

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH,

JAIPUR

Date of order: 05.05.2003

OA No.232/98

Mahaveer Singh s/o Shri Narayan Ram r/o D-57, Hanuman Nagar, Jaipur, presently posted as Settlement Commissioner, Rajasthan, Jaipur.

.. Applicant

VERSUS

1. Union of India through the Department of Personnel and Training, Government of India, New Delhi.
2. The State of Rajasthan through the Secretary, Department of Personnel, Secretariat, Jaipur

.. Respondents

Mr. Manish Bhandari, counsel for the applicant

Mr. U.D.Sharma, counsel for the respondents

CORAM:

HON'BLE MR. H.O.GUPTA, MEMBER (ADMINISTRATIVE)

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

O R D E R

Per Hon'ble Mr. H.O.GUPTA.

In this OA, the applicant has prayed for quashing the order dated 27.1.98 (Ann.A1) whereby on promotion to the Indian Administrative Service (IAS), he had been granted the pay scale of Rs. 3950-5000 and for directions to place him in the pay scale of Rs. 4800-5700 as was correctly accorded vide their order dated 18.9.96 (Ann.A6). He has also prayed for grant of corresponding pay scale under revised Pay Rules as per the recommendations of the 5th Central Pay Commission alongwith all consequential benefits including arrears with 18% interest. In the alternative, he has prayed for

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fixing his pay in the pay scale of Rs. 14300-18300 of Rajasthan Administrative Service (RAS) and correspondingly fix him in the equivalent pay scale in the IAS by giving benefit of higher pay scale as provided under the rules including arrears with interest of 18%. It is further prayed that he may be granted benefit of the pay scale as has been done in respect of his junior persons S/Shri S.N.Dharendra and R.K.Sharma with all consequential benefits including arrears alongwith 18% interest, on various grounds stated therein.

2. Briefly stated, the facts of the case, as made out by the applicant, are that:-

2.1 He was initially selected in the RAS in the year 1974. During his service in RAS, he got promotions and finally got promotion in the super time scale of Rs.4500-5700 vide order dated 24.11.95 (Ann.A5) and his pay was fixed at Rs. 4800/- with next increment fall due on 1.9.96 based on anniversary of his increment.

2.2 He was appointed through promotion in the IAS vide order dated 13.12.95. Vide order dated 18.9.96 (Ann.A6), he was fixed on the pay point of Rs. 5100/- in the pay scale of Rs. 4800-5700 w.e.f. 1.9.96. The next increment was granted to him raising the pay of the applicant to Rs. 5250/- w.e.f. 1.9.97 in the pay scale of Rs. 4800-5700 vide order dated 9th Sept.97 (Ann.A7).

2.3 On implementation of the 5th Central Pay Commission recommendations, his pay was refixed at the pay point of Rs. 13500/- in the pay scale of Rs. 3950-5000/12750-16500 w.e.f. 1.1.96 with next date of increment 1.9.97 vide order 27th January, 98 (Ann.A2) and cancelling the earlier pay fixation and pay scale granted to him, vide

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impugned order dated 27.1.98 (Ann.A1).

2.4 His representations dated 19.2.98 and 22.4.98 were rejected vide order dated 19th January, 98 (Ann.A4) and hence this OA.

3. The respondents have contested this application. Briefly stated, they have submitted that:-

3.1 The pay of the promotee officers is required to be fixed in accordance with the provisions of Rule 4(3) or 4(4), as the case may be, of the IAS (Pay) Rules, 1954. Since the applicant was not holding a cadre post in an officiating capacity on the date of his promotion to the IAS, his pay is required to be fixed in accordance with Rule 4(3) read with the principles laid down in Section I of Schedule II to the said Pay Rules. Rule 3 of the IAS (Pay) Rules provides that the Senior Scale consists of Time Scale of pay of Rs. 3200-4700, of Junior Administrative Grade Rs. 3950-5000 and of Selection Grade Rs. 4800-5700.

3.2 Vide clause (2) of Section I of Schedule II to the said Rules, the initial pay of a promotee officer, who is substantive in the higher pay scale of State civil service, is required to be fixed in the senior time scale of IAS next above his actual pay in the higher scale. The applicant was appointed to the IAS on 13.12.95 and prior to the said date, he was getting the pay of Rs. 4800/- p.m. in the super time scale of RAS of Rs. 4500-5700. Thus, in accordance with the provisions of the Pay Rules, his pay, on his appointment to the IAS w.e.f. 13.12.95, was fixed at Rs. 4800/- p.m. in the senior time scale of IAS of Rs. 3200-4700 vide order dated 7.2.96.

