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**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No.180/01012/2015,
Original Application No.180/00545/2016
&
Original Application No.180/00546/2016

Wednesday, this the 19th day of June, 2019

C O R A M :

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

Original Application No.180/01012/2015

R.Rajalekshmi Peethambaran,
W/o.late K.G.Peethambaran Pillai IPS,
Kurumthottical House, Kadammanitta P.O., Pathanamthitta. ...Applicant

(By Advocate Mr.R.Sreeraj)

v e r s u s

1. Union of India
represented by its Secretary to the Government of India,
Ministry of Home Affairs, New Delhi – 110 001.
2. State of Kerala represented by the Chief Secretary,
Secretariat, Thiruvananthapuram – 695 030.
3. The Accountant General (A&E) Kerala,
M.G.Road, Thiruvananthapuram – 695 039. ...Respondents

(By Advocates Mr.P.R.Sreejith,ACGSC [R1] & Mr.M.Rajeev,GP [R2-3])

Original Application No.180/00545/2016

C.Rajagopal IPS (Retired),
S/o.late G.Chellappan Pillai,
Retired as AIG (Public Grievances),
Police Head Quarters, Trivandrum.
Residing at Padma, TC 9/164-1,
O-Street, Jawahar Nagar,
Kowdiar, Trivandrum. ...Applicant

(By Advocate Mr.R.Sreeraj)

v e r s u s

.2.

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

(By Advocates Mr.T.C.Krishna [R1] & Mr.M.Rajeev,GP [R2-3])

Original Application No.180/00546/2016

P.G.Asokkumar IPS (Retired),
Retired Superintendent of Police.
Residing at Ambazhathinal House,
Panamattom P.O., Kottayam – 686 522. ...Applicant

(By Advocate Mr.R.Sreeraj)

v e r s u s

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

(By Advocate Mr.V.A.Shaji [R1] & Mr.M.Rajeev,GP [R2-3])

This application having been heard on 11th June 2019, the Tribunal on 19th June 2019 delivered the following :

ORDER

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

As the issues involved in these cases are identical in nature, these cases are disposed of by this common order.

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2. In all these O.As the applicants are seeking extension of benefit of the decision of this Tribunal in **Union of India v. T.M.Somarajan & Ors.** dated 22.2.2002 reported in (2003) 2 SLJ 225 CAT and as affirmed by Hon'ble High Court and Hon'ble Supreme Court. They have also cited their junior both in the State Police Service (SPS) and in the Indian Police Service (IPS) as getting stepping up of pay.

3. The grievance of the applicants relates to pay fixation on induction to the IPS from SPS wherein their pay was fixed at a stage lower than that of their basic pay in the SPS. They are also aggrieved when their juniors in the SPS, on their later induction to the IPS, gets their pay fixed at a stage higher than that of their basic pay thus fixed in the IPS. Though the applicants have submitted individual representations highlighting their grievance, the same was rejected by the respondents on the ground that the judgment in **T.M.Somarajan** was against the statutory provisions of IPS (Pay) Rules and as such its implementation is limited to the petitioners therein only. The respondents have also informed that the State Government is moving to file a Review Petition against the final order dated 7.1.2016 in O.A.No.514/2013 and connected cases.

4. As grounds it is submitted that this Tribunal, despite the arguments of the Central/State Governments and the Accountant General that the situation is the natural consequence of fixation as per the IPS (Pay) Rules and that total emoluments on induction to the IPS is on the higher side and hence there

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is no cause for any grievance, found that an anomaly exists in the pay fixation and directed it to be removed by taking recourse to the residual powers of the Central Government under the IPS (Pay) Rules. The Central Government on their part, issued certain guidelines in the matter by recommending stepping up of the pay in such circumstances. The other issue, namely drop in the Basic Pay, was not addressed in the so called guidelines.

