

**Central Administrative Tribunal
Principal Bench, New Delhi**

O.A. No.292/2018

Order reserved on 7th March 2018

Order pronounced on 22nd March 2018

**Hon'ble Mr. Justice Permod Kohli, Chairman
Hon'ble Mr. K.N. Shrivastava, Member (A)**

Dr. Jitendra Gupta
s/o Sh. B P Gupta
r/o RZB103 Bharat Vihar, Raja Puri
Gali No.25, Uttam Nagar, New Delhi – 59

Aged around 35 years
Presently posted as
Joint Secretary/OSD
Department of Environment & Forest, Patna

..Applicant

(Mr. Sachin Dutta, Senior Advocate (Mr. Sourabh Ahuja, Advocate) with him)

Versus

1. Union of India through its Secretary
Department of Personnel & Training
Govt. of India, North Block, New Delhi – 110 001
2. State of Bihar through its Chief Secretary
Secretariat Patna – 800 015, Bihar

..Respondents

(Mr. Rajeev Kumar, Advocate for respondent No. 1 &
Mr. Shreyas Jain and Mr. Gopal Singh, Advocates for respondent No.2)

O R D E R

Mr. K. N. Shrivastava:

This O.A. has been filed under Section 19 of the Administrative Tribunals Act, 1985 praying for the following main reliefs:-

“(i) quash and set aside the impugned order dated 6.12.2017 (Annexure A-1), as being unjust, arbitrary and unsustainable;

(ii) direct respondent no.1 to forthwith approve the inter-cadre transfer of the Applicant on a permanent basis to Haryana Cadre, in view of the “extreme hardship” faced by the Applicant and the concurrence accorded by the State Government of Haryana dated 7.8.2017.”

2. The factual matrix of the case, as noticed from the records, is as under:-

2.1 The applicant is 2013 batch of Indian Administrative Service (IAS) officer of Bihar cadre. He was posted as Sub Divisional Officer (SDO) / Sub Divisional Magistrate (SDM) in Mohania Sub-Division of Kaimur District of Bihar in December 2015.

2.2 It is stated that the State of Bihar was then afflicted with the menace of overloading of heavy vehicles, which was causing fatal accidents leading to loss of human lives besides causing vehicular pollution, damage to roads, national highways (NHs), bridges and public & private properties. The action being taken by the State Transport Department to curb the menace was not found to be satisfactory. As a result, the State Government in the Department of Transport, vide Annexure A-2 letter dated 23.10.2013, authorized the SDOs of the State to check and stop the overloading of heavy vehicles. The contents of said letter are reproduced below:-

“It is stated in the above mentioned matter that in the Janta Darbar of Honorable chief Minister held on 16.09.2013, it was decided that an intensive drive is to be started to put a check on overloading of vehicles.

2. It is reminded in this regard that via departmental notification No.G.S.R.-5029 dated 09.12.2000, using power vested under section 200 of Motor Vehicle Act 1988, Bihar Government has empowered under Sections-177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 188, 189 and 191, 191, 192, 194, 196 and Section 198 all Sub-

Divisional Officers (Civil) to check and stop crime mentioned in above sections.

3. Majority of Sub-Divisional Officers are not using these powers and the responsibility of putting check on overloading has been left to Officers of Transport department because of which putting an effective check on overloading is not possible.

4. In view of the above, it is requested that all Sub-Divisional Officer be directed to check overloaded vehicles and use punitive powers delegated to them in above sections to put on effective check on overloading.

(A) Sub-divisional officers of the concerned districts should get seizure Book and Money Receipt from the District Transport officer of the district.

(B) The power to fine under above sections shall not be less than the provisions of the Act.

(C) Money collected through fine shall be deposited in the office of District Transport officer. Also the information in this regard should be sent to head quarter of Transport department, monthly.”

2.3 It is stated that another illegal practice rampant in the State was that of unauthorized seizure and parking of trucks & heavy vehicles on NH-2 by the Police to make illegal monetary gains. The illegal parking of trucks on NH was causing fatal accidents and deaths on daily basis and was also hindering the on-going work of widening of NH-2. It is further stated that the National Highways Authority of India (NHAI) and its Concessionaire *Soma Isolux* had written several letters to Superintendent of Police (SP) & Deputy Superintendent of Police (DSP) as also to jurisdictional Station House Officers (SHOs) of the Police Stations to stop parking heavy vehicles on NH-2, but no action was taken by the police authorities.

2.4 The applicant contends that on the strength of directions of the State Government vide Annexure A-2 letter dated 23.10.2013 and as per the

directions of the District Magistrate, he took stern lawful action against the transport mafia and wrongdoers. He was thus able to control the overloading of heavy vehicles as well as illegal parking of trucks on NH-2 considerably, which also resulted in reduction of fatal road accidents.

2.5 The applicant has averred that due to the action taken by him, the transport mafia got annoyed with him and in connivance with the Vigilance Bureau of the State Government hatched a conspiracy to get him out of the way, so that they could continue with their illegal activities and corruption.

2.6 The applicant has stated that the Vigilance Bureau and the transport mafia framed a completely false and vexatious case, implicating him therein. They got a false complaint written on 08.07.2016 by a notorious 'entry mafia' called Arvind Kumar Singh, who is a known criminal of Mohania and named as an accused in numerous FIRs and have been in jail for many serious socio-economic crimes.

