

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

O.A. No. 517/93 199
T.A. No.

DATE OF DECISION 3.6.1996

Ratan Lal Jain Petitioner

Mr. O.P.Sharma Advocate for the Petitioner (s)

Versus

Union of India and another Respondent

Mr. U.D.Sharma, for respondent Advocate for the Respondent (s)
No.1

Mr. B.N.Purohit, for respondent No.2

CORAM:

The Hon'ble Mr. Justice A.P.Ravani, Chairman
The Hon'ble Mr. Ratan Prakash, Member (J)

The Hon'ble Mr. S.P.Biswas, Member (A)

1. Whether Reporters of local papers may be allowed to see the Judgement? *Yes*
2. To be referred to the Reporter or not? *Yes*
3. Whether their Lordships wish to see the fair copy of the Judgement? *Yes*
4. Whether it needs to be circulated to other Benches of the Tribunal?

(S.P.Biswas)
Member (A)

(Ratan Prakash)
MEMBER (J)

(A.P.Ravani)
Chairman

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH,

JAIPUR

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Date of order: 3.6.96

OA No.517/93

Ratan Lal Jain, I.A.S. (Retd.)
A-37, Subhash Nagar, Jaipur- 302 016.

.. Applicant

Versus

1. Union of India represented by:
The Secretary, Department of Personnel,
Public Grievances and Pensions (Personnel
and Training Division), New Delhi
2. State of Rajasthan represented by :
The Chief Secretary, Government of Rajasthan
Rajasthan Secretariat, Jaipur.

.. Respondents

Mr. O.P.Sharma, Counsel for the applicant
Mr. U.D.Sharma, Counsel for Respondent No.1
Mr. B.N.Purohit, Counsel for Respondent No.2

CORAM:

Hon'ble Mr. Justice A.P.Ravani, Chairman
Hon'ble Mr. Rattan Prakash, Member (J)
Hon'ble Mr. S.P.Biswas, Member (A)

ORDER

(Per Hon'ble Mr. Rattan Prakash, Member (J))

The material question which has been posed before
this Full Bench is:

"Whether the view taken by Madras Bench of the
Tribunal in T.M.Thomas and anr. Vs. Secretary,
Department of Personnel and Training, New Delhi
and ors. (1987 LAB. IC 1541) 'that while fixing
pay of a Selectee Non-State Civil Service Officer
inducted to the I.A.S. under Rule 8(2) of the
I.A.S. (Recruitment) Rules, 1954 the pay drawn by
him prior to his appointment to the I.A.S. has to
be protected' should be adhered to in preference
to a contrary approach expressed by the referring
Division Bench of this Tribunal in its order dated
8-1-1996 in OA No. 517/93, R.L.Jain Vs. U.O.I. and
Ors."

contd...2/-

2. Undisputed facts of this application, in brief, are that the applicant was a Member of the Rajasthan Accounts Service from 1.3.1958 to 26.4.1985. At the time of his induction on 27.4.1985 to the Indian Administrative Service by selection under Rule 8(2) of I.A.S.

(Recruitment) Rules, 1954 (for short 'Recruitment Rules, 1954'), he was drawing a substantive pay of Rs.2500/- per month in the scale of Rs.1920-2500. The State Government (respondent No.2) recommended that since the applicant at the time of induction to the I.A.S. was drawing a substantive pay of Rs.2500/- in the above pay scale and that after the year 1973 a sum of Rs.550/- was the amount of Dearness Allowance merged in the above scale; on deduction of this amount from his substantive pay; his remaining substantive pay works out to be Rs.1950/- and thus his initial pay was fixed at Rs.2000/- per month. Contrary to the data supplied by the State of Rajasthan as above to the Union of India as per the prescribed proforma for fixation of pay of the State Civil Service Officers appointed to the IAS; the Union of India (respondent No.1) instead fixed the pay of the applicant at Rs.1660/- w.e.f.

