

**CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH, BENGALURU**

ORIGINAL APPLICATION NO.170/00784/2017

DATED THIS THE 21st DAY OF MARCH, 2019

**HON'BLE DR.K.B.SURESH
HON'BLE SHRI C.V. SANKAR**

**...MEMBER(J)
...MEMBER(A)**

Sri K.B. Gokulachandran, I.P.S (Retd.)
Aged about 63 years,
Special Director (Retd)
Intelligence Bureau,
(MHA), Government of India,
Residing at No.94/95, Sripadam,
Behind 4th Cross,
Royal Shelters Layout,
D.C. Halli, IIM-B Post,
Bengaluru-560 076.

Applicant

(By Advocate Shri Srinivas)

Vs.

1. Union of India,
Represented by its Union Home Secretary,
Ministry of Home Affairs,
New Delhi-110 001.

2.Intelligence Bureau,
Represented by its Director,
North Block,
Central Secretariat,
New Delhi-110 001.

...Respondents

(By Standing Counsel Shri V. N. Holla for Respondents)

O R D E R (ORAL)

HON'BLE DR.K.B.SURESH ...MEMBER(J)

Heard. The matter seems to be covered by order of the Principal Bench in
OA.No. 823/2012 dated 10.5.2012, which we quota:

“Justice S. C. Sharma, Acting Chairman:

Instant Original Application has been instituted for the following reliefs:

- “i. Direct the Respondent to grant the applicant the apex pay scale of Rs.80,000/- w.e.f. 19.05.2011.
- ii. Pass any other order that is deemed fit and proper in view of the facts & circumstances of this case.”

2. Pleadings of the parties may be summarized as follows:

It has been alleged by the applicant that he is an IPS officer of 1976 batch (Kerala cadre) and came on deputation to the Intelligence Bureau, Ministry of Home Affairs, Government of India, as Deputy Inspector General in November, 1991. The applicant is due to retire on 30.04.2012 and holding the post of the rank of Director General of Police. Services of the applicant are governed by the guidelines dated 15.01.1999 issued by the respondent No.1 as regards promotion to senior scale, junior administrative grade, selection grade, super time scale and above super time scale. The said guidelines provide for formation of a specialized screening committee to evaluate the ACRs and service records. There are no further provisions for promotion in the service of the applicant beyond super time scale post. This exercise is done at all India level for all the eligible IPS officers of the batch, and this is independent of the State carrying out exercise for promotions at cadre level for its officers. The applicant was empanelled and promoted along with some other officers of his batch under different cadres to the rank of Director General of Police on 27.04.2010 in the pay scale of Rs.75000-80000 (HAG+). It is pleaded that it has been the consistent practice of the respondent No.1 for years together to give apex pay scale to an officer the moment his junior is appointed to a post carrying the apex pay in order to avoid arbitrariness in pay scale, if a junior happens to get higher pay without undergoing the selection process, and due to the past conduct of the respondent No.1, the applicant has a legitimate expectation for being granted the apex pay scale. The Hon’ble Supreme Court has also held in *Ram Pravesh Singh v State of Bihar* [(2006) 8 SCC 381] that it is an expectation of a benefit, relief or remedy that may ordinarily flow from a promise or established practice. In *R. K. Sethi & another v Oil & Natural Gas Commission & others* [(1997) 10 SCC 616], the Hon’ble Supreme Court held that protection of pay is to be given to eligible senior once it has been given to a junior, under the “next below rule”. It is averred that the respondent No.1 appointed Shri P. K. Mehta, IPS, as Director General of Railway Police Force with effect from 19.05.2011 and provided him the apex pay scale of Rs.80000/-. Shri Mehta is stated to be junior to the applicant, being 1977 batch IPS officer. Of late, another IPS officer of 1977 batch, Shri Ajay Chadha has also been given the apex scale in December, 2011. It is pleaded that the respondent No.1 ought to have revised the pay of the applicant in the apex scale of Rs.80000/- on the date Shri P. K. Mehta, who is a year junior to the applicant i.e. 1977 batch of IPS, was given the higher pay scale than that of the applicant, and that it has been the practice in the service of the applicant that whenever a junior officer is given higher pay scale than that of an eligible senior officer, the pay scale of the said senior is increased to the apex pay scale, equivalent to the junior officer, but the respondent failed to do so in the case of the applicant in spite of several representations given by him. Respondent No.2, vide note dated 21.06.2011 citing past practice in its organization, requested the respondent No.1 to grant apex pay scale to the applicant along with other officers who were senior to Shri P. K. Mehta, as he was given the apex grade pay of Rs.80000/- as Director General of Railway Police Force w.e.f. 19.05.2011. Respondent No.2 reiterated its request vide note dated 25.08.2011. It is averred that

