

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O. A. No. 260/00458 OF 2012
Cuttack, this the 22nd day of June, 2017

CORAM
HON'BLE MR. A.K.PATNAIK, MEMBER(J)
HON'BLE MR. R. C. MISRA, MEMBER (A)

.....

Sri Ashok Kumar Sahu, IAS(Retd.), aged about 61 years, son of Late Jogendra Mohan Sahu at present residing at Plot No. 22A, Chintamaniswar Area, Bhubaneswar-751006, Dist-Khurda, Odisha.

...Applicant

(By the Advocate-M/s. K. C. Kanungo, R. C. Behera, Ms. C. Padhi)

-VERSUS-

Union of India Represented through

1. Secretary, Ministry of Personnel, Public Grievance and Pension, Deptt. Of Personnel and Training, North Block, New Delhi-110001.
2. State of Odisha represented through; Chief Secretary to Govt. of Odisha, Odisha Secretariat, Bhubaneswar-751001, Dist- Khurda, Odisha.
3. Special Secretary to Govt. of Odisha, General Administrative Department, Odisha Secretariat, Bhubaneswar-751001, Dist-Khurda, Odisha.

...Respondents

By the Advocate- (Mr. G. C. Nayak, S. Mohanty.)

.....

O R D E R

R. C. MISRA, MEMBER (A):

The applicant, in this O.A., has prayed for the following relief:

“.....to quash Annexure A/15 to the extent it contains, “Since he has been given the benefit of fixation of the pay in the Selection Grade of Pay I.A.S. before his actual appointment to the grade, he is not entitled to have his pay re-fixed on his actual appointment to this grade subsequently” for the ends of justice.

AND

Be further pleased to quash Annexure A/16 and A/17 for the ends of justice.

AND

Be further pleased to direct Respondent No.1 suitably amend/modify Rule-5(c) of Indian Administrative Service (Pay) Second Amendment Rules, 2008, to the extent it contains 'by adding two additional increments @ 3% of the sum of the pay in the Pay Band-3 and grade pay of Rs. 7600/-, computed and rounded off to the next multiple of 10 and added successively to the existing pay in the Pay Band-3 plus the grade pay of Rs. 7600/-' to bring the claim of the Applicant under its ambit or in the alternate treat the case of the Applicant as an anomaly to be sorted out by extending the benefit of promotion (granting two additional increments) in the grade of JAG for the ends of justice.

AND

Be further pleased to direct Respondent No.1 suitably amend/modify Rule-5(d) of Indian Administrative Service (Pay) Second Amendment Rules, 2008, to the extent it contains, 'to be computed on the minimum of pay band plus grade pay of Rs. 8700/-.....' to bring the claim of the applicant under its ambit or in the alternate treat the case of the applicant as an anomaly to be sorted out by extending the benefit of promotion (granting two additional increments) in the grade of 'Selection Grade' for the ends of justice.

AND

Be further pleased to direct the Respondent No.2 to pass appropriate order for refund of Rs. 81,825/- and release the withheld amount of Rs. 58,216/- along with the interest till the actual refund is made.

AND

Be further pleased to direct the Respondent No.2 to revise, re-fix the pay of the Applicant and corresponding grade pay from time to time with other entitlements as

detailed vide Annexure A/20 and pay the differential amounts with interest for the ends of justice.

AND

Be further pleased to direct the Respondents to revise and re-fix the pension and determine the consequential revision of retirement benefit such as commutation, gratuity and leave salary accordingly and direct the payment of the differential amount with interest till the actual payment is made in the interest of justice.

AND

Be further pleased to allow the cost.”

2. The facts of the case as reveals from the record is that the applicant, who is a retired I.A.S. officer, had entered into the State Civil Service as a member of Orissa Administrative Service (in short, O.A.S.) on 22.12.1976. On 18.04.2006 he got promotion to the rank of Additional Secretary and, while working as such, he was promoted to the Indian Administrative Service (I.A.S. in short) w.e.f. 17.11.2006 in pursuance of the notification No. 14015/17/200-AIS (I)-13, dated 17.11.2006 as per Indian Administrative Service (Appointment by Promotion) Regulation, 1955 in “Senior Time Scale” under Rule 4(3) read with Clause-2 of Section-1 of Schedule-II of the I.A.S. Pay Rules, 1954. In pursuance of the notification dated 05.04.2007 (Annexure-A/2) by the General Administration Department, Govt. of Odisha, the applicant was appointed to the “Junior Administrative Grade” (Non-functional) w.e.f. 17.11.2006. Subsequently, by another notification dated 07.11.2008 (Annexure-A/3) by the G.A. Department, Orissa, the applicant was promoted to the “Selection Grade”. Consequent upon the

