

CENTRAL ADM INISTRATIVE

PATNA BENCH, PATNA

O.A.No.: 470 of 1996,

(Patna, this Tuesday, the 10th Day of December 2002).

C O R A M

HON'BLE MR. JUSTICE B.N.SINGH NEELAM, VICE-CHAIRMAN.

HON'BLE MR. SARWESHWAR JHA, MEMBER (ADM INISTRATIVE).

Mithilesh Kumar, son of Late Kailash Pati Kumar, age 53 years, presently posted as Additional Member, Board of Revenue, Old Secretariate, Patna, Bihar. APPLICANT.

By Advocate :- Mr. B.P.Pandey,
Sr. Advocate,
Mr. Surendra Pandey.
Vs.

1. Union of India through the Secretary, Department of Personnel & Training, Ministry of Personnel, Public Grievances and Pensions, North Block (Central Secretariate), New Delhi.
2. Secretary, Department of Personnel & Administrative Reforms, Government of Bihar, Old Secretariate, Patna.
3. Shri Shripati Narain Dubey, Managing Director, Bihar State Food & Civil Supplies Corporation Ltd., Sone Bhawan, Birchand Patel Marg, Patna. RESPONDENTS.

By Advocate :- Mr. V.M.K.Sinha,
Sr. Standing Counsel.
Mr. B.N.Yadav,
Standing Counsel (Res. No. 2&3).

O P P R

JUSTICE B.N.SINGH NEELAM, V.C. Backgrounds of the case : The applicant, Shri

Mithilesh Kumar, was appointed to the Indian Administrative Service in 1979 by the Selection from the non-State Civil Services and 1974 he was assigned 1974 as year of allotment (YOA) for the purpose of seniority. Being aggrieved by the notification (1974) allotting YOA from 1974, the applicant filed OA No. 311/93 before Patna Bench of CAT claiming re-fixation of his seniority and year of allotment relying on the judgment in the case of Shri K.Ramchandran Vs. UOI & Ors., so passed in OA 536 of

1986 by the Madras Bench of CAT and also in the case of
Shri K.V.Nambiar, so decided in OA 871 of 1986 by the Ernakulam
Bench of CAT on 28.07.1990, also referring that the norms
so set in Shri Ramchandran's case was also relied upon as
a guideline while deciding the case of Shri T.M.Thomas in
OA No. 851 & 852 of 1996, disposed of on 05.06.1987 by the
Madras Bench of CAT. The said OA bearing OA No. 311 of 1993
before the Patna Bench of CAT was so disposed of on 28.07.95
directing concerned respondents to consider the representa-
tion of the applicant dated, 29.01.1992 and pass appropriate
orders in accordance with law within a period of three months
from the date of receipt of the order. The said representa-
tion was so disposed of by the competent authority which was
not so considered favourably and being aggrieved, the present
applicant filed this OA 470 of 1996 before the Patna Bench
of CAT which was so admitted on 08.10.1996 and the written
statement was filed by the respondents and its rejoinder
by the applicant which are on the record. After hearing the
learned counsel for the parties, the same was so disposed
of by this Bench on 22.11.1999 and the OA was so dismissed
on the grounds detailed therein with no order as to costs.
The applicant then preferred a Review Application, vide R.A.
No.30 of 2000 with a prayer to review the order dated 22.11.99
so passed in OA 470 of 1996 and grant relief to the applicant
as prayed for in the OA. The relief/reliefs, so sought for,
in the OA 470 of 1996, as detailed in the para 8 of the OA,
need not be repeated, but in short, it was for giving

direction to respondents no. 1 & 2 i.e., the Union of India through the Secretary, Department of Personnel & Training, Ministry of Personnel, Public Grievances & Pensions, Central Secretariate, New Delhi, and Secretary, Department of Personnel & Administrative Reforms, Govt. of Bihar, Old Secretariate, Patna, to re-fix the seniority of the applicant in the IAS cadre and the year of allotment be given as 1966 in the background of the decision so taken in Shri K.Ramchandran and Shri K.V.Nambiar cases by the Madras & Ernakulam Benches of CAT, referred above. The said R.A. was also dismissed by the Patna Bench of CAT on 28.09.2001 holding that there was no merit in the R.A. and it is held that no error apparent on the face of record was so found. Thereafter, the applicant filed writ petition, bearing CWJC No. 5009 of 2002 before the Hon'ble Patna High Court challenging the orders dated 22.11.1999 so passed in OA 470 of 1996 dismissing the OA and also challenging the order dated, 28.09.2001, so passed in R.A. No. 30 of 2000 by the Patna Bench of CAT, even dismissing the R.A. In the CWJC No. 5009 of 2002 the relief so sought for/as to set-aside the orders so passed by the Patna Bench of CAT dated, 22.11.1999 and 28.09.2001 claiming vehemently that the case of the applicant stands rather, on a better footing with that of Shri Ramchandran and Shri Nambiar and since year of allotment to them was given as 1966, the respondent concerned be commanded to re-fix the seniority of the applicant in that light in taking it to be also