27.4.1985, the date of his induction to the IAS vide their communication dated 25.2.1986 (Annexure A-1).

The applicant feeling aggrieved approached the Tribunal by filing an O.A. No.517/93 and claimed fixation of his initial pay at Rs.2,000/- per month in the Senior Scale of IAS w.e.f. 27.4.1985. The Division Bench of this Tribunal vide its order dated 8.1.1996 finding itself in conflict with the view expressed by Madras Bench

of the Tribunal in Thomas case (supra), sought a direction of Hon'ble the Chairman ; and hence this OA having been placed before the Full Bench, has been heard in its entirety.

3. While making the reference as above, the Division Bench has framed the following issues:-

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?

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 a non-State Civil Service as fixed at Rs.4850 in Junior Administrative Scale of IAS Rs.3950-125-4700-150-5000 in view of Annex.A4 because that he was drawing pay of Rs.4800/- at the time of appointment to the IAS, in spite of the fact that Annex.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"?

4. Since third issue referred to by the Bench having been not pressed by the learned counsel for the applicant; we heard the learned counsel for the

applicant Shri O.P.Sharma and the opposing learned counsels S/Shri U.D.Sharma for Union of India and Shri B.N.Purohit for the State of Rajasthan on the remaining issues.

5. To resolve the material question posed before us, it is necessary to reproduce the relevant provision contained under Rule 4(6) of the Indian Administrative Service (Pay) Rules, 1954 (for short 'Pay Rules, 1954) which deals with the Fixation of initial pay in the time Scales. Rule 4(6) of the Pay Rules, 1954 reads:

"4.(6) The initial pay of an officer not belonging to a State Service on appointment to the Indian Administrative Service under sub-rule(2) of rule 8 of the Indian Administrative Service (Recruitment) Rules, 1954, shall be fixed by the Central Government in consultation with the State Government concerned;

Provided 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.

Explanation.- The term 'recognised service' in relation to an officer recruited to the Indian Administrative Service under sub-rule(2) of rule 8 of the Indian Administrative Service(Recruitment) Rules, 1954, means his employment in a gazetted post after attaining the age of twenty-five years in Government Service."

6. A perusal of the above provision exhibits that the initial pay of an officer not belonging to a State Civil Service, on appointment to the IAS under Sub-rule (2) of Rule 8 of the aforesaid Pay Rules, 1954; shall be fixed by the Central Government in consultation with the State Government concerned. The only

limitation placed in this regard has been explicitly provided under the proviso to this sub-rule(6). This proviso lays down 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."(emphasis supplied). Except this, no other restriction has been placed in the matter of fixation of pay of an officer inducted to the IAS from the non-State Civil Service by virtue of sub-rule(2) of Rule 8 of the Recruitment Rules, 1954. A controversy regarding the fixation of pay of such a non-State Civil Service officer; sometimes referred also as 'Selectee Officers', came for an exhaustive consideration before Madras Bench of the Tribunal in the case of TOM. Thomas (supra). After a detailed analysis and evaluation of the provisions related to the fixation of initial pay of a selectee non-State Civil Service Officer, Madras Bench of the Tribunal relying upon its earlier decision dated 30.4.1986 in Application No.536/86 K.Ramchandran Vs. Union of India held that the recommendation of the State Government in this regard has to be given due weight. Accordingly, the Tribunal in Thomas's case rejected the contentions made on behalf of the Union of India to the effect that there being no provision under the Pay Rules, 1954 to give such a protection to non-State Civil Service Officers, the Government of India is not bound to act upon the recommendations made by the State Government. Similar contentions in substance have

have been reiterated by the learned counsel for the respondents in the instant OA as well. The Tribunal while disposing of T.M.Thomas's case observed in para 24 of its judgment as under:-

"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."