the applicant has to face constant humiliation as in spite of the fact that he is empanelled and promoted to the rank of Director General of Police way back on 27.04.2011 in the pay scale of Rs.75000-80000 and has impeccable service records, the respondents are not giving the apex pay scale of Rs.80000/- to him which has been granted to his junior Shri P. K. Mehta. Hence, the OA.

3. The respondents have contested the case by filing their counter reply. It has been admitted that the applicant is an IPS officer of 1976 batch of Kerala cadre and that the applicant joined on deputation basis as Deputy Director in the Intelligence Bureau w.e.f. November, 1991. The applicant was subsequently appointed as Joint Director (IG level) and as Additional Director (ADG level) in the HAG scale of Rs.67000-79000. He was further appointed as Special Director on in situ basis in HAG+ scale Rs.75500-80000 w.e.f. 27.04.2010. A representation was submitted by the applicant that he may be allowed the apex scale of pay of Rs.80000/- (fixed) from the date of appointment of Shri P. K. Mehta, IPS (HY:77) as DG, RPF w.e.f. 19.05.2011. The apex scale of Rs.80000/- is allowed to the Director General of Police (Head of Police Force) in each State and certain posts at the Centre, as specified in Schedule II C of the IPS (Pay) Amendment Rules, 2008. In the said Schedule, the post of DG, RPF is in the apex scale and the incumbent appointed to the said post is entitled to draw the pay of the post. The post of Director in IB is in the apex scale and two posts of Special Director can be operated either in apex scale in HAG+ (Rs.75500-80000). For appointment of an incumbent to the apex scale at Special Director level, approval of DOP&T and that of the Ministry of Finance is necessary. It has also been alleged by the respondents that the apex scale of Rs.80000/- (fixed) is allowed to the Director General of Police (head of police force) in each State and certain posts at the Centre, as specified in Schedule II C of the IPS (Pay) Amendment Rules, 2008. The post of Director is in the apex scale and two posts of Special Director can be either operated in apex scale or in HAG+ (Rs.75500-80000/-). In IB, officers senior to the applicant, i.e., Shri V. Rajagopal and Shri Yashovardhan Azad have not got the apex scale. Further, 33 IPS officers of 1974 to 1977 batches senior to Shri P. K. Mehta have also not been given the apex scale. It is pleaded that empanelment of an IPS officer at a particular level is only an eligibility status for holding such post at the Centre, and that such empanelment does not entitle the officer for appointment in that grade, and further that the grant of higher rank and pay scale under the next below rule is applicable to officers serving at the Centre with reference to their juniors in their State cadres, and in case any officer of Kerala cadre junior to the applicant is promoted in that cadre, the applicant would be entitled for the benefit of promotion on proforma basis under the next below rule, but the benefit of proforma promotion under the aforesaid rule would not be applicable to apex scale as the apex scale is allowed to the incumbent holding the post of Director General of Police (head of police force) in each State cadre. Shri P. K. Mehta and Shri Ajay Chadha were appointed on the post of DG, RPF and Special Secretary (Internal Security) respectively, after due selection process with the approval of the competent authority. Shri R. N. Gupta, IPS (HP:76), Special Director, has been allowed the apex scale and for the other incumbent Shri V. Rajagopal, IPS (AGMU:76), a proposal has been referred to the Finance Ministry for its approval. Shri Yashovardhan Azad, IPS (MP:76), senior to the applicant, has been granted HAG+ scale on in situ basis, and not the apex scale. That the applicant has been appointed as Special Director on in situ basis and has been granted HAG+ scale Rs.75000-8000 w.e.f. 26.04.2010 on his empanelment as DG grade at the Centre. That the OA lacks merit and is liable to be dismissed.

4. In response to the counter reply of the respondents, on behalf of the applicant rejoinder affidavit has also been filed and in the rejoinder the facts alleged in the OA have been reiterated.

