

.1.

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Review Application No.180/00033/2019 in O.A No.180/00546/2016

&

Review Application No.180/00034/2019 in O.A No. 180/00545/2016

Friday, this the 9th day of August, 2019

CORAM:

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

HON'BLE Mr.ASHISH KALIA, JUDICIAL MEMBER

Review Application No.180/00033/2019

P.G.Asokkumar IPS (Retired)

Aged 67 years

Retired Superintendent of Police

Residing at 'Ambazhathinal House'

Panamattom P.O

Kottayam – 686 522

... Review 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

... Review Respondents

Review Application No.180/00034/2019

C.Rajagopal IPS (Retired)

S/o.Late G.Chellappan Pillai

.2.

Aged 66 years, retired as AIG (Public Grievances)
Police Head Quarters, Trivandrum
Retired Superintendent of Police
Residing at 'Padma', TC 9/164-1, O-Street
Jawahar Nagar, Kowdiar, Trivandrum

... Review 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 ... Review Respondents

These two Review Applications having been heard on 7th August, 2019 the Tribunal on 9th August, 2019 delivered the following :

ORDER

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

The two OA Nos.545/2016 and 546/2016 were allowed through a common order by this Tribunal vide order dated 19.06.2019. The applicants in the Original Applications were 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**, which was affirmed by the Hon'ble High Court and Hon'ble Supreme Court. The primary issue on which they had approached the Tribunal was over the fact that they should not be required to accept a lower level of emoluments after selection to the IPS as compared to

.3.

what they were getting in the State Police Service. In other words, they were aggrieved by the fact that their pay was fixed at a stage lower than that of their basic pay in SPS after induction to the IPS. They were also aggrieved by the fact that their juniors in SPS and who were later inducted to the IPS after the applicants, had got their pay fixed at a stage higher. The operative portion of the Order of this Tribunal reads:

“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 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. ”

2. RA Nos.33/2019 and 34/2019 are filed by the applicants in O.A Nos.546/16 and 545/16 praying to recall Annexure RA-1 order and seeking fresh orders directing the respondents to step up the pay of the applicants with that of Shri.T.K.Rajmohan on implementation of the order of this Tribunal in O.A 407/2014 dated 7.1.2016 and to give them all consequential benefits including the arrears, revision of pension etc. In other words, even after drawing the benefit as allowed in the OA, the applicants' pay has been fixed at a lower level than that of Shri T.K.Rajmohan who was junior to them in the SPS as well as the IPS.

3. We have heard Shri R.Sreeraj on behalf of the review applicants and Shri V.A.Shaji, learned ACGSC for Respondent-1 and Shri M.Rajeev (GP) for

Respondent-2&3 It would be useful to refer to the order of this Tribunal in OA No.1552 of 1998 which had been upheld by the Hon'ble High Court of Kerala and the Apex Court in **T.M.Somarajan & others Vs. Union of India**, which is quoted at some length.

"7. We have examined the enormous bulk of pleadings made by the rival parties. The main question is how the pay of the applicant, a State Police Service officer, is to be fixed on his induction on promotion into the All India cadre, viz, IPS, before his confirmation in the State cadre came and after his confirmation orders with retrospective effect were issued. Admittedly, the applicant was yet to be confirmed in the post of Superintendent of Police (Non-IPS) when he was selected to and joined the IPS on 8.12.95 (Afternoon). So it was necessary to fix his pay with effect from 9.12.95 with reference to his actual pay on that date in the State cadre at the appropriate stage in the IPS as applicable at the relevant point of time. He was permanently appointed to the IPS cadre with effect from 31.12.95. More than 18 months thereafter, by order dated 5.7.97, the applicant was confirmed in the State Police Service with retrospective effect from 4.5.94. Thus, the applicant's pay was required to be recalculated from 9.12.95 taking note of the fact that he was confirmed in the post of Superintendent of Police (Non-IPS) with effect from 4.5.94. That takes us to the rules regarding pay fixation relevant to the applicant's case. Indian Police Service (Pay) Rules 1954 (referred to as Rules) governed these matters. Rule 4(5) is the relevant Rule that deals with the type of cases under which the applicant comes. Rule 4(5) states as under:

“The initial pay of an officer of a State Police Service who has been appointed to hold a cadre post in an officiating capacity in accordance with Rule 9 of the Indian Police Service (Cadre) Rules, 1954, shall be fixed in the manner specified in Section III of Schedule II.

Now, one has to see Section III of Schedule II of the Rules to understand the manner in which the applicant's initial pay in the IPS is to be fixed. Section III of Schedule II reads as follows:

“The initial pay of a member of the State Police Service appointed to officiate in a cadre post shall be fixed in accordance with the principles enunciated in Section I of the Schedule.

