

CENTRAL ADMINISTRATIVE TRIBUNAL,
ERNAKULAM BENCH

Original Application No. 180/00721/2015

Original Application No. 180/00722/2015

Original Application No. 180/00723/2015

Tuesday, this the 11th day of September, 2018

CORAM :

HON'BLE Mr.E.K.BHARAT BHUSHAN, ADMINISTRATIVE MEMBER

HON'BLE Mr.ASHISH KALIA, JUDICIAL MEMBER

Original Application No. 180/00721/2015

1. M. Padmanabhan IPS,
S/o. Gopalakrishnakurup,
Superintendent of Police (Retired),
Residing at 'Padmaragam' Subhash Road,
Civil Station Road, Kannur.
2. K.K. Joshwa IPS,
S/o. Kunjummen,
Superintendent of Police (Retired),
Residing at 'Kaleekal', SNRA 81, Soorya Nagar,
Powdikonam P.O., Trivandrum.
3. T. Sreesukan IPS,
S/o. Kunhappa Nair,
Superintendent of Police (Retired),
Residing at 'Sreechithiram',
Chirakal, Kannur.
4. M. Sugathan,
S/o. K. Marthandan,
Superintendent of Police (Retired),
Residing at 'Nishani', TC 76/1758-2,
Highway Gardens, Chackai,
Anayara P.O., Trivandrum.

.....Applicants

Original Application No. 180/00722/2015

1. T.V. Kamalakshan IPS,
S/o. Late K. Chandu,
Superintendent of Police (Retired),
Residing at Sivapriya,
Ramanattukara, Kozhikode – 673 633.

2. C. Sharafudeen,
S/o. Kunhamad,
Superintendent of Police (Retired),
Residing at 'Sandram',
Housing Colony Road, Perinthalmanna.
3. K. Kuttappai IPS,
S/o. Late Kocherukkan,
Superintendent of Police (Retired),
Residing at Vrindavan, Sancharimukku,
Vadakkemala P.O., Kollam.

....Applicants

Original Application No. 180/00723/2015

1. K. Balakrishnakurup IPS,
S/o. Late Kunhiramakurup,
Superintendent of Police (Retired),
Residing at IA Crescent Cascade,
Therveed Road, Calicut Beach, 673 032, Kozhikode.
2. A.M. Mathew Polycarp,
S/o. Late Mathai,
Superintendent of Police (Retired),
Residing at Arackal House,
Manaladi, Mannarkkad, Palakkad.
3. Dr. P.T. Nandakumar,
S/o. Late A.P. Krishnan,
Superintendent of Police (Retired),
Residing at Lane A I Apartment, SFS-I,
Vellayambalam, Trivandrum-10.

....Applicants

(By Advocate : Mr. R. Sreeraj in all the OAs)

V e r s u s

1. State of Kerala, represented by the Chief Secretary to
Government of Kerala, Secretariat, Thiruvananthapuram-695 001.
2. The Accountant General (A&E), Kerala, MG Road,
Thiruvananthapuram – 695 001.
3. Union of India, represented by the Secretary to Government of India,
Ministry of Home Affairs, New Delhi-110 001. **Respondents
in all the OAs**

**[By Advocates : Mr. M. Rajeev, GP (R1&2 in all the OAs)
Mr. S. Ramesh, ACGSC (R3 in OA No. 180-721-2015)
Mr. T.C. Krishna, Sr. PCGC (R3 in OA No. 180-722-2015) &
Mr. K.S. Dilip, ACGSC (R3 in OA No. 180-723-2015)]**

These applications having been heard on 06.09.2018, the Tribunal on 11.09.2018 delivered the following:

ORDER

Per : Mr.E.K.BHARAT BHUSHAN, ADMINISTRATIVE MEMBER

OAs Nos. 180-721, 722 and 723 of 2015 have common points of fact and law involved, hence are being disposed of through this common order. For the purpose of convenience we shall advert to the facts and Annexures produced in OA No. 180-721-2015.

2. In O.A.No.180/721/2015 the applicants were recruited in General Executive Branch of Kerala Police as Sub Inspector of Police. Their dates of appointment to IPS are 10.3.2005, 18.1.2007, 10.3.2005 and 8.4.2004 respectively. In O.A.No.180/722/2015 the applicants were recruited in General Executive Branch of Kerala Police as Sub Inspector of Police. Their dates of appointment to IPS are 3.4.2004, 10.3.2005 and 10.3.2005 respectively. In O.A.No.180/723/2015 the applicants were recruited in General Executive Branch of Kerala Police as Sub Inspector of Police. Their dates of appointment to IPS are 8.4.2004, 10.3.2005 and 8.4.2004 respectively.