5. We have heard Shri K. K. Rai, Sr. Advocate along with Shri S. K. Pandey, Advocate, for the applicant, and Shri R. V. Sinha, Advocate, for the respondents, and perused the entire facts of the case. It has been alleged by the applicant that he is an IPS officer of 1976 batch, and at present he has been granted HAG+ scale of Rs.75000-80000 in the rank of Director General of Police w.e.f. 26.04.2010. It has also been alleged by the applicant that Shri P. K. Mehta, IPS, an IPS officer of 1977 batch and another officer Shri Ajay Chadha, IPS, 1977 batch, both junior to the applicant, have been granted the apex scale of Rs.80000/-. As the junior officers have been granted the apex scale of Rs.80000/- (fixed), hence the applicant being senior is also entitled to the apex scale of Rs.80000/-. Representations were made by the applicant for grant of the apex scale of Rs.80000/- (fixed) to him, but the respondents have not passed any order, and the respondent No.2 also forwarded the representation of the applicant and recommended the same. It has not been disputed by the respondents in the counter reply that Shri P. K. Mehta and Shri Ajay Chadha are not junior officers to the applicant. Admittedly, the applicant is senior to Shri P. K. Mehta and Shri Ajay Chadha. It is also admitted fact that both the said officers have been granted the apex scale of Rs.80000/- (fixed), but it has been alleged by the respondents in their counter reply that the apex scale of Rs.80000/- is allowed to the DGP (head of police force) in each State and certain posts at the Centre as specified in Schedule II C of the IPS (Pay) Amendment Rules, 2008, and in the said Schedule the post of DG, RPF is in the apex scale and the incumbent appointed to the said post is entitled to draw the pay of the post. Shri P. K. Mehta is DG, RPF, and hence he is entitled to get the apex scale of Rs.80000/- (fixed). Shri Ajay Chadha, an IPS officer of 1977 batch, was appointed to the post of Special Secretary (Internal Security) after due selection process and hence, the apex scale of Rs.80000/- (fixed) has also been granted to him. Now we have to adjudicate as to whether the applicant being a senior officer of the 1976 batch would be entitled to the apex scale of Rs.80000/-, as his junior IPS officers of the 1977 batch, i.e., Shri P. K. Mehta and Shri Ajay Chadha are getting the apex scale of Rs.80000/-. It is the argument of the respondents' advocate that these two officers are holding the post of DG, RPF and Special Secretary (Internal Security) respectively, and hence they are entitled to the apex scale, as they are working on the said posts. There are numerous officers senior to these two officers and they are not entitled for the apex scale of Rs.80000/-. That the apex scale is available to the DGP of the States and certain other posts at the Centre.

6. It has also been argued by the learned counsel for the applicant that the applicant is entitled for the higher pay scale under the next below rule, but the learned counsel for the respondents argued that the applicant is not entitled to the higher rank and pay under the next below rule, as this rule would be applicable to the officers serving at the Centre with reference to their juniors in the State cadre. That the applicant belongs to the Kerala cadre, and if a junior officer of the Kerala cadre is promoted in the apex scale, then the applicant would also be entitled for the benefit of promotion on proforma basis under the next below rule. The respondents have disputed the claim of the applicant that he would be entitled for the apex scale of Rs.80000/- under the next below rule. The meaning of next below rule is that if a junior has been granted higher scale of pay, then senior to such person is also entitled to the higher pay scale, but it is the contention of the respondents that the apex scale has been granted to certain posts, and it is the post which carries the apex scale and the principle of next below rule would not be applicable in such cases, and that the applicant has been granted the HAG+ scale of Rs.75000-80000 w.e.f. 26.04.2010 on his empanelment as DG grade at the Centre, and as the posts are not available for the applicant in the apex scale of Rs.80000/-, hence he is not entitled for the apex scale. According to the respondents, this principle is applicable only if a junior officer in the Kerala cadre is granted the apex scale, then the applicant would also be entitled for the apex scale on that basis under the next below rule, but in the Centre no such principle is applicable.