implementation of the recommendations of the Sixth Central Pay Commission, the IAS (Pay) Rules, 2007 was notified, which was partially amended on 19.09.2008 and was called “I.A.S. (Pay) Second Amendment Rules, 2008” (in short, Rules 2008). The grievance of the applicant is that although the State Govt. employees, like that of Central Govt. employees, got their pay revision w.e.f. 01.01.2006, he got the benefit of pay revision in the State Scale w.e.f. the date of his promotion, i.e. 17.11.2006. It has been submitted that vide a single notification dated 15.01.2009 (Annexure-A/6), Respondent No.2 revised his pay scale in all the three grades of IAS taking into account the State Govt. Scale received by him till his promotion to IAS. Pointing out at Annexure-6, the applicant submitted that his Basic Pay was fixed at Rs. 14,875/- (pre-revised) in the “Senior Time Scale” of Pay of Rs. 10,650-325-15,850/- (pre-revised) and at Rs. 15,000/- (pre-revised) w.e.f. 17.11.2006 in the “Junior Administrative Grade” scale of pay of Rs. 12,750-375-16,500/- under Rule 4 (6B) of the I.A.S. Pay Rules, 1954. He got the subsequent annual increments w.e.f. 01.11.2007 and 01.11.2008 and, accordingly, his pay was raised to Rs. 15,750/-. Consequent upon his promotion to the “Selection Grade” of I.A.S. his pay was fixed at Rs. 15,900/- (pre-revised) w.e.f. 07.11.2008 in the scale of pay in Selection Grade in I.A.S. of Rs. 15,100-400-18,300/- and his date of next increment was on 01.11.2009. Subsequently, on exercise of his option to come over to the revised pay structure w.e.f. 01.01.2006 re-fixation of his pay was done as per Office

Order dated 11.02.2009 (Annexure-A/7), which was partially modified vide Office Order dated 03.12.2009 (Annexure-A/8). He was further promoted to “Super Time Scale” and he joined the promotional post on 14.01.2011. His pay was fixed at Rs. 60,960/- (Rs. 50,960/- + G.P. Rs. 10,000/-) w.e.f. 14.01.2011 (FN), i.e. the date of joining in the promotional post in PB-4 Rs. 37,400-67,000/- with GP Rs. 10,000/- as per Office Order dated 28.02.2011 (Annexure-A/10). While the matter stood thus, the applicant noticed that while re-fixing his pay vide Annexure-A/8, the principle of granting two additional increments @ 3% of the sum of Basic Pay and Grade Pay was not followed at the stage of the promotion from “Senior Time Scale” to “Junior Administrative Trade” and from “Junior Administrative Grade” to “Selection Grade” for which he made a representation on 31.03.2009 (Annexure-A/11). In the meantime, the Govt. of India, Ministry of Personnel vide Notification dated 15.04.2009 (Annexure-A/12) amended the IAS (Pay) Rules, 2007 by substituting paragraph (1) of the Schedule-1. It has been submitted that while the applicant was in State Civil Service as Additional Secretary (SAG) he was in PB-4, i.e. in the scale of Rs. 37,400-67,000/- with G.P. Rs. 8,700/-, w.e.f. 18.04.2006 and he continued in that post till his promotion to IAS, i.e. 17.11.2006. His contention is that as per the IAS (Pay) Amendment Rules, 2009 (Annexure-A/12) he was entitled to have his initial pay fixed by adding one increment, i.e. he is entitled to the Basic Pay of Rs. 38,790/- with G. P. 8,700/- on his promotion to IAS w.e.f. 17.11.2006. He,