2.7 Without permission of the competent authority or search warrant, the Vigilance Bureau searched the official residence of the applicant in the night of 12.07.2016 and arrested him in the midnight of 12/13.07.2016. Thereafter, an FIR No.67/2016 dated 13.07.2016 was lodged at Vigilance Police Station, Patna against the applicant under Sections 7, 8, 13 (2) read with Section 13 (1) (d) of the Prevention of Corruption Act. The FIR contains the following charges against the applicant:

- (i) On 08.07.2016, one Jaspreet Singh, the driver of truck No.HR-58A-9867, filed an FIR against the Sub-Divisional Magistrate, Mohaniya,

District Bhabhua, alleging, *inter alia*, that on 03.07.2016, in the morning hours, the Sub-Divisional Magistrate, along with his men, came in a Scorpio vehicle and seized the documents of four vehicles including that of the applicant.

- (ii) Thereafter, the informant went to the residential office of the Sub-Divisional Magistrate and pleaded for release of the vehicles' documents. According to the informant, the accused asked him to meet his driver, Sanjay and do what Sanjay asked. The informant claims to have accordingly approached Sanjay. (*Incidentally, all the four trucks belonged to the same owner*)
- (iii) Sanjay demanded a sum of ₹90,000/- for release of the vehicles' documents. At that time, the informant approached the Vigilance Police.
- (iv) A trap was laid and the demanded money was recovered from the possession of the co-accused Sanjay, who gave a statement that he had collected the money on behalf of the applicant.
- (v) Based on the action taken report of the In-charge of the trap team, the Vigilance Police Station registered a case. The raid was conducted at the official residence of the accused and the documents of the truck were found from a Tata Sumo vehicle parked in the compound of the said house.

2.8 Following his arrest, the applicant was placed under suspension on 20.07.2016, as his judicial custody had exceeded 48 hours. The State

Government initiated departmental proceedings against him vide Annexure A-13 memorandum of charges dated 08.12.2016.

2.9 The IAS Officers Association, Bihar Branch protested against the illegal arrest of the applicant and submitted Annexure A-10 memorandum dated 20.07.2016 to Government of Bihar, in which, *inter alia*, they deprecated the highhanded action of the Vigilance Bureau and the corruption perpetrated by ‘entry mafia’, ‘mining mafia’, ‘sand mafia’, and demanded introduction of governance reforms in machinery handling the menace of corruption. The relevant extract from the memorandum of the Association is reproduced below:-

“It is proposed that Station Diary of each PS be scanned at 9 am to 8 pm each day and uploaded necessarily on secure site (online/offline option be there), open record this statement of uploaded Station Diary be maintained permanently, for ready reference by any individual online; individuals also be allowed to obtain certified/RTI copy of the scanned document too just like the regular document, so that they may cross check in their respective case, if necessary. By putting the Station Diary in public domain for the whole of Bihar, civil rights will be upheld since it would eliminate possibilities of tampering, concoction and post facto entries. Viewership of content rights may be initially retained with higher authorities (SP/DM/DJ/DIG/IG/Commissioner/ADG concerned and DGP/Home Secy/Chief Secy);

vi. As the menace of corruption needs to be tackled effectively, governance reforms be introduced in machinery handling the same. These must *inter alia* include the following.

- a) Wherever prevention of corruption machinery of the state is involved, a search cum screening committee (led by Chief Secretary rank officer) be put in place to ensure that at the level of Dy SP and above, only officials of unimpeachable integrity are allowed to be posted.
- b) Personnel serving in these sensitive positions not be allowed to serve beyond three years, in consonance with norms laid down by CVC.

c) In matters related to enforcement of law and prevention of corruption, responsibility must also be fixed in respect of officials actively or passively conniving through the act of continuous omission; and

vii. Public Servants discharge a substantive part of the regulatory and original function of the State in their role as quasi-judicial authorities. As protection to them is guaranteed under The Judicial Officers' Protection Act, 1850 and The Judges (Protection) Act, 1985, efforts may be made to sensitize enforcement machinery of the same."

2.10 The applicant challenged the said FIR before the Hon'ble High Court of Patna in Criminal Writ Jurisdiction Case No.1000/2016, which was allowed vide judgment dated 28.10.2016 and the FIR was quashed and set aside. The relevant extracts from the said judgment are reproduced below:-

"7. The petitioner's side has drawn my attention to certain documents like gate receipts issued by the Government of Jharkhand, which show that the truck, in question, could not have been at the place alleged in the morning of 03.07.2016 and it has, therefore, been argued that the documents go to show that the whole case of the prosecution is based on falsehood and its continuance, therefore, so argued the learned counsel, would amount to abuse of the process of the court. As I proceed further, it would transpire that even the State concedes no occurrence, as alleged in the FIR, had taken place in the morning hours of 03.07.2016. The State, thus, I must hasten to point out, admits that the alleged occurrence of taking away of the document of the vehicle by the petitioner or his associates is completely false.

xx xx xx xx

26. At this juncture, the ratio, laid down in the case of State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335, may be profitably invoked, wherein the Supreme Court while summarizing the discussion in paragraph 102, held against clause No.5 that where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused, a case for quashing is made out. When the improbability of events, taking place on 03.07.2016, was brought to the notice of Court an attempt was made to change the very date of occurrence of offence.

