

**CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH, PATNA
O.A. No. 811 of 2005**

Dated : 4th ^{April} February, 2012

C O R A M

Hon'ble Mr. A.K.Jain, Member [Administrative]
Hon'ble Ms. Bidisha Banerjee, Member [Judicial]

1. Kumud Kumar Varma, son of Murari Sharan Verma, resident of 11 Patliputra Colony, P.S. - Patliputra, Patna.
2. Saheb Akhtar, son of Mojidduddin, resident of Makdumpur, P.S. - Ara Muffasil, District - Bhojpur, presently posted as Superintendent of Police, Chhapra.

Applicant

By Advocate : Shri M.K.Rai.

Vrs.

1. The Union of India through Ministry of Home Affairs, New Delhi.
2. The Under Secretary, Ministry of Home Affairs, Govt. of India, New Delhi.
3. The Union Public Service Commission, through its Secretary, Dholpur House, New Delhi.
4. The State of Bihar through its Chief Secretary, Old Secretariat, Patna.
5. The Secretary, Department of Home [Police], Govt. of Bihar, Old Secretariat, Patna.
6. The Director General and Inspector General of Police, Govt. of Bihar, Old Secretariat, Patna.

Respondents.

By Advocate : Shri Shekhar Singh [State Respondents]
Shri R.K.Choubey, [UOI].

O R D E R

Bidisha Banerjee, Member [Judicial] :-

The OA is filed seeking quashing of impugned order dated 05.01.2004 [Annexure-A/9] whereby and whereunder the year of allotment to IPS cadre of the applicants have been revised from existing 1990 to 1991 and, accordingly quashing of letter no. 15011/1995-IPS dated 01.05.1997 whereby which the applicants were assigned 1990 as year of allotment of D.P.S. Cadre was modified.

2. The impugned order speaks as follows :

BB

“O R D E R

Whereas S/Shri Nandu Prasad, Kumud Kumar Verma, Saheb Akhtar and Madan Mohan Ojha were appointed by promotion to the IPS w.e.f. 19.12.1996 ^{on the} basis of their inclusion at Sl. No. 1 to 4 respectively in the Select List of 1995-96 prepared by the ^{the} Selection Committee and approved by the UPSC vide Notification No. F-7/3/17/96-IAS ⁷⁹ dated 30.10.1996 and;

2. Whereas in terms of Rule 3[3][ii] of IPS [Regulation of Seniority] Rules, 1988 S/Shri ^Nandu Prasad, Kumud Verma, Saheb Akhtar and Madan Mohan Ojha were assigned 1990 as their year of allotment in the IPS vide Government of India's letter No.I.15011/5/97-IPS.I dated 1st May, 1997 and;

3. Whereas Shri Kamla Prasad Singh, a SPS Officer of Biahr Cadre was not considered by the Selection Committee whil preparing the Select List of 1995-96 as his name did not figure in the zone of consideration as per the seniority of SPS officers which was provided by the State Government to the Selection Committee and;

4. Whereas, subsequently in 1997, the State Government revised the seniority of Shri Kamla Prasad Singh in SPS as per the directions of Patna High court in CWJC No. 8173/96 and;

5. Whereas Shri Kamla Prasad Singh went to CAT, Patna Bench against non inclusion of his name in the zone of consideration for the Select List of 1995-56 and the Hon'ble CAT, Patna Bench in its judgement dated 02.11.1999 in OA No. 83/1998 directed as under :

“The application is allowed. The case of the applicant for inclusion in the Select List of 1996 shall be placed before the Selection Committee for review, and for that purpose, the meeting of the Committee shall be convened as soon as possible and in any case before the end of this month. In case the applicant comes to be included in the Select List, and becomes entitled to promotion on that basis, the order of promotion shall be issued as soon as possible, preferably during this month before his retirement. There shall be no order as to costs and;