accordingly, made a representation to Respondent No.3 on 10.12.2009 (Annexure-A/13), in pursuance of which, the State Government vide its letter dated 11.06.2010 (Annexure-A/14) sought clarification from Respondent No.1. Respondent No.1 vide letter dated 14.01.2011 (Annexure-A/15) clarified the entitlement of the applicant, which, the applicant claims, is rejection of all his representations. As per the interpretation by Respondent No.1 at Annexure-A/15, Respondent No.3 vide Office Order dated 21.05.2011 (Annexure-A/16) revised the pay fixation of the applicant, who in the meantime retired on superannuation on 30.04.2011, from the stage of initial fixation of pay in “Senior Time Scale” of I.A.S. till the “Super Time Scale” and directed recovery of excess payment made to him. Consequently, the Directorate of Animal Husbandry and Veterinary Service, Orissa, where the applicant was posted before his retirement directed vide letter dated 25.06.2011 (Annexure-A/17) to deposit an amount of Rs. 81,825/- said to have been paid in excess of his entitlement. Being aggrieved, the applicant preferred a representation to Respondent No.3 on 28.06.2011 (Annexure-A/18). However, under duress and demur, he refunded the alleged excess payment of Rs. 81,825/- on 22.12.2011. The applicant submitted that an amount of Rs. 58,216/-, which was due to be paid to him in terms of earlier pay revision/fixation has also not been paid to him. On the above backdrop of the case, he has filed this O.A. with the prayer as aforesaid.

3. In support of his claim, the applicant has taken the ground that admittedly he was getting the pay of Rs. 37,400/- in PB-4 (Rs. 37,400-67,000/- G.P. Rs. 8700/-) w.e.f. 18.04.2006 in terms of ORSP Rules, 2008 when he was in the State Civil Service in the “SAG” Grade in O.A.S. and, therefore, in terms of Amendment (Pay) Rules-2009 he was entitled to get his pay fixed by adding one increment as also the Grade Pay received by the applicant in the Pay Band in the State Service was required to be granted. Hence, his initial fixation of pay in the “Senior Time Scale” in IAS should have been at Rs. 38,790/- with G.P. of Rs. 8700/- in PB-4. As per the application of Amendment Rules, 2008, he is entitled to get two additional increments on his appointment by promotion to the “Junior Administrative Grade” w.e.f. 17.11.2006. In terms of Amendment Rules, 2008, he is also entitled to get two increments on his appointment by promotion to “Selection Grade”. It has been submitted that the clarification given by Respondent No.1 under Annexure-A/15 that “since he has been given the benefit of fixation of pay in the Selection Grade of I.A.S. before his appointment to the grade, he is not entitled to have his pay re-fixed on his actual appointment to this grade subsequently” is bereft of any legal principles/provisions enumerated in Pay Rules. Schedule-I of the Amendment Rules, 2009 specifically provides that the initial pay of a promoted officer shall be fixed in Pay Band-3/Pay Band-4 by adding one increment equal to 3% of the sum of the pay, he was last drawing and the respective Grade Pay. The direct recruits were allowed all

promotional benefits in full as per the Pay rules, but the same has been denied to the promotees in all grades up to “Selection Grade” merely on a wrong interpretation that too without any supporting Rules that promotee officers had enjoyed the pay of “Selection Grade” in the State Service. The fixation of pay of the applicant vide Annexure-A/16 at column No. 2 refers to “Junior Administrative Grade” but the fixation of pay of the applicant was first to be done in the Grade of “Senior Time Scare” since he was initially appointed in the said grade of I.A.S. based on his length of service in Orissa Administrative Service and the pay fixation benefit was to be determined in terms of the Amendment Rules, 2009.

4. Respondent Nos. 2 and 3, i.e. Government of Orissa, have filed their counter refuting the claim of the applicant. Initially, they have submitted that the O.A. is not maintainable in view of Rule 10 of the CAT (Procedure) Rules, 1987 as the applicant has sought plural remedies in this O.A. The applicant, in this present O.A. has sought modification/amendment of Rule 5(c) of IAS (Pay) Second Amendment Rule-2008, to Modify/amend Rule 5(d) of the said Rule, to direct the refund of Rs. 81,825/- and release the withheld amount of Rs. 58, 216/- and revise/refix his pay and pension and other pensionary benefits with further prayer to quash Annexures-A/16 and A/17.