5. The Union of India has filed reply statement wherein they have submitted that the IPS (Pay) Rules, 2007 have been framed to govern the pay and allowances of officers borne on IPS cadre posted in all States in the country. The initial pay of a SPS on his promotion to IPS is fixed in accordance with the principles laid down in Schedule I of IPS (Pay) Rules, 2007 and such fixation of pay is effective from the date of joining the duty as an IPS Officer, irrespective of the year of allotment assigned to the officer under IPS (Regulation of Seniority) Rules, 1988. They further submitted that as per Schedule I dealing with the principles of pay fixation in cases falling under sub rule (3) of rule 5 of the IPS (Pay) rules, 2007, “the initial pay of a promoted officer or an officer appointed by selection, as the case may be, shall be fixed in the pay band 3 or pay band 4 by adding one increment equal to 3% of the sum of the pay in the pay band and the grade pay applicable which will be rounded off to the next multiple of 10 and in addition, the grade pay of Senior Time Scale or Junior Administrative Grade or Selection Grade, corresponding to pay scale or grade pay in the State Service, shall be granted.”

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With regard to applicability of judgment of **T.M.Somarajan**, it is submitted that the same was against the statutory provisions of IPS (Pay) Rules and its implementation is limited to the petitioner only, the respondents maintain.

6. The State Government has also filed reply in these cases wherein they have submitted that the State Government revises the pay scale of State Services Officers from time to time so as to bring a parity with the Central Pay Scales. The promotee IPS officers from the State Service get the benefits of pay enhancement in their substantive post last held in the State Service till they hold a lien in State Service. As soon as they are confirmed in IPS they cease to have any lien in State Service and thereafter are governed by the IPS (Pay) Rules and as such it is not possible to refix the pay or to remove the anomaly of the pay etc. for the promotee officers with reference to their juniors who joined IPS from the State Service after getting one or more enhancement in State pay scale in whose case the State pay scales were enhanced before their confirmation to IPS. Further in the absence of any special or general directions from the Government of India in Ministry of Home Affairs, the Cadre Controlling Authority in respect of IPS Officers, the State Government are constrained to stick to the rules in force while fixing the pay of the promotee IPS officers. Further the Ministry of Home Affairs had already made it clear that the application of court orders for the fixation of pay in favour of promotees shall be limited only to the applicant in the respective cases since the verdict is against the statutory provisions/orders in force.

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7. We have heard learned counsel for the parties in all these cases and perused the records available on record.

8. An identical issue has been considered by the Hon'ble Apex Court in **Civil Appeal No.9041/2003** in the case of **Union of India v. T.M.Somarajan & Ors.** which has arisen out of the order of this Tribunal dated 22.2.2002 **(2003) 2 SLJ 225 CAT**. The direction issued by this Tribunal has been extracted in the judgment of the Hon'ble Apex Court which reads as under :

4. We declare that the applicant is entitled to have his initial pay fixed in the IPS Cadre on the basis of the pay drawn by him in the non-IPS cadre as a confirmed Superintendent of Police as on 9.12.1995 without applying the restrictive definition of the expression higher scale occurring in definition Clause (iii) of Schedule II of the Indian Police Service (Pay) Rules, 1954. We further declare that in the applicant's case the context requires such interpretation of the meaning of expression 'higher scale of pay' that should not cause the anomalous situation of the applicant deriving less pay and allowance than his juniors some of whom were not even found fit to be promoted to the IPS along with and hence were considered for promotion on subsequent date or dates. We also declare that the anomaly in the applicant's initial pay fixation in the IPS is to be necessarily removed by applying the provisions of Clause (6) of Schedule II of the Indian Police Service (Pay) Rules, 1954. The first respondent is directed to pass appropriate orders and ensure removal of the anomaly in the applicant's initial pay fixation in the IPS by applying the provisions of Clause (6) and fixing the applicant's initial pay in the IPS on the basis of his actual pay in the higher scale of Super Indent of Police (Non-IPS) as on the date of his promotion to the IPS.

