

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,

PATNA BENCH : PATNA

Date of Decision:- 13/11 Nov. 2001

1. Registration No.80 of 1996

Bimalesh Prasad Sinha, Son of Late Sri Batukeshwar Singh, resident of village Sattar, P.S. Nabinagar, District Aurangabad, at present posted as Superintendent of Police, Pakur, District Pakur,

.... Applicant

- By Shri L.N.Das, Advocate

Versus

1. The Union of India through the Ministry of Home Affairs, New Delhi.
2. The Union Public Service Commission, through its Secretary, Dholpur House, New Delhi.
3. The State of Bihar through Secretary, Home (Police), Main Secretariat, Patna.

... Respondents

- By Shri H.P.Singh, Additional Standing Counsel for official respondents
Shri G.P.Singh with Shri M.K.Rai,
Advocate for private Respondents.

2. Registration No. OA-624 of 1995

Chandrika Prasad Kiron, Son of Late Chathu Bhagat, resident of Noonki Chouraha, P.S. Khajekala, Patna City, District Patna, at present posted as Superintendent of Police, Samastipur, District Samastipur

- By Shri L.N.Das, Advocate ... Applicant
Versus

1. The Union of India through the Secretary, Ministry of Home Affairs, New Delhi.
2. The Union Public Service Commission through its Secretary, Dholpur House, New Delhi.

3. The State of Bihar through Secretary, Home (Police),
Main Secretariat, Patna.

.... Respondents

- By (1) Shri H.P.Singh, Additional Standing Counsel for office Respondents-Union of India
- (2) Shri B.N.Yadav, Standing Counsel for State of Bihar
- (3) Shri M.K.Rai, the counsel for private Respondents

Coram:- Hon'ble Shri L.R.K.Prasad, Member (Administrative)
Hon'ble Shri Lekshman Jha, Member (Judicial)

ORDER

Hon'ble Shri Lekshman Jha, Member (Judicial):-

1. In both the aforesaid O.A.s common questions of facts and law are involved and they arise out of the same cause of action with similar prayer for reliefs. Hence, they are taken up together and are being decided by this common order.
2. Originally these applications have been filed with prayer for the reliefs for direction to the Ministry of Home Affairs (Respondent No.1) to send its concurrence to the Union Public Service Commission (Respondent No.2) and for further direction to the Union Public Service Commission to approve and notify the select list, and also, for direction to the Respondents Nos. 1, 2 & 3 to make appointments of the applicants in I.P.S. cadre before the expiry of the year 1995, against the existing vacancies. Further prayer is also made

for restraining the Respondents from holding a select committee meeting till the approval and notification of the promotions of the applicants in the cadre of I.P.S. from the select list of 1995 and for direction to the respondents to give them seniority from 1995, the year of appointment, in case for any reason, the order of appointment is delayed beyond 31.12.95. However, the select list in respect of the applicants could not be finalised within the year 1995 and they (the applicants) could be appointed in the cadre of IPS only in the year 1996, resulting in loss in weightage and year of allotment to them. Hence, by amendment, the prayer for reliefs for direction to the Respondent No.1 to assign the applicant year of allotment as 1989, in stead of 1990, as per the provision of Rule 3 of Indian Police Service (Appointment by promotion) Regulation, 1955 (for short, Regulations) and also, for a direction to calculate the weightage with respect to them with effect from the date when the vacancies occurred or alternatively with effect from June, 1995, since when the applicants had been holding the cadre post, has been made.

3. Shorn of the details, the undisputed facts are as follows:-

The applicants were appointed in the cadre of Bihar State Police Service as Deputy Superintendent of Police. They were promoted from time to time on due dates in appreciation of their service records. It is stated that as per the Regulation 5 of the Regulations, a meeting of the