This view was taken by the Madras Bench of the Tribunal as early as in the year 1986 and thereafter in the year 1987 in T.M.Thomas case (supra). It has held the field for almost 10 years. On enquiries as to whether Union of India filed any appeal or S.L.P. before the Hon'ble Supreme Court against the view taken by the Madras Bench, the learned counsel candidly answered that he has no such information. However, the learned counsel for the respondents still insisted that certain appeals filed by the Union of India are pending before

Hon'ble the Supreme Court although none of them has been decided so far. On being pointedly asked whether such appeals which are said to be pending before Hon'ble the Supreme Court deal with the same subject matter or not; the learned counsel for the respondent submitted that they are in reference to the promotee officers i.e. the State Civil Service Officers and not with reference to the Selectee Officers/^{of}Non-State Civil Service inducted to the Indian Administrative Service. The learned counsel for the respondents further informed that he is not in a position if the view taken by Madras Bench of the Tribunal in T.M.Thomas's case has not been implemented by the Union of India so far in the same and/or in any subsequent matters. In other words, the learned counsel for the respondents could not convince us and establish that the view taken by Madras Bench of Tribunal in T.M.Thomas case on the controversy and reproduced above; has been dis-approved or set-aside by Hon'ble the Supreme Court so far.

7. It is an accepted principle that if a party with full knowledge by conduct or otherwise acquiesces in a particular state of affairs continuing for a substantial number of years (in the present case for almost ten years) without any contradiction by the affected party or placing a verdict of a competent court contrary to it; before the Court seized with the matter, it would be inferred that such a party had no grievance at all whatsoever and has acquiesced in its entirety. This is more so in the case when the employee belongs to an All India Cadre Service. Also the law will

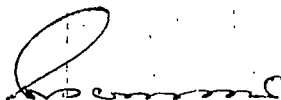
neither encourage nor permit that in service matter the Government of India adopts and pursues one policy in one part of the country and in other parts a different one. If this is allowed, then it would result into a chaotic situation and a state of uncertainty would permeate all through between the employees of the same cadre/service. This has to be avoided to maintain uniformity of approach by the State- here the Union of India. This is what actually appears to have happened in the instant case. Union of India in spite of a clear verdict given in T.M.Thomas case (supra) lay inactive since the year 1987. It, therefore, cannot now reagitate it; the verdict of Madras Bench having acquired finality.

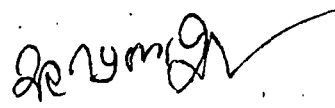
8. In view of above, the prudence requires that it would neither be just and fair, nor equitable to unsettle the position which has held the field since the year 1987 onwards after the decision of Madras Bench in T.M.Thomas case (supra).

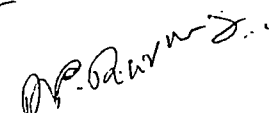
9. Consequently while endorsing the view taken by Madras Bench of the Tribunal in T.M.Thomas case, our answer ~~to the first issue~~ referred to by the Division Bench is in the negative and to the second issue in the affirmative. We find that there was no justification for the respondent Union of India to issue the impugned order dated 25.2.1986 (Annexure A-¹/₂) denying the admissible claim to the applicant; which is hereby quashed. It is further held that the applicant herein being in receipt of Rs.2500/- per month on the date of his induction to the IAS by selection under Rule 8(2) of the Recruitment Rules, 1954 and the State Government having recommended that the initial pay on his induction into IAS be fixed at Rs.2000/- which is next stage after

Rs.1950/- in the scale of Rs.1200-2000; the applicant is entitled for protection of his pay accordingly. The respondents, therefore, are directed to fix the initial pay of the applicant on his appointment to the IAS in the light of what has been said above and pay all consequential monetary benefits to the applicant within a period of four months from the date of receipt of a copy of this order failing which it shall carry interest at the rate of 15% p.a from the date of this judgement till the payment is made. The registry is directed to send a copy of this order to all the respondents.

10. OA stands disposed of accordingly with no order as to costs.


(S.P. BISWAS)
MEMBER (A)


(RATTAN PRAKASH)
MEMBER (J)


(A.P. RAVANI)
CHAIRMAN