3.3 The aforesaid Pay Rules came to be amended vide notification dated 6.5.94 and the amended rules came into

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force from 9.5.94 by which sub-rules (3), (4) and (5) of Rule 4 had been amended by providing that such fixation of pay shall be irrespective of the year of allotment under Rule 3 of IAS (Seniority) Rules and also if the pay is fixed at a stage which is common to any two grades of the senior scale, the officer shall be placed in the lower of those grades. By further amendment, the expression 'Senior Scale' was substituted for the expression 'Senior Time-Scale' in Rule 5(1)(ii) and in Schedule II, Sections I, II and III. By yet another amendment notified on 14.7.95, Rule 1(2) of the said third amendment rules, were modified by providing that the said third amendment rules shall come into force from the date of their publication in the official Gazette and notional benefit on account of the said amendments shall be admissible from 1.1.86. It is stated that the said amendments had been made with a view to give protection to the State Civil Service officers in respect of pay drawn by them in the State Govt. on their appointment to the IAS.

3.4 Thereafter vide order dated 28.6.96, the pay of the applicant was fixed at Rs. 4850/- w.e.f. 13.12.95 in the Junior Administrative Grade (JAG) of Rs. 3950-5000. The pay of Rs. 4800/- which the applicant was drawing in the State Service on the date of his appointment to the IAS was coming within the ambit of the JAG scale of Rs. 3950-5000 as well as the Selection Grade of Rs. 4800-5700. In accordance with the second proviso inserted in Rule 4 vide the aforesaid Third Amendment Rules, 1994, the pay of the applicant was required to be fixed in the lower of the two pay scale and accordingly the pay of the applicant was fixed at Rs. 4850/- in the JAG of the IAS having a pay scale of Rs. 3950-5000.

3.5 Based on some erroneous consideration, vide order dated 18.9.96, his pay was refixed at Rs. 4950/- from 13.12.95 in the selection grade of Rs. 4800-5700. Since his fixation of pay was in violation of the provisions of the second proviso inserted in the Pay Rules vide the Third Amendment, vide order dated 27.1.98 in supersession of the earlier orders, his pay was refixed at Rs. 4850/- w.e.f. 13.12.95 in the JAG of the IAS in the pay scale of Rs. 3950-5000. Since the revised pay scale came into force w.e.f. 1.1.96 his pay was fixed at Rs. 13500/- w.e.f. 1.1.96 and at Rs. 13875/- w.e.f. 1.9.96 in the revised pay scale of Rs. 12750-16500 which corresponds to the JAG of Rs. 3950-5000.

3.6 The entire matter regarding pay fixation of the applicant has been considered by the State Govt. in consultation with the Deptt. of Personnel, Govt. of India and pursuant to the instructions received from the Govt. of India, the pay of the applicant has been fixed vide OM dated 20.10.99 (Ann.R6) as detailed below:-

- (i) vide the first order, his pay was fixed at Rs. 4850/- p.m. in the senior scale (J.A.G.) of Rs. 3950-5000 with effect from 13.12.95 and at Rs. 5000 with effect from 1.9.96. This order has been issued in supersession of earlier orders;
- ii) vide the second order, his pay as Rs. 4850/- in the existing scale of Rs. 3950-5000 was fixed at Rs. 13500/- w.e.f. 1.1.96 in the corresponding revised scale of Rs. 12750-16500 and also at Rs. 13500 with effect from 1.9.96.
- iii) Vide the third order, his pay was fixed at Rs. 15000 p.m. with effect from 1.9.96 in the pay scale of Rs. 12750-16500 consequent on the

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fixation of his pay at Rs. 14700/- in the RAS pay scale of Rs. 14300-18300 w.e.f. 1.9.96.

- iv) Vide fourth order, the applicant was granted increments in the pay scale of Rs. 12750-16500 and consequently, his pay was fixed at Rs. 15000/- on 1.9.96, at Rs. 15375/- on 1.9.97, at Rs. 15700 on 1.9.98 and at Rs. 16125/- on 1.1.99.
- v) Vide another order, the pay of the applicant was fixed at Rs. 15375/- w.e.f. 1.1.98 in the JAG pay scale of Rs. 12750-16500 consequent on his having completed 9 years from the year of allotment to him and having thus been appointed to the JAG scale w.e.f. 1.1.98.
- vi) Vide another order, a consolidated pay order was issued indicating his pay from 13.12.95 till 1.9.99.