7. For an IPS officer, all India seniority is being maintained. It has also been argued by the learned counsel for the applicant that this practice is prevalent at all India level for all eligible IPS officers of the batch and this is independent of the State carrying exercise for promotions at the cadre level for its officers. Moreover, it was consistent practice of the respondent No.1 for years together to give apex pay scale to an officer the moment his junior is appointed to a post carrying the apex pay scale. The respondents have also not disputed this fact, but they have stated that this principle would be applicable to the State level officers and the applicant belongs to Kerala cadre, and hence if a junior to the applicant in the Kerala cadre is given the apex scale, then the applicant is entitled on that basis for the apex scale, but it has not happened so. It is the case of the applicant that this practice is prevalent at the national level. The learned counsel for the applicant cited judgment of the Hon'ble Supreme Court reported in (2006) 8 SCC 381 Ram Pravesh Singh & others v State of Bihar & others, and it has been argued that in view of the judgment of the Hon'ble Apex Court, it is a legitimate expectation of an employee for getting higher pay if his junior is granted higher pay. Reliance is also placed on the judgment of the Hon'ble Supreme Court reported in (1997) 10 SCC 616 R. K. Sethi & another v Oil & Natural Gas Commission & others. In para 12 of the judgment, it has been held by the Hon'ble Supreme Court that The next below rule in service jurisprudence seeks to ensure that if a junior employee is given promotion without considering his senior then the senior employee can claim the right to be considered for such promotion with effect from the date on which the junior was so promoted. The action of the Commission in extending the benefit of promotion to regular employee in AG-II cadre as AG-I with effect from the date the Telex Operators were so promoted on account of the 12 years Policy, being in consonance with this principle, cannot, therefore, be held to be arbitrary or unreasonable. The Hon'ble Apex Court held that the principle of next below rule in service jurisprudence is to ensure that a senior must be considered for promotion if a junior has been considered, and likewise it is applicable in the case of granting the apex scale of Rs.80000/- to junior officers, and undisputedly Shri P. K. Mehta and Shri Ajay Chadha are junior officers of 1977 batch, whereas the applicant belongs to the 1976 batch. Representations were made by the applicant to the respondents through proper channel. Annexure A-3 (colly.) is the copy of office memorandum dated 07.10.2005 regarding grant of pay scale of Rs.26000/- (fixed) to IPS officers on personal basis. This office memorandum shows that six IPS officers were granted the fixed scale of Rs.26000/- w.e.f. 06.05.2005, when Shri S. I. S. Ahmed, IPS (WB:70), junior to the six officers mentioned therein, was appointed as DG, CISF. Considering the principle of next below rule, the senior officers were granted the apex scale of Rs.26000/- (fixed) as the same was granted to Shri Ahmed. Vide another office memorandum dated 24.05.2007 also, on personal level the pay scale of Rs.26000/- (fixed) was granted to five IPS officers with retrospective effect from 01.03.2006, the date on which Dr. G. S. Rajagopal, IPS (RJ:71) was appointed as Special Secretary (Internal Security) in the Ministry of Home Affairs. Yet another office memorandum dated 25.07.2008 is also to the same effect. Further orders dated 24.11.2008 and 12.12.2008 are also to the same effect. It is not the case of the respondents that the applicant is making a new demand for grant of the apex scale under the next below rule. In past as well, the Government have been granting higher pay scale to seniors, if granted to juniors, with retrospective effect. Annexure A-6 is a forwarding letter of Intelligence Bureau, Ministry of Home Affairs, and according to this forwarding letter nine officers represented for grant of the apex scale of Rs.80000/- as their junior Shri P. K. Mehta, IPS (HY:77) was granted the apex scale. It was forwarded and recommended, but the respondents have not taken care of that.

8. In view of the numerous orders filed by the applicant to supplement his contention, it has been amply demonstrated before us by the applicant that in the past as well,

apex scale has been granted to senior officers with retrospective effect from the date when that higher pay scale was granted to junior officers, but it has not been followed in the case of the applicant. The respondents have specifically alleged in their counter reply that the apex scale of Rs.80000/- is available only to the post, and as Shri P. K. Mehta is the DG, RPF, which post carries the apex scale of Rs.80000/-, hence he is entitled for the apex scale of Rs.80000/-, and other persons senior to Shri Mehta would not be entitled for the same on the principle of next below rule. We disagree with this contention of the respondents, because all India seniority is being maintained in respect of IPS officers, and even though the applicant joined at the Centre, he is entitled for the benefit of seniority. Shri P. K. Mehta has also joined in the RPF as DG and he has been given the apex scale of Rs.80000/-. He might be belonging to some other State cadre. We disagree with the contention of the respondents that the applicant is not entitled to the highest pay scale on the parity of Shri P. K. Mehta and Shri Ajay Chadha because they are holding specific posts carrying that pay scale. We are to be guided by the principle of next below rule, and in view of the next below rule, if a junior has been granted the apex scale of Rs.80000/-, then his senior is also entitled for the same.