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31. Because of what has discussed and pointed out above, this Court is clearly satisfied that the FIR and the consequential investigation so far as the same relate to the present petitioner are concerned, it would be nothing but abuse of the process of Court. Necessarily, therefore, the FIR and the investigation so far as the same relate to the present petitioner need to be set aside and quashed.

32. In the result and for the foregoing reasons discussed above, the writ petition succeeds and the FIR, along with its consequential investigation, are hereby set aside and quashed.”

2.11 The judgment of Hon’ble High Court was challenged by the State Government before the Hon’ble Supreme Court in Special Leave to Appeal (Criminal) No.805/2017, which was dismissed at the admission stage itself vide order dated 06.02.2016. The order reads thus:

“We do not see any merit in this special leave petition which is hereby dismissed.

2.12 As mentioned earlier, the applicant was arrested in the midnight of 12/13.07.2016. He was remanded to judicial custody for about a month. He remained in jail for 29 days before being granted bail by Hon’ble High Court of Patna.

2.13 Following the orders of the Hon’ble High Court of Patna and Hon’ble Supreme Court, the State Government of Bihar (respondent No.2), vide Annexure A-18 order dated 21.04.2017, reinstated the applicant in service, regularized the period of suspension and incarceration as period ‘spent on duty’ and also withdrew the departmental proceedings initiated against him.

2.14 The applicant has contended that even after resuming the service, he continued to face great danger to his life and property. In this regard, he has cited Annexure A-19 letter dated 20.12.2016 from Principal Secretary to Government of Bihar, Department of Environment & Forests, under whom the applicant was then posted as OSD, addressed to Senior Superintendent of Police (SSP), Patna, requesting for providing security to the applicant, and Annexure A-20 letter dated 23.12.2016 of District Collector, Patna addressed to SSP, Patna with similar request. The applicant has thus contended that despite great threat to his personal safety and security, no security was provided by the State Government to him. He has further stated that faced with extreme condition at the hands of the State Government, the applicant had no option but to seek inter-cadre transfer from Bihar to Haryana under the provisions of Rule 5 (2) of IAS (Cadre) Rules, 1954, for which the Haryana Government had given its consent.

2.15 It is stated that the applicant submitted his representation dated 21.03.2017 (Annexure A-21) to Central Government (respondent No.1) with a copy to the State Government. As no action was taken on his representation by the Central Government, the applicant moved the Hon'ble Supreme Court in Writ Petition (Civil) No.338/2017 in this regard. The said Writ Petition was disposed of by the Hon'ble Apex Court vide Annexure A-23 order dated 09.05.2017, which reads as under:-

“We have heard learned counsel for the petitioner and also perused the record. Particularly, we have seen the grievance of the petitioner of being implicating in the criminal case which was quashed. It has been submitted that I.A.S. officers Association gave a memorandum in support of the petitioner.

In these circumstances, the representation of the petitioner has to be considered by the concerned administrative authorities and not by the Court. Accordingly, we direct respondent No.1 to look into the grievance of the petitioner and take such appropriate action as may be considered appropriate within three months from today.”

2.16 In obedience of the *ibid* time bound direction of the Hon’ble Apex Court, respondent No.1 solicited the consent of State Government of Haryana, which was communicated by it to respondent No.1 vide Annexure A-24 letter dated 07.08.2017. Finally, respondent No.1, vide impugned Annexure A-1 order dated 06.12.2017, rejected the request of the applicant for inter-cadre transfer.

Aggrieved by the impugned order, the applicant has filed the instant O.A. praying for the reliefs as indicated in paragraph (1) above.

3. In support of the reliefs claimed, the applicant has pleaded the following important grounds:

3.1 In terms of Rule 5 (2) of IAS Service (Cadre) Rules, 1954, the inter-cadre transfer can be permitted on the ground of extreme hardship. As there is persistent threat to his life in the State of Bihar, his request for inter-cadre transfer under the *ibid* rule ought to have been considered.

3.2 The applicant is facing threat to life and property from the mafias and the conniving officials of the State Government, as a result of which, his mental peace and that of his family members has vanished. The applicant is also suffering with health problems. The State Government has inflicted loss to his reputation and dignity. The applicant has also suffered financial loss and is laden with social stigma, all due to the State Government. Even

the education and personality development of applicant's children have suffered severely. All these would go to show that the applicant is indeed facing extreme hardship.

3.3 Respondent No.1 had sought opinion of Intelligence Bureau (IB) in regard to threat to life of the applicant, who has informed that "no specific threat to the life and property of the officer from either any mafia or other anti-social elements could be established during the discreet enquiries". The IB has failed to notice that the Hon'ble Patna High Court, in its judgment, has already taken note of the threat being faced by the applicant to his life and property.

3.4 The State Government has withheld its concurrence for the inter-cadre transfer of the applicant. This withholding shows extreme animosity and bias of respondent No.2 against the applicant. The bias of respondent No.2 against the applicant is further apparent from the fact that despite his reporting authority (District Magistrate, Kaimur), awarding him 9.81 marks on the scale of 10 in his Annual Performance Appraisal Report (APAR), the reviewing authority, sitting in Patna, arbitrarily and without assigning any reason downgraded his APAR to 6 out of 10.

