

**Central Administrative Tribunal
Principal Bench**

OA No.2689/2012

New Delhi, this the 7th day of April, 2016

**Hon'ble Mr. Justice Permod Kohli, Chairman
Hon'ble Ms. Nita Chowdhury, Member (A)**

P. Ganeshan, IAS (Retd.),
171, 11th Cross, Malleshwaram,
Bangalore-560003.

... Applicant

(By Advocate: Shri P. S. Narwal)

Versus

1. Government of India through
Secretary, Ministry of Personnel, Public
Grievances and Pensions (Department of
Personnel & Training), North Block,
New Delhi.

2. Indian Audit and Accounts Department,
Office of the Accountant General (A&E),
Karnataka, Post Box No.5329/5369,
Park House Road,
Bangalore-560203.

... Respondents

(By Advocate : Dr. Ch. Shamsuddin Khan for Respondent No.1;
Ms. Eshita Baruah proxy for Shri Gaugang Kanth, for Respondent No.2)

O R D E R

Justice Permod Kohli, Chairman :

The applicant was appointed in the Karnataka Administrative Service (hereinafter to be referred as 'KAS') on 07.01.1980, and one Shri D. N. Nayak, with whom the applicant is claiming parity for fixation of pay, also came to be appointed in the KAS on 19.07.1976. Both the officers were placed in the selection grade. Being eligible members of the State Civil Service, both of them were entitled to be considered for their induction

into the Indian Administrative Service (IAS) in accordance with the rules against five available vacancies.

2. As per the prescribed procedure, the officers were to be classified as 'outstanding', 'very good', 'good' or 'unfit' on overall relative assessment of their service records. The selection committee constituted in terms of Regulation 3 of the Indian Administrative Service (Appointment by Promotion) Regulations, 1955, met on 17.03.1994 and considered the service records of 21 KAS (Selection Grade) officers to fill-up five vacancies. On the strength of respective service record, the applicant was graded as 'outstanding', whereas D. N. Nayak was graded as 'very good'. They were accordingly placed in the select list at serial numbers 1 and 2 respectively. Consequent upon their selection, they were appointed to IAS from the State Civil Service. Government of India vide its letter No.20015/7/94-AIS (II) dated 28.10.1994 fixed the pay of D. N. Nayak at Rs.4700/-, and vide a subsequent letter No.14014/45/95-AIS (I) dated 20.06.1995 his year of allotment was notified as 1989. Insofar as the applicant is concerned, his pay was fixed at Rs.4200/- on appointment to IAS w.e.f. 31.05.1994 vide letter No.GM/IAS/239-242 dated 31.05.1997. The applicant had to rank senior to Shri D. N. Nayak on appointment to IAS in terms of IAS (Regulation of Seniority) Rules, 1987. Rule 4 of the above mentioned Rules provides for determination of *inter se* seniority. Sub-rule (ii) of rule 4 deals with determination of seniority of promotee officers, and reads as under:

“(ii) Promotee officers shall be ranked inter-se in the order of their dates of appointment to the Service:

Provided that if the date of appointment of more than one officer is the same, their inter-se seniority shall be in the order in which their names are arranged in the Select List on the date of appointment to the Service.”

Thus, the *inter se* seniority of the applicant and D. N. Nayak was fixed on the basis of their classification and arrangement made by the selection committee under the above rule. The applicant, being at serial number 1 on the basis of his ‘outstanding’ grading, was ranked senior to D. N. Nayak, whose grading was ‘very good’ and placed immediately below the applicant in the select list. Based upon his seniority on appointment to IAS, the applicant made a representation dated 10.04.1996 to the Ministry of Personnel, Public Grievances and Pensions (Department of Personnel & Training), Government of India, for stepping up his pay at par with D. N. Nayak, primarily on the ground that he being senior to D. N. Nayak, would be entitled to pay fixation equivalent to D. N. Nayak who was immediate junior to him. It appears that the Accountant General, Karnataka, Bangalore, fixed the pay of the applicant at Rs.4200/- w.e.f. 31.05.1994 in the pay scale of Rs.3200-100-3700-125-4700, vide letter dated 31.05.1997. However, the Government of India vide letter No.20015/4/98-AIS (II) dated 15.09.1998 fixed the pay of the applicant at Rs.4325/- w.e.f. 31.05.1994 in the same pay scale. There has been some correspondence between the office of the Accountant General, Karnataka and the Department of Personnel & Training, Government of India on the issue of pay fixation of the applicant. The above mentioned representation of the

applicant was not responded to. The applicant accordingly has filed this Application seeking the following reliefs:

- “(a) direct the Respondents to step up the pay of the Applicant to Rs.4700 in the scale of pay of Rs.3200-100-3700-125-4700 with effect from 04.06.1994 i.e. the date on which the Applicant’s immediate junior got his pay fixed upholding the principle that a senior cannot get less pay than that of his junior in line with the provisions under Regulation 5(4) & 5(5) of the IAS (Appointment by Promotion) Regulations, 1955 (Annexure-3) r/w Rule 3(3)(iii) of the IAS (Regulation of Seniority) Rules 1987 (Annexure-4) thereby implementing the Government of India letter dated 20.06.1995 (Annexure-6) in its true letter and spirit;
- (b) direct the respondents to pay the arrears of salary in the pay scale of 3200-100-3700-125-4700 as communicated by letter No.20015/4/98-AIS (II) dated 15.9.1998 with 18% interest;
- (c) pass any other order or orders as this Hon’ble Tribunal may deem fit and proper in the facts and circumstances of the case.”

3. Claim of the applicant is seriously contested by the respondents. According to the respondents, Shri D. N. Nayak was appointed in KAS on 19.07.1976, whereas the applicant was appointed on 07.01.1980. Shri Nayak being senior to the applicant in the KAS was getting more pay than the applicant at the time of their appointment to IAS. It is further stated that the pay of the officers has been fixed in accordance with the IAS (Pay) Rules, 1954. It is further the case of the respondents that IAS (Appointment by Promotion) Regulations, 1955 as also IAS (Regulation of Seniority) Rules, 1987 do not provide for promotion or stepping up of pay on promotion to IAS cadre at par with

the junior. The claim of the applicant is thus refuted. The respondents have produced the chart relating to fixation of pay of both the officers. The same is noticed hereunder:

	D. N. Nayak	P. Ganeshan
Date of appointment - KAS	19.07.1976	07.01.1980
Date of appointment - IAS	04.06.1994	31.05.1994
Substantive pay drawn in KAS Selection Grade (4070-120-4550-125-4925)	Rs.4800	Rs.4310
Less 7.5% (DA & IR paid from 01.01.1986 to 30.06.1986)	Rs.206.25	Rs.183.75
Total	Rs.4593.75	Rs.4126.25
Next stage in Sr. time scale	Rs.4700	Rs.42000

4. We have heard the learned counsel for the parties and carefully examined the IAS (Pay) Rules, 1954; IAS (Appointment by Promotion) Regulations, 1955; and IAS (Regulation of Seniority) Rules, 1987 (Annexures A-1, A-2 and A-3, respectively).

5. Shri P. S. Narwal, learned counsel appearing for the applicant has argued that the office of Accountant General, Karnataka and the Department of Personnel & Training, Government of India are not in tune in the matter of fixation of pay of the officers. While the office of the AG, Karnataka has fixed the pay of the applicant at Rs.4200/-, the DOP&T, Government of India has fixed the same at Rs.4325/-. The applicant has relied upon letter dated 15.09.1998 (Annexure A-10) whereby his pay was stated to be Rs.4325/- in the senior time scale of Rs.3200-4700. This communication has been contested by the respondents, as is evident from letter dated 20.10.1998 (Annexure A-11). In the last paragraph of this

letter, the position in respect of pay fixation has been reflected. The paragraph reads as under:

“Sri P. Ganeshan & Sri D. N. Nayak are not Regular recruits. They are promotees from state civil services. They were not similarly placed in S.C.S. Sri D. N. Nayak was senior to Sri P. Ganeshan in S.C.S. Cadre and he was drawing more pay than Sri P. Ganeshan in the scale applicable to S.C.S. As the pay fixed under IAS (Pay) Rules 1954 depends on the pay drawn in the S.C.S. scale of pay, no stepping up of pay is permissible. Government of India may reconsider this case and communicate their decision.”

6. The IAS (Appointment by Promotion) Regulations, 1955 only deal with the question of appointment to IAS from State Civil Service, i.e., appointment by promotion, whereas IAS (Regulation of Seniority) Rules, 1987 deal with the manner of determining seniority. The applicant has no grievance in respect of his appointment by promotion or fixation of seniority, as he ranks senior to Shri D. N. Nayak on appointment to IAS by promotion.