9. Learned counsel for the respondents has cited the judgment of the Hon'ble Supreme Court reported in (1997) 6 SCC 360 Union of India & others v O. P. Saxena & others, etc. It has been held by the Hon'ble Supreme Court as follows:

“10. In our opinion, the decision of the Tribunal directing stepping up of the pay of the respondents herein was not correct. It had been clarified by the Ministry of Railways in its letter dated 14th September, 1990 that the principle of stepping up referred to in its earlier letter of 16th August, 1988 was "subject to codal conditions being fulfilled". The principle of stepping up of pay is contained in Rule 1316 of Indian Railway Establishment Code, Vol. II which also contains conditions which have to be followed while ordering stepping up. Two of the conditions contained therein are:

(a) Both the senior and junior officers should belong to the same cadre and the post in which they have been promoted on a regular basis should be identical in the same cadre;

(b) The scales of pay of the lower and higher posts in which they are entitled to draw should be identical.”

Learned counsel argued that in view of the judgment of the Hon'ble Supreme Court, senior and junior officers should belong to the same cadre and the post in which they have been promoted on regular basis should be identical to the same cadre, and the scale of pay of the lower and the higher posts in which they are entitled to draw, should be identical. It is a fact that the applicant as well as Shri P. K. Mehta and Shri Ajay Chadha belong to the Indian Police Service, although they may not be holding the same post, but the applicant has been granted HAG+ scale of Rs.75000-80000 in the capacity of Special Director, and has not been granted the apex scale of Rs.80000/- as has been granted to Shri P. K. Mehta and Shri Ajay Chadha. We are of the opinion that the judgment is of no help to the respondents. The learned counsel also cited the judgment of the Hon'ble Supreme Court reported in JT 2008 (11) SC 467 Official Liquidator v Dayanand & others. We have perused the judgment of the Hon'ble Apex Court, and in our opinion it is of no help to the respondents.

10. Learned counsel for the applicant cited the judgment of the Hon'ble Supreme Court reported in (2009) 3 SCC 94 Gurcharan Singh Grewal & another v Punjab

State Electricity Board & others. It has been held by the Hon'ble Supreme Court as follows:

“17. Something may be said with regard to Mr. Chhabra's submissions about the difference in increment in the scales which the appellant No.1 and Shri Shori are placed, but the same is still contrary to the settled principle of law that a senior cannot be paid lesser salary than his junior. In such circumstances, even if, there was a difference in the incremental benefits in the scale given to the appellant No.1 and the scale given to Shri Shori, such anomaly should not have been allowed to continue and ought to have been rectified so that the pay of the appellant No.1 was also stepped up to that of Shri Shori, as appears to have been done in the case of the appellant No.2.”

It has been held by the Hon'ble Supreme Court that it is the settled principle of law that a senior cannot be paid lesser salary than his junior, and if there is a difference in the incremental benefits in the scale given to the respondent, such anomaly should not have been allowed to continue and ought to have been rectified. In view of this judgment, the senior cannot get lesser salary than his junior, and in these circumstances, the anomaly must be removed. Learned counsel for the applicant, on the strength of this judgment argued that Shri P. K. Mehta and Shri Ajay Chadha, juniors to the applicant, are getting higher scale of Rs.80000/- (fixed), hence the applicant is also entitled to the higher pay scale. Learned counsel for the applicant also cited a judgment of the Allahabad Bench of this Tribunal in OA No.681/2011 Alok Bihari Lal v State of Uttarakhand & others. We have perused this judgment. Although different controversy was involved in the said OA, but even then the principle was followed that a junior cannot draw higher pay than his senior, and in that case the junior officer of the IPS was appointed as DGP of the State of Uttarakhand, and the applicant claimed that he may be appointed as DGP of the State of Uttarakhand in place of the choice of the Government. This prayer of the applicant was not granted. However, it was held that as the apex scale of Rs.80000/- was granted to a junior officer, hence the applicant would also be entitled to the apex scale. This judgment is favourable to the applicant to this extent, and the applicant is entitled to the apex scale of Rs.80000/-.