3.5 The Secretary, Department of Personnel & Training (DoPT) despite the IB reporting no threat to applicant's life from mafia, found merit in the case of applicant and recommended for approval of the competent authority for his inter-cadre transfer.

3.6 The FIR against the applicant was false and fabricated and hence quashed by the Hon'ble High Court of Patna. The FIR was lodged at the instance of the notorious 'entry mafia' called Arvind Kumar Singh against whom numerous FIRs had been lodged for various socio-economic crimes. The applicant was sent to judicial custody by the Special Judge of Vigilance on a false report submitted by the investigating officer.

3.7 As per the provisions of AIS (Discipline & Appeal) Rules, 1969, the State Government (respondent No.2) was obliged to inform the cadre controlling authority of the applicant, i.e., DoPT – respondent No.1, within the stipulated time, but did not do so. The information was sent after a week. Respondent No.2 has wrongly stated that it had withdrawn all legal and disciplinary actions after the order of the Hon'ble High Court dated 28.10.2016. On the contrary, respondent No.2 has become more vindictive and initiated departmental proceedings against the applicant after he was exonerated by the Hon'ble High Court. Even the report of officers in regard to threat to his life and property has been hushed up by the higher-ups in the State Government of Bihar.

3.8 The official website of the Vigilance Department of respondent No.2 continues to vilify the applicant by mentioning that he was caught red handed with bribe. Respondent No.2 and some of its officials are hell-bent to seriously endanger the life and liberty of the applicant and his family. They had falsely implicated him in the criminal cases and thus impeded the applicant's confirmation and promotion. They also refused to release his salary and damaged his APAR. The applicant has brought all these to the

knowledge of respondent No.1 vide his representation dated 21.03.2017, and thus sought inter-cadre transfer from Bihar to Haryana, but respondent No.1 has arbitrarily rejected the request of the applicant without assigning any reason. The impugned order rejecting his request is also violative of Article 14 of the Constitution, for inter-state transfer has been granted by respondent No.1 in numerous other cases, which, in fact, stand on a lower footing of extreme hardship, viz. Mr. R N Gupta, IAS was allowed change of cadre from West Bengal to Punjab in 1992 on the basis of a request made by his mother, Mr. Sunil Porwal was allowed cadre change from Bihar to Maharashtra on compassionate grounds, Ms. Madhu Rani Teotia, IAS was allowed change of cadre from Madhya Pradesh to AGMUT in 2012 after death of her husband, as a special case and Mr. Anand Sharma, IAS was allowed change of cadre from Assam Meghalaya to Bihar on the basis of physical disability, etc.

3.9 This Tribunal had adjudicated and allowed request for inter-cadre transfers in the following cases:-

- i) **Pankaj Kumar Pal v. Union of India & others** (O.A. No.3921/2010) decided on 30.08.2011
- ii) **D. Sathiyan v. Union of India & others** (2012 SCC Online CAT 4004)
- iii) **Surinder Sidhoo v. Union of India** (CAT Chandigarh Bench), decided on 30.07.1999.

4. Pursuant to the notices issued, the respondents entered appearance and filed their respective replies. Respondent No.2, State of Bihar, in its reply, has broadly made the following important averments:-

4.1 The applicant, while posted as Sub-Divisional Magistrate, Mohaniya in Kaimur District, was arrested on 12.07.2016 by the Vigilance Investigation Bureau, Bihar, Patna in connection with a case of making demand for illegal gratification for releasing the seized trucks there. The Bureau lodged a criminal case No.067/2017 dated 13.07.2016 under Sections 7, 8, 13 (2) read with Section 13 (1) (i) of the Prevention of Corruption Act, 1988, in which the applicant and his two subordinates were named as accused.

4.2 The applicant was placed under suspension vide order dated 20.07.2016 of General Administration Department of the State Government, which was followed by service of a memorandum of charges dated 08.12.2016 under Rule 8 (5) of AIS (Discipline & Appeal) Rules, 1969 on the applicant.

4.3 The Hon'ble High Court of Patna, vide judgment dated 28.10.2016, was pleased to set aside and quash the FIR along with its consequential investigation *qua* the applicant only. It, however, did not quash the FIR against the other accused, against whom investigation is still continuing.

4.4 The SLP filed by respondent No.2 against the *ibid* order of the Hon'ble High Court was dismissed by the Hon'ble Apex Court vide order dated 06.02.2017.

4.5 Pursuant to the *ibid* orders of the Hon'ble High Court and Apex court, disciplinary action instituted against the applicant vide order dated 21.04.2017 has been closed and the period of judicial custody of the applicant from 13.07.2016 to 10.08.2016 was also regularized as period 'spent on duty'. He has also been granted promotion to Senior Time Scale (Joint Secretary level) with effect from the due date of promotion, i.e., 01.01.2017.

4.6 The Hon'ble Supreme Court in Writ Petition (Civil) No.338/2017 filed by the applicant, vide its order dated 09.05.2017, directed respondent No.1 to look into the grievance of the applicant and take such action as may be considered appropriate within a period of 3 months.

4.7 The inter-cadre transfer is to be accorded by the Central Government. The State Government, vide its letter dated 21.06.2017, has sent its comments to the Central Government on the request of the applicant for inter-cadre transfer. In its letter dated 07.08.2017, besides giving chronological details of applicant's case, it has been reported as under:-

"4. It is pertinent to state here that.