exceptional case exercising the administrative powers vested under with the Union of India under Residuary Rules deciding on individual merits because in Shri K. Ramchandran's case norms was so set as to give this privilege to the selectee having and above their basic pay of Rs.1000/- prior to the cut-off date so fixed as 01.01.1973 and the applicant, as claim_u comes very much under the same purview that too, in the background when 'N' formula was so withdrawn from 15.02.1977 and in the cases of Shri Ramchandran & Shri Nambiar the provisions so contained in Rule 3(3)(c) of the IAS (Regulations of Seniority) Rules, 1954, and its proviso was not considered to be a block or hurdle for considering their cases. The Hon'ble Patna High Court disposed of the said writ petition bearing CWJC No. 5009 of 2002 on 02.09.2002. The operative portion of the orders so passed by the Hon'ble Patna High Court in the said writ petition runs as under :-

"The petitioner, Mithilesh Kumar will have an opportunity to move the Tribunal for examination of his case afresh. If the Tribunal come to the conclusion that the case of Mithilesh Kumar is likely to affect any other officer such an officer would be entitled to notice so that he may have his/her case before the Tribunal. The Court mentions this because in the past rightly or wrongly some incumbents were left out in presenting their case."

In the circumstances, as the material will be examined afresh the orders of the Tribunal dt. 22.11.1999 and 28.09.2001, contained in Annexures 3 & 4 are quashed.

The High Court would request the Tribunal regard being had to the circumstances that as the petitioner, Mithilesh Kumar would be

retiring in November 2002, if it is possible, the matter may be taken for consideration for rendering the decision before November 2002.

The petition succeeds. There will be no order as to costs."

It is in this background because of the finding so given by the Hon'ble Patna High Court as to hear the OA 470/96, so filed by the applicant, afresh, the same ^{was} so taken-up for hearing.

2. Facts of the case :- Placing in nutshell, the facts of the case in connection with the stand^s so taken by the present applicant, as detailed in this OA so preferred in the year 1996, also in short given in the R.A. bearing R.A.No.30 of 2001 and also in the Misc. Application No. 370 of 2002 so filed before the Patna Bench of CAT with that of the grounds so taken by the applicant detailing his case in CWJC No. 5009 of 2002 so preferred before the Hon'ble Patna High Court (copy of which is also filed for perusal), the matter being remitted back by the Hon'ble Patna High Court while disposing of CWJC No. 5009 of 2002, it is pointed out by the learned Sr. Counsel, Shri B.P.Pandey, that the case of the applicant falls under special category and is fit to be covered under the Residuary matter of Rules because of its being exceptional in nature as was so held in Shri K.Ramchandran and Shri K.V.Nambiar's case. In OA 536/86 in the case of Shri Ramchandran, Madras Bench of CAT set the norm that a non-SCS Officer getting basic pay ~~of~~ of Rs.1000/- or more prior to 01.01.1973 has to be treated on the same footing as the direct recruit of IAS of a particular batch

who was officiating against the Sr. Scale post (in scale of Rs.900-1800/-) and the same principle being adopted in toto in the case of Shri Nambiar when Shri Nambiar filed OA 871/96 and it was accepted and consequently his YOA was upgraded to 1966, so with the case of Shri Ramchandran whose YOA was also upgraded to 1966.

