Scale of the IAS under Rule 4(6) of the Pay Rules read with the principles of pay fixation enunciated in Schedule-II to the said Rules upto 31.12.85. The maximum of the pre-revised Senior Time Scale of IAS introduced w.e.f. 1.1.1973 was Rs.2000/- in scale Rs.1200-2000. At the time of induction into IAS, the applicant was drawing substantive pay of Rs.2500/- in scale Rs.1920-2500. After 1.1.73 the first revision of pay scales was on 1.9.76 raising the pay scale to Rs.1550-1900, after merger of DA of Rs.243/-. Subsequently by the revision effected in 1981, D.A of Rs.307 was merged and thereby scale of Rs.1920-2500 was created. The D.A merged at the time of first revision in 1976 was Rs.243 and thus an imaginary scale by reducing the amount of Rs.243 was worked out at Rs.1307-1657. Since the aforesaid imaginary scale was higher than the higher scale of Rajasthan State Civil Service the pay of the applicant was fixed in the Senior Time Scale of IAS (Rs.1200-2000) under clause (2) of Sec.1 of

Schedule-II to the said Pay Rules at Rs.1660 per month. As per the provisions of the Pay Rules, the pay scale as it existed on 1.1.73 or the pay scale revised for the first time after 1.1.73 was only required to be taken into account as the basis on fixation on appointment to the IAS. A totally new pay scale prescribed for State Service Officers after 1.1.73, as distinguished from the revision of the pay scales prescribed on 1.1.73 was not required to be taken into account for the purpose of fixation. By adopting the above procedure for fixation of pay, the possibility of double benefit of D.A being granted to the appointees to IAS was avoided as it was not intended by the Rules. Therefore, the revised pay drawn in the State Service on the date of appointment to the IAS could not be straightaway taken as the basis for fixation of pay in the IAS. No doubt Rule 4(6) of the Pay Rules provides for fixation of the initial pay of a non-State Civil Service officer on his appointment to the IAS and Schedule-II thereto does not contain any specific provision for non-State Service officer but with a view to maintaining parity between the State Service and non-State Service officers the conditions laid down in Schedule-II to the said Pay Rules in case of State Civil Service officers are also made applicable for the purpose of fixation of initial pay of non-State Civil Service officers appointed to the IAS. This according to the respondents is a reasonable and rational approach.

8. Further according to the respondent, Annx.A4 pertains only to fixation of pay of State Service officers. This annexure refers to fixation of pay with reference to pay scales effective from 1.1.86 and is not applicable in the case of the applicant as the applicant was inducted into IAS on 27.4.85. Therefore, the applicant's case is not comparable with Shri S.S.Parnami (who was inducted into IAS on 14.6.89).

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The applicant's representation had been duly considered by the Union Govt. There was no legal requirement for recording any reason for rejecting the representation. Also, according to the respondents the prior written consent of officers promoted to IAS is taken with regard to fixation of their pay under the Pay Rules and in case they find these provisions disadvantageous to them, it is open to them not to accept such appointment.

9. In the reply filed on behalf of respondent No.2, the State of Rajasthan, it has been stated that no recommendation was made by the State Govt to the Central Govt with regard to fixation of pay of the applicant and only a routine letter sending necessary information to enable fixation of pay of the applicant by the Central Govt. was sent. The Central Govt. is not required to give reasons while making initial fixation of pay of a person appointed to IAS as per Rule 4(6) of the Pay Rules. Initial pay of the applicant has been fixed in accordance with the Pay Rules. Anxx.A4 relied upon by the applicant relates to fixation of pay of IAS officers appointed on promotion from State Civil Service and it is not applicable to the case of the applicant.

10. The applicant has filed rejoinder to the replies filed by respondent No.1 and respondent No.2. The applicant has repelled the preliminary objections raised by respondent No.1 to the maintainability of the application and has claimed that the application is within the limitation period. He has maintained that the contents of Anxx.R1/l regarding fixation of pay of the applicant are in the nature of a recommendation in favour of the applicant. He has disputed that there is any concept of an imaginary scale in the process of pay fixation. No double benefit would be involved in fixing the initial pay of the applicant according to the recommendations of the State

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Govt. Nonapplication of the principle applied for fixation of pay of Shri S.S.Parnami to the applicant is arbitrary, discriminatory, etc. Rejection of the proposal of the State Govt for fixation of the pay of the applicant without assigning any reason is itself arbitrary. IAS is a superior service and reduction in pay on induction into a superior service would amount to punishment for no reason. The applicant was not a consenting party to fixation of pay below the pay last drawn by him as a non-State Civil Service Officer.