(i) the Hon'ble Vigilance court had sent Dr. Gupta into judicial custody for the allegations made against him in the criminal case registered by the Vigilance Investigation Bureau on receipt of a complaint of an informant. Consequently, required disciplinary actions under the provisions of AIS (Discipline and Appeal) Rules – 1969 were also followed by the Cadre Controlling Authority.

(ii) Subsequently, Dr. Gupta challenged the FIR registered against him by preferring a Criminal Writ, bearing No. C.W.J.-1000/2016 before the Hon'ble Patna High Court, Patna. The Hon'ble Patna High Court, Patna in its order dated 28.10.2016 set aside and quashed the FIR and the concerned investigation. It was also upheld by The Hon'ble Supreme Court in SLP (Crl.) No.-805/2017.

(iii) Complying with order dated 28.10.2016 of the Hon'ble Patna High Court, Patna the State Government has withdrawn all the legal and disciplinary actions instituted against Dr. Gupta and made him free from the allegations and the charges leveled against him.

(iv) Comment / report regarding threat to life and malicious was sought from the Home Department. As per the report of the Home Department, Bihar, Patna, presently there is no probable threat to the life of Dr. Gupta and his family as well. Photo copy of the concerned report is enclosed for ready reference.

5. In this way, Dr. Jitendra Gupta, IAS (BH: 2013) is clear in all respects and may continue to serve fearlessly in Bihar Cadre with dignity."

4.8 The Central Government, vide the impugned Annexure A-1 order dated 06.12.2017, had rejected the request of the applicant.

4.9 The applicant has filed M.A. No.1484/2017 before the Hon'ble Supreme Court, which was listed on 06.02.2018. He did not inform the Apex Court that he has filed the instant O.A. before this Tribunal. He has also not apprised this Tribunal about the outcome of the said M.A. before the Hon'ble Apex Court. Thus, it is respectfully submitted that the applicant is pursuing similar remedies at two different *fora*, which is not permissible.

5. Respondent No.1, in its reply, has broadly submitted as under:-

5.1 The change of cadre of IAS officers is governed by Rule 5 (2) of the IAS (Cadre) Rules, 1954, which stipulates as under:-

"5 (2)The Central Government may with the concurrence of the State Government concerned transfer a cadre officer from one cadre to another cadre."

5.2 The policy for change of cadre of IAS officers on the ground of extreme hardship was circulated vide O.M. dated 08.11.2004. The

conditions for change of cadre of IAS officers on the grounds of extreme hardship are as under:-

- a. Inter cadre transfer shall be permitted on ground of extreme hardship in the rarest of rare cases.
- b. Inter-cadre transfer shall not be permitted to the Home State of the officer.
- c. Extreme hardship for purpose of inter cadre transfer, should be defined to include (a) threat to the life of the officer or his immediate family and (b) severe health problems to the officers or his immediate due to the climate or environment of the State to which he is allocated.
- d. In cases of request on grounds of threat or health, the Central Government shall have the genuineness of the request assessed by an independent Central agency or group of at least two independent experts.
- c. If a request on grounds of threat or health is found to be genuine, the Central Government may initially send the officer on a three years deputation to a State of his choice. The situation may be re-assessed after the three years period. If the situation so warrants, the Central Government may permanently transfer the officer to that State.”

5.4 The proposal was placed before the Committee headed by the Secretary (Personnel) in its meeting held on 01.05.2017 wherein the Committee directed to seek report from the IB regarding threat to applicant’s life. The IB, vide its letter dated 15.05.2017, had reported that “no specific threat to the life and property of the officer from either any mafia or other anti-social elements could be established during the discreet inquiries. It further reported that in the administrative circles, there are serious doubts about the financial integrity of the applicant and it would appear that he is seeking inter-cadre transfer to escape the ignominy faced by him following his accusation in the bribery case”.

5.5 The applicant had also filed Writ Petition (Civil) dated 338/2017 before the Hon'ble Apex Court in regard to inter-cadre transfer, which was disposed of vide order dated 09.05.2017, in which a direction was issued to the Central Government to look into the grievance of the applicant and take such action as may be considered appropriate within a period of 3 months.

5.6 Concurrence of both the State of Bihar (cadre allocated to the applicant) and State of Haryana (cadre to which he is seeking transfer) was required for consideration of the request of the applicant for inter-cadre transfer under Rule 5 (2) of IAS (Cadre) Rules, 1954.

5.7 The Haryana Government has conveyed its consent for inter-cadre transfer of the applicant but the Bihar Government has not done so (the comments of Bihar Government conveyed to the Central Government vide letter dated 07.08.2017 have been reproduced in paragraph 4.7 above).

5.8 The proposal for inter-cadre transfer of the applicant on the ground of extreme hardship was again placed before the Committee headed by the Secretary (Personnel) in its meeting held on 17.08.2017 wherein the Committee, after detailed deliberations, recommended that the proposal may be submitted to Appointments Committee of the Cabinet (ACC) for consideration and appropriate orders on inter-cadre deputation of the applicant from Bihar cadre to Haryana cadre for a period of 3 years as per the extant guidelines. The ACC, vide impugned order dated 06.12.2017, has rejected the request of the applicant for inter-cadre deputation.

