

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH**

OA No. 134 of 2017

**Present: Hon'ble Mr. Gokul Chandra Pati, Member (A)
Hon'ble Mr. Swarup Kumar Mishra, Member (J)**

Dr.Binoy Kumar Behera, IPS, aged about 59 years, S/o Late Prof. Bhubaneswar Behera, permanent resident of Vill./PO Mundraguda, PS – Junagarh, Dist. – Kalahandi, presently serving as Director General of Police, Fire Services, Commandant General Home Guards and Director, Civil Defence, Odisha, Cuttack.

.....Applicant

VERSUS

1. Union of India, represented through the Secretary to the Government of India, Department of Personnel & Training, 2nd Floor, Lok Nayak Bhawan, New Delhi, Pin – 110003.
2. Secretary, Ministry of Home Affairs, North Block, Cabinet Secretariat, Raisina Hill, New Delhi.
3. Government of Odisha, represented through the Chief Secretary to the Government of Odisha, Secretariat building, Bhubaneswar.
4. Principal Secretary to Government, Home Department, Odisha, Secretariat Building, Bhubaneswar.
5. Additional Secretary to Government, General Administration Department, Secretariat Building, Bhubaneswar.

.....Respondents.

For the applicant : Mr.S.K.Ojha, counsel

For the respondents: Mr.S.Behera, Sr. Panel counsel
Mr.J.Pal, counsel (State Govt.)

Heard & reserved on : 16.5.2019

Order on : 10.7.2019

O R D E R

Per Mr.Gokul Chandra Pati, Member (A)

The applicant has filed this OA under Section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs :

- (i) To admit this OA.
- (ii) To quash the order No. GAD-SER1-IPS-0004-2016/2884/AIS dated 9th February, 2017 (Annexure A/1) and the letter of the Government of India No.16011/22/2016-IPS.II dated 6th February, 2017 (Annexure A/11).
- (iii) To direct the respondents No. 3 & 4 to extend the apex pay to the applicant w.e.f. 12.5.2016 at par with his junior Sri K.B.Singh with corresponding revised pay.
- (iv) To direct the official respondents to pay the differential amount as arrears of pay with 18% interest.
- (v) To direct the respondents No.3 & 4 to extend all financial and consequential benefits to the applicant;

- (vi) To pass any other order/orders as are fit and proper for the ends of justice.

2. The facts of the case in brief are that the applicant's husband was an officer belonging to Indian Police Service (IPS), Orissa cadre till his retirement from service. He is aggrieved by the fact that he is not being given the apex scale of pay which has been allowed to one of his junior officer Mr.K.B.Singh who is drawing the pay in the apex scale at Rs.80,000/- (fixed) whereas the applicant's husband, who was three years senior to Mr.Singh was getting lesser running scale of Rs.75,500-80,000/-. It is stated that after 7th CPC revision the applicant will be entitled to pay in the running scale of Rs.2,05,400 – 2,24,400/-. It is stated that even in the highest scale his pay will be less than the pay of Mr.Singh who is junior to the applicant's husband.

3. It is stated that as per the decision of Hon'ble Apex Court in the case of State of Bihar –vs- J.K.Khanna it has been decided by the Government of India vide letter dated 6.2.2017 (Annexure A/11) that the decision of Hon'ble Apex Court in the case of J.K.Khanna (supra) is personal to that officer and cannot be extended to other similarly placed cases. Since a person who has not been appointed to that post cannot be deemed to have performed the functions attached to the post and therefore he cannot get the post of DGP in the apex scale. It is also stated that provisions of 'Next Below Rule' is not applicable for the post of DGP (HOPF). It is stated in the OA that next below rule is also applicable in his case as decided by the Hon'ble Apex Court in the case of Gurcharan Singh Grewal –vs- Punjab State Electricity Board. It is further stated that in consideration of the decision in the case of J.K.Khanna, government of West Bengal also allowed the benefit of the pay scale on the basis of next below rule. The case of R.K.Sethi & Another –vs- Oil & Natural Gas Commission & Others [(1997) 10 SCC 616] is also cited in support of his contention. The decision of the Tribunal in OA 8232/2012 disposed of on 10.5.2012 in the case of R.N.Ravi –vs- UOI is also cited by the applicant.