6. Whereas in compliance of the orders of Hon'ble CAT, Patna Bench a RSCM was convened by UPSC on 30.11.1999 to consider the name of Shri K.P.Singh in the Select List of 1995-96 and that Shri Singh figured at the top of the list recommended by the Selection Committee of the officers to be included in IPS and;

7. Whereas Shri Kamla Prasad Singh filed CA No. 46/99 for

implementation of Hon'ble CAT's directions in OA No. 83/98 and;

8. Whereas the Hon'ble Tribunal in CCPA No.46/99 observed as under :

"We are sure, that whatever confusion stood in the way of implementing the earlier order so long would be removed by the above observation and hence, in the fitness of thing, the official respondents would proceed to comply the relevant order within six weeks from the date of communication of this order. There shall be no order as to costs. The Misc. Application, bearing M.A. No. 207 of 2000, also stands disposed of accordingly" and;

9. Whereas while fixing the seniority of Shri K.P.Singh in the Select List of 1995-96, it was observed that the seniority of S/Shri Nandu Prasad, Kumud Kumar Verma, Saheb Akhtar and Madan Mohan Ojha is bearing affected as in the rules prepared by the SCM, the name of Shri Singh figured above the names of above four officers and that as per the provisions of Rule 3[3][ii] if the IPS [Regulation of Seniority] Rules, 1988 as they stood and applicable on the date of the appointment of Shri K.P.Singh in IPS, he was entitled to be assigned 1991 as his year of allotment and;

10. Whereas S/Shri Nandu Prasad, Kumud Kumar Verma, Saheb Akhtar and Madan Mohan Ojha had been allotted 1990 as their year of allotment as per the Government of India's letter No. 15011/5/97-IPS.I dated 1st May, 1997, and in terms of proviso to Rule 3[3][ii] if IPS [Regulation of Seniority] Rules, 1988, their year of allotment was to be restricted to the year of allotment which was to be assigned to Shri K.P.Singh i.e. 1991 and;

11. Whereas S/Shri Kumud Kumar Verma, and Prasad, Saheb Akhtar and Madan Mohan Ojha were served a show cause notice as to why their year of allotment should not be changed to 1991 instead of 1990 in view of the position explained above and;

12. Whereas the Government of Bihar has intimated that it has received the representation of all the four officers and has furnished in its comments that since all the four officers have mainly objected to the appointment of Shri K.P.Singh to IPS w.e.f. 19.12.1996 and not to the year of allotment and fixation of seniority, the representations do not hold good and;

13. Whereas the contents of the representations have been examined in this Ministry and it has been found that the points raised and the grounds mentioned by the representationists have already been considered by the Competent Authority and it has been decided to appointment Shri Kamla Prasad Singh w.e.f. 19.12.1996 as per the directions of Hon'ble CAT and

accordingly he is to be assigned his year of allotment as 1991;

14. Now, therefore, the year of allotment of S/Shri Kumud Kumar Verma, Nandu Prasad, Saheb Akhtar and Madan Mohan Ojha is revised from existing 1990 to 1991 as per details below :

Sl. No.	Name of the Officers	Date from which holding rank not below that of Dy. SP or equivalent	Date of appointment to IPS	Completed years of service rendered in the rank not below that of Dy. SP or equivalent	Total weight age in years in terms of the IPS [Regulation of Seniority] Rules, 1988	Year of allotment
1	2	3	4	5	6	7
1	Kamla Prasad	15.12.1979	19.12.1996	17 years	5 years	1991
2	Nandu Prasad	15.01.1976	19.12.1996	20 years	6 years	1991
3	Kumud Kr.Verma	06/12/76	19.12.1996	20 years	6 years	1991
4	Saheb Akhtar	06/12/76	19.12.1996	20 years	6 years	1991
5	Madan Mohan Ojha	06/12/76	19.12.1996	20 years	6 years	1991