5.9 Regarding the reason for declining the request, it is stated that such cases are decided by the competent authority on case to case basis keeping in view the merit and circumstances. The executive policy on the subject does not confer any right to the officer for grant of change of cadre.

5.10 The cases quoted by the applicant do not have any resemblance to this case. Moreover, as per Rule 5 (2) of the IAS (Cadre) Rules, 1965, the Central Government has to consult concerned the State Governments.

6. On completion of pleadings, the case was taken up for hearing the arguments of learned counsel for the parties on 07.03.2018. Arguments of Mr. Sachin Dutta, learned senior counsel assisted by Mr. Sourabh Ahuja, learned counsel and that of Mr. Rajeev Kumar, learned counsel for respondent No.1 & Mr. Shreyas Jain with Mr. Gopal Singh, learned counsel for respondent No.2 were heard.

7. Reiterating the points raised in the O.A., Mr. Sachin Dutta, learned senior counsel for applicant submitted that the applicant is facing serious threat to his life and property, as evident from Annexure A-20 letter dated 23.12.2016 of District Collector, Patna addressed to SSP, Patna. He further submitted that the Vigilance Department of the State Government is hell-bent to destroy the reputation of the applicant and despite the quashment of an FIR by the Hon'ble High Court of Patna in Criminal Writ Jurisdiction Case No.1000/2016 vide judgment dated 28.10.2016, which is duly affirmed by the Hon'ble Supreme Court in Special Leave to Appeal (Criminal) No.805/2017 vide judgment dated 06.02.2017, the Vigilance Department continues to show that the applicant, the then SDO in Mohania

Sub-Division of Kaimur District of Bihar, together with Sanjay Tiwari, Driver of the then SDO and Ashok Kr. Srivastava, Home Guard, were caught red handed on 13.07.2016 for accepting a bribe of ₹90,000/-. In this regard, Annexure A-28 was referred to by Mr. Dutta. He further drew our attention to Annexure A-27, which is a letter written by the Under Secretary, Bihar Government, General Administration Department to the Principal Secretary, Vigilance Department, Bihar, Patna, wherein a direction was issued to critically probe the entire matter and fix responsibility and take action against persons responsible for conspiracy and submit a detailed report at the earliest. It would indicate that the threat to applicant's life has been acknowledged by the Bihar Government, Mr. Dutta averred.

8. Mr. Dutta vehemently argued that the averments made in paragraph 10 of the reply filed on behalf of respondent No.1 are absolutely false and stated that the IB report is not based on any facts or evidence. He also questioned the veracity of paragraph 15 (iv) of the said reply wherein it is reported that the Bihar Government has informed that there is no probable threat to the life of the applicant and his family members.

9. Concluding his arguments, Mr. Dutta submitted that despite the directions of Hon'ble Supreme Court vide order dated 09.05.2017 and recommendation of the Committee headed by Secretary (Personnel), in its meeting held on 17.08.2017 regarding applicant's inter-cadre transfer, the request of the applicant has been rejected by the ACC without any rhyme or reason.

10. *Per contra*, learned counsel appearing for respondent No.2, besides drawing our attention to the averments made in the reply filed on behalf of said respondent, submitted that the applicant has not come before this Tribunal with clean hands, as he has suppressed the fact from this Tribunal that he had filed M.A. No.1484/2017 before the Hon'ble Apex Court praying for identical relief, that he is seeking in the instant O.A.

11. Mr. Rajeev Kumar, learned counsel appearing for respondent No.1 submitted that all the points relevant for the case have already been mentioned in the reply and he has got nothing more to add to it.

12. Rebutting the contention of learned counsel for respondent No.2 that the applicant has not brought M.A. No.1484/2017 filed by him before the Apex Court to the notice of this Tribunal, Mr. Dutta, learned senior counsel for applicant brought to our notice Annexure A-25 filed with the O.A., which is a copy of said M.A. filed by the applicant before the Apex Court.

13. We have considered the arguments of learned counsel for the parties and have also perused the documents annexed thereto.

14. After the quashment of FIR by the Hon'ble High Court of Patna, vide its judgment dated 28.10.2016, which has been affirmed by the Hon'ble Apex Court, the FIR has become non-*est* in the eyes of law. It is very unfortunate that both the respondents in their respective replies have made a mention of it. We do not appreciate it. The Hon'ble High Court of Patna, in its judgment, has analyzed glaring deficiencies and inaccuracies in the FIR, and has thus set at naught its veracity *qua* the applicant. From

Annexure A-19 letter of the Principal Secretary, Department of Environment & Forests, Government of Bihar and from Annexure A-20 letter of the District Collector, Patna, both addressed to SSP, Patna, it appears that a request has been made to the said police authority to provide security to the applicant, as he is facing threat to his life and property. It is unfortunate that no action has been taken by the State Government of Bihar to provide personal security to the applicant and to his family members. Be that as it may, the Annexures A-19 & A-20 letters would go to establish that threat to the life of the applicant from the mafias still persists in Bihar. The applicant himself is fearful of these mafias, which he has narrated / represented in different *fora*. It would only be prudent for the respondents to move out the applicant from Bihar at present. The IB report referred to hereinabove is required to be discarded, as it does not appear to be based on the ground realities. Even the averments made in the IB's report smack of its basis being rumor / gossip. It is important to mention that despite Annexures A-19 & A-20 letters and applicant's own perception of threat to his life, if he is not taken out from Bihar, we are afraid, there could be a repeat of Satyendra Dubey murder case, in which a bright young engineer Satyendra Dubey working as Project Director in NHAI, Gaya, Bihar and who had apprehended threat to his life and had sought security, which was not provided, was murdered by road the construction mafia. Hence, it is the duty of the respondents to save the life of the applicant and *prima facie*, there is threat to his life. This can easily be done if the applicant is taken out of Bihar for the present.