11. During the arguments the learned counsel for the applicant has stated that the State Govt. had made a definite recommendation for fixation of the pay of the applicant as per item (ii) of column 13 of Form-B attached to Annx.R1 by which it was proposed that his pay may be fixed at Rs.2000/-. This recommendation could not be treated as futile. Although the State Govt gave two recommendations as contained in items (i) and (ii) of column 13 of Form-B, it was in fact only one recommendation namely fixation of pay at Rs.2000/- per month. On behalf of the applicant, a judgment of Madras Bench of the Tribunal in T.M.Thomas & Anr. Vs. Secretary, Deptt of Personnel & Training, New Delhi (1987) Lab IC 1541 was cited of which relevant portion has also been reproduced in the rejoinder filed to the reply filed by respondent No.1. In this judgment, it has been stated inter alia that the recommendation of the State Govt for protection of the pay that the officer was drawing at the time of his appointment to the IAS has to be accepted and the fact that such protection has been granted to non-State Civil Service Officers earlier has to be given due weight. Further as per this judgment the requirement of justice, equity and fair play have to be given due regard. It has been concluded in this judgment that the

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substantive pay of the officer on the date of appointment to IAS after deducting the amount of DA will have to be protected by granting personal pay if necessary. He denied that any consent letter was obtained from the applicant with regard to fixation of his pay at a figure lower than that last drawn by him before appointment to IAS.

12. The learned counsel for respondent No.1 stated during the arguments that pay of the applicant was fixed on the basis of item (i) of column 13 of Form-B attached to Annx.A1 on the basis of the information furnished by the State Govt. There was no recommendation by the State Govt, and it was conceded during the arguments by the learned counsel for the applicant that even if it was assumed that Form-B contained a recommendation favourable to the applicant, a recommendation in its very nature could not be binding. The pay of the applicant had been fixed on the same basis and on the same principles and by applying the same rules by which pay of State Civil Service Officers appointed to IAS has been fixed, in order to remove any sense of discrimination, when there was no specific provision regarding the manner in which the pay of non-State Service officers appointed to IAS was to be fixed. He added that there is no concept of protection of pay in the Pay Rules. He distinguished the judgment in the case of T.M.Thomas relied upon on behalf of the applicant by stating that while delivering this judgment the Tribunal had not gone into the rules and had not considered the formula by which the pay of State Service officers inducted into IAS (and by analogy, of non-State Service officer inducted into IAS) was to be fixed. He referred to the judgment of the Bangalore Bench of the Tribunal in the case of T.Thimmaiah Vs. Union of India & Ors 1989(7) SLR 333 in which the Tribunal held, in the matter of dispute regarding year of allotment to an officer on

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appointment to IAS under the IAS (Appointment by Selection) Regulations, 1956, that the recommendation of the State Govt. to the effect that the officer be given a particular year as year of allotment was not binding on the Union Govt. He added that the same ratio will be applicable in a case where there was a recommendation by the State Govt regarding fixation of pay of an officer appointed to IAS by selection, and even if it is assumed that there was any recommendation by the State Govt in this behalf it would not be binding on the Union Govt. which is the authority competent to fix the pay under the Pay Rules. He also referred to the judgment of the Hon'ble Supreme Court in Union of India & Ors. Vs. G.K.Sangamashwar & Ors, 1994 SCC (L&S) 116, wherein it was held that the principle laid down in Rule 3(3)(b) of the IAS (Regulation of Seniority) Rules, 1954 or Seniority Rules which is applied for assigning the year of allotment to a State Civil Service officer vis a vis a directly recruited officer can also be applied for assigning the year of allotment to a non-State Civil Service officer vis a vis a State Civil Service officer and a directly recruited officer. According to the learned counsel for respondent No.1, therefore, on the same analogy the principle governing fixation of pay of State Civil Service Officer appointed to IAS under Rule 4(6) of the Pay Rules can be applied to non-State Civil Service officers appointed to IAS, in the absence of a specific provision regulating the fixation of pay of the latter category of officers. As regards Shri S.S. Parnami, he stated that whereas the applicant was appointed to IAS on 27.4.85, Shri Parnami was appointed to IAS on 14.6.89. Prior to his appointment to IAS, Shri Parnami was getting pay of Rs.4800/- per month. On his appointment to the IAS he was given scale of pay Rs.3950-5000 which scale came into effect after 1.1.86 and therefore Shri Parnami's pay was