5. Respondents' further contention with regard to the prayer of the applicant for amendment of Rule 5(c) and (d) of the Indian Administrative Service (Pay) Second Amendment Rules, 2008 is that

the same is not acceptable as the applicant has failed to give any reason or show any ground pointing out that the amendment has been made by the authority having no competency or the amendment has been made against the spirit of the Act or Constitution of India. Such prayer also cannot be accepted as because same is depriving the applicant of getting certain benefits. With regard to the fixation of pay of the applicant, it has been submitted that the applicant was an officer of the State Civil Service promoted to IAS w.e.f. 17.11.2006 in pursuance of IAS (Appointment by Promotion) Regulations, 1955. According to Rule 6(3) of the IAS (Recruitment) Rules, 1954 the initial appointment of the applicant to IAS was made in Senior Time Scale in IAS. Subsequently, his inter-se seniority was fixed and he has been assigned 1995 as his year of allotment and as he had already completed 12 years of service to the date of his actual appointment to the IAS, he was granted Junior Administrative Grade w.e.f. 17.11.2006, i.e. the date of his actual appointment to IAS and, thereafter, under Rule 3(1) of IAS (Pay) Rules, 2007, he was appointed to the Selection Grade in IAS w.e.f. 07.11.2008. Thereafter, upon implementation of the recommendation of the 6th Central Pay Commission, the IAS (Pay) Rules was amended on 19.09.2008 and called as the IAS (Pay) 2nd Amendment Rules, 2008, however, it was subsequently amended on 15.04.2009 and called as IAS (Pay) Amendment Rules, 2009, which deemed to have come into force w.e.f. 01.01.2006. The Rule -3(a)(1) of IAS (Pay) Amendment Rules, 2009 states that “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. In addition, the Grade Pay of Senior Time Scale or Junior Administrative Grade or Selection Grade, corresponding to Pay Scale or Grade Pay in the State Service, shall be granted.” Prior to implementation of the amended pay rules, the applicant’s pay was fixed as per provisions contained in IAS (Pay) Rules, 1954/IAS (Pay) Rules, 2007 in the various grades in IAS. Consequent upon exercise of option by the applicant to come over to the revised pay structure w.e.f. 01.01.2006, the pay of the applicant was re-fixed afresh w.e.f. 17.11.2006. Since the IAS (Pay) 2nd Amendment Rules, 2008 does not clearly state whether the promoted IAS Officers, who have been promoted to Senior Time Scale, Junior Administrative Grade and Selection Grade on one day, would be entitled for multiple fixation of pay on the same day or not, basing upon the representation of the applicant dated 31.03.2009 the State Government vide letter dated 11.06.2010 (Annexure-14) referred the matter to Govt. of India and the Govt. of India vide letter dated 14.01.2011 (Annexure-15) clarified that the initial pay shall be fixed in PB-4 after grant of an increment @ 3% plus Grade Pay of Rs. 8700/- in the Senior Scale of IAS in terms of the provisions contained in Clause 1

of Schedule I of IAS (Pay) Rules, 2007, amended vide notification dated 15.04.2009. He is also entitled to have his initial pay in IAS re-fixed on enhancement of his State Pay on account of increment of revision of pay scale during the period of probation in terms of Clause 2 of Schedule I of the Pay Rules. Since he has been given the benefit of fixation of pay in the Selection Grade of IAS before his actual appointment to the grade, he is not entitled to have his pay re-fixed on his actual appointment to this grade subsequently. In pursuance of the clarification dated 14.01.2011, issued by the Govt. of India, the pay of the applicant was revised and re-fixed vide order dated 21.05.2011 (Annexure-16) and, as per the statutory provision, the applicant had furnished the undertaking dated 31.12.2008 to refund the excess payment made to him, if any, due to incorrect fixation of pay. Accordingly, on detection of certain irregularities in the applicant's pay fixation, his pay was refixed and he was requested to deposit the excess amount of Rs. 81,825/-. They have further submitted that Respondent No.1 is the final authority in the matter of formulating principles on fixation of pay relating to All India Services. On the above submission, Respondents have prayed for dismissal of this O.A.