Another order of the Tribunal dated 7.12.2009 in OA 1807/2009 in the case of J.K.Khanna has been cited (Annexure A/4).

4. In the Counter filed by the respondent no. 1 and 2 (Government of India), it is stated by the respondents that the promotion is not a matter of right. It is also not a condition of service but an incidence of service to be earned by virtue of continued good and efficient service. In IPS cadre in Orissa the post of DGP as Head of Police Force (in short HoPF) is eligible to draw the apex scale as per the IPS (Pay) Amendment Rules of 2008. The representation of the applicant was forwarded to the Government of India and it was not accepted vide letter of Government of India at Annexure R/1 to the counter. It is further stated that the DGP (HoPF) is a selection post through provision of next below rule is not applicable to the post of DGP. The decision of Hon'ble Supreme Court in the case of Prakash Singh & Others -vs- Union of India & Others held that the selection to the post of DGP in the State be made amongst the three senior most officers to be empanelled by the UPSC and fixing a minimum tenure of two years for them irrespective of the date of superannuation. The Government of India has filed a petition for certain clarification/modification of the order which is pending before the Hon'ble Supreme Court. With regard to the case of R.N.Ravi it is stated that the Ministry of Home Affairs has filed a SLP against the order of Hon'ble High Court of Delhi by which the writ petition against the order of the Tribunal has been dismissed and the SLP is pending.

5. Heard learned counsels for the parties and perused the pleadings as well as documents on record. Learned counsel for the applicant submitted that the applicant has expired during pendency of the OA, for which he had filed a substitution application (MA No. 632/2017) which was allowed by the Tribunal vide order dated 8.12.2017 and accordingly, he has submitted the amended cause title for the OA. It was submitted by the applicant's counsel that the respondents have rejected the claim of the applicant's husband for the Apex pay scale under the next below rule and as per the order of the Tribunal dated 7.12.2009 (Annexure-A/4) in the case of Shri J.K. Khanna, which is factually

similar and which has been upheld by Hon'ble High Court of Delhi vide order dated 28.2.2013 (Annexure-A/5) and by Hon'ble Apex Court vide order dated 3.5.2013 (Annexure-A/6). Learned counsel for the applicant also submitted that in another case of Shri R.N. Ravi vs. Union of India & others with similar facts and circumstances, the Tribunal vide order dated 10.5.2012 (Annexure-A/3) in OA No. 823/2012, the benefit of the apex scale was allowed to senior IPS officer if his junior is availing the same benefit.

6. Per contra, learned counsel for the respondent no. 1 and 2 Mr. S. Behera reiterated the stand taken by Government of India in the Counter stating that as per the notification dated 27.9.2008 of the Department of Personnel & Training (in short DOPT) by which it is laid down that only DGP (HoPF) is eligible for the Apex scale and it is stipulated that as per the DOPT notification dated 18.10.2011, no ex-cadre post of DGP (HoPF) in Apex scale can be created. It is stated that the representation of the applicant was duly considered in the light of the DOPT notifications as above and it was rejected. It is further stated in the Counter that the order of Hon'ble High Court in the case of J.K. Khanna (supra) is applicable to that specific case and it will not have general applicability. It is also stated accordingly, letter dated 6.2.2017 (Annexure-A/11) was issued to all States stating that the provision of the Next Below rule is not applicable for the post of DGP (HoPF), which is a selection post. As per the order of Hon'ble Supreme Court, the selection of the DGP (HoPF) is to be done from among three senior most officers who have been empanelled by the UPSC and for fixing a minimum tenure of two years. It is also stated that while accepting the recommendations of 6th pay commission report, it was decided that one of the post of DGs will be upgraded to the post of DGP (HoPF) with the Apex scale of Rs. 80000/- and accordingly the amendment to IPS (Pay) Amendment Rules, 2008 was notified and it was also notified that no ex-cadre post of DGP (HoPF) will be created (Annexure-III & IV to the Counter). Mr. Behera pointed out that since the applicant's husband was

not appointed as the DGP (HoPF), he is not entitled for the apex pay scale as claimed by him.