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fixed at Rs.4850/- per month in the aforesaid scale. Therefore according to him, Shri Parnami's case was not at all comparable with that of the applicant because he was appointed to IAS after 1.1.86 and his pay was fixed in a scale created after 1.1.86, whereas, the applicant was appointed to IAS before 1.1.86. If any justifiable grounds exist for fixing a junior at a higher pay, the principle of equal pay for equal work or grant of same pay to the senior that has been given to the junior would not be applicable. To support this contention, he referred to the judgment of the Hon'ble Supreme Court in State of Andhra Pradesh & Ors. Vs. G.Sreenivasa Rao & Ors, 1989 SCC (L&S) 339. He added that as far as Annex.A4 is concerned, it has prospective application and the applicant's pay could not be fixed in terms of these instructions.

13. The learned counsel for respondent No.2 i.e. the State of Rajasthan, stated during his argument that as far as Shri Parnami's case was concerned, in 1988 a new Supertime pay scale had been introduced in the Rajasthan Accounts Service and since Shri Parnami had been placed in this scale, he was drawing a higher pay than the applicant at the time of induction into IAS. Correspondingly, therefore his pay had been fixed at a higher figure. He maintained that the application was time barred inasmuch as the rejection order of 1986 had been challenged by filing an O.A in 1993.

14. We have heard the learned counsel for the parties, have perused the record and have also gone through the judgment cited before us.

15. We may first dispose of the preliminary objections raised on behalf of the respondents. We do not find the reliefs claimed by the applicant to be such as to constitute a misjoinder of causes. Essentially these are reliefs for fixation of pay of the applicant at a higher figure than that at which it was initially fixed on the applicant's promotion to the IAS.

either independently, or with reference to the pay of Shri S.S. Parnami. Hence the plea that there has been misjoinder of causes is rejected.

16. As regards the second preliminary objection ~~that~~ referred to in para 6 supra, it has recently ^{been} held by the Hon'ble Supreme Court in M.R.Gupta Vs. Union of India & Ors, 1995(2) ATJ 567 that non-grant of proper pay is a recurring cause of action and a fresh cause of action in this regard arises every month when a person is paid salary on the basis of wrong computation ~~as contrary~~ to the rules. The question of limitation or laches would arise only with regard to the payment of arrears of salary. Hence, the preliminary objection that claim for pay fixation which was done initially on 27.4.85 is time barred is also rejected.

17. On the applicant's appointment to the IAS, the State Govt, had given the following information in Form-B enclosed with Anxx.R1 filed alongwith the reply of respondent No.1. The two proposals of the State Govt. in this regard were as under:

"(i) Govt of India have not agreed the pay fixed in Rajasthan Revised Pay Scale, 1981 for the purpose of pay fixation in the senior scale 1200-2000 on IAS in respect of those who were promoted in IAS vide Govt. of India letter No.20015/5/81AIS(II) dated 30.8.83. In accordance with the instructions received had the Rajasthan Revised Pay Scale Rules, 1983 not been applicable w.e.f. 1.9.1981, Shri Ratan Lal Jain would have drawn Rs.1900/- in the pay scale of Rs.1560-1900 in the Revised Pay Scales Rules 1976 on the date of his promotion in IAS. Therefore, keeping Rs.1900/- in view, it is proposed to fix his pay in IAS as follows:

Pay as on 27.4.85 in the pay scale 1550-1900 Rs.1900

Addl. D.A merged (-) Rs. 243

Q Rs.1657

Pay fixed in Senior Scale of IAS 1200-2000
w.e.f 27.4.1985.