15. Consequent on bifurcation of erstwhile IPS Bihar Cadre, Shri Nandu Prasad and M.M. Ojha were allocated to the newly created IPS Jharkhand Cadre and S/Shri Kumud Kumar Verma and Saheb Akhtar were allocated to the re-organized IPS Bihar Cadre. Accordingly, as per Rule 4 of the IPS [Regulation of Seniority] Rules, 1988, Shri Nandu Prasad and Shri Ojha will be placed en-block below Shri A. Natrajan, IPS [RR:1991] and above Shri Naresh Prasad Singh, IOPS [SPS : 1991] in the gradation list of IPS officers of Jharkhand Cadre in the order in which their names are arranged in paragraph 14 above. In the same way, Shri Kamla Prasad Singh, Kumud Kumar Verma and Shri Saheb Akhtar will be placed en-block below Smt. Preeta Verma, IPS [RR :1991] and above Shri Ganesh Prasad Verma, IPS [SPS : 1991] in the gradation list of IPS offices of Bihar Cadre in the order in which their names are arranged in paragraph 14 above.

16. This partially modified this Ministry's letter No.15011/5/1995-IPS.I dated 1st May, 1997.

17. The concerned officers may be informed accordingly."

3. It is noticed that the OA 83 of 1998 filed by Kamla Prasad Singh was decided on 02.11.1999 as follows :

"6. As we have said, the applicant's date of birth was 5.11.1941. Then, unless he is promoted to the IPS within this month, he will be retiring from

Govt. service as an officer of BPS, where the age of superannuation is 58 years. He filed this OA on 06.02.1998, and because of many other pressing matters, the application has remained un-disposed of, and the respondents will be left with very little margin for issuing final order even if he becomes entitled to promotion on review of his case for inclusion in the Select List of 1996. The applicant himself could have filed this OA much earlier, as his seniority position was revised by order dated 14.2.1997. Thus, he himself is partly responsible for leaving the respondents a very brief margin for completing the action. We are not saying that the applicant would necessarily be entitled for promotion to the IPS even if his case is revised promptly. Even if he is graded as fit for inclusion in the Select List, he may still not be entitled to promotion, unless he is graded 'outstanding' which is the highest grading. Any way he is entitled to review of his case for inclusion in the Select List of 1996 for which the respondents will have to convene the meeting of the Selection Committee.

The application is allowed. The case of the applicant for inclusion in the Select List of 1996 shall be placed before the Selection Committee for review, and for that purpose, the meeting of the Committee shall be convened as soon as possible and in any case before the end for this month. In case the applicant comes to be included in the Select List, and becomes entitled to promotion on that basis, the order of his promotion shall be issued as soon as possible, preferably during this month before his retirement."

Therefore, while deciding OA No.83 of 1998, the Court had not adjudicated on the issue whether Kamla Prasad Singh was eligible to be placed in the Select List of 1995-96. The primary concern was that "unless he is promoted to the IPS within one month, he will be retiring from Govt. service as an officer of Bihar Public Service Commission where the age of superannuation is 58 years". He was, however, declared to be "entitled to review of his case for inclusion in the Select List of 1996".

4. It is further noticed that pursuant to the direction of OA 83 of 1998, a memorandum dated 19.07.2000 was issued by Shri S.P. Verma, Under Secretary to the Govt. of India. It says :

"Whereas, in compliance with the direction dated 2.11.1999 of the Hon'ble CAT, Patna Bench, a meeting of the Review Selection Committee was convened by the UPSC on 30th November, 1999 to consider the case of Shri Kamla Prasad Singh for inclusion of his name in the 1995-96 Select List;

Whereas, on the basis of an overall relative assessment of his service records, the Review Selection Committee included the name of Shri Kamla Prasad at the top of the 1995-96 Select List above the name of Shri Nandu Prasad, Sl. No.1 in the 1995-96 Select List and the recommendations of the Review Selection Committee were approved by the UPSC on 4th May, 2000;

Whereas on the basis of his unconditional inclusion at the top of 1995-96 Select List, Shri Kamla Prasad Singh became entitled to promotion to the IPS w.e.f. 19.12.1996 ie. from the date from which his immediate junior in the 1995-96 Select List Shri Nandu Prasad was appointed to the IPS and seniority/year of allotment on that basis;

Whereas on receipt of the necessary proposal from the Govt. of Bihar, the Govt. of India vide Notification No.1-14013/49/99-IPS.1 dated 26th March, 2002 has appointed Shri Kamla Prasad Singh to the IPS w.e.f. 19.12.1996 i.e. from the date from which his immediate junior in the 1995-96 Select List Shri Nandu Prasad was appointed to the IPS.