3. A controversy has erupted whether in the case of Police Officers of the Executive Branch, training is to be considered as a pre-appointment phase or it is to be counted as service. Several cases were filed in courts pressing the demand that it is to be treated as service. Ultimately the matter attained quietus with the Hon'ble High Court of Kerala vide its judgment dated

6.11.2008 in Writ Appeal No.671/2008 ruling that it is to be counted as service. After the dismissal of the SLP against the said judgment Annexure A-1 order was issued by Respondent No.1 sanctioning an advance increment to all police personnel in service for the successful basic training they had attended for appointment to the police force. As per order at Annexure A-2 dated 22.8.2011, Respondent No.1 revised the said order sanctioning one additional increment instead of advance increment sanctioned as per Annexure A-1. The said benefit was ordered to be given along with normal increment due during April, 2010 to March, 2011. The officers of the Executive Branch who has joined as SI of Police and who had undergone two years in-service training were given two additional increments.

4. Later Respondent No.1 vide Annexure A-3 order dated 19.12.2012 granted two additional increments to those All India Service Officers who had been promoted from the State Police Service (Executive Branch) provided they had come into IPS during April, 2010 to March, 2011 and continued thereafter or retired subsequently. Respondent No.1, however, did not implement Annexure A-3 order, despite the applicants among others, submitting several representations. It is maintained in the O.As that Respondent No.1 is fully competent to grant the financial benefits ordered in Annexure A-3 order for the period during which they were serving or about to enter the service of Respondent No.1.

5. The applicants claim the following reliefs :

- “1) To declare that the inaction on the part of the respondents in implementing Annexure A-3 GO is illegal, arbitrary, unjust & unreasonable and that the same violates Articles 14 & 16 of the Constitution of India.
- 2) Direct the respondents to implement Annexure A-3 GO in the cases of the applicants forthwith by granting them the additional increments with all consequential benefits including revision of pension & arrears.
- 3) Such other relief as may be prayed for and this Tribunal may deem fit to grant.
- 4) Grant the cost of this Original Application.”

6. Respondent No.1 has filed a reply statement wherein the general facts mentioned in the O.A have been admitted. The applicants had been recruited in the General Executive Branch of Kerala Police as SI of Police. Annexure A-3 had been issued sanctioning two additional increments to officers such as the applicants who had been promoted to All India Service from the State Police Service if they had joined All India Service during April, 2010 to March, 2011 and continuing thereafter or retired subsequently. After the issuance of Annexure A-3 order it so happened that Respondent No.2 vide letter dated 7.1.2013 (Annexure R-1[a]) had taken a stand that since the additional increments are proposed to be allowed during the period when the applicants were already members of the All India Service, concurrence of Respondent No.3 is required. As can be seen Respondent No.3 vide Annexure R-1[c] took a different stand stating that the matter has been examined in consultation with DoP&T and since there is no provision for grant of two increments in the IPS (Pay) Rules for the SPS officers on their induction into the IPS, no such benefit can be extended, as detailed in DoP&T Notification at Annexure R-1[d] dated 3.3.2010.

7. Respondent No.3 also filed a short written statement in O.A.No.180/721/2015 wherein it is submitted that initial pay of State Police Officer on his promotion to IPS is fixed in accordance with the principles laid down in Schedule 1 of IPS (Pay) Rules, 2007 and such fixation of pay is effective from the date of joining duty as an IPS Officer irrespective of the year of allotment assigned to the officer under IPS (Regulation of Seniority) Rules, 1988. Order of Respondent No.1 dated 19.12.2012 (Annexure A-3) providing for two additional increments along with normal increment received during April, 2010 to March, 2011 to State Police personnel can have no force in respect of officers who had already been promoted and confirmed in IPS. Respondent No.3 further submits that the matter has been examined by Ministry of Home Affairs (MHA) in consultation with DoP&T and Respondent No.1 had been informed as under :

“Notwithstanding anything contained in the first proviso to sub-rule (1) of rule 3 and the Notes thereunder, the initial pay of a promoted officer or an officer appointed by selection, as the case may be, shall be fixed in the pay band 3 or pay band 4 by adding one increment equal to 3% of the sum of the pay in the pay band and the grade pay applicable which will be rounded off to the next multiple of 10 and in addition, the grade pay of Senior Time Scale or Junior Administrative Grade or Selection, corresponding to pay scale or grade pay in the State Service, shall be granted.