Rs.1660

Next date of increment

27.4.1986

(ii) The officer was drawing substantive pay of Rs.2500/- in the pay scale of 1920-60-2100-75-2400-100-2500. After 1973, a sum of Rs.550 has been merged in the above pay scale (Rs.243/- on 1.9.76 on Rs.1900/- and Rs.307/- on 1.9.81 on pay Rs.2500/-). Deducting this amount from his substantive pay, the remaining substantive pay comes to Rs.1950/-. He may, therefore, be fixed on the next stage of Rs.2000/- in the pay scale of 1200-2000. This will protect his substantive pay."

The Union Govt accepted the first proposal and fixed the applicant's pay at Rs.1660/- per month w.e.f. 27.4.85. At most these proposals can be called the recommendations of the State Govt. It was conceded by the learned counsel for the applicant himself during the arguments that recommendations cannot be considered to be binding. His prayer only was that the second proposal which sought to protect the applicant's substantive pay in the non-State Civil Services from which he was appointed to IAS should have been accepted by the Union Govt. in preference to the first proposal which lowered his pay. It is undisputed that the applicant's substantive pay before his appointment to the IAS was Rs.2500/- per month.

17. Rule 4(6) of the Pay Rules provides that the initial pay of an officer not belonging to a non-State Civil Service on appointment to IAS under Rule 8(2) of the Recruitment Rules shall be fixed by the Central Govt. in consultation with the State Govt. concerned. There is a proviso to the said sub-rule (6) which provides that in no case shall such an officer be granted higher rate of pay in the senior scale of the service than that admissible to a direct recruit of the same length of recognised service. As can be seen from this sub-rule, there are no precise or detailed guidelines therein for fixation of initial pay of non-State Civil Services officers appointed to the IAS. The Union Government chose to accept the

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first proposal mentioned above which according to them amounts to fixation of pay on the same principles on which the pay of State Civil Service officers appointed to the IAS is fixed. The detailed provision for fixation of pay of State Civil Service officers appointed to the IAS are incorporated in Schedule-II of the Pay Rules. Item (2) of Sec.1 of Schedule-II provides that the initial pay of a promoted officer who is substantive in the higher scale of the State Civil Service shall be fixed at the stage of the Senior Time Scale of the IAS next above his actual pay in the higher scale. 'Higher scale' has been defined as under:

"'Higher scale' means any scale of pay higher than the 'lower scale' prescribed for the State Civil Service and in force on the first day of January, 1973 or any date subsequent thereto, the subsequent date being the date on which the scales of pay applicable to the State Civil Service were revised for the first time after the first day of January, 1973 provided that in the later case the dearness allowance, dearness pay, interim or additional relief sanctioned by the State Govt after the first day of January, 1973 and merged in the revised pay scale shall be excluded."

The Union Govt has claimed that since no precise rules or guidelines are available for fixation of the initial pay of the non-State Civil Services officers, the principle or the formula laid down in Schedule-II for fixation of the pay of State Civil Service officers appointed to the IAS has been followed while fixing the pay of the applicant, a non-State Civil Service officer appointed to the IAS. This has been done, according to them, to ensure adoption of a rational and logical approach and to avoid any sense of discrimination. The first proposal contained in Form-B was in accordance with this principle and therefore, the applicant's pay was fixed at

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Rs.1660/- per month w.e.f. the date of applicant's appointment to the IAS.

18. If the applicant's pay is fixed in accordance with the principles laid down for fixation of initial pay of State Civil Service officers appointed to the IAS, we find that this computation has been correctly made by the Union Govt, which is incidentally on the basis of the calculations provided by the State Govt. The higher pay scale in which the applicant would have been placed in accordance with the Revised Pay Scale Rules of 1976 would be Rs.1550-1900 and his pay as on 27.4.85, i.e. the date of appointment to the IAS would have been at the maximum of Rs.1900/- if he had still been in that scale. Deducting an amount of Rs.243, which was the DA merged therein, the balance arrived at would be Rs.1657 and the applicant would therefore be entitled to the next stage of pay in the senior scale of IAS at Rs.1660. The definition of "higher pay scale" as reproduced above suggests that only the first pay revision after 1.1.73 is to be taken into account for determining such higher scale of pay and ^{the} DA, etc. merged therewith has to be deducted for the purpose of working out the actual pay with reference to which the incumbent is to be placed in the senior scale of IAS Rs.1200-2000. Since the first revision after 1.1.73 was the one which took place in 1976, therefore, we are of the view that if the rules regarding fixation of pay of State Civil Service officers appointed to the IAS were to be followed, the applicant's initial pay has been correctly fixed at Rs.1660. Of course his substantive pay at the time of such appointment was Rs.2500 and he would have started drawing lower emoluments on his appointment to the IAS. But then question would arise which other principle should have been followed by the Union Govt in fixing the initial pay of the applicant. After all Rule 4(6)