Thus it becomes necessary to fix the initial pay of the applicant by going back to Section I of Schedule II. Section I of Section II is extracted below:

“Section I : Fixation of initial pay of promoted officers falling under Rule 4(3).

(1) The initial pay of a promoted officer shall be fixed at the stage of the senior time-scale of the Indian Police Service equal to his actual pay in the lower scale or his assumed pay in the lower scale, as the case may be, increased at the rate of one increment in the senior time scale of the Indian Police Service for every three years of service in the State Police Service. The resultant increase shall be subject to a minimum of Rs. 150 and a maximum of Rs. 200 over his pay in the State Police Service:

Provided that:

.5.

- (i) Where, however the amount arrived at after the addition of such minimum or maximum increase corresponds to a stage in the senior time scale of the Indian Police Service, the initial pay shall be fixed at that stage; and where it does not correspond to a stage in the senior time scale of the Indian Police Service, the initial pay shall be fixed at the next higher stage of the scale; and
- (ii) for the purpose of this Clause, service in the State Police Service shall include such service in a former State, now merged in the State concerned, as may be equated to service in the State Police Service by the Central Government in consultation with the State Government concerned.

Explanation: In the case of a promoted officer whose actual pay in the lower scale of the State Police Service is equal to or above the minimum of the senior time scale of the Indian Police Service, the rates of increment shall be equal to the rates admissible in the senior time scale of the Indian Police Service at the stage to which the actual pay corresponds or if there is not such stage, the next lower stage.

- (2) The initial pay of a promoted officer who is substantive in the higher scale of the State Police Service shall be fixed at the stage of the senior time scale of the Indian Police Service next above his actual pay in the higher scale.

Provided that in a case where the pay in the senior time scale of the Indian Police Service calculated in accordance with clause (1) is higher than that admissible under this Clause, the promoted officer shall be entitled to such higher pay.

- (3) A promoted officer, who, at the time of his appointment to the Indian Police Service was officiating in the higher scale of the State Police Service and whose initial pay in the senior time scale of the Indian Police Service is fixed in accordance with Clause (1), shall, in case his officiating pay in the higher scale is higher than the initial pay so fixed in the senior time scale of the Indian Police Service, be entitled to a personal pay equal to the difference provided that the State Government certifies that the promoted officer would have continued to officiate in the higher scale but for his appointment to the Indian Police Service. The personal pay shall be absorbed in future increments and increases in his pay, if any, including special pay, additional pay and any other form of pay.

8. It is quite clear that the applicant became a confirmed Superintendent of Police in the State Police Service (i.e. Non-IPS) with effect from 4.5.94. There cannot be any controversy about the position that when the applicant was appointed to the cadre of IPS with effect from 8.12.95 afternoon, he was holding the substantive post of Non-IPS Superintendent of Police. His substantive pay as Superintendent of Police (Non-IPS) as on 9.12.95 was Rs. 4650 per month plus Special Pay of Rs. 100/-. Needless to say, he was drawing pay in the higher scale of the State Police Service as on 9.12.95 when he was appointed to the All India Cadre (IPS). In Accordance with Clause 2 of Section I of Schedule II, the applicant's pay should be fixed at the stage of the senior time scale of the IPS next above his actual pay in the higher scale. Actual pay in the higher scale is Rs. 4650/- plus Special Pay of Rs. 100/- as has already been seen. However, the pay calculated as per Clause 1 is higher than that admissible under Clause 2. Therefore, in accordance with the proviso to Clause 2 of Section I of Schedule II, the applicant should be entitled to

.6.

such higher pay as is calculated in terms of Clause 1. In other words, the applicant would be entitled to get his initial pay in IPS fixed at Rs. 4900/- per month in accordance with the proviso to Clause 2 Section I of Schedule II. 'Actual pay' is defined as the pay whether in the lower scale or in the higher scale to which a member of the State Police service is entitled by virtue of his substantive position in the State Police Service. In view of the above, the applicant's pay in his substantive post being Rs. 4650/- plus Special Pay of Rs. 100/- has to be reckoned for purposes of pay fixation. The claim of initial pay at Rs. 4900/- to be fixed in the light of the above, therefore appears to have reasonable basis.

9. Now turning our attention to the restriction taken recourse to by the respondents, apparently, in view of the definitions of the expressions "higher scale" and "lower scale" contained in definition Clauses (iii) and (iv) of Schedule II of the IPS (Pay) Rules, we find that the meanings attributed to these two expressions as appearing in the definitions need to be taken as such unless the context otherwise requires. (emphasis supplied). In our considered opinion, the context in which the applicant's pay fixation is to be considered does require the expression "higher scale" to be understood in its most natural and unrestricted meaning.