11. After considering the facts of the case, we are of the opinion that the applicant belonging to 1976 batch of IPS, in the rank of DGP in IB in the HAG+ scale of Rs.75000-80000 w.e.f. 27.04.2010, is entitled to the apex scale of Rs.80000/-. It is admitted and undisputed that Shri P. K. Mehta and Shri Ajay Chadha are junior to the applicant. Both belong to 1977 batch, although Shri P. K. Mehta is holding the post of DG, RPF and Shri Ajay Chadha has been appointed on the post of Special Secretary (Internal Security), and both are getting the apex scale of Rs.80000/-. As in the past, the apex scale of Rs.26000/- (fixed), which is at present equivalent to Rs.80000/- (fixed), was granted to senior officers of IPS, if this apex scale was granted to junior officers, with retrospective effect. Hence, following the principle of next below rule, the applicant is entitled to the apex scale of Rs.80000/- with retrospective effect from the date Shri P. K. Mehta and Shri Ajay Chadha were granted the apex scale of Rs.80000/- w.e.f. 19.05.2011. The applicant is also entitled for the apex scale of Rs.80000/- w.e.f. 19.05.2011. OA deserves to be allowed. OA is allowed and the respondents are directed to grant the apex scale of Rs.80000/- to the applicant w.e.f. 19.05.2011. The order passed by this Tribunal shall be complied with by the respondents within a period of two months from the date of communication of the order. In case the applicant has retired, then he is entitled for this scale and his pension shall also be revised accordingly. There shall be no order as to costs.”

2. The facts stated in this case and that case are exactly similar. The applicant has actually not produced the High Court order, but offers it across the Bench. We accept it, The matter was challenged in WP(c) No.4658/2012 and vide order dated 25.02.2013, it was disposed of by the Hon'ble High Court of Delhi, which we quote:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MS. JUSTICE PRATIBHA RANI

ORDER

25.02.2013

W P(C) 4658/2012 and WP(C) 4660/2012

1. Since, with respect to the existing pleadings of the parties, we agree with the view taken by the Tribunal and as a consequence would be dismissing the two writ petitions and thereby uphold the order date d May 10, 2012 passed by the Central Administrative Tribunal allowing OA No.823/2012 filed by respondent R.N.Ravi (WP(C) No.4658/2012) and the order dated May 29, 2012 allowing OA No.1722/2012 filed by respondent O.P.S.Malik (WP(C) No.4660/2012), we would briefly note the pleadings in OA No.823/2012; as agreed to by learned counsel for the parties since the reasoned decision of the Tribunal is dated May 10, 2012 and the latter simply follows the former. Step up of pay of IPS officers applying ?Next Below Rule? is in issue.
2. Averments made in para 4.1 to para 4.6 of OA No.823/2012 read as under:-

4.1 That the applicant is an IPS officer of 1976 batch, Kerala Cadre who came on deputation to the Intelligence Bureau in the Ministry of Home Affairs, Government of India as a Deputy Inspector General in November 1991. While on Central deputation he has served in the North-East and Jammu and Kashmir besides in Delhi. The applicant is due to retire on 30.04.2012. The applicant is presently holding the rank of Director-General of Police.

4.2 That the service of the applicant is governed by guidelines dated 15.01.1999 by the respondent No.1 with regard to the promotion to the senior scale, junior administrative grade, selection grade, super timescale and above super timescales. The said guidelines have provisions for formation of a specialised screening committee which evaluates the ACRs and service records. As per the said guidelines the applicant falls under the category of above super timescale posts that i s promotion of an officer to the grade of director general as well as additional director-general of police

and/or equivalent post. There are no further provisions for promotion in the service of the applicant beyond super timescale posts. The copy of the guidelines dated 15.01.1999 is annexed herewith and marked as Annexure A- 1.

4.3 That this exercise is done at All India Level for all the eligible IPS officers of the batch. This is independent of the State carrying out exercise for promotions at cadre level for its officers . An officer getting promotion in his cadre may not find his place in the empanelled list prepared by Union of India.

4.4 That the selection committee after considering the service records of the applicant had empanelled and promoted the petitioner along with some other officers of his batch under different cadres to the rank of director-general of police on 27.04.2010 in the pay scale of `75,000- 80,000 (HAG+). The true copy of the office order dated 27.04.2010 is annexed herewith and marked as Annexure A-2.

4.5 That clause 16 of the guidelines dated 15.01.1999 provides our in which promotions are to be made which is read as follows:-

The officers placed in the approved panels for promotions are to be considered for appointment to higher grades in the order of the inter –se position in the respective panels, except in cases where disciplinary/court proceedings are pending against an officer. The procedure to be adopted in cases of officer against whom disciplinary/court proceedings are pending has been laid down in the succeeding paragraphs.