2(i). It is further pleaded that the applicant joined the State Government of Bihar in Class-I post as the District Mining Officer in the year 1968 and from 05.09.1963 to 31.10.1968 he was serving under the Govt. of India Undertaking, NCDC Limited. After joining the State Govt. of Bihar, the applicant got advance eight increments which was highest ever allowed and prior to his joining the first place of posting under the State Govt. as District Mining Officer, Dhanbad, the applicant served in various responsible position under the largest mineral producing Govt. of India Enterprises over five years i.e., from 1963 to 1968 and his services were so obtained in public interest from the Govt. of India Enterprises in National Coal Development Corporation Ltd. (For short, NCDC) and this was a case of switchover from Class-I under Govt. of India Enterprises to Class-I service under the State Government without any break. There was no scope according to the applicant as not to consider at all the services rendered from 1963 to 1968 in NCDC Limited by the Union of India in fixation of seniority, which was, as

submitted, very much ~~considered~~ considered in the case of Shri Nambiar for his rendering services at the initial stage out of his State. In ~~Shri~~ Ramchandran's case the Madras Bench of CAT, ~~assubmitted~~, has set the norms of a cut-off date for non-SCS officers as 01.01.1973 and thus, on the cut selectees drawing basic pay off date Rs. 1000/- p.m. or above, ~~as~~ is treated to be on the same footing as a direct recruit to the IAS of a particular batch and the juniormost direct recruit to IAS for the said batch would only rank above the said non-SCS officers when their cases were equated against each other and the non-SCS officers would also be allotted the same YOA as the juniormost direct recruit of the same batch and this rank-mark judgment in adhoc fixation of seniority of non-SCS Officer still holds field when the 'N' formula ceased to operate. The Ramchandran's case was decided by the Madras Bench of CAT was not appealed against in the Hon'ble Supreme Court by the Union of India and ~~Shri~~ Ramchandran's case regarding assignment of YOA and fixation of pay accordingly was accepted and implemented by the Union of India and ~~as~~ assumed finality and became a bench mark for similar cases of non-SCS selectee officers who drew pay of Rs.1000/- or above ~~on~~ on 01.01.1973. In the case of applicant, it is vehemently argued that the applicant was drawing more than Rs.1000/- as also detailed in comparative chart so submitted before the Hon'ble Patna High Court in CWJC No. 5009 of 2002 ~~as~~ as also the comparative chart incorporated so submitted, verbatim ~~in~~ in its order dated

61 passed
02.09.2002 by the Hon'ble Patna High Court disposing of the said writ petition by referring to the said chart, which is also filed separately in the supplementary affidavit so filed before this Bench after the matter being remitted and the said chart being marked as Annexure-A/5, it is further pointed out that Shri Ramchandran & Shri Nambiar were selected for IAS in 1981, whereas, the applicant was so selected in 1978 itself, those two were appointed to IAS cadre in 1982, whereas, the applicant was so appointed in 1979, whereas, in the case of Shri Ramchandran and Shri Nambiar the initial YOA were 1975 & 1978 respectively with that of YoA so given to the applicant being 1974, when the YOA of Shri Ramchandran and Shri Nambiar got revised and which was so given from 1966, the applicant being placed apparently on the better pedestal, which will be so apparent by looking into the comparative chart so furnished before the Hon'ble Patna High Court as per the direction of the High Court which was not so available before this Bench and which was also not called for while deciding this OA on 22.11.1999, the rather a better case applicant has a good case for consideration and after going through the comparative chart so submitted before the Hon'ble Patna High Court in its order dated 02.09.2002, the Hon'ble Patna High Court was also pleased to observe while quoting para-8 of the orders so passed by this Tribunal in this OA on 22.11.1999 that it has been incorporated therein that the applicant had not clearly demonstrated to place together the comparative information relating

to Shri Ramchandran and Shri Nambiar with that of the applicant

It is in that context it is pointed out that the Hon'ble Patna High Court had made also reference to para-5 of the order of this Bench dated 22.11.1999. After looking into the comparative chart so furnished before the Hon'ble Patna High Court, the Hon'ble Patna High Court has expressed its opinion that the petitioner, Mithilesh Kumar, is at least entitled to have his case re-considered more so as to the Tribunal as earlier felt that he did not have the details and the details have been furnished before the Hon'ble Patna High Court.

The case of Shri Nambiar, referred to above, it is further pointed on behalf of the applicant that the UOI filed SLP and even C.A. was also preferred before the Apex Court bearing C.A.No.1784 & 1755 of 1981 and the findings relating to revising and fixing the YOA of Shri Nambiar in the light of the decision so taken in Shri Ramchandran's case was so sustained by the Apex Court.