6. Applicant has filed rejoinder to the counter affidavit filed by the Respondent Nos. 2 and 3 refuting the contentions made by the Respondents. With regard to the maintainability of this O.A., stand has been taken by the applicant that the prayers made in the O.A. are consequential to each other. His grievance originates from the wrong

fixation of his pay, which has resulted in the order or recovery and consequentially affected his pension. It has been submitted that although the Respondents Nos. 2 and 3 in their counter have unambiguously admitted the authority of Respondent No.1 in the matter of fixation of pay relating to All India Services, however, they have not applied their mind to the directives/instruction of Respondent No.1 contained in Annexure-A/15 before taking steps for reduction in the Basic Pay/Grade Pay of the applicant and subsequent revision of pension and recovery of alleged excess payment. With regard to the contention of the Respondents that amendment/modification of Rule 5(c) and (d) of the Indian Administrative Service (Pay) Second Amendment Rules, 2008, is not acceptable as the applicant has failed to give any reason, applicant has submitted that he was extended promotions in various grades right from 'Senior Time Scale' to 'Junior Administrative Grade' and then to 'Selection Grade' from time to time with Pay fixation benefits in pursuance to Pay Rules, 2008 at Annexure-A/5 and I.A.S. (Pay) Amendment Rules, 2009 at Annexure-A/12 by the Respondents themselves. Vide Annexure-A/8 they had also recommended appropriate fixation of pay of the applicant in terms of the interpretation of Amendment Rules, 2009 by giving a tabular chart justifying the claim of the applicant. However, they accepted and implemented the instructions at Annexure-A/15 issued by the office of Respondent No.1 without application of mind. On the other hand, the applicant has justified the modification/amendment of Rule 5(c) and (d)

of Rules, 2008 at Annexure-A/5 on the ground that the said Rules creates anomaly in pay fixation of promotee officers, which is visible as well as perceptible.

7. The applicant has also filed his written note of argument in which it has been reiterated that under ORSP Rules he was in the scale of pay of Rs. 37,400-67,000/- with GP 8700/- in PB-4, which corresponds to pre-revised scale of Rs. 14,300-18,300/-. The pay revision of the State Govt. employees under Annexure-A/21 was effective w.e.f. 01.01.2006 and the applicant got the benefit of the pay revision as stated above till 16.11.2006 and, thereafter, he was appointed by promotion with effect from 17.11.2006. Annexure-A/12, i.e. IAS (Pay) Amendment Rules, 2009, lucidly explains how the initial pay of a promoted officer or officer appointed by selection is to be fixed and, therefore, in terms of Annexure-A/12 the applicant's pay scale in the State Service, i.e. Rs. 37,400-67,000/- with GP 8700/- in PB-4, was required to be protected. An officer from the State Service when appointed by promotion to IAS is placed in the entry grade, "Senior Time Scale" (pre-revised scale 10,650-15,850/- which corresponds to Rs. 15,600-39,100/- under PB-3 with Grade Pay of Rs. 6600/-) whereas a candidate directly appointed to IAS by selection is placed in the "Junior Scale" (pre-revised scale Rs. 8000-13,500/- which corresponds to Rs. 15600-39100 under PB-3 with Grade Pay of Rs. 5400/-). However, consequent to Annexure-A/12 (IAS (Pay) Amendment Rules, 2009), the applicant's pay under PB-4 (Rs. 37400-

67000/- with GP Rs. 8700/- drawn by him while in State Service is to be protected. The benefit of fixation of pay on promotion from time to time in hierarchy of promotion in IAS from Senior Time Scale to Junior Administrative Grade and, thereafter, Selection Grade and the final promotion to Super Time Scale under Annexure-A/2, A/3 and A/9 respectively is a lawful and justified claim and that cannot be denied since promotion means assumption of higher responsibility, change of designation and benefit of higher pay fixation. Although in course of hearing, vide order dated 17.09.2014 Respondent No.1 was directed to give necessary clarification on Annexure-A/12, despite time taken by the Counsel for Respondent No.1 no clarification was submitted. Respondent Nos. 2 and 3 in their counter has taken specific stand that in the matter of fixation of pay the Respondent No.1, i.e. Central Government, is the final authority, however, Respondent No.1 did not file his counter and adopted the counter filed by the State Government. Since the Respondent No.1 did not say anything with regard to Annexure-A/12, a communication issued by him, denying the fixation of pay of the applicant and the ordering recovery are bad in law and liable to be quashed.