Provided that the grade pay attached to Selection Grade shall be granted with the pay in running pay band-4 only.

3. Since there is no provision for grant of two increments in the IPS (Pay) Rules for the SPS officers on their induction into to the IPS, necessary action may be taken in terms of (DoP&T) Notification No. 14021/3/2008-AIS (II)-A dated 03.03.2010.....”

8. Respondent No.3 further contends that the subject of fixation of pay of an officer once promoted to the IPS from SPS falls entirely within the purview of the State Government. However, such fixation is to be done in accordance with IPS (Pay) Rules, 2007.

9. Heard Shri R. Sreeraj, learned counsel appearing for the applicants in all the OAs, Mr. M. Rajeev, GP, learned counsel appearing for respondents Nos. 1 & 2 in all the OAs and learned Additional Central Government Standing counsel appearing for respondent No. 3 in all the OAs. Perused the records.

10. The issue in this case pertains to a special incentive granted to inductees into Executive Branch of the Kerala State Police Service. In accordance with the order issued by the Hon'ble High Court of Kerala, Annexure A-1 had been issued by Respondent No.1 dated 1.3.2011 sanctioning an advance increment to all police personnel in service in consideration of successful basic training they had attended for appointment to the police force. Until then the period had not been treated as part of service. Vide Annexure A-2 dated 22.8.2011 Respondent No.1 sanctioned one additional increment to the State Police personnel instead of advance increment and the said benefit was ordered to be given along with normal increments received during April, 2010 to March, 2011. Possibly on account of the representations made by the group of officers who had been selected to the IPS from the SPS cadre, Respondent No.1 decided to extend the benefit of two additional increments to them also as per Annexure A-3

order dated 19.12.2012. This was objected to by Respondent No.2 who refused to disburse the benefit on the ground that consultation with Ministry of Home Affairs who is the Cadre Controlling Authority of the IPS had not taken place. This is where the matter rests.

11. In the reply statement Respondent No.1 has submitted that appointment from State Police Service to the Indian Police Service is governed by the Indian Police Service (Appointment by Promotion) Regulations, 1955. The regulations have envisaged distinct roles in respect of the State Government, the UPSC and the Government of India. It is also to be noted that as per Government of India decision under Regulation 9 IAS (Appointment by Promotion) Regulations, 1955, the specifics of the appointment of State Service Officer to All India Service Officer against promotion quota or otherwise has been defined as an appointment in a substantive capacity outside his cadre. Thus his lien on the post in the State Service would stand suspended under Fundamental Rules 14 (a)(2) and his written consent obtained for the termination of his lien in the State Service before he is confirmed in the All India Service. The written consent should be obtained by the State Government while recommending the names of State Service Officers for appointment to the All India Service. (G.I., M.H.A letter No.4/4/60-AIS(II) dated 15.10.1960).

12. In terms of the above, the case of the applicants collapses. The only question that remains is how the State Government, Respondent No.1 in this case, with full knowledge of the above decided to issue Annexure A-3 order.

This is perhaps an example of a State Government yielding to the demand of a section which has no strength of law. What is curious is how Respondent No.1 chose to issue the order at Annexure A-3 and strongly oppose the measure in their written statement. We conclude that the O.As in question have no merit and are liable to be dismissed. We proceed to do so. There shall be no order as to costs.

(Dated this the 11th day of September 2018)