2(ii) . . . Challenging the orders so passed by this Bench while deciding this O.A. on 22.11.1999 it is submitted that since the comparative chart unfortunately was not so available before the Bench at that time, it led the Bench to arrive at a wrong decision when the OA got dismissed and the case of the applicant for re-fixation of seniority and assignment of YOA to the year 1966 were not so considered.

It is further pointed out that even Union Public Service Commissioner opined on 29.11.1997 that the applicant's case may be considered and relief could be granted as

had been done at the instance of CAT's order passed by the Madras & Ernakulam Benches of CAT in the cases of Shri Ramchandran and Shri Nambiar in exceptional nature in the interest of justice, equity and fair play., but that was also not so looked into by this Bench while disposing of the OA on 29.11.1999. As regards the letter of the UPSC which is dated 29.09.1997, and which is marked as Annexure-6, the operative part of the said letter runs as under :

".....The Commission is of the view that the basic principles of seniority in Shri Mithilesh Kr. case can be upheld by the Central Govt. by invoking the provisions of Residuary Rules. They advise that the Central Govt. may exercise the administrative powers vested with them under the Residuary Rules so as to consider upgrading the YOA to Shri Mithilesh Kumar in the interest of justice and fair play."

2(iii). It has also been averred that as far as the applicant is concerned he is the seniormost now amongst all the SCS and non-SCS IAS Officers in the country still in the active service and any change of his YOA could not affect adversely seniority of any IAS Officer in that category and this being also not controverted at any time when the matter was remitted to this Bench by the Hon'ble Patna High Court by the learned counsel representing the respondents, as per the observations so made by the Hon'ble Patna High Court while deciding the CWJG No. 5009 of 2002, no necessity was felt and even no such argument was advanced as to notice any other IAS officer to be affected if relief/reliefs so sought for, being granted to the applicant. In this connection, it is also pointed out that in the

written statement so filed on behalf of the respondents in the R.A. so filed even it has been conceded that by the efflux of time the applicant is the seniormost amongst the SCS and non-SCS Officers in the country in active service on this date.

2(iv). On behalf of the applicant it has also been averred that the State of Bihar vide its letter dated, 15th April 1996, letter No. 1/MU-03/94(Part)Ka, had even communicated to the UOI that from 05.09.1963 to 31.10.1968, the applicant was rendering his services to the Govt. of India undertaking NCDC from which on 01.11.1968 he was so taken to Grade-I service in the State of Bihar and the relevant portion (Paragraphs 2 & 3) of the said letter, as referred to above, is quoted below :-

“मेरी तुमारे के अनुग्रहित देव वै यज्ञोऽपि रूपोऽहं
S. L. 63 वे 31.10.68 के अर्थे एरिया के एक मूलिक अधिकारी वै वै
N.C.D.C. नियमित अंकुशित वा विद्युत 1.11.68 त्री 2024
एरिया मेरी-1 की दिक्षा के समाचारित वा लिपि विद्या-
प्रदान की गयी वा इसी दूसरे के आवाले के
मेरी तुमारे के अनुग्रहित वै यज्ञोऽपि रूपोऽहं वै वै
मूलिक अंकुशित वा विद्युत नियमित वै वै
वै वै वै वै वै वै वै वै वै वै वै वै वै वै वै वै वै वै वै
वै वै

  
This letter in Hindi is sent by the Commi-

ssioner-cum-Secretary, Department of Personnel & Administra-
tive Reforms, Govt. of Bihar to the Secretary, Deptt. of

Personnel & Administrative Reforms, Govt. of India, New Delhi,
and this letter also shows that due recognition of the
services of the applicant (1) rendered was so given by the
Govt. of Bihar and the same was so given by the UPSC, as
referred to above and its operative part even quoted and
that being the position it was a fit case for considera-
tion for grant of relief/reliefs so sought for, but this
undue delay, as submitted on behalf of the applicant is pur-
posely made to scuttle the case of the applicant and see
him retiring without granting relief and the YOA so fixed
thus, requires revision to 1966 from 1974 so given wrongly
to the applicant. In the R.A. so filed good number of points
are so taken up as good grounds claimed by the applicant
which were not so considered by this Bench while disposing
of this OA on 22.11.1999 which need not be repeated. In the
written statement so filed by the UOI in this case it is
further submitted that the UOI had almost accepted the
contention of the applicant admitting his rendering service
in NCDC Limited, a Govt. of India Undertaking from 1963
to October 1968 and then in Class I service of the State
Govt. from 01.11.1968 also admitting that the applicant is
the seniormost IAS Officers amongst non-SCS selectee and
the SCS promotee officers in the country who are still in
active service and ignoring all these aspects of the matter
completely by the order dated, 22.11.1999 the OA was dis-
missed arbitrarily and realising the same the Hon'ble Patna
High Court was thus pleased as to remit the matter for fresh

consideration also in verbatim the comparative chart was incorporated in its order dated. 02.09.2001.

