

**\*IN THE HIGH COURT OF DELHI AT NEW DELHI**

*Judgment Reserved on July 29, 2013*

*Judgment Delivered on August 05, 2013*

+ W.P.(C) 5594/2012

RAVINDER KUMAR ..... Petitioner

Represented by: Petitioner in person

versus

UNION OF INDIA AND ANOTHER ..... Respondents

Represented by: Mr.Aditya Dhawan,  
Advocate for R-2

**CORAM:**

**HON'BLE MR. JUSTICE PRADEEP NANDRAJOG**

**HON'BLE MR. JUSTICE V.KAMESWAR RAO**

**V.KAMESWAR RAO, J.**

1. The challenge in this writ petition is to the orders dated November 08, 2011 and January 09, 2012 passed by the Central Administrative Tribunal in Original Application No. 79/2011 and Review Application No.407/2011 in Original Application No.79/2011 whereby the Tribunal dismissed the Original Application and Review Application filed by the petitioner.

2. From the perusal of para 3 of the impugned order it is seen that the petitioner had raised two issues; one for grant of stagnation increments with effect from May 27, 2008 in accordance with IPS Rules, 2007 as amended by the IPS (Pay) Amendment Rules, 2008 and the second issue was that his grade pay has not been enhanced in accordance with the notification dated March 03, 2010. In that regard he relied upon Note 3 of Rule 3 of IPS (Pay) Rules, 2007.

3. To understand the controversy raised in this petition, it is necessary to note certain facts. They are that the petitioner joined Indian Police Service on November 13, 1977 and was borne on the cadre of State of Himachal Pradesh.

4. On March 22, 2004 he was compulsorily retired from service. He challenged his compulsory retirement before the Central Administrative Tribunal, Chandigarh Bench. The Tribunal set aside the order of compulsory retirement.

5. Pursuant thereto he was reinstated in service on June 5, 2008 and accordingly he joined the duties on June 12, 2008.

6. On April 9, 2009 the pay of the petitioner was fixed with effect from May 27, 2008 in the revised structure.

7. Not being satisfied with his pay fixation the petitioner made a representation to the authorities for re-fixation of his pay. In his representation the petitioner stated as under:

*“4. Your attention is also drawn to the 1<sup>st</sup> proviso to Rule 6 (d) of the IPS (Pay) Rules, 2007 as amended by the IPS (Pay) Amendment Rules, 2008 that reads as follows:*

*“Provided that in that case of persons who had been drawing maximum of the existing scale for more than a year as on the 1<sup>st</sup> day of January, 2006, the next increment in the revised pay structure shall be allowed on the 1<sup>st</sup> day of January, 2006. Thereafter, this rule shall apply.”*

*5. The basic pay of the undersigned as per pay-slip issued by the Controller (Fin. & Accts.), Department of Personnel, Govt. Of H.P. was Rs. 20000 w.e.f. 1<sup>st</sup> July, 2002 ₹20,000 was the maximum of the existing pay scale of 16400-450-20000 for members of IPS in the rank of DIGP. The undersigned had been drawing this basic pay of 20000 till 21.03.2004.*

6. *Therefore, keeping both the above facts in view, one stagnation increment became due to the undersigned on 1<sup>st</sup> January, 2006, and the figure under the heading “Existing emoluments as on January 1, 2006-(a) Basic Pay (including stagnation increments, if any)” should be 20,450 instead of 20000.”*

8. The aforesaid contention of the petitioner was with respect to the grant of stagnation increments. In so far as his claim for fixation of pay in terms of Note 3 under Rule 3 of the IPS (Pay) Rule, 2007, the petitioner in his representation dated June 17, 2009 stated as under:

*“8. Secondly, there is no heading in the table in Annexure-A which caters to the case of member of IPS covered by Note 3 under Rule 3 of the IPS (Pay) Rules, 2007 as amended by the IPS (Pay) Amendment Rules, 2008 that reads as follows:*