4.6 That as stated in paras 4.4 and 4.5 above, once the officers are empanelled as Director-Generals, there is no further selection/screening/empanelment. Therefore it has been consistent practice of the Respondent No.1 for years together to give apex pay scale to an officer the moment his junior is appointed to a post carrying apex pay. The copies of the orders giving apex grade pay to the officers when their juniors were given apex grade pay are annexed herewith and marked as Annexure A-3 (Colly.).?

3. The response by the writ petitioner to said paragraphs in the reply filed would read as under:-

4.1 - 4.5 The contention made by the applicant in this Para are matters of record and as such no comments are offered.

4.6 The contention made by the applicant in this Para are denied. The Apex scale is not automatic in the absence of any enabling rules/provisions. The Apex scale to officers working at the Centre is granted with the approval of the Competent Authority in the Central Government depending on the merits of each cash. In IB, officers senior to Shri R.N.Ravi viz. Shri V.Rajagopal and Yashovardhan Azad have not got the Apex. Furthermore 33 IPS officers of 1974 to 1977 batches senior to Shri Mehta have also not been given Apex scale.

4. Suffice would it be to highlight that in para 4.6 of the OA, R.N.Ravi made a reference to orders passed when on a junior officer being placed in the apex grade, the senior officers were likewise granted the benefit applying the “next below Rule” and in the reply filed, said orders have not been disputed to have been passed and no pleadings have been made as to why said orders would not constitute precedents.

5. It is not in dispute that on the basis of the Central Civil Services Examination, depending upon the merit position and the option, the candidates are allocated to various services. In the instant writ petitions we are concerned with the Indian Police Service.

6. R.N.Ravi is an officer in the Indian Police Service (1976) batch. He was allocated to the Kerala cadre. Coming on deputation to the Intelligence Bureau as a Deputy Inspector General and serving in various States as a deputationists, he reached the rank of Director General of Police. As pleaded by him as Director General of Police he was placed in the HAG grade in the pay-scale `75,000-80,000/- on April 27, 2010 and raised the issue of not being placed in the apex grade of `80,000/- when one P.K.Mehta (IPS) allocated to Haryana cadre but of the 1997 batch, on being appointed as Director General, Railway Protection Force, was placed in the apex scale of `80,000/-.

7. Making a reference to Annexure P-3 (collectively), in para 4.6 of the Original Application, it was pleaded by R.N.Ravi that consistent practice in the past followed would reveal that irrespective of the seniority in the State cadre, seniority of IPS Officers was maintained by the Central Government and whenever any junior IPS officer as per the Central List was placed in the apex scale, all senior IPS officers irrespective of the State to which they were allocated were placed in the said apex scale. Annexure P-3 would reveal that R.N.Ravi relied upon Office Memorandum dated October 07, 2005, May 24, 2007, May 25, 2008, November 24, 2008, and December 12, 2008, which orders would reveal that when Shri SIS Ahmed, IPS (WB:70) was placed in the apex scale then `26,000/-, six IPS officers senior to him in the All India Seniority List but in UP cadre, Bihar cadre and HP cadre, applying the next below Rule, were granted pay in the apex scale of then `26,000/-. Order dated May 24, 2007 would reveal that when G.S.Rajagopal, IPS (RJ:71) was granted the apex scale, five officers in UP cadre, Jharkhand cadre, Bihar cadre, West Bengal cadre and Rajasthan cadre, applying the Next Below Rule, were granted apex scale of `80,000/- and this continued to happen when orders dated May 25, 2008, November 24, 2008 and December 12, 2008 were issued.

8. The only contention urged before us by the writ petitioner is that the issue is governed by the All India Service (Pay) Rules 2007 as amended by the Amendment Rules on September 27, 2008, as per which the Next Below Rule is to be applied only if a junior officer in the State cadre is placed in the higher pay scale and that all India seniority is irrelevant.

9. We need not note the controversy which is sought to be projected with reference to the amendments incorporated on September 27, 2008, for the reason learned counsel for the writ petitioner is just not able to explain as to

why orders thereafter were issued on November 24, 2008 and December 12, 2008 granting benefit of pay being stepped up applying the Next Below Rule to the four officers whose pays were stepped up as per order dated November 24, 2008, and the said four officer whose pays were likewise affirmed as having been stepped up as per order dated December 12, 2008, all of whom were senior as per the All India Seniority List and were in different State cadres i.e. the officer to whom the apex scale was granted was the senior-most in the State cadre and none of the four officers to whom Next Below Rule was made applicable were from the said State cadre.