Select Committee for appointment by promotion in the cadre of I.P.S. was held on 28/29.3.1995, in which a list of 8 State Police Officers to be promoted to the cadre of I.P.S. was prepared. Shri Bimlesh Prasad Sinha (applicant in OA-80 of 1995) was graded as outstanding and was placed at serial No.1, and Shri Chandrika Prasad Kiron (applicant of OA-624 of 1995) was also graded as 'outstanding' and was placed at Serial No.2, in the select list of 1995. The select list was so prepared against one existing vacancy and 5 anticipated vacancies. The second vacancy also occurred with effect from 1.5.1995. In other words, there were two existing vacancies on the dates these O.As. were filed. The State of Bihar had also sent its concurrence as required under Regulations and they were waiting for notification for appointments to the I.P.S. cadre from the select list of 1995. However, in the meantime, one Meghnath Ram, who is at Sl. No.4 of the select list, filed OA-337 of 1995 before this Tribunal with prayer for direction to the State Government to send integrity certificate in his respect to the Union Public Service Commission and for stay of approval and publication of select list of 1995. The applicant, Chandrika Prasad Kiron, intervened in this OA and this Tribunal finally disposed of the OA on 29.8.95, with the following observations:-

"In fact, the posts on which these two private respondents could be appointed are stated to be vacant and ready or will be ready in a very short time. After hearing the counsel for the parties we

vacate the interim stay imposed by this Tribunal on 10.7.95, and continued thereafter. Thus, the Union Public Service Commission shall, if it considers fit and proper, finalise the select list of 1995 and notify for appointment by promotion of Shri Bimal Kishore Sinha and Shri Chandrika Prasad Kiron".

Thus, the decks had been cleared for appointment by promotion to the cadre of I.P.S. to the applicants with effect from the date of vacancies i.e. with effect from 31.1.1995 and 30.4.1995 respectively. But, the select list of 1995 could not be notified latest by 31.12.95. It was notified only on 7.3.96 (Annexure-A-1 to MR-229 of 1996 out of OA-80/96). It is stated that the applicants had no role to play in the notification of the select list of 1995, and as a matter of rules as well as the matter of precedence the select list of the year 1995, should have been positively notified by the Respondents latest by 31.12.95. The notification of Respondent No.1 vide Government of India, Ministry of Home Affairs, MHA's letter No.18/22/66-AIS-III dated 26.11.66, specifically states that the appointment of select list officers to the service can be notified against the vacancies in promotional posts retrospectively from the date they have been holding cadre post continuously in accordance with rule 2 of the cadre rules. The applicants are said to have been holding cadre posts of I.P.S. officers from June, 1995 and, therefore, they should have been notified in the I.P.S. cadre in the year 1995. But the Respondent No.1 delayed the matter by making correspondence with the Respondent No.2 with regard to the case of one Shri M.K. Mishra, who could not be assessed.

by the select committee on account of non-availability of A.C.Rs. The Respondent No.2, the Union Public Service Commission, turned down the request of the Respondent No.1, Union of India to review the case of Shri Mishra and requested the Government of India for its view on the recommendation of the select committee urgently to enable them to approve the select list vide letter dated 23.11.95 (Annexure-A-2 to MP-229 of 1996, arising out of OA-80/96. The State of Bihar also wrote such letters to the Respondent No.1 on 30.9.95, 21.12.95, 5.1.96 and 8.2.96 vide Annexure-3 series to the MP-229 of 1996 arising out of OA-80/96. But, the Respondents could not notify appointment of the applicants within the year 1995. They could be notified and appointed to the cadre of I.P.S. from 7.3.96, as a result of which, the weightage of the applicants had been calculated from the year 1996, instead of 1995. The Respondent No.1 issued the list of seniority of promotees I.P.S. officers fixing the seniority of the applicant from the year of appointment in 1996 vide Annexure-A-5 to the MP-229 of 1996 arising out of OA-80/96 and they have been allowed 1996 year of allotment instead of 1995. Hence, the O.As. with the prayer for the reliefs as stated above.

4. The Respondent No.1, Union of India in their counter have stated that the Central Government in terms of Regulation 6(a) of the promotion Regulation is required to convey its observation on the recommendation of the selection committee to the Union Public Service Commission. Accordingly, the Central Government conveyed its recommendation to the

Union Public Service Commission on 29.1.96, and thus, discharged its statutory function.