2(v). Quoting hence, the prayer so made on behalf of the applicant that it is a fit case for granting the relief/reliefs, so sought for, by commanding the respondents as to re-fix the seniority of the applicant putting his YOA as 1966 so given to Shri Ramchandran and Shri Nambiar as the case of the applicant on all fronts being better than those two and the norms so fixed considering such cases in Ramchandran's case still holds the field and no appeal was so preferred before the Apex Court and in Nambiar's case when appeal was so preferred that was so decided sustaining the order so passed revising the YOA of Shri Nambiar to 1966 and even in Shri T.M.Thomas case in OA 851 & 852 of 1996, so decided on 05.06.1987 on the basis of the principles and norms so adopted in Shri Ramchandran's case, the benefit of which be extended to the applicant because of his case standing on a better pedestal which would be apparent by having a glances of the comparative chart so furnished at the instance of the Hon'ble Patna High Court (Annexure-A/5).

2(vi). On behalf of the State of Bihar & Jharkhand in their written statement so filed, it is submitted that mainly in such circumstances the onus is upon the Union of India, the respondent no.1, as to take a decision and as regards the Union of India, being represented by the Shri V.M.K.Sinha, the Ld. Sr. Standing Counsel, reference is made to the written statements filed on behalf of the

respondent no.1 at different stages which are also looked into and in narrow compass ~~the~~ putting the stand so taken by the respondent no.1 when such privileges were so given in the case of Shri K. Ramchandran and Shri K.V.Nambiar and even the norms so adopted was applied in the case of the Shri P.M.Thomas at the instance of the order of the different Benches of the CAT though, it has been submitted that the provisions of Rule 3.(3), (c) of the IAS (Regulations of Seniority) Rules 1954, and its proviso do not leave much of scope for consideration of the case of the applicant on individual merit taking the same to be an exceptional case and granting relief, so sought for, by taking shelter of administrative orders/residuary rules. It is further pointed out that the orders so passed in Shri Ramchandran's and Shri Nambiar's case were implemented as per the directions of the orders so passed by the Madras & Ernakulam Benches of the CAT. As regards the relief/reliefs, so sought for, on behalf of the applicant, if granted, would effect any other officer or not, on this score on behalf of the respondents no specific instance is cited with regard to any officers at present in active service in the category from which the applicant is appointed as IAS. As regards the UPSC recommendation so sent, as argued on behalf of the applicant and its operative part even quoted above, from the respondents' side, it has not been controverted and so with regard to the letter in Hindi so sent by the Govt. of Bihar to the Secretary, Department of Personnel, Public Grievances & Pensions, New Delhi. In short, it is also argued on behalf of the respondents that though 'N' formula was withdrawn w.e.f. 15.02.1977, but

even Shri Ramchandran and Shri Nambiar as per the IAS (Regulations & Seniority) Rules, particularly, Rule 3(3) (c) of 1954, in normal course were not expected to have revision of their YOA though so given and implemented by the UOI by the orders of the Madras/Ernakulam Benches of the CAT. In course of arguments, however, on behalf of the respondents nothing specific has been argued particularly relating to the comparative chart so submitted (Annexure-A/5) which was so submitted firstly, at the instance of the Hon'ble Patna High Court in the writ petition as to ~~see whether the applica-~~ is distinguishable ~~case of~~ ~~nt's case~~ with that of the ~~Shri Ramchandran and Shri Nambiar~~ or not ?

3. Issue for adjudication :- In the context of the above facts of the case, detailed above, with regard to the applicant's case and resisting the claim of the applicant, the arguments so advanced on behalf of the respondents particularly respondent no.1, in our considered opinion, the issue for adjudication while considering the case afresh after examining the documents available on the record only is as to whether the relief/reliefs so sought for by the applicant for re-fixing his seniority and revising his YOA to 1966, in the light of the orders so passed in the case of Shri K. Ramchandran with that of Shri K.V. Nambiar, being also sustained as far as the revision of YOA is concerned even by the Apex Court when SLP was so preferred and then Civil Appeal bearing no. 1784 & 1755 of 1981 in the case of ~~Shri~~ K.V. Nambiar, can well be said to be justified particularly also looking into

the comparative chart so submitted with regard to the services rendered by Shri Ramchandra and Shri Nambiar and the applicant was submitted belatedly before the Hon'ble Patna High Court in the CWJC No. 5009 of 2002 very much made available to us for perusal. For met?

