

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No.180/00455/2016

Tuesday, this the 5th day of November, 2019

C O R A M :

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

1. Vijayan.A., IPS, 56 years,
S/o.R.Appukutta Panicker,
Additional Excise Commissioner (Enforcement),
Kerala, Thiruvananthapuram, Excise Head Quarters,
Vikas Bhavan, Thiruvananthapuram.
Residing at Vaikuntam, Nampi Gardens 62,
Manakkadu P.O., Kamaleswaram,
Thiruvananthapuram – 695 009.

2. Gopi.P.S., IPS, 57 years,
S/o.P.R.Sankunni,
Commandant, India Reserve Battalion, Thrissur.
Residing at Valiyaparambil House,
Kottur P.O., Thrissur – 680 013.

3. Ashok Kumar.P., IPS, 57 years,
S/o.M.Padmanabhan,
District Police Chief, Alappuzha.
Residing at Sindoora, Near St.Thomas,
Residential School, Mukkolakal P.O.,
Thiruvananthapuram – 695 014. ...Applicants

(By Advocate Mr.K.R.Radhakrishnan Nair)

v e r s u s

1. Union of India represented by Secretary to Government,
Ministry of Home Affairs, New Delhi – 110 012.

2. The State of Kerala,
represented by its Chief Secretary,
Secretariat, Thiruvananthapuram – 695 001.

3. The Accountant General (A&E) Kerala,
Indian Audit and Accounts Department,
M.G.Road, P.B.No.5607,
Thiruvananthapuram – 695 039.

4. The Senior Accounts Officer,
Indian Audit and Accounts Department,
Office of the Accountant General (A&E),
M.G.Road, P.B.No.5607,
Thiruvananthapuram – 695 039.
5. The Secretary,
Ministry of Personnel Public Grievances & Pension,
(Department of Personnel & Training),
Government of India, New Delhi – 110 001.
6. The Secretary,
Department of Expenditure,
Ministry of Finance, New Delhi. ...Respondents

**(By Advocates Mr.T.C.Krishna, Sr.PCGC [R-1, 5 & 6]
& Mr.M.Rajeev, GP [R-2-4])**

This application having been heard on 30th October 2019, the Tribunal on 5th November 2019 delivered the following :

O R D E R

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

The applicants have filed this O.A challenging Annexure A-12 by which their request for refixation of pay in the IPS cadre has been rejected. The reliefs sought by the applicants are as follows :

1. Pleased to call for the records leading to passing of Annexure A-12 order of second applicant and set aside Annexure A-12 order and similar orders issued to the applicants 1 and 3 also.

2. Pleased to declare that the applicants are entitled to have their pay fixed in the IPS cadre on the basis of the pay drawn by them in the Non-IPS cadre as Superintendent of Police, in the scale of pay of Rs.39100/- with Grade Pay of Rs.8700/- of the 1st applicant, Rs.37400/- - Rs.67000/- in the time scale of selection grade Superintendent of Police in respect of 2nd and 3rd applicants in the IPS cadre, from their respective date of eligibility.

3. Please to issue necessary direction to the respondents to grant pay fixation in IPS as per Annexures A-3, A-6 and A-9 representations and salary slips respectively and pay the arrears, within a time frame fixed by this Hon'ble Tribunal, in view of the decisions rendered by this Hon'ble Tribunal in Annexure A-13.

and

.3.

4. such other reliefs as this Hon'ble Tribunal deems fit and proper.

2. The applicants, three in number, were all members of the Kerala Police Service and while working as Superintendent of Police (Non-Cadre IPS) they were appointed to the Indian Police Service and allocated to the cadre of Kerala. It is submitted that while fixing the pay of the applicants on promotion to IPS, the protection of pay sanctioned to IPS Officers appointed on promotion by IPS (Appointment by Promotion) Regulation, 1955 and the relevant provisions contained in the IPS (Pay) Rules 1954 and the IPS (Pay) Seventh Amendment Rules 1997 were erroneously denied to them resulting in reduction in pay from the pay they were drawing as substantive non-IPS Superintendent of Police.

3. It is submitted that according to Rule 4(5) of the IPS (Pay) Rules, 1954, 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 (Cadre) Rules, 1954 shall be fixed in the manner specified in Section III of Schedule II which reads as follows :

Section III of Schedule II : 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 1 of the IPS Pay Rules.

Section I(3) of Schedule II : 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.

4. The applicants submit that when the above rules are applied, necessarily their pay cannot be fixed as done by the 3rd and 4th respondents by reducing the pay from the pay they were drawing as substantive non-IPS Superintendent of Police.

5. The applicants have relied on the judgment of the Hon'ble Apex Court in **Union of India v. T.M.Somarajan & Ors. (2010) 1 SCC 129**. The applicants submitted that based on the aforesaid judgment of the Hon'ble Apex Court, this Tribunal had directed the respondents to rectify the anomaly in their fixation of pay on promotion to IPS from the cadre of Superintendent of Police (non-IPS) and ordered to pay consequential arrears arising therefrom. O.A.No.514/2013 and connected cases refer. The relevant portion of 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** reads as follows :

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>
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Officers with pay upto Rs. 29490/- in pay band 3	Rs. 6600/-
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Officers with pay between Rs. 29491 to Rs. 30690 in pay band 3	Rs. 7600/-
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.5.

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.

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.