10. Learned counsel for the writ petitioner concedes that response to the Original Application filed was inadequate, in that, it has just not been explained as to why order dated November 24, 2008 and December 12, 2008 were issued notwithstanding the Rules being amended in September 2008. Learned counsel for the writ petitioner concedes that if said four officers were entitled to pay being stepped up, the two respondents before us being identically situated would be also entitled to the same unless in the counter affidavit filed before the Tribunal it was pleaded that benefit was erroneously granted to said four officers and that there cannot be equality in the negative. In the absence of any such justification, we dismiss the writ petitions keeping in view the existing pleadings before the Tribunal but as desired by counsel for the writ petitioner would observe that if the issue re-arises and the writ petitioner can plead facts or law with clarity, the Tribunal would not be influenced by the view taken in the instant orders under challenge, which view we find is the result of the existing pleadings where the writ petitioner was unable to show how orders dated November 24, 2008 and December 12, 2008 came to be passed in favour of four persons named therein who admittedly are identically situated as the two respondents before us.

11. Accordingly, the writ petitions are dismissed.

12. No costs.

CM No.9651/2012 (Stay) in WP(C) 4658/2012; and
CM No.9653/2012 (Stay) in WP(C) No.4660/2012

Disposed of as infructuous.”

3. Thereafter, apparently it has gone up to the Hon'ble Apex Court in CC 3907/2014, we note that even though leave was granted, prayer for interim stay is declined. Hon'ble Apex Courts says **“Prayer for interim stay is declined. Any payment made to the respondent- writ petitioner pursuant to the impugned order in excess of what may be held legitimately payable to him**

shall be refundable by him depending upon the final outcome of this petition.”

4. Therefore, with respect, we will follow the Hon’ble Apex Court judgment. Therefore, in accordance with what has been stated by the co-ordinate Bench and Hon’ble High Court of Delhi, an answer will be issued, even though clarified by the respondents and Judgment of these two entities, will be implemented in full. But then we will direct the applicant to file an Indemnity Bond to the effect that if at all the final outcome of C.C. 3907/2014 by the Hon’ble Apex Court is against his interest, he will repay the same in accordance with the directions contained in the determination of the case by the Hon’ble Apex Court.

5. This OA is therefore disposed off as above. No costs.

(C.V. SANKAR)
MEMBER(A)

(DR.K.B.SURESH)
MEMBER(J)

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Annexures referred in O.A. No. 170/00784/2017

- Annexure-A1: Copy of the representation dated 10.3.2017 made by the applicant.
- Annexure-A2: Copy of the Notification dated 15.04.1983.
- Annexure-A3: Copy of the letter No.1-21016/29/99-IPS.III dated 13.5.1999.
- Annexure-A4: Copy of the Notification No. IPS-2811/CR-138/POL-1 dated 01.6.2011.
- Annexure-A5: Copy of the seniority list bearing No.MHA OM/No.1-28018/02/2010-IPS-/IV dated 30.12.2010.
- Annexure-A6: Copy of the order of Government of India No. 28017/02/2009-IPS-/IV dated 24.11.2009.
- Annexure-A7: Copy of the inter-se Seniority list of IPS Probationers of 1977.
- Annexure-A8: Copy of the representation by the applicant dated 03.06.2011.
- Annexure-A9: Copy of the letter dated 21.6.2011 issued by the 2nd respondent.
- Annexure-A10: Copy of the letter dated 30.5.2014 filed by the applicant.
- Annexure-A11: Copy of the order in Application No.823/2012/ MA. No.109/2012.
- Annexure-A12: Copy of the letter dated 03.07..2014 issued by the 2nd respondent
- Annexure-A13: Copy of the representation dated 20.07.2015 made by the applicant.
- Annexure-A14: Copy of the representation dated 30.11.2015 made by the applicant.

Annexures referred by the respondents in the Reply

- Annexure-R1: Copy of Extract of IPS (Pay) Rules.
- Annexure-R2: Copy of letter dated 23.6.2014 issued by Under Secretary, Ministry of Home Affairs.
- Annexure-R3: Copy of OM dated 18/19.06.2012.
- Annexure-R4 Copy of OM dated 06.02.2012 issued by DOPT.
