

CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH, PATNA

O.A. NO. 050/00 362/2014

RESERVED ON 05.09.2017

PRONOUNCED ON 01.11.2017

CORAM

HON'BLE SHRI A.K. UPADHYAY, MEMBER (A)
HON'BLE SHRI J.V. BHAIRAVIA, MEMBER (J)

1. Vijai Kumar Sinha (I.A.S Retd) son of Late D.P.Singh resident of G/26, P.C. Colony, P.O. Lohianagar, P.S. Kankarbagh, District and Town: Patna, Pin-800 020, Bihar.

.....Applicant

BY ADVOCATE : Shri Nikesh Kumar.

VERSUS

1. The Union of India represented through the Secretary, Government of India, Ministry of Personnel, Public Grievances & Pensions, Department of Personnel & Training, New Delhi;
2. The Secretary, Government of India, Ministry of Personnel, Public Grievances & Pensions, Department of Personnel & Training, New Delhi;
3. The State of Bihar represented through the Chief Secretary, Government of Bihar, Patna;
4. The Principal Secretary, General Administration Department, Government of Bihar, Patna.

.....Respondents

BY ADVOCATE : Shri Ravindra Rai, Id. ASC for UOI

Shri S.N. Madhyban, Jr. To Shri Sekhar Sing for State of Bihar.

ORDER

J.V. BHAIRAVIA, MEMBER (J) : This application has been filed by the applicant praying for the following relief(s) :-

"[8.1] The order dated 20.01.2014 contained in No. 14014/4/2012-AIS-I as contained in Annexure A/11 may be declared as illegal, void and unconstitutional.

[8.2] It be declared that the notification dated 18.4.2012 (Annexure A/5) is prospective in nature and cannot be applied in the case of this applicant;

[8.3] The respondents as a consequence of the aforesaid reliefs being granted may be directed to suitably re-assign the year of assignment to 1996 with suitable weight-age i.e '10' strictly as per the 1997 Rules which was in vogue to fill up vacancies of 2006 pursuant to Select List 2006-A;

[8.4] The respondents may further be directed to ensure extension of the benefits which may accrue to this applicant in view of grant of the aforesaid reliefs as and by way of consequences and fall out of reliefs 8.1 to 8.3 i.e by extending the benefit of Senior Selection Grade w.e.f. 01.01.2012 together with arrears of salary and interest thereon.

[8.5] Cost of the litigation;

[8.6] Any other relief or reliefs which the applicant may be found entitled to in the facts and circumstances of the case. "

2. Brief facts and submissions of the applicant are as follows :-

[i] The applicant had joined the State Civil Service within the State of Bihar on 19.07.2078.

[ii] By virtue of Notification No.14015/04/2006-AIS(I)-B, dated 26th February 2007, Ten (10) State Civil Service Members of Bihar were appointed to the Indian Administrative Service the vacancies of the year 2006.

[iii] The officers who were appointed to I.A.S on 26th February 2007 for the vacancies of the year 2006, their seniority/year of the allotment were fixed vide communication dated 28/05/2-17. In the said order it was also mentioned that the 'weight-age' admissible for all ten (10) such officer which was shown as 10 (ten) years and it was also stated that all the abovementioned 10 officers are entitled to and assigned 1996 as their year of allotment in terms of the Rule 3(3)(ii) of the I.A.S (Regulation of Seniority) Rule 1987). Annexure A/2 refers.

[iv] it is further stated that pursuant to judicial interference & directions on the issue of recalculation of vacancies earmarked for the year 2006, the Government re-worked the vacancies & found that for the year 2006 additional eight (8) more vacancies are available under State Quota of Bihar and Accordingly, the Government of Indian by Notification dated 10th October 2011 appointed the applicant alongwith seven other officers of Bihar Civil Service to I.A.S against the re-calculated vacancies of 2006 and from the select list of 2006 by making a select list with nomenclature "Select List 2006 A" . Annexure A/3 refers.