6. As grounds the applicants submit that the ratio of the decision of the Hon'ble Apex Court in *T.M.Somarajan's* case has to be uniformly applied and they seeks extension of benefit of the aforesaid decision.

7. 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 officer 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 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.” 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.

8. The State Government has also filed their reply statement wherein they have submitted that the initial pay of a promoted officer shall be fixed in accordance with the principles laid down in Section I of Schedule II of All India Service – IPS (Pay) Rules. In the case of promoted SPS officers who are in the higher scale of Superintendent of Police (non-IPS),

the initial pay should be fixed at the stage of the senior time scale of IPS next above his actual pay in the higher scale vide clause (2) of Section I of Schedule II, provided (a) the basic pay of a promoted officer should not on any account be fixed below the minimum of the Senior Time Scale of IPS and (b) the pay of the promoted officer fixed should not at any time exceed the basic pay which he would have drawn in IPS as a direct recruit on that date if he had been appointed to IPS on the date on which he was appointed in State Police Service ie. date of regular appointment as Deputy Superintendent of Police. Further in the amendment to IPS (Pay) Rules, 2007 under sub-rule (3) of rule 5 in Schedule I, it has been defined that the actual pay means the pay to which a member of the State Police Service is entitled by virtue of his substantive position in the cadre of that service of in view of his having continuously worked in a temporary or officiating capacity in a higher post for a period of 3 years or more after following the prescribed procedure, provided the State Government have not revised the scale of pay applicable to the State Police Service after 1st day of January 2006. If the pay scales have been revised subsequent to the 1st day of January 2006, the dearness allowance, dearness pay, interim or additional relief sanctioned by the State Government after the 1st day of January 2006 and merged in the revised pay scales, shall be excluded. Moreover, Rule 7 of Schedule I in the amended IPS (Pay) Rules, 2007 emphasizes that notwithstanding anything contained in these rules, the pay of a promoted officer shall not at any time exceed the basic pay which he would have drawn as a direct recruit on that date if he had been appointed to the IPS on the date on which he was appointed to the State Police Service. And finally they have submitted

that while fixing the pay of the officer, they had strictly followed the Manual provisions and orders issued by the Government of India/MHA from time to time.

9. We have heard the learned counsel for the parties and perused the records available on record. The matter has been covered by the various orders of this Tribunal which have been confirmed by the Hon'ble High Court and Hon'ble Supreme Court. The applicants seeks extension of the benefits of the aforesaid decisions in their case also. The order of this Tribunal dated 22.2.2002 in **O.A.No.1552/1998 (T.M.Somarajan v. Union of India & Ors.)** reads as follows :

13(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 9.12.1995 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.

10. The respondents took up the matter in appeal before the Hon'ble High Court of Kerala in O.P.No.22783/2002 which dismissed the same. Thereafter, the respondents went to Hon'ble Apex Court in C.A.No.9041/2003. 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.

11. As recently as in June 2019 an identical issue has been considered by this Tribunal in O.A.No.332/2016 and connected cases wherein this Tribunal 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 view of the above facts and circumstances of the case, we have no hesitation to hold that the principle laid down in the aforementioned orders is squarely applicable in this case also. Therefore, the O.A is 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.

(Dated this the 5th day of November 2019)

ASHISH KALIA
JUDICIAL MEMBER

E.K.BHARAT BHUSHAN
ADMINISTRATIVE MEMBER

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List of Annexures in O.A.No.180/00455/2016

- 1. Annexure A-1** – A copy of the Notification No.I-14011/28/2014-IPS.I(II) dated 5.10.2015 issued by the 1st respondent.
- 2. Annexure A-2** – A copy of the order G.O.(Rt.) No.7545/2015/GAD dated 12.10.2015.
- 3. Annexure A-3** – A copy of the Proforma-A Application dated 9.11.2015 submitted by the 1st applicant to the 3rd respondent.
- 4. Annexure A-4** – A copy of the salary slip dated 21.12.2015 of the 1st applicant.
- 5. Annexure A-5** – A copy of the salary slip dated 8.10.2015 of the 1st applicant.
- 6. Annexure A-6** – A copy of the representation dated 15.3.2016 submitted by the 2nd applicant to the 3rd respondent.
- 7. Annexure A-7** – A copy of the salary slip dated 21.12.2015 of the 2nd applicant.
- 8. Annexure A-8** – A copy of the salary slip dated 26.3.2015 of the 2nd applicant.
- 9. Annexure A-9** – A copy of the letter dated 29.3.2016 submitted by the 3rd applicant to the 3rd respondent.
- 10. Annexure A-10** – A copy of the salary slip dated 21.12.2015 of the 3rd applicant.
- 11. Annexure A-11** – A copy of the salary slip dated 13.2.2015 of the 3rd applicant.
- 12. Annexure A-12** – A copy of the Order No.GE01/C/IPS/G-14/3249 dated 29.3.2016 issued by the 4th respondent to the 2nd applicant.
- 13. Annexure A-13** – A copy of the Common Order dated 7.1.2016 in Original Application Nos.514/2013, 516/2013, 349/2014, 407/2014, 639/2014, 650/2014 and 923/2014 of this Hon'ble Tribunal.
- 14. Annexure R-1A** – A copy of the letter dated 14.3.2016 sent by 1st respondent to the Chief Secretary, Government of Kerala.