10. In the case of State Government officers, the first pay revision after 1.1.1986 took place with effect from 1.7.88. However, it was only after the next pay revision which was brought into force with effect from 1.3.92 as per G.O.(P) No. 600/93/Fin. Dated 25.9.93 that the applicant became a confirmed Superintendent of Police (Non-IPS) and then got into the All India cadre (IPS) on 9.12.95. We are inclined to agree with the applicant's view that if the definition of 'higher scale' contained in the rules is taken as the basis for fixation of the applicant's initial pay in the IPS cadre on 9.12.95, it would bring about unreasonable result and cause unintended hardship to the applicant. It is in this connection, that Clause (6) of Section III of the Rules whereby specific power is conferred on the Central Government for removing the unreasonableness in the rules is expected to be called in aid. Clause (6) of Section III of Schedule II is as follows:

"Notwithstanding anything contained in any clause in the section, where the Central Government is satisfied that the operation of any clause or clauses of this section causes undue hardship in any particular case, it may, by order, dispense with or relax the requirements of that clause or clauses, as the case may be, to such an extent and subject to such exceptions and conditions it may consider necessary for dealing with the case in a just and equitable manner."

The respondents' stand that the Special Allowance of Rs. 500 sanctioned by the State Government to the promoted IPS officers like the applicant was intended to remove the pay disparity is incorrect as it is clear from A-8 and A-9 that the Special Pay of Rs. 500 was by way of rectifying the disparity arising out of the implementation of the Central scale for the State Government employees with effect from 1.3.92 and not as a protection against the drop in the basic pay of Non-IPS officers of the State Police service appointed to IPS after 1.3.92 and that it had no bearing on the fixation of pay in the IPS post based on the principles mentioned in Schedule II of the rules. We have also examined the applicant's submission that the maximum basic pay that could be drawn by a promotee IPS officer could be pegged at Rs. 5700 p.m. being the maximum of the basic pay of the Selection Grade Superintendent in the IPS cadre. The applicant relies on A-11 dated 14.7.95 which provides for protection of pay of officers belonging to the State Police Service appointed to the Indian Police Service under the IPS (Appointment by Promotion) Regulations, 1955. It would appear that the necessary amendment made to this effect in the Department's notification G.F.R. No. 437(E) dated 9.5.94 provide for the protection of State Police Officers' pay to the extent of Rs. 5700, i.e. the maximum of the Senior Scale

of the IPS and that the amendment would be effective from the date of its publication i.e. 9.5.94. However, the hardship that was caused from the date of effect of the said notification was taken note of and it was, accordingly, decided to make the amendments notionally effective from 1.1.86 on which date the revised pay scale in respect of All India Services came into effect on the recommendations of the Vth Central Pay Commission. One of the important aspects of the said notification is that while the promoted officers would get their pay fixed in the light of the amendment with effect from 1.1.86, no arrears of pay on account of the same period from 1.1.86 to 8.5.94 would be admissible. It would, therefore, be clear that the respondents' averment in the reply statement to the effect that the definition of higher scale was necessary to limit the maximum pay to the State Police Officers on promotion to the IPS cadre vis-a-vis their direct recruit counterparts is unsound.

11. As has been observed earlier, there existed a serious anomaly. According to us, the anomaly in the fixation of initial pay of the applicant in the IPS is further accentuated by the higher basic pay allowed to be drawn by some of his juniors who were not found fit for promotion along with him and who were given promotion to the IPS cadre on subsequent date or dates. A-12 Pay Slip in respect of Shri M. Sethuraghavan inducted into the IPS in 1997 illustrates this. Pay fixations allowed to other juniors like S/Shri Somasundara Menon Shamsudeen, Vijayan etc. who were inducted into the IPS much after the applicant are other cases in point. This anomalous situation was not lost even on the second respondent for in his communication dated 3.12.99 (A-15), he admits that his office was not in a position to rectify the anomaly as pointed out by the applicant. The above communication (A-15) was in reply to the applicant's detailed representation in A-14 whereby he had highlighted not only the anomaly in his initial pay fixation in the IPS per se but also the anomalous position arising out of higher pay and allowances being given to his juniors who were promoted to the IPS cadre later than himself. In our considered opinion, the rules would have never intended to produce such a result. But the rule makers, we have reason to believe, have apprehended that in the implementation of the rules there might be inequities or anomalies. Wherever such unintended injustice is done and hardship is caused, law provides for administrative remedy. If no such remedy is provided, Courts can interfere. It is this remedy that is provided for in Clause (6) of Section III of Schedule II quoted supra. The applicant endeavoured to persuade the respondents to remove the anomaly and, as we have observed, the second respondent recognised at one stage that there indeed was an anomaly. We do not know why this anomaly was not removed. We are afraid, the respondents have failed in their duty to apply their mind judiciously in the matter of removing the anomaly. The applicant has been unjustly left in the lurch drawing less salary than those who received promotion later than himself in the same cadre. Dealing with a fairly similar situation, the Hon'ble High Court of Kerala, in the case of Madhavan Assan v Kerala SSI & E. Corp. Ltd., 1990 (2) KLT, 871, after referring to the concept of equal pay for equal work being an aspect of the doctrine of equality enshrined in Articles 14 and 16 of the Constitution, and surveying a body of case law including several Supreme Court decisions like those reported in AIR 1982 SC 879 and AIR 1988 SC 1504, made the following observations:

“7. The question involved is a fundamental one, in that a senior in a category is made to draw basic pay less than that drawn by his junior for the simple fortuitous circumstances that he stood promoted earlier than his junior and the pay revision for the junior was effected in the lower category in the interregnum. I should think that it is a fundamental principle of service law that when everything else is equal, a senior in service should receive a salary higher than, or at least equal to, that drawn by his junior. To relegate him to a lower pay is arbitrary and negation of the rule of equality enshrined in Art. 14 of the Constitution. It looks obnoxious and revolting to good sense that a senior should get lower pay merely because he was promoted earlier.

8. It is true that the principle adopted by the first respondent that the pay drawn in the lower category should be protected on promotion is valid, but then it is equally incumbent on them to see that the interests of the senior who was already in a higher category are protected by appropriate revision of his pay, so that he does not stand in a worse position than his junior in relation to the pay drawn by him. The payment of lesser salary for an admitted senior, who is similarly situated, than his junior, amounts to an unequal treatment meted out to equals, there by violating Art. 14 of the Constitution. The fact that respondents 2 and 3 were promoted after the pay revision on 1.7.1980 does not put them in a separate or different category. Such a differentia between persons promoted before or after 1.7.1980 has no rational basis in so far as it relates to fixation of salary.

12. Respectfully following the ratio of the findings of the High Court's decision cited above, we are inclined to hold that the respondents erred in not judiciously examining the anomaly that really existed and highlighted by the applicant in his various representations, particularly, with reference to the provision of Clause (6) of Section III of Schedule II which are on the statute book precisely for the purpose of removing anomalies of this type.

13. Accordingly, we dispose of this application with the following orders/directions:

- i) The impugned order A-1 dated 2.9.97 is set aside.
- ii) The impugned order A-2 dated 4.2.98 which practically reiterates the interpretation of the Rules as given in A-1 and the conclusions drawn therein is set aside.
- iii) The impugned order A-16 dated 22.5.2000 of the DOPT is set aside.
- iv) 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 9.12.95 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 allowances than his juniors some of whom were not even found fit to be promoted to the IPS along with him 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 Superintendent of Police (Non-IPS) as on the date of his promotion to the IPS.
- v) The above orders and directions shall be carried out and the consequential benefits including arrears, if any, flowing therefrom granted to the applicant at an early date and in any case, within a period of four months from the date of receipt of copy of this order.

14. The parties shall bear their respective costs."

4. The Apex Court in 2010 (1) SCC (L&S) 15 - Union of India Vs. T.M.

Somarajan & Ors. upholding the order of this Tribunal held as under:-

"14. 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. With these observations, we feel that there is no infirmity in the orders of the Tribunal and the High Court. We do not see any merit in this appeal which is, accordingly, dismissed."

5. The ratio of the decision of this Tribunal in OA No.1552/1998 squarely covers the instant OAs. Accordingly, we direct the first respondent to pass appropriate orders removing the anomaly of the reduction of pay in the IPS cadre vis-a-vis the pay in the State Police Service cadre which the applicants were drawing at the time of their promotion to the IPS and also to step up the pay of the applicants to that of their junior Shri T.K.Rajmohan, IPS with all consequential benefits including arrears by invoking Clause 6 of Schedule 2 of IPS (Pay) Rules as was done in the case of Shri.T.K.Rajmohan within a period of three months from the date of receipt of a copy of this order. RAs allowed.

(ASHISH KALIA)
JUDICIAL MEMBER

(E.K.BHARAT BHUSHAN)
ADMINISTRATIVE MEMBER

sd

List of Annexures

R.A 33/19:

1. **Annexure RA-1** – True copy of the order dated 19.6.2019 in O.A.No.180/00546/2016 of the Hon'ble Tribunal.

R.A 34/19:

1. **Annexure RA-1** – True copy of the order dated 19.6.2019 in O.A.No.180/00545/2016 of the Hon'ble Tribunal.
-