by itself is not very detailed nor does it provide any guidelines for such fixation. This rule on the other hand suggests that pay under it has to be fixed on an ad hoc basis, which cannot be considered to be a better approach.

19. As regards Shri Parnami's case, he was inducted into the IAS on 14.6.89 after the revision of pay scale had taken place on 1.1.1986. The clarifications, etc, given in Anxx.A4 pertain to fixation of pay after 1.1.86. The applicant was appointed to the IAS before 1.1.86 and therefore, he cannot claim fixation of pay on the basis of pay granted to Shri Parnami. It is perfectly legitimate for the government to fix a cut off date for grant of benefits to members of the service if such a date has a rational nexus with the object sought to be achieved. The Hon'ble Supreme Court have laid down this principle in a number of judgment, a very recent one of which is Union of India Vs. P.N.Menon & Ors, 1994 SCC(L&S) 860 wherein the Hon'ble Supreme Court held, in the context of fixation of a cut-off date regarding treatment of DA as pay for the purpose of retirement benefits that whenever the revision takes place a cut-off date becomes imperative because the benefit has to be allowed within the financial resources available with the government. We, therefore, hold that the applicant cannot take benefit of the clarifications given in Anxx.A4. No rules or instructions were shown to us during the hearing to suggest that the substantive pay of an officer appointed to the IAS from a State Civil Service or a non-State Civil Services has to be protected on his such appointment. Also no provisions were shown which would suggest that the pay of a senior has to be stepped-up equal to that of a junior in such circumstances.

20. Therefore, the fixation of the applicant's initial pay at Rs.1660 on 27.4.85 appears to us to be in order. However,

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the applicant cited before us the judgment of the Madras Bench of the Tribunal in T.M.Thomas and Anr, referred to above. We have gone through the judgment carefully. There is a reference in this judgment to Rule 4(6) of the Pay Rules and according to para 3 of the Tribunal's judgment in this case the only restriction in the matter of fixation of pay of non-State Civil Service officers appointed to the IAS is that they shall not be granted higher rate of pay in the senior scale than that is admissible to a direct recruit of the same length of recognised service. This restriction has been placed by way of a proviso to Rule 4(6). The proposal of the State Govt in Thomas's case was that the pay of the applicants in that case, who were also non-State Civil Service officers appointed to the IAS, ~~was that~~ their pay prior to their appointment to the IAS should be protected while fixing their pay in the IAS. This proposal was not accepted by the Union Govt. This is what the Tribunal had observed in its judgment in Thomas's case.

"23. However on the ground that there is no provision in the Pay Rules for such protection the request of the State Government was not acted upon. It may be that there is no rule as such to give protection. But as pointed out by this Tribunal in the judgment in Ramachandran's case the question is whether the employee under the State Government, of exceptional merit and ability, having been absorbed in the IAS, so that officers of real worth may be utilised in that service, can be deprived substantially of the pay that he was drawing under the State Government, and which he would have continued to draw had he remained in the State Service. It is clear from the file of the State Government referred to above that in the case of more than one previous selectee non-State Civil Service officer such protection had actually been granted by the Central Government. It will be apposite at this

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juncture to point out regarding the fixation of the initial pay of a promotee State civil service officer the provisions in the Pay Rules reveal that ample safeguards have been made for protecting the pay that such officers were drawing before they were promoted to the IAS.