Copies of aforesaid orders are marked as Ann.R1 to R6 respectively.

4. The applicant has filed rejoinder to controvert the various contentions of the respondents. The applicant has filed an MA as per direction of this Tribunal enclosing certain orders issued by the respondents. The respondent No.2 has replied this MA also enclosing a chart of pay fixation.

5. Heard the learned counsel for the parties and perused the record.

5.1 The dispute in this case is with regard to pay fixation and consequential placement in a particular pay scale.

5.2 It is an admitted fact that the applicant was

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appointed to the IAS by way of promotion w.e.f. 13.12.95. It is also an admitted fact that the applicant was drawing a pay of Rs. 4800/- w.e.f. 1.9.95 in the pay scale of Rs. 4800-5700 while he was in RAS at the time of his appointment to the IAS. During the course of arguments, the learned counsel for the applicant also conceded that as per the extant rules, if the pay of the applicant is fixed at the stage of Rs.5000/- or less, if in accordance with the Rules, on appointment to the IAS, the applicant shall be placed in the pay scale of Rs. 3950-5000 and not in the pay scale of Rs. 4800-5700 of the IAS since as per the amended rules, lower of the two pay scales is required to be granted. It is not denied by the learned counsel for the respondents that the revised pay scale based on the recommendations of the 5th Central Pay Commission was notified sometime in 1997, effective w.e.f. 1.1.96.

5.3 The contention of the learned counsel for the applicant is that on 13.12.95, the date of promotion to the IAS, the applicant's pay in State service was Rs. 4800/- and since as per extant rules benefit of Rs. 200/- (minimum) to Rs. 300/- (maximum) is required to be given on promotion to IAS, the applicant's pay is required to be fixed at Rs. 5000/- on 13.12.95 and not Rs. 4850/- as fixed by the respondents. Further, the rules provide refixation of pay during the probation period on the anniversary of the next increment in the State service. As the applicant was drawing Rs. 4800/- p.m. as on 1.9.95, on the date of next increment on 1.9.96, if ^{continued} in State service, he would ~~be~~ draw Rs. 4950/- p.m. Further, since a minimum benefit of Rs. 200/- and maximum of Rs. 300/- is required to be given on promotion, the applicant's pay is to be fixed between Rs. 5150/- to 5250/- on a stage

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falling in any of the two pay scales. Since there is no such stage in the pay scale of Rs. 3950-5000, the applicant is required to be placed in the pay scale of Rs. 4800-5700 at the stage of Rs. 5250/- as there is no other stage between Rs. 5150/- to Rs. 5250/-, the annual increment in this scale being Rs. 150/-. The contention of the learned counsel for the respondents is that his pay has been correctly fixed as on 13.9.95. He has also been correctly placed in the pay scale of Rs. 3950-5000 as per the extant rules. Further that the new pay scale came into force w.e.f. 1.1.96 and, therefore, the applicant cannot be given the benefit in old pay scale, as claimed.

5.4. The relevant rules relied by the applicant and the applicability of ~~these~~^g these to the applicant is not denied by the learned counsel for the respondents, ~~which~~^h are summarised below:-

5.4.1 Section I(1) of the IAS (Pay) Rules 1954 with regard to fixation of initial pay of a promoted officer falling under Rule 4(3) is as under:-

"(1) The initial pay of a promoted officer shall be fixed at the stage of the 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 be, increased at the rate of one increment in the senior time scale of the Indian Administrative Service for every 3 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) where however, the amount arrived at after

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the addition of such minimum or maximum increase corresponds to a stage in the senior time scale of the Indian Administrative 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 Administrative Service the initial pay shall be fixed at the next higher stage of that scale; and

(ii) for the purpose of this clause, service in the State Civil Service shall include such service in a former State, now merged in the State concerned, as may be equated to service in the State Civil Service by the Central Government in consultation with the State Government concerned.

Explanations- (i) In the case of a promoted officer whose actual pay in the lower scale of the State Civil Service is less than the minimum of the senior time scale of the Indian Administrative Service, the rate of increment shall be taken as Rs. 100 for each increment.

(ii) In the case of a promoted officer whose actual pay in the lower scale of the State Civil Service is equal to or above the minimum of the senior time scale of the Indian Administrative Service, the rates of increment shall be equal to the rates admissible in the senior time scale of the Indian Administrative Service at the stage to which the actual pay corresponds or, if there is no such stage, the next lower stage.