5. The State of Bihar in their written statement as well as in their supplementary written statement have stated that 24 officers of the State Police Services were within the consideration zone for promotion to the rank of Indian Police Service and all the 24 candidates should have been assessed on the basis of overall relative assessment. But, the 24th Officer, Shri Manoj Kumar Mishra was not assessed at the time of Select Committee meeting. The State Government sent its concurrence to the Central Government as well as the Union Public Service Commission vide letter dated 30.4.95. But it came to know that the case of Shri Mishra was not assessed for which the State Government was not responsible. It is further stated that the vacancy in the cadre of Indian Police Service after select committee meeting was delayed by six months, as the State Government extended the services of three officers under Rule 61(1) of All India Service Death-cum-retirement benefit Rules, 1965. These three officers were one Maurish Kiro, I.P.S. who retired on 1.3.96, next one, Shri R.E. V. Koojur, who after availing extension, retired on 1.5.96, and the 3rd, Shri Balmiki Sharan Sharma, retired on 30.6.96. However, the State Government sent its proposal for appointment of the applicants and one Shri Megh Nath Ram to the Indian Police Service to the Ministry of Home Affairs, Government of India, vide letter dated 29th February, 1996, along with necessary papers by special messenger which was received by the Ministry on 1.3.96, and they were appointed vide

Notification dated 7.3.96 with effect from the date of issue of notification. Accordingly, proposal for assignment of the year of allotment and seniority in respect of them were sent to the Ministry of Home Affairs vide letter dated 6.5.96.

6. Heard Shri L.N.Das, learned counsel for the applicant, Shri H.P.Singh, Additional Standing counsel for the Government of India, Respondent No.1, Shri B.N. Yada v, learned counsel for the State of Bihar, and Shri G.P.Singh, Senior counsel for the private Respondents and perused the record.

7. The moot point for consideration is as to whether the applicants are entitled to the allotment of year/seniority from the year 1995, when they were placed in the select list against the clear vacancy of that year or from the date of notification of appointment in 1996.

8. It is admitted position that the select committee meeting for appointment by promotion in the cadre of I.P.S. was held on 28/29.3.95, in which, Shri Bimlesh Prasad Sinha, the applicant in OA-80/95, was graded as outstanding and was placed at Serial No.1, and Shri Chandrika Prasad Kiron (applicant of OS-624 of 1995) was also graded as 'outstanding' and was placed at Sl.No.2, in the select list. There was one clear-cut vacancy on the date the selection committee meeting was held, and the second vacancy also occurred with effect from 1.5.95. In other words, there were two existing vacancies on the date

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the OAs. were filed. It is also admitted position that the State of Bihar sent its concurrence as required under Regulation through the Respondent No.1 on 30.9.95 and 21.12.95.

9. It appears that the Union of India (Respondent No.1) could not send its recommendation/observation to the Union Public Commission as, in the meantime, Shri Megh Nath Ram, who was at Sl. No.4 of the select list, filed the OA-337/95 before this Tribunal with prayer for direction to the State Government to send integrity certificate in his respect to the Union Public Service Commission for approval and publication of the select list of 1995. The applicant, Chandrika Prasad Kiron, intervened in the OA, which was finally disposed of on 29.8.95, with the direction to the Union Public Service Commission to finalise the select list of 1995, and to notify the applicants for appointment by promotion. Thus, there was no hurdle for the Union of India to send its recommendation to the Union Public Service Commission for notification of the applicants to the cadre of I.P.S. during the year 1995 itself.

10. The learned counsel for the Respondents contended that 24 officers were considered by the selection committee, 24th officer but Shri Mishra could not be assessed by the select committee, who was within the consideration zone, and, therefore, the matter was delayed. He further contended that three officers were granted extension which expired by June, 1996 and, therefore, the matter was delayed. The contention of the learned counsel for

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the Respondents ~~do~~ not appear to hold water
for the reasons that Shri Mishra was 24th candidate
and the Union Public Service Commission had already
rejected the prayer of the Union of India for his
assessment for want of ACR, and, admittedly, the
applicants were appointed in March, 1996 i.e.
to say, before the period of extension granted
two
to the aforesaid officers. The State Government
has failed to bring out nexus between the
appointment of the applicant and the extension
granted to those three officers.