24. In the judgment in Ramachandran's case this Tribunal had indicated certain guidelines in the matter of fixation of the initial pay of a selectee non-State Civil Service officer. The first thing to be taken into account is the pay that he was actually drawing at the time of his appointment to the IAS. The special pay attached to the post and granted in lieu of higher time-scale of pay has also to be taken into account. The amount of dearness allowance that has been merged with the pay can be deducted. The safeguards provided to the promotee State Civil Service officers in order to see that no depression is caused to the pay that they were drawing have to be borne in mind. The recommendation of the State Government that protection of the pay that the officer was drawing at the time of his appointment to the IAS, has to be allowed, and the fact that such protection has been granted to Selectee non-State civil service officers earlier have to be given due weight. Above all the requirement of justice, equity and fair play that in fixing the initial pay of an officer under the State Government selected to the IAS on the basis of merit and outstanding ability a substantial depression from the pay that he was drawing at the time of selection is not made has to be given due regard. We would add that the substantive basic pay of the officer on the date of appointment to the IAS, after deducting the element of DA, will have to be protected by grant of personal pay if necessary."

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Thus in the above judgment, the Tribunal has extended the principle of protection of pay drawn prior to appointment to IAS on appointment to the IAS. Question that arises is whether this approach is more rational and logical than the one adopted by the Union Govt in fixing the initial pay of a non-State Civil Service Officer on appointment to the IAS on the basis of the rules framed for the State Civil Service officers appointed to the IAS. The Rules for fixation of pay of non-State Civil Service officers are not so very detailed and specific and in the absence of details being available in the said rules, we are of the view that it would be a more rational and logical approach to adopt the same rules which are applicable to the State Civil Service officers appointed to the IAS. This approach would ensure a parity in treatment of officers appointed from the State Civil Services and the non-State Civil Services to the IAS. Also it would ensure that in comparable circumstances the non-State Civil Service officers inducted into the IAS do not start drawing higher pay than the State Civil Service officers or that the pay of the non-State Civil Service officers is protected while that of the State Civil Service officer is not. Also it appears to us that if it had been the intention of the legislature to provide protection to the pay drawn in the State Service on appointment to the IAS, a specific provision to this effect would have been incorporated in the Rules. We cannot read into the rules what has not been specifically provided therein.

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21. Thus there is a conflict in the view that we have taken above and that expressed in the judgment of the Madras Bench of the Tribunal in Thomas's case. The matter is, therefore, referred to the Hon'ble Chairman for constituting a larger Bench. The following questions need to be answered:

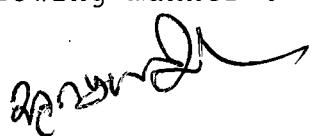
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i) Whether in the absence of specific and detailed rules for fixation of initial pay of non-State Civil Service officers appointed to the IAS, it would be appropriate for the Govt of India to follow the same principles for fixation of pay of non-State Civil Service officers as are applied while fixing the pay of State Civil Service officers appointed to the IAS for which detailed and specific rules exist.

ii) Whether the substantive pay of non-State Civil Service officers appointed to the IAS has to be protected on their appointment to the IAS in spite of the fact that there is no specific provision for protection of such pay in the Pay Rules either for State Civil Service officers or for non-State Civil Service officers appointed to the IAS.

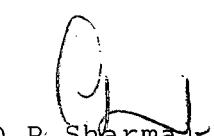
Another question arising in this case is whether the pay of the applicant should be fixed at a higher figure on the basis of such pay fixation in the case of Shri Parnami. This question does not arise on account of a different view taken by us from that of the Madras Bench of the Tribunal in Thomas's case but on account of a claim made in this case. Since the matter is being referred to the Hon'ble Chairman, this question may also be referred to the larger Bench. The question would be as under:

(iii) Whether the applicant is entitled to higher pay fixation on the ground that pay of Shri S.S.Parnami, appointed to the IAS on 14.6.89 from an non-State Civil Service was fixed at Rs.4850 in Junior Administrative Scale of IAS Rs.3950-125-4700-150-5000 in view of Annx.A4 because that he was drawing pay of Rs.4800 at the time of appointment to the IAS, in spite of the fact that Annx.A4 lays down revised guidelines for pay fixation prospectively by using the expression "pay of promoted officers may now be fixed in the following manner".



(Ratan Prakash)

Member(Judl)



(O.P. Sharma)

Member(Adm).