

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

DATE OF ORDER: 3.06.2004

ORIGINAL APPLICATION NO. 12/2002

S.S. Tripathi son of Shri Shiv Govind Tripathi, aged about 60 years, resident of A/12, Van Vihar Colony, Tonk Road, Jaipur.

....Applicant

VERSUS

1. Union of India through its Joint Secretary, Government of India, Secretariat, New Delhi.
2. The Secretary, Department of Personnel, Government of Rajasthan, Secretariat, Jaipur.

....Respondents

Mr. P.P. Mathur, Counsel for the applicant.

Mr. H.C. Bairwa, Proxy counsel for Mr. Bhanwar Bagri, Counsel for the respondent No. 1.

Mr. U.D. Sharma, Counsel for the respondent No. 2.

CORAM:

Hon'ble Mr. M.L. Chauhan, Member (Judicial)

Hon'ble Mr. A.K. Bhandari, Member (Administrative)

ORDER

PER HON'BLE MR. M.L. CHAUHAN, MEMBER (JUDICIAL)

In this OA, the applicant has prayed for quashing the order dated 1.8.2001 (Annexure A/1) and order dated 9.11.2001 (Annexure A/2) whereby the representation of the applicant for stepping up of pay in accordance with IAS (Pay) Rules, 1954 and also removal of anomaly in the pay of promoted IAS Officers vis-a-vis pay of their junior appointed subsequently to the IAS was rejected. The applicant has further prayed that on promotion to the IAS, he may be given the pay scale of Rs.4500-5000 (Pre-revised). The applicant has also prayed that provisions of Note 4 & 5 of the Section 1 of the Scheduled II of the IAS (Pay) Rules, 1954 may be declared ultra-virus of Article 14 of the Constitution of India. The applicant is claiming the benefit of stepping up of his pay equivalent/higher than Mr. Manaveer Singh & Others, who were promoted to the IAS subsequently.

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2. It may be stated that so far as grant of pay scale of Rs.4500-5000 (Pre Revised) in the IAS to the applicant w.e.f. the date he was promoted to the IAS is concerned, it may be stated that this issue is no longer res-integra. This Tribunal in OA No. 232/98 decided on 05.05.2003 in the case of Mahaveer Singh vs. Union of India (against whom the applicant is claiming the benefit of stepping up of his pay), this Tribunal has held that on promotion to the IAS, the pay of the applicant therein had been correctly fixed in the pay scale of Rs.3950-5000 (JAG). Even otherwise also the learned counsel for the applicant has not pressed this relief at the time of arguments, as such no finding is warranted on this count.

3. Now let us notice the relevant facts which are necessary for the purpose of deciding the matter in issue. The applicant was initially selected in the RAS in the year 1974. On account of his promotion to the post of IAS, his pay was fixed at Rs. 4700/- per month in the senior scale of IAS Rs.3200-4700 w.e.f. 7.8.1995, the date of his appointment to the IAS and at Rs.4850 in the pay scale of Rs.3950-5000 w.e.f. 1.9.1995 vide order dated 4.2.1998. Since the applicant was not holding the cadre post at the time of appointment as IAS, his pay in the IAS was required to be fixed in accordance with provisions of Rule 4(3) read with the principles laid down in Section I of Scheduled II to the pay Rules. The applicant was put on probation of one year in accordance with Rule 3 of the IAS (Probation) Rules, 1954 and on the expiry of one year, the applicant was confirmed as IAS on 7.8.1996. The grievance of the applicant is that since Shri Mahaveer Singh was appointed to the IAS on 13.12.1995 and confirmed on 13.12.1996, his pay in the IAS has been fixed higher than him, as such he is entitled for the benefit of stepping up of his pay at par with his junior and for that he made representation on 1.7.2000 and 14.12.2000 but no decision has been taken in this regard by the respondents. Subsequently, he filed a representation in the month of March, 2001. The respondents have illegally rejected the representation of the applicant vide impugned order dated 1.8.2001 (Annexure A/1) and order dated 9.11.2001 (Annexure A/2) thereby stating that there exists no rule to allow stepping up of pay and also that it is not desirable to rectify the anomaly in the senior promoted officers vis-a-vis their juniors. It is on these basis that the applicant has filed this OA thereby praying for the aforesaid reliefs and also praying for quashing the provisions of Clause 4 and 5 of the Section I of the Scheduled II of the IAS (Pay) Rules, 1954.