4. Findings :- We have given anxious consideration to the rival contentions of both the sides and perused whole of the record. By going through the spirit of the orders so passed by the Hon'ble Patna High Court, the comparative chart so submitted before the Hon'ble Patna High Court on behalf of the applicant as verbatim also quoted in Hon'ble High Court's order dated, 02.09.2002, is of much importance which admittedly was not made available before this Bench at the time of disposal of the matter i.e., this OA on 22.11.1999 which led this Bench on 22.11.1999 as to have no clear picture of the matter as also incorporated in the orders dated 22.11.1999 so passed by the then Vice-Chairmen sitting with Member (A), Mr. L. Hinglana, since retired. Since the comparative chart so supplied is vital and carries much importance, at the cost of repetition, though the same verbatim detailed in the order of the Hon'ble Patna High Court, is detailed below :

	<u>"K. Ramachandran</u>	<u>K.V. Nambiar</u>	<u>Petitioner</u>
1) Pre State Service (Joining date)	x	Sardar Patel Institute of Economics, Ahmedabad as Economist.	5.9.63 to 31.10.68 Govt. of India Undertaking NCDC Ltd.
2) State Service 1951 - As junior Engineer promoted as Assistant Engineer on 28.12.1955.		11.07.72 - State Service under Govt. of Kerala as Economist.	01.11.1968 - Inducted into Class-I Service of Govt. of Bihar.

3) Salary drawn in 1971.	Rs.1050/- in July 1971.	x	On 01.01.1971 above Rs.1000/-.
4) Salary drawn in 1972.	Rs.1050/- in July 1971.	On 11.07.1972 Rs.1000/- fixed pay.	Rs.1,100/- as per calculation of increments.
5) Selected for IAS	1981	1981	1978.
6) Appointed IAS	1982	1982	1979.
7) Initial allotment of YOA	1975	1978	1974.
8) Revised YOA	1966	1966	1971 which subsequently was again challenged to 1974).

4(i). Comparatively by the examination of facts and the comparative chart so supplied, detailed above, we find that there is much of substance in the argument so advanced by the applicant's side with regard to the case of the applicant being also identical with that of Shri Ramchandran and Shri Nambiar particularly, Shri Nambiar being also given weightage of services ^{of} serving ~~as~~ outside his State as the applicant rendering services from 05.09.1963 to 31.10.1968 in the Govt. of India Undertaking, NCDC. The applicant, it seems, is appointed in the year 1979 as IAS, whereas, the rest of the two in 1982 and YOA initially was given as 1975 in case of Shri Ramchandran and ~~in~~ 1978 to Shri Nambiar which were so revised as per the orders so passed by the Madras and

Ernakulam Benches of CAT, referred to above, to 1966 i.e., to them YOA was revised to 1966, whereas, after this relief being granted when the applicant on the same footing made a prayer for revising his YOA also to 1966 because of his case being on a better pedestal, which is till today is 1974, for which long back in the year 1996 this OA was so filed, the matter could not be finally decided. The case of the applicant finds also support when the UPSC in a way recommended his case to the UOI for consideration and even the Govt. of Bihar also accepted rendering his service in Govt. of India Undertaking, NCDC, from 05.09.1963 to 31.10.1968. Not only this, the orders so passed in Shri Ramchandran's case while deciding OA 536 of 1986 by the Madras Bench of CAT, is filed for perusal with that of the case of Shri Nambiar, so decided in OA 871 of 1986 on 28.07.1990, by the Ernakulam Bench of CAT. The orders so passed in Shri T.N.Thomas case is also made available so passed by the Madras Bench of CAT on 05.6.87 in OAs no. 851 & 852 of 1996. The Apex Court orders in C.A. No. 1784 & 1755 of 1981 are also looked into and the Apex Court has sustained that part of the order which related to revision of YOA to Shri Nambiar. Over and above, all these, we also find that the norms so set in Shri Ramchandran's case (Supra) by Madras Bench of CAT fixing the cut-off date as 01.01.1973 for the officers of this category drawing pay of Rs.1000/- to be considered and above on that date by looking into the comparative chart so made available, it is clear that the applicant was also drawing above Rs.1000/- p.m. and thus, on the cut off date