Whereas based on the information furnished by the Govt. of Bihar, Shri Kamla Prasad Singh was holding rank not below that of Dy. SP w.e.f. 15.2.1979. As such he had rendered 17 completed years of service not below the rank of Dy. SP of equivalent in the SPS till the date of his appointment to the IPS i.e. 19.12.1996 and thus entitled to get a weightage of 5 years in the matter of determination of his year of allotment in IPS from 1996;

Whereas it has been decided by the Govt. of India to assign 1991 to Shri Kamla Prasad Singh as his year of allotment in IPS Biahr Cadre in terms of provisions contained in Rule 3[3][ii] of the IPS [Regulation of Seniority] Rules, 1988, as they stood and applicable on the date of his appointment/promotion to the IPS;

Whereas it is observed that immediate juniors of Shri Kamla Prasad Singh in the 1995-96 Select List namely S/Shri Nandu Prasad, Kumud Kumar Verma, Saheb Akhtar and Madan Mohan Ojha, who were appointed to the IPS w.e.f. 19.12.1996 on the basis their inclusion at Sl. No. 1, 2, 3 and 4 respectively in the 1995-96 Select List, were assigned 1990 as their year of allotment in IPS vide Ministry of Home Affairs letter No. 1-15011/5/97-IPS.1 dated 1.5.1997;

Whereas, proviso to Rule 3[3][ii] of the IPS [Regulation of Seniority] Rules, 1988 stipulates that a promotee officer shall not be assigned a year of allotment earlier than the year of allotment assigned to

an officer senior to him in that Select List or appointed to the service on the basis of an earlier Select List and as such the year of allotment of S/Shri Nandu Prasad, Kumud Kumar Verma, Saheb Akhtar and Madan Mohan Ojha is proposed to be restricted to 1991 with reference to the one to be assigned to their senior Shri Kamla Prasad Singh in the Select List of 1995 -96;

And whereas, the above-mentioned four officers are likely to be affected by the above proposed decision of the Govt. of India.

Now, therefore, S/Shri Nandu Prasad, Kumud Kumar Verma, Saheb Akhtar and Madan Mohan Ojha, promotee IPS Officers are hereby given an opportunity to show cause as to why their inter-se-seniority and year of allotment with reference to Shri Kamla Prasad Singh should no be revised. Any representation, which they may wish to make, should be submitted through the State Government within a period of 30 days from the date of service of this memorandum failing which it shall be presumed that these officers have nothing to represent against the proposed action of the Govt. of India and the matter shall accordingly be decided on the basis of available facts."

5. It is seen that the applicants had specifically raised the following facts in reply to the show cause dated 19.07.2000 whereby they had objected to the postponement of their year of allotment, in the following words :

"A copy of your letter under reference was communicated to me vide D.G.P., Jharkhand letter No. 326/G dated 12.9.2002. Through this letter it has been informed that my year of allotment in the I.P.S. is going to be revised from 1990 to 1991. I wish to represent against the proposed revision and place the following facts for the kind consideration of the Government of India.

I was recruited as a Dy. S.P., in the state Police Service Bihar on 6.12.1976. I was promoted to I.P.S., on 19.12.1996 and seniority of six years was given to be ante-dated. Accordingly, I was allotted 1990 in the I.P.S. I was also promoted to the Junior Administrative Grade w.e.f. 01.01.1999.