7. Mr. Pal, learned counsel for the respondent no. 3, 4 and 5 was heard. While reiterating the contentions in the Counter filed by the respondents, he submitted that the impugned rejection order dated 9.2.2017 at Annexure-1 has been passed by the respondent no. 3 to 5 based on the instructions received from the respondent no. 1 and 2. Mr. Pal also reiterated the stand taken in the Counter that the next below rule is not applicable to the present case.

8. We have considered the submission by the parties and also perused the documents as well as the copy of the judgments cited by the parties. The applicant has referred to the case of Shri J.K. Khanna (supra), the Principal Bench of the Tribunal has held as under:-

"2. Brief facts of the case would reveal that the Applicant was appointed to Indian Police Service, Bihar Cadre on 21.7.1974. He was confirmed by order dated 1.7.1976 and was granted selection grade on 1.1.1987, 1st super time scale of DIG on 17.11.90, 2nd Super time scale of IG on 5.4.1997 and Super time scale of ADG on 30.9.2004. It is the case of the Applicant that he was sent on central deputation to KRIBHCO as Chief Vigilance Officer where he worked from 3.9.2003 to 2.9.2008. On 5.5.2008, the Applicant submitted a representation to the Bihar Government thereby stating that his deputation to the Central Government would come to an end on 2.9.2008 and his candidature may be considered for promotion to the post of Director General of Police which was expected to be vacant on 31.07.2008. The Respondents conducted DPC in the last week of July 2008 for the post of Director General of Police wherein the name of the Applicant and one Dr. D. N. Gautam, Respondent No.3 was considered. The Applicant states that Dr. D. N. Gautam is junior to him. The Respondent-2 issued an order dated 31.07.2008 granting promotion to Dr. D. N. Gautam (Respondent No.3), to the post of Director General of Police, Bihar ignoring the claim of Applicant, being senior to the Respondent No.3. On 1.08.2008, the Applicant submitted a representation to the Official Respondents requesting them to grant him promotion to the post of Director General of Police w.e.f. 31.07.2008, the date on which his junior was promoted. The Accountant General (A&E) wrote to the State of Bihar on 4.08.2008 to grant proforma promotion to the Applicant in the scale of Director General of Police as junior to the Applicant had been granted promotion in the scale of pay of the Director General of Police. The Applicant also submitted another representation on 8.08.2008 to the Respondent-2, requesting (a) to grant him proforma promotion w.e.f. 31.07.2008 and (b) to create an additional post of Director General of Police after obtaining the consent of the Central Government. On 15.09.2008, the Applicant joined the duty in the State of Bihar after getting relieved from the Central deputation, but the Respondents neither granted him promotion to the post of Director General of Police nor gave the pay scale of the said post. However, by order dated 26.9.2008, the Respondents posted the Applicant as Director General of Police-cum-Officer on Special Duty at Bihar Bhawan, New Delhi, but the Accountant General, Bihar objected informing the Respondent-2 that the Applicant had been appointed to a non-existence post and that the consent of the Central Government to create an additional post was necessary for regularization of (i) the said post and (ii) the waiting period i.e. 15.9.2008 to 28.9.2008. On 22.10.2008, the Respondent-2 informed the Respondent-4 that the post of Director General of Police-cum-

Officer on Special Duty had been sanctioned from 1.4.2006 to 31.3.2009. Applicant submitted a representation to the Respondent-1 to sanction an extra ex-cadre post of Director General of Police. He also submitted an application on 10.11.2008 to the Respondents requesting them to grant promotion w.e.f. the date his junior had been promoted and fix the pay and allowances accordingly. However, the said representation was not replied to by the Respondents. Since the Applicant was not getting the pay for the last 2 months, he again submitted a representation on 14.11.2008 to the Respondents to grant him promotion w.e.f. 31.7.2008 and regularize the waiting period from 15.9.2008 to 28.9.2008 and declare the ex-cadre post of Director General of Police-cum-Officer on Special Duty, Bihar Bhawan, New Delhi equivalent in rank and status to the cadre of post of Director General of Police. The same was also not replied by the Respondents. As a result, he is before this Tribunal in this OA.