[v] It is submitted by the learned counsel for applicant that during the pendency of the consideration of the computation of fixation of seniority of years of allotment of the applicant and seven other officers who are appointed from the select list 2006-A according to the existing Rule 1987. The Government of India had carried out certain amendments in I.A.S (Regulation of Seniority) Rule 1987 by way of Notification dated 18th April 2012. Annexure A/5 refers.

[vi] It is submitted that by notification dated 29.06.2012 (Annexure A/4) the year of allotment (referred as YOA) to the applicant and other appointee of select list of "2006-A" was ordered. According to the said notification the total weight-age in years has been shown as "9" years and years of allotment assigned of year "1997" against the name of applicant (Sl. No. 8 of the notification dated 29.6.2012).

[vii] The learned counsel for the applicant further submits that the YOA of the applicant was erroneously assigned therefore the applicant had filed a detailed representation dated 23rd July 2012 to the competent authority and followed by reminders. (Annexure A/8 series refer). However, it remained without consideration, therefore, the applicant had approached this Tribunal by filing O.A 835/2012.

[viii] This Tribunal vide its order dated 04.10.2012, disposed of the said O.A. No. 835/2012 with direction to the Secretary, D.O.P.T, New Delhi, to consider the representation of the applicant treating the O.A as additional representation and decided it by passing a reasoned and speaking order before the retirement of the applicant, but not later than one month from the date of receipt of the order.

It is stated by the applicant that the applicant superannuated from service on 31.10.2012. As there was no compliance of the order passed by the Tribunal, he was compelled to file contempt application bearing no. CCPA 145/2013. On the basis of

notices issued by this Tribunal, the concerned respondent authority had passed an order dated 20.01.2014, rejecting the representation of the applicant (Annexure A/11 refers). The said order dated 20.01.2014 is under challenge in the present order.

[ix] It is submitted that respondents have incorrectly recorded that after the judgment in Praveen Kumar Vs U.P.S.C. decided by Hon'ble Punjab and Haryana High Court in CWP 15798/2009 (hereinafter referred as Praveen Kumar's case). The respondents had to preponed the select list "by a year" coinciding the year of the occurrence of the vacancies. It is submitted that neither Praveen Kumar's Judgement such preponment nor the same was actually required in the facts of the present case.

[x] It is further submitted by the applicant that the impugned order is contrary to the principle of the Rules 1987 (Un-amended) governing the filling up vacancies as in vogue in the year 2006 and the method of assignment of the year of allotment and the weight-age out to have been calculated on the basis of rules which were in force in the year 2006 when the vacancies occurred i.e admittedly of year 2006.

[xi] The decision of the respondents is erroneous and the method adopted for assigned YOA to the applicant shown in the chart forming part of impugned order has incorrectly records that it is select list of year 2007 against the vacancies of year 2006 whereas it should have been select list of "2006-A" (Annexure A/3 refers) and the year of select list should have been 2006 instead of 2007. Therefore, the weight-age should have been point 10 (ten) as per 27 years of completed service on 21st December 2016, and it ought to have shift the year of allotment to 1996 instead of 1997.

[xii] The applicant further submitted that the notification dated 18.04.2012 should have been considered prospectively as held by various bench of this Tribunal including the order passed by this Tribunal in O.A No. 799/2013 dated 30th April 2013, O.A No. 834/2013 decided on 27th May 2015 and O.A No. 462/2013 decided on 4th December 2015.

In sum, the applicant submitted that the impugned order dated 20.01.2014 (Annexure A/11) is amount to discriminatory amongst equals and also contrary to the provisions of the Indian Administrative Service (Regulation of Seniority) Rules 1987 as vogue in the year 2006 therefore reliefs sought in the present O.A be granted in the interest of justice.

3. On behalf of respondent no. 3 & 4, i.e the Government of Bihar, written statement has been filed and the learned counsel for the said respondents has submitted that the grievances raised in the present matter by the applicant comes under the purview of the Government of India and the respondent no. 3 & 4 are arrayed only Proforma party. The competent authority had considered the representation of the applicant and passed the appropriate speaking orders.