7. Learned counsel for the applicant attempted to argue that notwithstanding the fact that there is no specific rule which *inter alia* deals with the question of stepping up of pay of a senior officer at par with his junior officer, on the principles of fairness the applicant is entitled to pay at par with his immediate junior. The argument though appears attractive, but the fallacy of the same is revealed on examination of the factual background and the principles of pay fixation, as incorporated in Rule 4 and Schedule-II of the IAS (Pay) Rules, 1954. Rule 4 deals with the fixation

of initial pay in the time scale. Sub-rule (3) of Rule 4 deals with the initial pay of promoted officers. The same is reproduced hereunder:

“(3) The initial pay of a promoted officer who prior to the date of his appointment to the Indian Administrative Service had not held a cadre post in an officiating capacity shall be fixed in accordance with the principles laid down in Section 1 of Schedule II.”

According to the above rule, the principles laid down in Section 1 of Schedule-II govern the fixation of pay of the promoted officers who had not held a cadre post in an officiating capacity while being members of State Civil Service. Schedule II and Section 1 read as under:

“SCHEDULE II
[See Rules 4 and 5]

Principles of pay fixation of promoted officers on appointment to the Indian Administrative Service and of members of the State Civil Service appointed to officiate in Cadre posts.

xxx xxx xxx”

“SECTION 1 - Fixation of initial pay of promoted officers falling under rule 4(3).

(1) The initial pay of a promoted officer shall be fixed at the stage of the Senior 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 Scale of the 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) where however, the amount arrived at after the addition of such minimum or maximum increase corresponds to a stage in the senior 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 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 Civil Service by the Central Government in consultation with the State Government concerned.

xxx xxx xxx

(8) Notwithstanding anything contained in any clause in this Section, the basic pay of a promoted officer on the Indian Administrative Service Time Scale shall not at any time exceed the basic pay he would have drawn on the Indian Administrative Service Time Scale as a direct recruit on that date if he had been appointed to the Indian Administrative Service on the date he was appointed to the State Civil Service.

(9) Notwithstanding anything contained in any clause in this Section, the pay of a promoted officer, whose pay has been fixed in the Senior Scale of the Indian Administrative Service prior to the date of publication in the Official Gazette of the Indian Administrative Service (Pay) Eleventh Amendment Rules, 1976, in accordance with existing provision of the Indian Administrative Service (Pay) Rules, 1954, shall not be fixed in the revised Senior Scale of the Indian Administrative Service under the Section at a stage lower than the pay fixed earlier. “

The illustration attached to Section 1 of Schedule-II provides the method to be followed in fixing the pay of promoted officers. The same reads, thus:

“Illustration. - 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 officers to be noted down:

- (a) Actual pay of the officer in the State Civil Service or, as the case may be, his assumed pay in that service;

- (b) Completed years of Service in the State Civil Service; and
- (c) Number of increments in the Senior Scale of the Indian Administrative Service calculated at the rate of one increment for every three years of service in the State Civil Service."

8. It is not in dispute that in fixation of pay of the applicant, the principles enunciated in the above illustration read with Rule 4(3) have been adhered to. The above illustration clearly indicates that the actual or assumptive pay of the officers in the State Civil Service forms the basis for fixation of pay on appointment by promotion to the IAS. Indisputably, Shri D. N. Nayak was senior to the applicant in the State Civil Service. He was drawing more pay than the applicant in the State Civil Service. Both of them were in the selection grade. Shri Nayak being senior to the applicant having put in more length of service was getting more pay on account of additional increments, and on appointment to the IAS the pay of the officers was fixed in accordance with the statutory provisions. No rule, regulation or even Government instructions have been brought to our notice which *inter alia* confer any right upon the applicant to claim higher pay than fixed in accordance with the statutory rules, or pay at par with a junior appointed in the same selection to the IAS and drawing higher pay in the State Civil Service on account of more length of service. We do not find any reason to accept the prayer of the applicant for stepping up of his pay at par with his immediate junior. Otherwise also, we find that the pay of the applicant was fixed on 31.05.1997 w.e.f. 31.05.1994. He made his representation on 10.04.1996, which remained pending for more than six

months. Section 21 (b) of the Administrative Tribunals Act, 1985 prescribes one year's period from the date of expiry of six months as limitation for approaching the Tribunal. The present Application was filed on 13.08.2012 and is hopelessly barred by time. For this reason as well, the applicant is not entitled to any relief.

9. The Application is dismissed, without any order as to costs.

(Nita Chowdhury)
Member (A)

(Permod Kohli)
Chairman

/as/