

In the Central Administrative Tribunal,

Patna Bench : Patna.

O.A. No. 431 of 1996

Date of order : 24.09.1996

Shri Raghuvansh Prasad Yadav & Ors Applicants.

Versus

Union of India & Ors Respondents.

Counsel for the applicants : Shri Ram Chandra Jha,

Counsel for U.O.I. respondents: Shri Lalit Kishore

Counsel for the State of Bihar : Shri B.N. Yadav

Respondent appears in person.

CORAM

Hon'ble Mr. Justice V.N. Mehrotra, Vice-chairman

Hon'ble Mr. K.D. Saha, Member (A).

O R D E R

Hon'ble Mr. K.D.Saha, Member (A) :-

Heard learned counsel for the parties. In brief, the contention of the applicants is that the respondent No. 7, Shri Brij Bihari Prasad was initially appointed as Sub-Inspector of Police in the year 1966 and was promoted to the cadre of Inspector of Police in due course and then to the cadre of Dy. Superintendent of Police (for short Dy.S.P.) w.e.f. 7.5.1992, but by obtaining orders in several writ petitions filed in the Patna High

Court without making the applicants as parties , he got placement in the seniority of Dy. S.P. at serial No. 7 , superceding 339 Dy. S.P. who are senior to him.

It is submitted that the Patna High Court also passed an order for inclusion of his name in the select list of IPS. ~~1. 2. 3. 4. 5. 6. 7. 8. 9. 10. 11. 12. 13. 14. 15. 16. 17. 18. 19. 20. 21. 22. 23. 24. 25. 26. 27. 28. 29. 30. 31. 32. 33. 34. 35. 36. 37. 38. 39. 40. 41. 42. 43. 44. 45. 46. 47. 48. 49. 50. 51. 52. 53. 54. 55. 56. 57. 58. 59. 60. 61. 62. 63. 64. 65. 66. 67. 68. 69. 70. 71. 72. 73. 74. 75. 76. 77. 78. 79. 80. 81. 82. 83. 84. 85. 86. 87. 88. 89. 90. 91. 92. 93. 94. 95. 96. 97. 98. 99. 100. 101. 102. 103. 104. 105. 106. 107. 108. 109. 110. 111. 112. 113. 114. 115. 116. 117. 118. 119. 120. 121. 122. 123. 124. 125. 126. 127. 128. 129. 130. 131. 132. 133. 134. 135. 136. 137. 138. 139. 140. 141. 142. 143. 144. 145. 146. 147. 148. 149. 150. 151. 152. 153. 154. 155. 156. 157. 158. 159. 160. 161. 162. 163. 164. 165. 166. 167. 168. 169. 170. 171. 172. 173. 174. 175. 176. 177. 178. 179. 180. 181. 182. 183. 184. 185. 186. 187. 188. 189. 190. 191. 192. 193. 194. 195. 196. 197. 198. 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promotion w.e.f. 25.10.1975, his date of promotion to the post of Dy. S.P. should be shifted from 11.7.81 to 25.10.1975 and the respondent No. 7 should also be provided with consequential benefits of the same including arrears of salary of the intervening period, seniority of the cadre of Dy. S.P. etc. The above direction was required to be complied with within a period of three months from the date of receipt/production of the copy of the orders. This was passed on 26.7.1995 in the CWJC No. 697/95. The above order dated 26.7.95 passed in CWJC 697/95 was assailed in LPA vide No. 1018/95 before the Division Bench, which was rejected. Thereafter, the respondent No. 7 approached Patna High Court through MJC No. 385/96 for initiation of contempt of Court Proceedings against the O/Ps for non-compliance of the order of the High Court in CWJC No. 4108/91 and CWJC No. 697/95, read with the order passed in MJC No. 1360/94.

3. While disposing of the above application on 1.5.96, ^(Annexure-13) the learned Single Judge has made the following observation;

" As regards the inclusion of the name of the petitioner in the select list, appropriate formalities must be completed within the aforesaid time, whereafter the matter may be referred to the Central Govt. for final decision, in accordance with law."

4. The learned counsel for the applicants submits that a meeting of the selection committee for promotion of the State cadre police Officers to the cadre of IPS is being held on 26.9.96, which will also consider the question of inclusion of the name of the respondent No. 7 in the select list of IPS for the year 1987 in view of the above order of the Patna High Court. The submission of the learned counsel is that the High Court is not competent to issue such a direction in the matter of promotion to the cadre of IPS, since the matter falls essentially within the jurisdiction of the Central Administrative Tribunal in view of Section 14 of the Administrative Tribunals Act, 1985. The learned counsel drew our attention to an order passed on 23.10.92 in CWJC No. 530/92 of the Patna High Court on an application filed by respondent No. 7 before the Division Bench. The above said order (Annexure-12) reads as under;

" 23.10.92- In this application, the petitioner has prayed that he is entitled to be recruited to the IPS cadre by way of promotion. In this view of the matter, in our opinion, as this matter falls within the jurisdiction of the Central Administrative Tribunal in view of the Section 14 of the Administrative Tribunals Act, 1985, this Court has no jurisdiction to entertain this application. The petitioner may move to the Central Administrative Tribunal.