15. There are three options available before respondent No.1 to take the applicant out from Bihar for the present:

- a) To consider his request for inter-cadre transfer under Rule 5 (2) of IAS (Cadre) Rules, 1954, for which the Haryana Government has already given its consent. As per the Central Government policy, an officer desirous of inter-State transfer is sent to the borrowing State initially on deputation for a period of 3 years and thereafter his/her case is re-assessed for inter-State deputation after re-confirming the existence of 'extreme hardship', warranting inter-State transfer.
- b) To consider deputation of applicant under Rule 6 of IAS (Cadre) Rules to the Government of Haryana. Such deputation could be for a period of 5 years, as is normally provided in such cases.
- c) To take the applicant on deputation to the Central Government itself under the Central Staffing Scheme under Rule 6 of IAS (Cadre) Rules.

16. With the passage of time, it is quite likely that the threat perception to the life of applicant may subside or vanish altogether in the State of Bihar and he may comfortably work in Bihar thereafter. From the records, we are quite convinced that the security threat to the applicant definitely warrants, at this juncture, to pull him out of Bihar.

17. It is a statutory requirement that for inter-State deputation or inter-cadre transfer to another State under Rule 6 and Rule 5 (2) of the Rules respectively, or deputation to the Central Government under Central Staffing Scheme under Rule 6, the consent of the parent cadre - State is

required. It is strange as to why the Bihar State Government is resisting the deputation of the applicant outside Bihar. Such resistance from the State Government only re-confirms the fear of the applicant. Hence, it is necessary and desirable that the Bihar State Government should not offer any resistance in this matter and allow the applicant to go out of Bihar.

18. Despite the Committee headed by the Secretary (Personnel), DoPT, Government of India making specific recommendation to the ACC for 3 years' deputation of the applicant from Bihar to Haryana State as a prelude to the final consideration of his inter-State cadre transfer in terms of Rule 5 (2) of IAS (Cadre) Rules, 1954, the ACC had chosen to reject such a sensible and pragmatic recommendation. We desired to know the reasons for ACC rejecting such recommendation, and consequently directed learned counsel for respondent No.1 to produce the necessary records of ACC wherein the applicant's case was processed. In compliance, Mr. Rajeev Kumar, learned counsel made us available File Nos. 13017/17/2017-AIS-I and 37/24/2017-EO (SM-I), in which this matter has been dealt with. The Secretary, ACC, placing the background of the case vide his Note dated 15.09.2017, in its paragraph 10, had made the following recommendation for the consideration of ACC:

“Point for consideration of the ACC:-

In view of the above, the proposal for inter-cadre deputation of Dr. Jitendra Gupta, IAS (BH:2013) from Bihar cadre to Haryana cadre for a period of three years on grounds of extreme hardship is submitted for kind consideration and appropriate orders of the Appointments Committee of Cabinet.”

19. In consideration of the *ibid* recommendation, the Prime Minister's Office (PMO) has conveyed the decision of the Hon'ble Prime Minister vide letter dated 20.10.2017; the contents of which are reproduced below:-

“Prime Minister's Office
(Political Section)

South Block, New Delhi – 110 011

Sub: Inter cadre deputation of Dr. Jitendra Gupta, IAS (BH:2013),
from Bihar cadre to Haryana cadre

Reference is invited to Secretary, ACC's Note No.37/24/2017-EO (SM.I) dated 15.09.2017, on the above subject.

2. Prime Minister has declined the proposal for inter cadre deputation of Dr. Jitendra Gupta, IAS (BH:2013) from Bihar cadre to Haryana cadre.

3. The File [No.37/24/2017-EO (SM.I) is returned herewith.

Sd/-
(V. Sheshadri)
Joint Secretary”

20. From the Note of the PMO, it is clear that no reason has been assigned as to why the proposal for inter-State deputation of the applicant has been rejected. Such an order is obviously arbitrary, unreasonable and illegal. In this regard, we would like to refer the following judgments of Hon'ble Apex Court and Hon'ble High Court of Delhi:

i) **Union of India & another v. Bhaskarendu Datta Majumdar** (Civil Appeal No.7116/2010) decided on 27.08.2010, wherein the respondent (Bhaskarendu Datta Majumdar) joined the services of the State Trading Corporation as Executive Secretary to the Chairman-cum-Managing Director of the Corporation and was on the relevant date working

as Chief General Manager. A post of Director (Marketing) having fallen vacant, Mr. Majumdar applied for the said post. The Public Enterprises Selection Board (PESB) had recommended his case but the ACC refused to accept the recommendations of PESB without assigning any reason. He challenged the rejection of his candidature by the ACC before a Division Bench of Hon'ble High Court, who, vide order dated 18.05.2009, set aside the order of the ACC rejecting his candidature and directed that his appointment be reconsidered in the manner indicated in the order. The Union of India challenged the said order in Civil Appeal No.7116/2010 before the Hon'ble Apex Court, who vide judgment dated 27.08.2010, noted that the Union of India has not been able to show any record indicating the reason as to why the ACC had differed with the opinion of the PESB, leading to the only inference that no reasons whatsoever had been recorded. Accordingly, the Appeal of the Union of India was dismissed.