*“Whenever any Indian Administrative Service officer of the State or Joint Cadre is posted at the Centre to a particular grade carrying a specific grade pay in pay band 3 or pay band 4, the members of Service, who are senior to such an Indian Administrative Service officer by two years or more and have not so far been promoted to that particular grade, shall be appointed to the same grade on non-functional basis from the date of posting of the Indian Administrative Service officer in that particular grade.”*

9. *The following officers of HP IAS Cadre who are junior to the undersigned by more than 2 years have been posted at the Centre as per details given below:*

| Sl. No | Name                    | Dt. Of Appointment Source of Recruitment | Date Of Birth Year             | Present Post With Effect From | Pay Scale Remarks                         |
|--------|-------------------------|------------------------------------------|--------------------------------|-------------------------------|-------------------------------------------|
| 1      | Dr. Pradeep Kumar Monga | 15/09/1980;RR                            | 20/11/1955<br>1980;HP<br>DELHI | Prl Secy<br>02/01/2007        | PB Rs. 37,400-<br>67,000+GP Rs.<br>12,000 |

|   |                                       |                                 |                                                                                                   |                                                                        |
|---|---------------------------------------|---------------------------------|---------------------------------------------------------------------------------------------------|------------------------------------------------------------------------|
| 2 | Dr. Saroj Kumar Dash<br>22/09/1980;RR | 11/06/1952<br>1980;HP<br>ORISSA | Jt. Secy, D/o<br>Road Tpt &<br>Highways,<br>M/o Shipping,<br>Road Tpt &<br>Highways<br>28/11/2005 | PB Rs. 37,400-<br>67,000+GP Rs.<br>10,000 On CD<br>since<br>28.11.2005 |
|---|---------------------------------------|---------------------------------|---------------------------------------------------------------------------------------------------|------------------------------------------------------------------------|

*10. Therefore, the grade pay of the undersigned should be Rs. 10000 w.e.f. 01.01.2006 and Rs. 12000 w.e.f. 02.01.2007 instead of Rs. 8900 that has been stated in Sr. Nos. 8&11 of the table. This may please be done forthwith."*

9. The Tribunal in the impugned order has concluded as under:

*"6. Having heard the contentions of the parties, we perused the pleadings. It is admitted fact that the applicant's period from 5.03.2004 to 25.05.2008 which is more than 4 years has not been regularised. The Ministry of Home Affairs vide its order dated 26.04.2011 has clearly intimated to the second respondent that the said deemed suspension period cannot be regularized. Pursuant to the above directions of the Ministry of Home Affairs, Government of India, the second respondent-Government of Himachal Pradesh have issued an order dated 29.06.2011, which reads as follows:-*

#### **"ORDER**

*In pursuance of Government of India, Ministry of Home Affairs Office Letter No. 26011/12/2002-IPS. II Department's order of even number dated 21.02.2011 (photocopy enclosed), the Governor, Himachal Pradesh, is pleased to order that the deemed suspension period of Shri Ravinder Kumar, IPS (retd.) i.e. 5.3.2004 to 25.5.2008 shall not count for any service benefits such as for the purposes of counting the period for retirement benefits, grant of increment and other service benefits etc."*

*7. As per the above order, the deemed suspension period is not being considered towards service benefits, which would otherwise means that more than 4 years of his service would be washed away. Even though the belongs to the batch of*

*1977 IPS, he cannot compare himself to the batch of 1977 IAS or 1980 IAS by losing 4 years of service. Be that as it may, both the orders i.e. order dated 26.04.2011 and order dated 29.06.2011 are not under challenge in the present OA.*

*8. It is noted that the period of suspension having been treated not to count for service benefits, these two orders will stand against the applicant's prayers in the present OA. In view of the above, we close the instant OA leaving the same open to challenge the orders dated 26.04.2011 and 29.06.2011. If he succeeds, he is granted liberty to file fresh OA with same set of prayers as in the present OA."*

10. We have heard the petitioner in person and Mr. Aditya Dhawan, learned counsel for respondent No. 2. The petitioner reiterates his submission that he is entitled to the stagnation increment with effect from January 01, 2006 in terms of first proviso to Rule 6 (d) of IPS (Pay) Rules, 2007 as amended by IPS (Pay) Amendment Rules, 2008 and the grade pay.