4. The respondents have filed reply. The facts, as stated above, has not been disputed. It has however, been stated that Mr. Mahaveer Singh came to be appointed as IAS on 13.12.1995 and confirmed on 13.12.1996. It is further stated that revised pay scale came into force in the Rajasthan

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State w.e.f. 1.9.1996, i.e. prior to the confirmation of Mr. Mahaveer Singh in the IAS. Accordingly, he became entitled to the benefit of the said revised pay scales and pay fixation in the RAS and consequently to the re-fixation of his pay in the IAS w.e.f. 13.12.1995. Thus the applicant is not similarly placed with Mr. Mahaveer Singh.

5. We have heard the learned counsel for the parties and have gone through the material placed on record.

6. The fact that the applicant came to be appointed in the IAS w.e.f. 7.8.1995 and was confirmed on 7.8.1996 has not been disputed. It is also not disputed that the revised pay scale of the RAS Officers came to be revised w.e.f. 1.9.1996 i.e. after confirmation of the applicant as such his pay at Rs.4850/- in the pay scale of Rs.3950-5000(JAG) was correctly fixed w.e.f. 7.8.1995. Similarly, the pay of Shri Mahaveer Singh who came to be appointed to the IAS on 13.12.1995 and was initially fixed at Rs. 4850 in the JAG scale of Rs. 3950-5000. However, Mr. Mahaveer Singh, who was not confirmed in the IAS and was holding his lien in the State Civil Service was allowed the benefit of provisions of Clause 4 of the Section 1 of the Scheduled II of the IAS (Pay) Rules, 1954. At this stage, it will be useful to quote the said provisions, which is in the following terms:-

FIXATION OF INITIAL PAY OF PROMOTED OFFICERS FALLING UNDER
RULE4(3)

(1) The initial pay of a promoted officer shall be fixed at the stage of Senior time scale of the Indian Administrative Service equal to his actual pay in the lower scale or his assumed pay in the lower scale, as the case may, increased at the rate of one increment in the senior time scale of Indian Administrative Service for every three years of service in the State Civil Service. The resultant increase shall be subject to a minimum of Rs.200 and maximum of Rs.300 over his pay in the State Civil Service.

Provided that -

(i)

(ii)

(2)

(3)

(4) In the case of a promoted officer appointed to the Indian Administrative Service on probation, on any enhancement of his actual pay in the State Civil Service in which he holds a lien, as a result of an increment in the lower scale or the higher scale of

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that service, or in the event of confirmation in the higher scale of the State Civil Service the officer shall, during the period of probation, be entitled to have his pay in the senior time scale of the Indian Administrative Service recalculated in accordance with the principles laid down in the Section on the basis of his enhanced pay in the State Civil Service, as if he was promoted to the Indian Administrative Service with effect from the date of such enhancement."

Thus from the portion, as quoted above, it is clear that during the period of probation, the promotee officer is entitled to the re-fixation of his pay in the IAS in the event of benefit of increment, revision of pay etc. having been made available to him in his service in the RAS. Since Mr. Mahaveer Singh was on probation, had his lien in the RAS, as such he was entitled to re-fixation of his pay in the IAS on account of revision of pay scale in RAS in terms of the aforesaid Clause. It was on this account that the pay of Mr. Mahaveer Singh on his promotion in the IAS w.e.f. 13.12.1995 was re-fixed on higher stage than the applicant as the applicant was already confirmed in the IAS and on his confirmation, he was no longer a Member of the State Service. Thus the case of the applicant cannot be compared with his Junior, Mr. Mahaveer Singh for the purpose of fixation of his pay on promotion/appointment to IAS.