4. Heard the parties, we have carefully perused the records and considered the submissions of learned counsels for the parties. It reveals from the record that main controversy in the

present O.A emerge that whether the YOA in the case of applicant has not assigned correctly by the respondent no. 1 & 2.

5. In response to directions issued by this Tribunal in O.A No. 835/2012, the respondents had considered the representation of the applicant and rejected the same by assigning YOA to the applicant of year 1997 against which the present applicant has filed the present O.A on the facts and grounds as stated hereinabove.

It is apt to note that the issue whether the notification dated 18.04.2012 by which certain amendments were carried out in I.A.S Rules 1997 can be made applicable prospectively or retrospectively, the said issue is now not in *res Integra* . It is held by the various bench of this Tribunal and of other states that the said notification date 18.04.2012 shall apply prospectively. This Tribunal also take note of order dated 24th August 2017 vide order no. 1014/08/2005-AIS-1 issued by Government of India, Ministry of Personnel, Public Grievances & Pensions (Department of Personnel & Training) whereby it is observed that the said notification dated 18.04.2012 shall apply prospectively.

6. Now, keeping in view of the above stated position, in the present case, the records reveals that it is admitted fact that the applicant was appointed as I.A.S against the vacancies of the year 2006 as per the appointment order dated 10.11.2011 with nomenclature “Select List 2006 A” . (Annexure A/3 refers), for fixation of seniority/year of allotment is governed under the Rule 3(3)(ii) of the IAS (Regulation of Seniority) Rules 1987 which is vogue in the year 2006. It is also admitted fact that vacancies were occurred in the year 2006 and earmarked it for the year 2006. For these vacancies the applicant was appointed therefore, the averment in the impugned order of the respondents that the select list came to be preponed by a year because of the Praveen Kumar’s case and same was confirmed by the Hon’ble Supreme Court in 2010, and the select list came to be preponed by a year coinciding with the year of occurrence of the vacancy is not proper. It is admitted fact that the select list of “2006-A” that the respondents have given weight-age in the case of applicant in accordance with amended rules of 18.4.2012, hence the said conclusion of the competent authority is in violation of Rule 3(3)(ii) of the IAS (Regulation of Seniority) Rules 1987 which is vogue in the year 2006. It is also not in dispute that identically situated other officers who were appointed on the basis of vacancies occurred in the year 2006 and the respondent authorities have granted weight-age in years in terms of the un-amended rules i.e weight-age point 10 (ten) and year of allotment assigned of 1996 whereas in the case of applicant the YOA assigned of 1997 on erroneous interpretation of the judgement of Praveen Kumar as well as I.A.S Rules 1987. The method adopted by the respondents for considering the weight-age point and assigning the year of allotment in the case of applicant is contrary to the Rules 1987 and also in also

incorrect interpretation of the various judgement passed by the Hon'ble High Court as well as this Tribunal. There is substantive force in the submission of the applicant that as per the Rule 1987 was in 2006 the applicant would have got "10" (ten) weight-age point in following manner as granted to similarly situated members/officers who were given "10" (ten) weight-age point as per the method adopted for them i.e

For 21 years of service calculating from 1978 : $21/3 = 7$

For every two years of service thereafter i.e $6/2 = 3$

Total = 10

Thus, in view of above, the case of applicant require to be considered according to the provisions of Rule prevailing/existing/in-force/ vogue in the year 2006 as the same is made applicable to other identically situated officers who are appointed for the vacancies of the year 2006 and of select list of 2006. The select list "2006-A" by which the applicant came to be appointed needs equal treatment by considering the fact that the same select list was prepared on the basis of vacancies occurred in the year 2006. Therefore, the impugned order dated 21.01.2014 (Annexure A/11) is quashed and set aside and respondents are directed to consider the year of allotment of the applicant in view of observations made hereinabove and according to the Rule 3(3)(ii) of the IAS (Regulation of Seniority) Rules 1987 (un-amended) and also the claim of consequential benefits thereof the applicant within three months from the date of receipt of the copy of this order. Accordingly, this O.A is allowed with above observations and directions. No costs.

(J.V. Bhairavia) M [J]

(A.K. Upadhyay] Member [A]

/mks/