9. The Hon'ble Apex Court in its penultimate paragraph in **T.M.Somarajan** has stated thus :

9. We have considered the order of the Tribunal in detail. We are in agreement with the Tribunal's well considered order as also of the High Court. In our opinion, after entering into the IPS cadre from the State Cadre Service, the pay of such an officer should not be reduced.

10. Taking a cue from an order of this Tribunal in O.A.No.514/2013 and connected cases pronounced in January, 2016 in the case of IAS and IPS which followed the aforesaid judgment in **T.M.Somarajan**, it has been held :

27. There can be no doubt that IPS (Pay) Rules 1954 as amended in 2007 and IAS (Pay) Rules, 1954 as amended in 2007 are identical. So much so, the principle laid down in **Somarajan's** case is equally applicable to officers promoted to IAS as well. In other words, the principle laid down in **Somarajan case** will apply in all the fours for fixation of pay of IAS personnel as well. It is not disputed that IAS (Pay) 2nd Amendment Rules 2008 was brought into force w.e.f. 1.1.2006. In Schedule I of the IAS (Pay) Rules which has been in force from 1.1.2006 the following paragraphs were substituted namely :

“(1) 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 at the pay drawn by the officer in the Pay Band 3 or Pay Band 4 in the State Service in addition to one of the Grade Pays admissible for the three components, Senior Scale as per the eligibility of the officer in the following manner:

<u>Pay in Pay Band</u>	<u>Grade Pay</u>
Officers with pay upto Rs. 29490/- in pay band 3	Rs. 6600/-
Officers with pay between Rs. 29491 to Rs. 30690 in pay band 3	Rs. 7600/-
Officers with pay Rs. 30691 or above in pay band 3 and pay band 4 Grade pay	Rs. 8700/-

In case the pay of officer in State Service has not been revised to the new pay structure with effect from the first January, 2006, the same shall be revised in terms of provisions contained in Rule 3A”.

Identical amendments were made in IPS/IFS (Pay) Rules 2007 as well as per gazette notification dated 27.9.2008, the learned counsel for applicants submits. It is also pointed out that by GSR 253(E) notification dated 15.4.2009, Schedule I of IAS (Pay) Rules, 2007 has been further amended w.e.f. 1.1.2006 substituting the following paragraph for paragraph I:

“(1)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.

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

Identical amendment was made in the IPS (Pay) Rules 2007 by inserting similar provision by notification No.14021/3/2008-AIS)II) dated 3.3.2010 w.e.f. 1.1.2006. Therefore, IAS (Pay) Rules, 2007 as amended by Gazette Notification dated 15.4.2009 and IPS (Pay) Rules as amended by notification dated 3.3.2010 would leave no doubt that the pay of a promoted officer shall not in any case be fixed below the minimum of the Senior Time Scale. Since the amendments referred to above made the position clear, there can be no doubt that the principle laid down in **Somarajan's** case is equally applicable to all the officers of State Police Service promoted to Indian Police Service (IPS) and the non-State Civil Service officers promoted to Indian Administrative Service (IAS). The respondents shall accordingly fix the pay of the applicants taking note of the 2007 amendment and the subsequent amendments and government notifications referred to in the preceding paragraphs and the arrears be paid within three months from the date of receipt of a copy of this order.

28. Original Applications are allowed. No order as to costs.

11. Thereafter again as recently as in June 2019 this Tribunal in O.A.No.332/2016 and connected cases passed the following orders :

13. In view of the settled position we are of the firm view that the principle laid down in **T.M.Somarajan** which was followed by this Tribunal in O.A.No.514/2013 is equally applicable to all the officers of State Forest Service promoted to the Indian Forest Service. The respondents shall accordingly protect the pay of the applicants corresponding to the last drawn SFS pay of the applicants on promotion to the IFS and refix the pay in the revised Central Pay Scales of 2006 in PB4 with Grade Pay of Selection Grade and the consequential benefits including arrears flowing therefrom shall be paid within a period of three months from the date of receipt of a copy of this order.