(2) The initial pay of a promoted officer who is substantive in the higher scale of the State

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Civil Service shall be fixed at the stage of the senior time scale of the Indian Administrative 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 Administrative 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.

(3) A promoted officer, who, at the time of his appointment to the Indian Administrative Service was officiating in the higher scale of the State Civil Service and whose initial pay in the senior time scale of the Indian Administrative 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 Administrative 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 Administrative 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.

(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 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 this 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."

5.4.2 The Schedule contains an illustration, which is as under:-

"The method to be followed in fixing the pay of a promoted officer under clause (1) of this section is indicated below:-

The following data in respect of the promoted officer to be noted down:-

- (a) Actual pay of the officer in the State Civil Service or, as the case may be, he assumed pay in that service;
- (b) Completed years of Service in the State Civil Service, and
- (c) Number of increments in the senior time scale of the Indian Administrative Service calculated at the rate of one increment for every three years of service in the State Civil Service.


Tabulate the information as follows to arrive at the initial pay to be fixed in the senior time scale of Indian Administrative Service:-

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	A	B	C	D	E
(a) Pay in State Civil Service	2650	3500	3900	3250	3700
(b) Completed years of Service in State Civil Service	7	6	18	17	3
(c) Number of increments	2	2	6	5	1
(d) Amount of increments	200	200	600	500	100
(e) Pay arrived at by addition of (a)&(d)	2850	3700	4500	3750	3800
(f) Stage at which pay should be fixed	3200	3700	4575	3875	3800
(g) Resultant increase	550	200	675	625	100
(h) Actual amount of increase subject to minimum and maximum specified	200	200	300	300	200
(i) Pay arrived at by addition of (a) & (h)	2850	3700	4100	3550	3900
(j) Stage at which pay should be fixed in the senior time scale of Indian Administrative Service	3200	3700	4200	3600	3900

(a) is a case where the resultant increase exceeds the maximum increase of Rs. 300 and the pay in the State Civil Service plus Rs. 300 results in a figure below Rs. 3200. Hence pay is fixed as the minimum of the senior scale;

(b) is a case where the resultant increase is Rs. 200 and



the pay fixed corresponds with the stage in the senior time scale of the IAS and as such pay is to be fixed at that stage and not at the higher stage;

(c) is a case where the resultant increase exceeds the maximum increase of Rs. 300, pay is to be fixed at the stage in the senior scale equal to the pay in the State Civil Service plus Rs. 300.

(d) is a case where the resultant increase exceeds the maximum increase of Rs. 300 and pay in this case is to be fixed at the stage of the senior time scale next above the pay in the State Civil Service plus Rs. 300.

(e) is a case where the resultant increase is less than the minimum increase of Rs. 200. In such a case pay is to be fixed in the senior time scale at the stage equal to the pay in the State Civil Service plus Rs. 200."

5.4.3 The Schedule II (iv) contains meaning of the lower scale as under:-

"'lower scale' means the ordinary or the lowest scale of pay prescribed for the State Civil Service and in force on the first day of January, 1986 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, 1986 provided that in the latter case the dearness allowance, dearness pay, interim or additional relief sanctioned by the State Government after the first day of January, 1986 and merged in the revised pay scale shall be excluded."

5.5 The respondent No.2 through MA No.2/03 has

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annexed Ann.R8 containing statement showing fixation of pay under Section I(1) of the Pay Rules as worked out by the applicant as also by the respondents, which is as under:-

"STATEMENT SHOWING THE FIXATION OF PAY UNDER SECTION I(1) OF THE PAY RULES AS WORKED OUT BY APPLICANT AS WELL AS BY RESPONDENT.

Applicant

Actual RAS pay on 13.12.95	Rs. 4800
a. Assumed pay in lower scale RAS (2200-75-2500-100-4000)	Rs. 4000
b. Completed years of service in RAS	21 years
c. Number of increments to be added	7
d. Amount of increments (Explanation No.2 of Sec. I(1))	7 x 125 = 875
e. Pay arrived at by addition (a) and (b)	Rs. 4875
f. Pay could have been fixed	Rs. 4950 (pay scale 4800-5700)
g. Resultant increase [(f) - actual pay] = 4950- 4800.	Rs. 150 which is less than Rs. 200
h. By adding minimum amount of Rs. 200, increased pay should be 4800+200	Rs. 5000

Therefore, applicant's pay should be fixed at Rs. 5000/-
p.m. in the pay scale of Rs. 3950-5000 (JAG).