8. It is noted that the IPS (Pay) Rules, 2007 were amended by DOP&Ts Notification No.14021/3/2008-AIS(II) dated 27.09.2008 to the extent that for the letters and figures Rs.24050-650-26000 in Rule 11(7), the letters, figures and words Rs.75500-(annual increment @3%)-80000 were substituted. Further, in Schedule-II.A of the IPS (Pay) Rules, 2007, one of the existing posts of Director General of Police in the HAG+scale of Rs.75500-(annual increment@3%)-80000, was placed in the apex scale of Rs.80000(fixed) and designated as the head of police force in the State or Union Territory.

9. It is noted that as per the Government of India Notification No.I.11052/12/03-AIS(Ii) dated 07.12.2004 for the State of Bihar, two posts at the level of DGP are cadre posts, out of the two cadre posts sanctioned, one of the posts is placed in the apex scale of Rs.80000(fixed) to be the head of the police force. Further, as per the provisions of Rule 11(7) of IPS (Pay) Rules, 2007, the Government of Bihar is empowered to create two ex-cadre posts against the two sanctioned cadre posts. Thus, in all, the Government of Bihar can operate four posts at DGP level (one in the fixed scale of Rs.80000 and other 3 in Rs.75000-80000 scale). We find from the averments that on 1.1.2008, the Government of Bihar had 3 posts at DG level. On 31.7.2008, the Government of Bihar created the 4th post in DGP grade and promoted Respondent-3 to that grade/post. It is noted that on 15.9.2008, the Applicant returned from Central deputation to join the Government of Bihar. It is admitted fact that the Applicant is senior to the Respondent-3. The Respondent-2 vide its order dated 26.9.2008 created another post i.e. of DG-OSD, Bihar Bhawan, New Delhi in DG grade and posted Applicant to the post, and forwarded a proposal to Respondent-1 for ex-post facto approval for creation of the 5th post of DGP. Respondent-2 noticed two violations namely (i) the promotion of Respondent-3 without prior concurrence of Respondent-1 was in violation of Rule 3(2)(ii) of IPS Pay Rules 2007; and (ii) creation of 5th DG post and posting of the Applicant to the same violated the principle of 1:1 ratio between cadre and ex-cadre posts[Rule 11(7) of IPS (Pay) Rules 2007]. On getting the clarification Respondent-1 noted that there was scope for 4th post of DG. However, it was found that along with the Applicant, 2 other IPS officers on central deputation had not been given proforma promotion while promoting Respondent-3 as DGP. The Respondent-1 gave conditional concurrence for creation of the 5th DGP level post, subject to grant of proforma promotion as given under Rule 6 (7) and 6(8) of IPS (Pay) Rules, 2007 to the Applicant by the Respondent-1.

10. In view of the statutory rule position in the matter, taking into account the facts and circumstances of the case; and our above analysis, we come to the considered conclusion that the Applicant has made out a case in his favour. In the result, the following directions are issued to the official Respondents:-

To grant proforma promotion to the Applicant in the post of Director General of Police with effect from 31.7.2008 or the date his junior (Respondent-3) was promoted whichever is later.

To grant the Applicant all consequential benefits including seniority and admissible pay and allowances.

11. The Original Application having merits is, therefore, allowed in terms of our direction in Para 10 above, leaving the parties to bear their respective costs."

The order of the Tribunal in the case of Shri J.K. Khanna (Annexure-A/4) was upheld by Hon'ble Delhi High Court and the SLP filed before Hon'ble Apex Court was dismissed. The respondents have taken a stand in this case that the judgment in the case of Shri J.K. Khanna (supra) is person specific and the applicant cannot take advantage of the judgment.