comes under the same category with that of Shri Ramchandran and Shri Nambiar to be considered for re-fixation of his seniority and revision of his YOA as non-SCS officers on the basis of the powers vested with the UOI under the Residuary Rules deciding the case on individual merit so as to consider upgrading the YOA of the applicant also considering re-fixation of seniority in that light i.e., as per the orders so passed in OA 536 of 1986 by the Madras Bench and OA 871/86 so passed by the Ernakulam Bench of CAT in Nambiar's case. Since the copies of the aforesaid orders are made available, we have also carefully gone through the same. Even in Shri Nambiar's case, the case of Shri Ramchandran is so discussed at length in which Shri Ramchandran was granted the relief/reliefs and his YOA was even revised to 1966 vide OA 536 of 1986, need not be repeated.

5. In the background, after going through the orders so passed, as referred to above, in Shri Ramchandran's and Shri Nambiar's case, being given the relief/reliefs, so sought for, particularly, their YOA also being revised and were given YOA as 1966 and finding the applicant's case also on the similar footing by closely scrutinising the comparative chart so submitted by the applicant in this regard, though filed belatedly at the stage when CWJC was taken up for hearing by the Hon'ble Patna High Court, we thus, come to the conclusion that the non-grant of relief or reliefs, so sought for, with regard to the reconsideration and re-fixing seniority of the applicant also assign-

assigning YOA of 1966 to the applicant will be against the principles of equity and fair-play and the case of the applicant is also to be considered in the hands of the concerned respondents deciding on individual merit because the applicant was also drawing basic salary of above Rs.1000/- p.m. on the cut-off date i.e., on 01.01.1973, as the norms set in Shri Ramchandran's case. Since it has been controverted from the respondents' side that the grant of reliefs, so sought for, will effect any of the officers in service all through India, as claimed by the applicant, we thus, while hearing the matter did not find any scope for issuing notice to any of the officers ~~exx~~ in this regard as indicated to be issued if situation so warrants while disposing of the writ petition by the Hon'ble Patna High Court.

6. Consequently, the requirement of justice, equity and fair-play requires the applicant, Shri Mithilesh Kumar, as to grant the same benefit as availed and enjoyed by Shri K.Ramchandran and Shri K.V.Nambiar, by the orders so passed by the Madras & Ernakulam Benches of CAT, referred to above, and also in the light when in course of arguments on behalf of respondent no.1 nothing is said particularly in connection with the comparative chart so submitted indicating in any way that the case of the applicant stands on a different footing. Since, the scrutiny of the comparative chart so given with that of the materials so available on the record keep the applicant, Shri Mithilesh Kumar, on the

same footing and on the cut-off date i.e., on 01.01.1973, in K. Ramchandran case the norms so set putting this date as cut-off date, the applicant was also drawing basic salary of above Rs.1000/- p.m., he can, in our considered opinion, be also very well considered on individual merit in exceptional case and granted such relief upgrading his YOA as claimed to 1966 also re-fixing his seniority by the concerned respondent(s).

7. In the result, this OA so filed by the applicant thus, stands allowed to that extent. The YOA so assigned earlier to the applicant as 1974 by notification also stands set-aside. The concerned respondent(s) as to

⁶¹ ^{consider} re-fix the seniority of the applicant and revise the YOA of the applicant in the light of the observations and directions so made above as expeditiously as possible at any rate not beyond three months from the date of communication/production of this order. The re-fixation of pay, however, to be made in accordance with law and the provisions in vogue, though the standard as was taken in the case of Shri K.Ramchandran ^{be kept in mind}, and Shri K.V.Nambiar. Copies of this order be furnished to all concerned lawyers. Since the applicant, as per the applicant's case, is to superannuate on 31.12.2002 itself, his retirement will not in any way stand in the way as to award consequential benefits pursuant to revised assignment of YOA also by re-fixing his seniority in that light.

The matter thus, stands, accordingly, disposed of. Parties to bear their own costs.

skj

SARWESHWAR JHA
MEMBER (A)

B.N.SINGH NEELAM
VICE-CHAIRMAN