8. Having heard Ld. Counsels for both sides, we have perused the records, including the written notes of argument filed by both sides. First of all, we are of the view that the applicant has prayed for plural remedies. The prayers that he had made in this O.A. include prayer for amendment/modification of Rule (5) of the IAS (Pay)

Second Amendment Rules, 2008, as well as Rule (5) (d) of the said Rules. Be it noted that the said Rules were notified by issue of a Gazette of India Notification dt. 19.09.2008 making amendments to IAS (Pay) Rules, 2007. The Central Govt. has made the amendment in exercise of powers conferred on them by Sub Section (1) of Section 3 of the All India Services Act, 1951. This is a matter of the All India Services, and, therefore, this Rule making power has been exercised by the Central Govt. in consultation with the State Govts. If we have a look at the Explanatory Memorandum, we come across the clarification that in order to implement recommendations of the Sixth Pay Commission accepted by the Govt. of India, it was required to notify this amendment, giving it retrospective effect from 01.01.2006. It is the position beyond any doubt that policy decision about pay scales applicable to IAS Officers is the prerogative of the Respondent No.1, Union of India. In the matters of pay and other service conditions of IAS Offices, the Central Govt. consults the concerned State Govts., because IAS offices are selected and appointed by the Union of India, but they are borne in State cadres, and discharge their duties in connection with the affairs of the respective State Govt. For the applicant to challenge a policy decision as has been notified by way of amendment of the Rules, he must have substantial grounds. Such grounds are conspicuous by their absence in this case. This prayer is, according to our view, without proper justification, and thus not sustainable. Similarly, the prayer of the applicant that his case may be

treated as an anomaly to be sorted out by extending the benefit of granting two additional increments in the ‘Selection Grade’ is without any basis, since removal of anomaly on account of implementation of recommendation of Sixth Pay Commission is altogether a different matter. Such prayer is not sustainable. The Ld. Counsel for applicant has asserted that the prayers are consequential to each other. Such assertion could be only partially correct. But a plain reading of prayers starting from the challenge made to various provisions of Amended Pay Rules, fixation of pay at the JAG and Selection Grade Level, refixing retirement benefits, and refund of the amount withheld by the Govt. gives us an impression that applicant has put multiple prayers in the O.A. without establishing a clear nexus of consequential relief. The most surprising feature is his prayer challenging certain provisions of the IAS (Pay) Second Amendment Rules, 2008, without explaining convincingly anywhere why such amendment of policy decisions would be required, basing upon his individual grievance. It is also not pleaded how the Respondent No.1 lacked the competence to notify the IAS (Pay) Second Amendment Rules, or whether there was any statutory anomaly in the issue of such notification.

9. The applicant, who was a member of the State Civil Service, was promoted to IAS by an order dt. 17.11.2006 from out of the select list of 2005, and was given the year of allotment SCS-1995. By issue of a single order dt. 15.01.2009, his pay was fixed under the relevant provision of IAS (Pay) Rules, 1954 in the Senior Time Scale,

Junior Administrative Grade and Selection Grade in IAS. He was promoted to Super Time Scale by an order dated 13.01.2011. By order dt. 28.02.2011 his pay was fixed under the IAS (Pay) Second Amendment Rules, 2008 after grant of his annual increment @ 3% at Rs. 57,900/- Consequent upon promotion to Super Time Scale, his pay was fixed at Rs. 60,960/- under Para 5 (e) of the IAS (Pay) Second Amendment Rules, 2006.

10. It is to be noted that by making representations dt. 31.03.2009 and 10.12.2009 to the State Govt., applicant had claimed that on his promotion to Junior Administrative Grade he should have been given two additional increments. His contention was that Respondent Nos. 2 and 3 have not sanctioned the same due to wrong interpretation of IAS (Pay) Rules, 2nd Amendment, 2008. He also contended that the order of the State Govt. runs contrary to clarification of the Union Govt. in the context of the Amendment that no member of the IAS is likely to be adversely affected by giving effect to the Rules. The pay fixation of the officers promoted to IAS was considered a little complex, since in the State Service, the officers had already enjoyed the Selection Grade, and their pay on entry to IAS was to be fixed initially in the Senior Time Scale of IAS, and subsequently in the Junior Administrative Grade and in Selection Grade, one after the other, by issue of one single order. Therefore, the State Govt. requested for clarification from Respondent No.1 about correct procedure of pay fixation under the IAS (Pay) 2nd Amendment Rules, 2008. Since the

applicant had put forth his grievance to the State Govt., in the letter dt. 11.06.2010, the State Govt. furnished the example of pay fixation of applicant as an illustration. The representation of applicant was enclosed, and clarification and instruction were solicited from Respondent No.1. Respondent No.1 examined the matter, and clarified the position in their letter dated 14.01.2011. The following decision about the case of the applicant was communicated.