9. Perusal of the judgment in the case of Shri J.K. Khanna (supra) would reveal that the direction was to promote Shri Khanna as DG Police at par with his junior. In the present case, the applicant had already been promoted to the rank of DGP, but he was not given the rank of DGP (HoPF) with the Apex scale. There is no mention in the order of the Tribunal in the case of Shri J.K. Khanna about his entitlement of the Apex scale. Hence in our opinion, the judgments in the case of Shri J.K. Khanna (supra) will not be of much help to the applicant, who wants parity in pay scale with his junior and not parity in promotion to the post of DGP allowed in the case of Shri J.K. Khanna.

10. Learned counsel for the applicant has also cited the order dated 10.5.2012 (Annexure-A/3) of the Principal Bench of the Tribunal in the case of Shri R. N. Ravi vs. Union of India through Secretary, Ministry of Home Affairs & another. In that case, the applicant claimed parity in the pay scale with his junior, while they were posted as DGP under Central Government. While the applicant in the cited case was getting the pay scale of the DGP i.e. Rs. 75000-80000/-, his junior was allowed the Apex Pay scale of Rs. 80000/- which was claimed by the applicant on the ground of seniority. Hence, the facts and circumstances of this case are similar to the present OA before us. In the case of R.N. Ravi (supra), it was held by the Tribunal as under:-

"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 appellant before the Hon'ble Apex Court and 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."

11. The respondent no. 1 and 2 in their Counter have stated that the order dated 10.5.2012 of the Tribunal in R.N. Ravi case was challenged before Hon'ble High Court in a Writ petition which was dismissed. This was taken to Hon'ble Apex Court in SLP No. 3907/2014 which was converted to Civil Appeal No. 4648/2014, which is stated to be pending. It is seen that the judgment in the case of R.N. Ravi is squarely applicable to the present case before us as the facts and circumstances of both the cases are similar. The respondents have not cited any authority or judgment in support of their contentions to the effect that when a senior officer, who is eligible for posting as DGP (HoPF) is

superseded by a junior officer who is posted as DGP(HoPF) carrying the apex scale, is not entitled for parity in the pay with his junior.

12. We take note of the averments of the respondents that the next below rule is not applicable in the case of DGP. Such a contention is not backed by any rule or authority. The respondents have taken a stand that since the applicant was not posted as DGP (HoPF), he will not be eligible for the apex pay scale. But the process followed for selecting a junior officer for a post with higher responsibility and higher financial benefits including salary has not been mentioned in the Counter filed by the respondents. we take note of the fact that in para 6 of the Counter filed by the respondent no. 1 and 2 it is stated that as per the direction of Hon'ble Apex Court, the post of the DGP (HoPF) is to be filled up through a process of empanelment by the UPSC and the Government has approached Hon'ble Apex Court for modification of the order for not involving the UPSC in the selection process for the post of DGP. The Counter is silent about the process to be followed for selection for the post of DGP (HoPF). In case the applicant's husband would have been found less meritorious vis-a-vis his junior through a process specified in the rules, then his claim for the financial benefit at par with the junior, who was posted as DGP (HoPF) with higher financial benefits, would not have been sustainable. In this case there is nothing on record to show that the applicant was found less meritorious compared to his junior Mr. K.B. Singh who was allowed the apex pay scale.

13. In view of the above discussions, we are of the considered view that the order dated 10.5.2012 (Annexure-A/3) of the Tribunal in the case of R.N. Ravi (supra) is applicable for the present OA with similar facts and circumstances. Applying the ratio of the aforesaid judgment to the present OA, we quash the order dated 9.2.2017 and 6.2.2017 at Annexure-A/1 and A/11 respectively and direct the respondent no. 3 and 4 to allow the benefit of the apex pay scale to the husband of the applicant with effect from the date such benefit was allowed to his junior Mr. K.B. Singh and also allow all consequential benefits in

favour of the applicant as per law. We further direct the respondents to implement this order within four months from the date of receipt of a copy of this order.

14. The OA is allowed as above with no order as to cost.

(SWARUP KUMAR MISHRA)
MEMBER (J)

(GOKUL CHANDRA PATI)
MEMBER (A)

I.Nath