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Respondents

a. Pay in State Civil Service (2200-75-2500-100-4000)	Rs. 4000
b. Completed years of service in State Civil Service	21 years
c. Number of increments	7
d. Amount of increments	7 x 125 = 875
e. Pay arrived at by addition of (a) and (d)	Rs. 4875/-
f. Stage at which pay should be fixed	Rs. 5000/- (3950-125-4700-150-5000)
g. Resultant increase [(f) minus (a)]	Rs. 1000/-
h. Actual amount of increase subject to the minimum and maximum specified in Sec. I(1).	Rs. 300/-
i. Pay arrived at by addition of (a) and (h)	4000 + 300 = 4300
j. Stage at which pay should be fixed in the senior time scale of Indian Administrative Service (3200-100-3700-125-4700)	Rs. 4325/-

This is a case where the resultant increase exceeds the maximum increase of Rs. 300 and pay in this case is to be fixed at the stage of the Senior time scale next above the pay in the State Civil Service plus Rs. 300/-"

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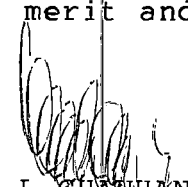
5.5 It is not disputed by the parties that the assumed pay of the applicant in Civil Service on the date of promotion to IAS shall be Rs. 4000/- p.m. Also that in accordance with Section I(1) of the Pay Rules (as reproduced in para 5.4.1 above), the assumed pay of the applicant in the lower scale, increased at the rate of one increment in the senior time scale of IAS for every 3 years of service in the State Civil Service, would be Rs. 4875/- p.m. This section further provides that the resultant increase shall be subject to minimum of Rs. 200/- and maximum of Rs. 300/- over his pay in the State Civil Services. Further, in such cases, as per remark (d) of the illustration stated in para 5.4.2, maximum benefit of Rs. 300/- is required to be given. Accordingly, the applicant's pay has to be fixed in appropriate stage and scale taking his pay as Rs. 4000+300 i.e. Rs. 4300/-. We are unable to agree with the learned counsel for the applicant that the benefit of Rs. 200/- to Rs. 300/- is required to be given over his actual pay drawn in the RAS at the time of his promotion to IAS. It is evident from the illustration that this benefit is to be given over the assumed pay in the lowest scale of RAS which is Rs. 2000-4000.


The Section I(2) of the said rules provides that the initial pay of the promoted officer who is substantive in the higher scale of the State Civil Service shall be fixed in the stage of the senior scale of IAS, next above his actual pay in the higher pay scale provided that the promoted officer shall be entitled to pay fixation as per Section I(1), if it is more beneficial to him. The pay of the applicant in State Civil Service at the time of his

promotion in IAS was Rs. 4800/- p.m. This pay point falls in both the higher scales of IAS viz. Rs. 3950-5000 and Rs. 4800-5700. In such cases, as per rules, the applicant will be entitled to and fixation thereof, in the lower of the two scales. Since there is no stage of Rs. 4800/- in the pay scale of Rs. 3950-5000, the applicant's pay is to be fixed at the stage of Rs. 4850/- p.m. in this pay scale. Therefore, the fixation of pay of the applicant at the stage of Rs. 4850/- p.m. in the higher pay scale of Rs. 3950-5000, on appointment by promotion in IAS w.e.f. 13.12.95, does not call for any judicial interference.

5.6 The next contention of the learned counsel for the applicant is that the benefit of provisions of Section I(4) were not made available to the applicant. The prayer of the applicant, in this OA, is for his placement in the higher pay scale of Rs. 4800-5700 on promotion to the IAS. Even if opportunity was given to him to have his pay in IAS recalculated on the basis of having earned increments in RAS on 1.9.96 and by postponing his promotion to IAS w.e.f. 1.9.96, in accordance with Section I(4) of the Pay Rules (as reproduced in Para 5.4.1 above), the applicant shall draw pay of Rs. 4950/- in the RAS as on 1.9.96 and based on provisions of the rules discussed in the preceeding Paras, the applicant shall be fixed only at the stage of Rs. 5000/- in the pay scale of Rs. 3950-5000 and not in the pay scale of Rs. 4800-5700 as prayed for.

6. In view of above discussions, this OA is devoid of merit and dismissed without any order as to costs.


(M.L. CHAUDHAN)
Member (J)


(H.O. GUPTA)
Member (A)