11. The learned counsel for the applicants
placed reliance on the decision of the Hon'ble
Supreme Court in Devendra Narain Singh & another
Versus the State of Bihar & Others, as reported in
AIR 1997 SC page 595, and contended that the
facts and circumstances of the instant case are
squarely covered by the Decision of the Hon'ble
Supreme Court in the aforesaid case. The appellant
in the aforesaid case before the Hon'ble Supreme Court
was eligible for being considered to be included
in the select list required to be prepared in
the year 1983, on the direction of the Hon'ble
Supreme Court. Pursuant to the direction of the
Hon'ble Apex Court, the selection committee met on
19.9.85, and prepared a select list of 24 officers,
including the appellant, for promotion to the Indian
Police Service and the appellants were ultimately
appointed to the cadre of IPS on different dates
in the year 1987. Thereafter, the Ministry of Home

Affairs issued the order on 4.5.92 assigning the appellant the year of allotment as 1981. The appellant challenged the same order of the Union Government claiming that the year of allotment should be 1979, on the ground that the select list, though was factually prepared in the year 1985, but in the eye of law, it related to the year 1983. The Union Government contested the application before the Tribunal on the ground that, no doubt, the Hon'ble Supreme Court had directed to draw a select list for the year 1983, and the same was drawn on 9.9.85. The appellant having been appointed in the year 1987, pursuant to his name being included in the select list prepared on 9.9.85, their year of allotment had been rightly fixed under Rule 3 (iii) of the Regulations. The Hon'ble Apex Court, taking into consideration the rival contention of the learned counsel of both the sides, framed the question for consideration as to whether the Union Government and the Central Administrative Tribunal were justified in coming to the conclusion that it is the date of factual inclusion of the appellant's name in the select list and his appointment to the Indian Police Service cadre, which would govern the year of allotment, notwithstanding the fact that earlier the Hon'ble Patna High Court and the Hon'ble Supreme Court had given direction that the appropriate

authorities had committed error in not preparing the list for the year 1983. The Hon'ble Supreme Court after considering the relevant provisions in the Rules and Regulations for appointment and for determination of the year of allotment came to the conclusion that the the Union Government had committed error in treating the appellant to have been included in the select list only from the year 1986, which is the factual year of their inclusion in the list and thereby determining the year of allotment. The Hon'ble Supreme Court further observed that the Tribunal had committed error in ignoring the fact of the earlier direction of the Court and legal fiction by which it must be held that the appellant was included in the select list of the year 1983. Thus, though the list was finally approved by the Union Public Service Commission in 1986, but in the eye of law it must be deemed to be listed for the year 1983, when the appropriate authority committed error in not preparing select list for the year 1983. Consequently, the year of allotment of those who were included in the select list was to be determined on the basis that they were in the select list of the year 1983, though factually the list was prepared in the year 1985, and was approved by the Union Public Service Commission in February, 1986. Accordingly, the Union of India was directed to redetermine the year of allotment of the applicant on the premises that they were included in the select list of 1983.

12. we find that the applicants were very much in the select list of 1995 with "Outstanding" grading. There were clear vacancies against which the case of the applicants for promotion to IPS cadre could have been considered by the respondents. This Tribunal had also cleared the deck in 1995 itself. The applicants were already holding cadre post of IPS from June, 1995. The Union Public Service Commission has not filed written statement which, admittedly, had already declined to assess Shri Mishra, the 24th officer, for whom the Union of India is said to have delayed the matter. All the more, as said above, even if he would have been assessed, he was not likely to be promoted to the cadre of I.P.S. for want of vacancies in that year. Rule 3 of IPS (Regulation of Seniority) Rules, 1988, governs the method for assignment of year of allotment of IPS officers. Rule 3(ii) relates to determination of year of allotment of a promotee IPS officer.

13. In view of the facts and circumstances of the case, as stated above, notification dated 22.5.95 (Annexure-5 in OA-80 of 1996) is quashed so far as applicants are concerned. The respondents are directed to consider afresh the prayer of the applicants for their appointment in IPS in 1995 and determination of their relative seniority in IPS cadre along with year of allotment on the premises that they were included in the select list of 1995 in the light of principle laid down by Hon'ble Supreme Court in Devendra Narayan Singh's case (Supra) referred to above and pass appropriate reasoned

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order in accordance with law within a period of four months from the date of communication of this order. The OAs referred to above stand disposed of.

14. No order as to the costs.

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Lakshman Jha 13.11.2001 (L.R.K. Prasad)
(Lakshman Jha) 13.11.2001 Member (A)

costs 13.11.01
Member (A)