(ASHISH KALIA)
JUDICIAL MEMBER

(E.K. BHARAT BHUSHAN)
ADMINISTRATIVE MEMBER

asp

Original Application No. 180/00721/2015**APPLICANTS' ANNEXURES**

- Annexure A1** - True copy of the G.O. (MS) No. 80/2011/Home dated 01.03.2011 issued by the 1st Respondent.
- Annexure A2** - True copy of the G.O. (MS) No. 185/2011/Home dated 22.08.2011 issued by the 1st Respondent.
- Annexure A3** - True copy of the G.O. (Rt) No. 3721/2012/Home dated 19.12.2012 issued by the 1st Respondent.
- Annexure A4** - True copy of the representation dated 22.02.2012 submitted by the 1st applicant to the 1st Respondent.
- Annexure A5** - True copy of the representation dated 12.04.2011 submitted by the 2nd applicant to the 1st Respondent.
- Annexure A6** - True copy of the representation dated 14.09.2011 submitted by the 2nd applicant to the 1st Respondent.
- Annexure A7** - True copy of the representation dated 2.12.2011 submitted by the 2nd applicant to the 1st Respondent.
- Annexure A8** - True copy of the representation dated 21.12.2011 submitted by the 2nd applicant to the 1st Respondent.
- Annexure A9** - True copy of the representation dated 27.12.2011 submitted by the 2nd applicant to the 1st Respondent.
- Annexure A10** - True copy of the representation dated 22.09.2011 submitted by the 2nd applicant to the 2nd Respondent.
- Annexure A11** - True copy of the representation dated 2.12.2011 submitted by the 2nd applicant to the 2nd Respondent.
- Annexure A12** - True copy of the representation dated 24.12.2012 submitted by the 2nd applicant to the 2nd Respondent.
- Annexure A13** - True copy of the representation dated 20.10.2014 submitted by the 2nd applicant to the 2nd Respondent.
- Annexure A14** - True copy of the representation dated 15.07.2015 submitted by the 4th applicant to the 2nd Respondent.
- Annexure A15** - True copy of the letter No. 16011/09/2013-IPS II dated 5.9.2014 from the 3rd respondent.

RESPONDENTS' ANNEXURES

- Annexure R1(a)** - True copy of letter No. GE1/C/IPS/Gen-Adv.Inc/2013/2647 dated 07.01.2013 of Accountant General (A&E), Kerala.
- Annexure R1(b)**–True copy of the letter No. 91440/SplC3/2011/GAD dated 13.03.2013.
- Annexure R1(c)** – True copy of the letter No. 16011/09/2013-IPS.II dated 05.09.2014 of MHA.
- Annexure R1(d)** – True copy of the DoPT notification No. 14021/3/2008-AIS(II)-A dated 03.03.2010.

Original Application No. 180/00722/2015

APPLICANTS' ANNEXURES

- Annexure A1** - True copy of the G.O. (MS) No. 80/2011/Home dated 01.03.2011 issued by the 1st Respondent.
- Annexure A2** - True copy of the G.O. (MS) No. 185/2011/Home dated 22.08.2011 issued by the 1st Respondent.
- Annexure A3** - True copy of the G.O. (Rt) No. 3721/2012/Home dated 19.12.2012 issued by the 1st Respondent.
- Annexure A4** - True copy of the representation dated 22.02.2012 submitted by the 1st applicant to the 1st Respondent.

RESPONDENTS' ANNEXURES

- Annexure R1(a)** - True copy of letter No. GE1/C/IPS/Gen-Adv.Inc/2013/2647 dated 07.01.2013 of Accountant General (A&E), Kerala.
- Annexure R1(b)**–True copy of the letter No. 91440/SplC3/2011/GAD dated 13.03.2013.
- Annexure R1(c)** – True copy of the letter No. 16011/09/2013-IPS.II dated 05.09.2014 of MHA.
- Annexure R1(d)** – True copy of the DoPT notification No. 14021/3/2008-AIS(II)-A dated 03.03.2010.

Original Application No. 180/00723/2015

APPLICANTS' ANNEXURES

- Annexure A1** - True copy of the G.O. (MS) No. 80/2011/Home dated 01.03.2011 issued by the 1st Respondent.
- Annexure A2** - True copy of the G.O. (MS) No. 185/2011/Home dated 22.08.2011 issued by the 1st Respondent.
- Annexure A3** - True copy of the G.O. (Rt) No. 3721/2012/Home dated 19.12.2012 issued by the 1st Respondent.
- Annexure A4** - True copy of the representation dated 18.03.2015 submitted by the 1st applicant to the 1st Respondent.
- Annexure A5** - True copy of the representation dated 25.01.2012 submitted by the 2nd applicant to the 1st Respondent.

RESPONDENTS' ANNEXURES

- Annexure R1(a)** - True copy of letter No. GE1/C/IPS/Gen-Adv.Inc/2013/2647 dated 07.01.2013 of Accountant General (A&E), Kerala.
- Annexure R1(b)** - True copy of the letter No. 91440/SplC3/2011/GAD dated 13.03.2013.
- Annexure R1(c)** - True copy of the letter No. 16011/09/2013-IPS.II dated 05.09.2014 of MHA.
- Annexure R1(d)** - True copy of the DoPT notification No. 14021/3/2008-AIS(II)-A dated 03.03.2010.

-X-X-X-X-X-X-X-