“Sri A.K.Sahu, IAS (OR/SCS-85) is entitled to have his initial pay fixed in pay band 4 after grant of an increment @ 3% plus Grade Pay of Rs. 8700/- in the senior scale of IAS in terms of provisions contained in Clause 1 of Schedule 1 of IAS (Pay) Rules 2007 as amended vide notification dated 15.04.2009. He is also entitled to have his initial pay in IAS re-fixed on enhance of his State Pay on account of increment or revision of pay scale during the period of probation in terms of Clause 2 of Schedule-1 of the Pay Rules. Since he has been given the benefit of fixation of pay in the Selection Grade of IAS before the actual appointment to the grade, he is not entitled to have his pay refixed on his actual appointment to the grade subsequently.”

11. In pursuance of the clarification dt. 14.01.2011, the Respondent Nos. 2 and 3 refixed the pay of applicant by an order dt. 21.05.2011, superseding the earlier orders issued in this behalf, and ordered that excess amount paid may be deposited by him. The applicant retired on 30.04.2011. He was asked in letter dt. 25.06.2011 to deposit an amount of Rs. 81,825/- paid in excess to him with the Govt. by a Treasury Chalan. The applicant deposited the amount under protest. In addition to that, Rs. 58,216/- was not paid to him due to the

clarification of Respondent No.1. Thus, he states to have incurred a total financial loss of Rs. 1,40,041/- . The O.A. contains a prayer for refund of this amount, and also refixation of pay and retirement dues, on the ground that clarification of Respondent No.1 is contrary to Rules.

12. The applicant has failed to bring out cogent reasons why he thinks that the clarification is defective. The interpretation of IAS (Pay) Rules is in the area of competence of the Respondent No.1. The State Govt., on his promotion to IAS, fixed his pay in various grades, which the applicant challenged by making a representation. Respondent Nos. 2 and 3 sought clarification from Respondent No.1 on the difficulty faced by them in fixing pay of SCS officers on promotion to IAS, and also sent the representation of the applicant for a decision. The decision as communicated by Respondent No.1, as discussed above, was implemented, as a result of which his pay was refixed, and resultantly there was a recovery. What Respondent No.1 has decided in the case of applicant is that since applicant was enjoying the benefit of Selection Grade, before his actual promotion, fixation of pay at Selection Grade was no more required. Who will get what pay is a prerogative of the employer to decide. If the employee challenges the same, it has to be on specific, cogent grounds. In the case at hand, applicant has given no such reason why the clarification of Respondent No.1 is to be considered faulty or defective. Applicant has also not made out a case of discrimination meted out to him. The question

pertinent to the subject is that several offices of State Civil Service have got promoted to IAS. The applicant has not cited the case of a similarly placed officer in whose case pay fixation was handled differently, and thus there was palpable discrimination against the applicant. That would have been a different scenario requiring judicial intervention. As such, however, we do not find anything irregular in the refixation of pay on the basis of clarification of the Respondent No.1.

13. Coming to the question of recovery, it is only a consequence of the final decision of the Respondents. Recovery is to be made, if any wrong is detected in pay fixation of an employee, even if the payment has been made to him. The Respondents have cited the decision of the Hon'ble Apex Court in the case of Chandi Prasad Uniyal & Ors. Vs. State of Uttarakhand & Ors. (2012) 8 SCC 417, the relevant part of which is quoted below:

“Any amount paid/received without authority of law can always be recovered barring few exceptions of extreme hardships but not as a matter of right, in such situations law implies an obligation on the payee to repay the money, otherwise it would amount to unjust enrichment.”

It is not that only in case of fraud or misrepresentation excess paid has to be recovered. Even if excess payment has been made by way of a bonafide mistake, recovery is to be made. Since refixation of pay was done after clarification of Respondent No.1, the Respondents have been justified in making recovery as per the law laid down in the Judgment of the Hon'ble Apex Court.

14. In view of the discussions made above, we are of the opinion that the applicant has failed to substantiate the prayer made in this O.A. with valid grounds and cogent reasons. In our view, no interference is called for with the decision of the Respondent-authorities.

Thus, the O.A. being devoid of merit, is dismissed with no cost to the parties.

(R.C.MISRA)
MEMBER(A)

(A.K.PATNAIK)
MEMBER(J)

RK