7. On the contrary, the learned counsel for the applicant could not show us any rule on the basis of which the applicant is entitled to stepping up of his pay at par with Mr. Mahaveer Singh. The learned counsel for the applicant has argued that the applicant is entitled to the benefit of stepping up of his at par with his junior on the basis of provisions contained in the fundamental rule. Such submission made by the learned counsel for the applicant cannot be accepted for the reason that fundamental rules are not applicable to Indian Administrative Services. The condition of service of IAS are regulated by provisions of All India Service Act, 1951 and various regulations framed thereunder including the Indian Administrative Service (Pay) Rules, 1954. When there is specific rule in regard to them on the particular subject regulating their service in the IAS, the question of applicability of fundamental rules does not arise. This view has also been taken by the Apex Court in the case of D.D. Suri vs. Union of India & Others, 1979(3)SLR 689. As such in the absence of any provision in the IAS (Pay) Rule, 1954, the applicant is not entitled to the benefit of stepping up of his pay at par with his junior. The pay of his junior namely, Mr. Mahaveer Singh, was re-fixed in accordance with provisions of Rule 4(3) read with principle laid in Section 1 of the

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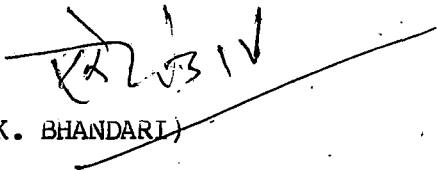
Scheduled II Clause (4) of the IAS (Pay) Rule, 1954, on account of revision of pay scale in the RPS, during his probation period in the IAS, as there was enhancement in his substantive pay of RAS. In the case of the applicant, there was no enhancement of substantive pay in RAS during the probation period in the IAS. Such enhancement took place only after the applicant has undergone the period of probation and stood already confirmed in the IAS. For the removal of anomaly in such cases, there is no provisions in the IAS (Pay) Rule, 1954. Further the contention of the learned counsel for the applicant that direction be issued to the respondents to make appropriate provision in that behalf cannot be accepted, in view of the law laid down by the Apex Court in the case of State of Jammu & Kashmir vs. A.R. Zakki & Others, 1992 SCC (L&S) 427 whereby the Apex Court has held that directions cannot be issued to legislature or to executive, exercising rule making power.

8. Similarly, the contention of the learned counsel for the applicant that provisions of Clause 4 and 5 of Rule 4(3) of the IAS (Pay) Rules, 1954 read with principle laid in Section 1 of the Scheduled II of IAS (Pay) Rules, 1954 should be quashed being ultra virus of article 14 of the Constitution of India, suffice it so say that the provision of the Rule cannot be struck down simply because it has caused hardship to some persons and no provision has been made in the rule to meet a particular contingency.

9. Further the benefit of stepping up of pay cannot be allowed simply because a person has been promoted earlier to his junior unless it comes in the four corner of law. This view has been taken by the Full Bench of CAT in the case of A. Venkatas Muni vs. Union of India, AIR 2002(1) 1. Similarly, the Full Bench of CAT in the case of B.L. Somayajulu & Others vs. Telecom Commission & Others 1997(35) AIC 26 has held that stepping up of pay of a senior with reference to his junior can be granted only where there is a provision in law in that behalf and only in accordance with that provision. It was further held that the claim of stepping up of pay has to be granted on the basis of a legal right and not on pervasive notions of equity or equality. There is no general principle that a senior is always entitled to get his pay stepped up with reference of pay of his junior. The applicant has not shown any Rule under which he^{is} entitled to get the benefit of stepping up of his pay at par with his junior. Similarly, the contention of the applicant that no provision has been made by the respondents in respect of the anomaly which has occurred in the instant case will not confer a legal ground for stepping up of the pay of the applicant at par with his junior. Thus, no fault can be found against the action of the respondents in rejecting the representation of the applicant vide impugned order dated 1.8.2001 (Annexure A/1) and order dated 9.11.2001 (Annexure A/2).

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10. In view of what has been stated above, there is no substance in the OA and the same is dismissed. No costs.


(A.K. BHANDARI)

MEMBER (A)


(M.L. CHAUHAN)

MEMBER (J)

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