ii) In the case of **Union of India & others v. N P Dhamania & others**, 1995 Supp (1) SCC 1, the issue before the Hon'ble Apex Court was that the Departmental Promotion Committee (DPC) held under the chairmanship of a Member of Union Public Service Commission (UPSC) had recommended certain officers of Indian Telecommunication Service (ITS) of Posts and Telegraph Department for promotion to Level II of Senior Administrative Grade (SAG) of the ITS. This recommendation was duly approved by the Minister concerned. It was forwarded to DoPT for obtaining approval of ACC, who, on perusal of records, directed vide its communication dated 14.01.1986 that the panel should be returned to the UPSC for a more 'rigorous review'. Accordingly, the proposal was returned

to UPSC, who informed that panel had been prepared strictly in accordance with the instructions issued by the DoPT and, therefore, there was no scope for review and further stated that it has no further advice to offer in the matter. The ACC approved the candidatures of 54 candidates out of 59 recommended for promotion to Level II of SAG. One of the 5 officers, whose candidature was rejected, approached this Tribunal in O.A. No.1191/1986 before this Tribunal. The Tribunal allowed the said O.A. and issued the following directions:-

"This, however does not clothe the appellants with any such right. They cannot claim as of right that the Government must accept the recommendation of the Commission. If, however, the vacancy is to be filled up, the Government has to make appointment strictly adhering to the order of merit as recommended by the Public Service Commission. It cannot disturb the order of merit according to its own sweet will except for other good reasons viz. bad conduct or character. The Government also cannot appoint a person whose name does not appear in the list. But it is open to the Government to decide how many appointments will be made. The process for selection and selection for the purpose of recruitment against anticipated vacancies does not create a right to be appointed to the post which can be enforced by a mandamus."

The judgment of the Tribunal was assailed by the Union of India before the Hon'ble Apex Court in C.A. No.1794/1988 with some other associated matters. The said C.A. was disposed of with certain directions and with the following significant observations:-

"14. In the instant case, the ACC chose to differ without assigning any reason. In fact, the counsel for the Union of India was unable to produce any material to show that the reasons had been assigned for differing from the DPC. Therefore, the name of the respondent cannot be arbitrarily dropped. It was this arbitrariness which weighed with the Tribunal. On that basis, it rightly concluded that it would be a futile exercise to direct the respondent to make a reference back and have further consultation with the UPSC in the matter. It was under

those circumstances deemed promotion was ordered. To this, no exception could be taken.

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19. Notwithstanding the fact that it is open to the ACC which alone is the appointing authority and not the Minister concerned, as urged by the respondent 7 to differ from the recommendations of the DPC, it must give reasons for so differing to ward off any attack of arbitrariness. Those reasons will have to be recorded in the file. It requires to be stated at this stage that we have perused the file in the instant case. We find no reasons have been recorded for differing from the recommendations of the DPC. That is why the Tribunal also, inter alia, observes in the impugned judgment as under: "However, the counsel for the respondent felt helpless in the matter and he failed to provide us any inkling of what prevailed with the ACC in dropping the petitioner and four others out of the select panel of 59 officers."

iii) The Hon'ble Delhi High Court in the case of **Shiv Charan Lal Sharma v. Union of India & others** (W.P. (C) No.3660/2017 decided on 06.08.2012 has observed as under:-

"35. No doubt, the approval of the ACC is mandatory and the final authority vests with the ACC. But if the selection committee has selected any candidate, the ACC can reject the same by giving the reasons on record, which is missing in the present case."

21. From the above cited judgments, it is quite clear that ACC is required to record reasons for rejecting a proposal. As noted hereinabove, in the instant case, the decision of Hon'ble Prime Minister communicated by his office vide letter dated 20.10.2017 does not record any reasons. Hence, such a decision is *ab initio* illegal, arbitrary and unreasonable, and is liable to be quashed and set aside in terms of the dictum of judgments referred to in paragraph (20) of this order.

22. In the conspectus of discussions in the pre-paragraphs, this O.A. is disposed of in the following terms:-

i) The Annexure -1 order dated 06.12.2017 of respondent No.1 is quashed and set aside.

ii) Respondent No.1 is directed to consider the case of the applicant for inter-State deputation to Haryana under Rule 5 (2) of IAS (Cadre) Rules, 1954 or for Central Government deputation under Rule 6 of the said Rules.

iii) Respondent No.2 is directed not to withhold its consent for the inter-State deputation / Central deputation of the applicant and communicate its consent to respondent No.1 within a period of four weeks from the date of receipt of a copy of this order.

iv) Respondent No.1, after the receipt of the consent of Bihar Government, shall issue an appropriate order, after obtaining the approval of the competent authority, i.e., ACC, within a period of two months thereafter, for inter-State deputation of the applicant to Haryana or for his Central deputation, as deemed fit.

There shall be no order as to costs.

The records produced by the respondent No.1 are returned herewith.

**(K.N. Shrivastava)
Member (A)**

**(Justice Permod Kohli)
Chairman**

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