The MAA letter under reference states that one Kamla Prasad Singh is going to be recruited in the I.P.S. He is said to have become eligible for consideration in the Select List of 1995-96 due to his revised seniority in the State Police Service from 11.12.1981 to 19.02.1979, thereby giving him

seniority [deemed] from 15.02.79 in the rank of Dy. S.P. This is based on the order of the Government of Bihar dated 13.2.1997. Now the position is that the above mentioned order of the Government of Bihar has been cancelled vide their Memo No. 6887 X-P dated 30.10.2000 and seniority of Kamla Prasad Singh has been reverted to 11.12.1981 in State Police Service as Dy. S.P. In view of this revised order of the Government of Bihar, the entire process of his inclusion in the Select List of 1995-96 has become infructuous. Sri Kamla Prasad Singh retired from service in the S.P.S., on 30.11.1999 and as such, his inclusion in the revised Select List of 1995-96 [approved on the 4th May, 2000] is against the letter and spirit of Regulation 5[3] of I.P.S. [Appointment by Promotion] Regulation 1955 as he has crossed the age of 54 years on the first day of the year [i.e. 1.1.96] in which meeting of the Select Committee was held for preparing the Select List for the year 1995-96.

From the facts and circumstances mentioned above it is obvious that Shri Kamla Prasad Singh has obtained order dated 2.11.1999 from Hon'ble CAT, Patna Bench by suppressing vital facts in O.A. 83/1998. Accordingly, his proposed appointment in the I.P.S. is ultra-vires.”

6. On the point of giving benefit of seniority to Shri Kamla Prasad Singh as per order dated 14.02.1997, the respondents in para 11 of their written statement have drawn attention to the judgment of Hon'ble Supreme Court dated 24.04.2000 in Civil Appeal No. 3005-3006-3007/2000. Paragraph 5 of the judgment as cited in the written statement reads as follows :

“5. Consequent upon the judgment, the appellant State shall not take any action against a person conferred with similar benefit as were conferred upon Brij Bihari Prasad Singh if that person has retired and is no more in service.”

7. The respondents have, therefore, claimed that in view of para 5 of the judgment, promotion of Shri K.P.Singh was not disturbed. They have, however, not commented upon issuing of memo no. 6887 X-P dated 30.10.2000 whereby, as claimed by the applicant, the seniority of Shri K.P.Singh was reverted to 11.12.1981. This is obviously a development after judgment of Hon'ble High Court. In fact neither in the written statement nor in the impugned order, the

respondents have discussed about this.

8. It is further noticed that while issuing the impugned speaking order, whereby the year of allotment of the applicants are shifted to their prejudice, their grievance as also the facts highlighted in the show cause have not been considered in the proper perspective. It is only stated that :

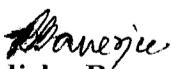
“13. Whereas the contents of the representations have been examined in this Ministry and it has been found that the points raised and the grounds mentioned by the representationists have already been considered by the Competent Authority and it has been decided to appointment Shri Kamla Prasad Singh w.e.f. 19.12.1996 as per the directions of Hon'ble CAT and accordingly he is to be assigned his year of allotment as 1991”.

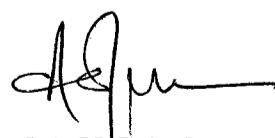
9. It is also noticed that neither the question whether Kamla Prasad Singh was eligible to be placed in the Select List, neither considered in OA83 of 1998 nor by the Review Selection Committee

It appears that the Respondent No.2 while issuing the impugned order has also not delved into the question whether the said Kamla Prasad Singh was at all eligible to be placed in the Select List of 1995-96 and has not applied its mind to the fact that the applicants had made two fold prayers :

- [i] not to include Kamla Prasad Singh in the Select List of 1995-96; and
- [ii] not to alter their year of allotment.

10. The impugned order being as such shorn of reasons is quashed. The respondents are directed to issue fresh orders applying their mind on all the points raised in the representation of the applicants dated 25.05.2000 [Annexure-A/7] series and the observations made in this order within three months from the date of communication of the order. No costs.


 [Bidisha Banerjee]
 Member [Judicial]
 mps.


 [A.K.Jain]
 Member [Administrative]