11. The learned counsel for the respondents would submit in view of the fact that the Ministry of Home Affairs, the Cadre Controlling Authority has decided that the deemed suspension period of the petitioner between the period March 05, 2004 to May 25, 2008 shall not count for any service benefits such as, for the purposes of counting the period, for retirement benefits, grant of increment and other service benefits etc. the petitioner is not entitled to the claims as put forth by him before the Tribunal.

12. On consideration of rival submissions we are of the view that in so far as the issue of stagnation increments are concerned the petitioner is not entitled to the same. This we say so because as per his own averment he is entitled to the same with effect from January 01, 2006. In fact the Rule also contemplates that in the case of

persons who had been drawing maximum of the existing scale for more than a year as on first day of January, 2006 the next increment in the revised pay structure shall be allowed on the first day of January, 2006. In the case of the petitioner he stood compulsorily retired on March 22, 2004. Even though he stood reinstated on June, 2008 the period between March 5, 2004 to June 25, 2008 has not been treated as spent on duty. The Tribunal has noted that the petitioner has not challenged the order of the Govt. of India, Ministry of Home Affairs nor of the Govt. of Himachal Pradesh for treating the period March 5, 2004 to May 25, 2008 for not counting the said period for any service benefits including retiral benefits, grant of increment and other service benefits. We agree with the conclusion of the Tribunal. Further, we note that the proviso clause to Rule 6(d) of the IPS (Pay) Rules 2007, contemplates grant of stagnation increment only to those persons who had been drawing maximum of the existing scale for more than one year as on 1<sup>st</sup> day of January, 2006. In those cases the next increment in the revised pay structure was to be allowed on 1<sup>st</sup> day of January, 2006. The position has to be seen on January 01, 2006 and not before or after that date. Since January 01, 2006 falls between March 5, 2004 and May 25, 2008, surely petitioner was not entitled to the benefit. Hence, the claim to that extent is liable to be rejected.

13. In so far as the aspect of grant of grade pay is concerned the respondent No.2 in its order dated November 27, 2010 has taken the following stand:-

*“The demand of Shri Ravinder Kumar, IPS (now ret’d.) for allowing him higher grade pay in terms of Note 3 under Rule 3 of the IPS (Pay) Rules, 2007 as*

*amended in 2008 has no merit and this decision has also been conveyed to him vide letter No.Home-D-B(3)42/84-Vol-IV(PF) dated 8-11-2010. It is further clarified that due to pendency of departmental enquiry against Shri Ravinder Kumar, IPS (now retd.), he is not entitled for higher grade pay since grant of higher grade amounts to a promotion. His name was considered for the post of IGP (which carries Rs.10,000/- Grade pay) but the recommendations of the Screening Committee were placed in sealed cover due to pendency of two departmental enquiries at the relevant time. Even at present, a departmental enquiry is pending against Shri Ravinder Kumar under AIS (Discipline & Appeal) Rules. Shri Ravinder Kumar already stands compulsory retired as a major punishment in another disciplinary case. Thus the demand of the officer lacks merit.”*

14. A perusal of the above would show that petitioner's name was considered for the post of IGP which carries ₹10,000/- grade pay but the Screening Committee's recommendations were kept in sealed cover due to pendency of two departmental inquiries at the relevant time. The petitioner was compulsory retired as a major punishment in a disciplinary case. Hence he was rightly not granted the grade pay of ₹10,000/- as claimed by him.

15. Even though the Tribunal in the impugned order, on the second issue states '*even though he belongs to the batch of 1977 IPS he cannot compare himself to the batch of 1977 IAS or 1980 IAS by losing four years of service*', the said reasoning may not be a correct reasoning. But we accept the position as has been clarified by the respondent No.2 in its order dated November 27, 2010.

16. In view of what we have stated above we are of the view that the present writ petition filed by the petitioner is without any merit

and the same is dismissed.

17. No costs.

**(V.KAMESWAR RAO)**  
**JUDGE**

**(PRADEEP NANDRAJOG)**  
**JUDGE**

**AUGUST 05, 2013**  
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