With the aforementioned observation, this petition is permitted to be withdrawn."

The learned counsel relies on the decision in Sampat Kumar vs. Union of India reported in 1987 (SLR) page 182. His further submission is that the respondent No. 7 does not fulfil the essential qualifications as laid down in the relevant Indian Police Service (Appointment by Promotion) Regulation 1955, in that he has not completed 8 years of service as Dy.S.P. His further contention is that by virtue of this order, the respondent No. 7 will be illegally superseding 339 senior Dy. S.P.s including the applicants, which is not only irregular but will also cause demoralisation in the cadre. In the circumstances, the applicants pray for an interim order that pending disposal of the OA, the Union of India and the U.P.S.C. be restrained from considering the case of promotion of respondent No. 7 in the cadre of IPS by way of appointment by promotion.

5. Shri Lalit Kishore, the Addl. Standing Counsel appearing for the Union of India respondents submitted that in view of the specific provision in the Administrative Tribunals Act, 1985 and also decision in the case of Sampat Kumar vs. U.O.I. (Supra), the High Court has no jurisdiction to issue orders with regard to inclusion of the name of the respondent No. 7 in the select list for appointment to the cadre of IPS by way of promotion.

6. The respondent No. 7 also appeared before us and made his submissions. He drew our attention to the various orders passed by the Patna High Court allowing him the benefits of seniority in the cadre of Inspector w.e.f. 27.7.71, in the cadre of Dy.S.P. w.e.f. 25.10.75 as also consequential benefits. He submitted that Shri Ram Yash Singh, his erstwhile junior has been appointed in the cadre of IPS by promotion in the year 1987 and accordingly his name should also be considered for such promotion. The respondent No. 7 also admits that he filed OA 241/94 before this Tribunal praying for issue of direction to send his name in the select list of IPS for the year 1994 and to consider his case for promotion to the IPS. His further prayer in that OA is for issuance of direction to the respondents to grant him retrospective seniority from the date his junior has been given the IPS cadre.

The above said OA stands admitted and notices has been issued but no W/S has been filed so far. The matter was adjourned sine die on 18.4.96 as no Division Bench was available at that time.

7. It is well settled that the matter with regard to the appointment of the ^{State} ~~Bihar~~ cadre Police Officers to the cadre of IPS by way of promotion comes under the jurisdiction of the Central Administrative Tribunal and

the High Court has no jurisdiction in the matter. Presumably, the learned Single Judge has made the above observation with regard to the inclusion of the name of respondent No. 7 in the select list for IPS due to the submission of the learned Govt. Pleader of the State Govt. The submission of the Govt. Pleader was to the effect that as regards the other consequential benefits referred to above, there may not be any difficulty in complying with the order but as regards the regular rank of Superintendent of Police which is in the cadre of IPS, the respondents O/Ps can immediately include the name of the petitioner in the select list but the final decision is to be taken by the Central Govt. as per IPS cadre rules. Normally, it is not for the Court or the Tribunal to issue specific direction for appointment/promotion or inclusion of the name of a person in the select list for the purpose of promotion. The directions are issued only for consideration of such person or persons concerned for appointment/promotion or inclusion in the select list in accordance with the provision of the relevant rules.

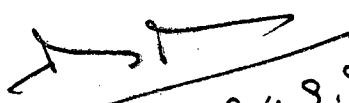
8. In the case of promotion of the State Police Officers to the cadre of IPS, a duly constituted committee is to make selection in accordance with the provision of rule 5 of the IPS (Appointment by ¹⁹⁵⁵ Regulation) and the list is then forwarded to the UPSC. The list as finally approved by the

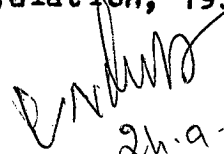
UPSC constitutes the select list.

9. In the conspectus of facts and circumstances of the case, we admit this application for final hearing. The respondents are directed to file W/S within four weeks. Rejoinder, if any, may be filed within two weeks thereafter.

10. As regards the interim order, we direct the respondents that in case there is meeting of the selection committee for considering the promotion of Bihar Cadre Police Officers to the cadre of IPS, the case of respondent No. 7 may also be considered alongwith other eligible officers for inclusion in the select list for appointment by promotion to the cadre of IPS in accordance with law with due regard to the provisions of the IPS (Appointment by Promotion) Regulation, 1955.

Received for
Respondent No. 7
27/9/96.
Authority letter kept
W. B. (c)
27/9/96


(K.D. Saha) 24.9.96
Member (A)


24.9.96
(V.N. Mehrotra)
Vice-chairman

Received by
Indu Bala Jha
30/9/96
BS/
Received for respondent
At Kumar
Alo to Mr. Lalit Kishore
30/9/96