14. The Original Applications are allowed. No order as to costs.

12. In the above facts and circumstances of this case, we have no hesitation to hold that the principle laid down in the aforementioned orders governs the field which is *mutatis-mutandis* applicable in these O.As also. Therefore, the O.As are allowed. The respondents are directed to grant the relief as per the

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principles laid down in **T.M.Somarajan** and disburse the consequential benefits including arrears within a period of three months from the date of receipt of a copy of this order. There shall be no order as to costs.

(Dated this the 19th day of June 2019)

ASHISH KALIA
JUDICIAL MEMBER

E.K.BHARAT BHUSHAN
ADMINISTRATIVE MEMBER

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List of Annexures in O.A.No.180/01012/2015

1. **Annexure A-1** – A copy of the representation dated 9.8.2002 submitted by Shri.Peethambaran Pillai to the 3rd respondent.
2. **Annexure A-2** – A copy of the Letter No.GE-1/C/P-10(IPS)/580 dated 14.8.1997 issued by the Senior Accounts Officer, O/o.the 3rd respondent.
3. **Annexure A-3** – A copy of the Letter No.GE 1/C/P-10(IPS)/275 dated 22.5.2000 issued by the Senior Accounts Officer, O/o. the 3rd respondent to Shri.K.G.Peethambaran Pillai, IPS.
4. **Annexure A-4** – A copy of the Letter No.GE-1/C/P.10-IPS/02-03/473 dated 1.8.2002 from the office of the 3rd respondent.
5. **Annexure A-5** – A copy of the Letter No.GE-1/C/P.10-IPS/02-03/576 dated 29.8.2002 issued by the Senior Accounts Officer, O/o. the 3rd respondent.
6. **Annexure A-6** – A copy of the Letter No.GE 1/C/IPS/P-10(Retd.)/2013/3072 dated 21/22.2.2013 issued by the Senior Accounts Officer, O/o.the 3rd respondent.
7. **Annexure A-7** – A copy of the Letter No.8863/Spl.C3/2013/GAD dated 7.4.2014 issued on behalf of the 2nd respondent.
8. **Annexure R-1(a)** – A copy of the judgment in O.A.No.514/2013 and connected cases dated 7.1.2016.
9. **Annexure R-1(b)** – A copy of the 1st respondent's Letter dated 14.3.2016 to the Chief Secretary, Government of Kerala.

List of Annexures in O.A.No.180/00545/2016

1. **Annexure A-1** – A copy of the Notification No.I-14011/32/2007-IPS.I(I) dated 28.8.2008 issued by the Government of India, Ministry of Home Affairs.
2. **Annexure A-2** – A copy of the Notification No.I-14011/32/2007-IPS.I dated 30.9.2008, issued by the Government of India, Ministry of Home Affairs.
3. **Annexure A-3** – A copy of the representation dated 21.3.2016 submitted by the applicant to the 1st respondent.
4. **Annexure A-4** – A copy of the Letter No.519113/Spl.C3/2016/GAD dated 14.4.2016 from the 3rd respondent.

5. Annexure R-1A – A copy of the letter dated 14.3.2016 send by 1st respondent.

6. Annexure R-2(a) – A copy of the order of the Hon'ble Court dated 3.11.2016 against the order dated 7.1.2016 in O.A.No.923/2014 of CAT.

List of Annexures in O.A.No.180/00546/2016

1. Annexure A-1 – A copy of the representation dated 5.2.2016 submitted by the applicant to the 1st respondent.

2. Annexure R-1-1 – A copy of the letter to the Chief Secretary, General Administration (Special C Department), Government of Kerala, Thiruvananthapuram dated 14.3.2016.

3. Annexure R-2(a) – A copy of the order of the Hon'ble Court dated 3.11.2016 against the order dated 7.1.2016 in O.A.No.923/2014 of CAT.
