

CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH, PATNA

Reserved on: 25.11.2019
Pronounced on: 29.11.2019

C O R A M

HON'BLE MR. JAYESH V. BHAIKAVIA, JUDICIAL MEMBER
HON'BLE MR. DINESH SHARMA, ADMINISTRATIVE MEMBER

I. OA/050/00767/2016

1. Shailesh Kumar, Son of Late Rameshwar Prasad Sinha, resident of Rajbanshi Nagar, Road No. 1 (Extension), Patna-23 at present posted as Joint Secretary, Labour Resources Department, Govt. of Bihar, Patna.
2. Umesh Kumar, Son of Late Triveni Singh, resident of Village- Alipur, PO+ PS – Dhanaura, Distt.- Patna, at present posted as Joint Secretary, Building Construction Department, Govt. of Bihar, Patna.
3. Shyamnandan Jha, Son of Late Parmanand Jha, resident of Village- Jagatpur, PO+PS - Supaul, Distt.- Supaul, At present posted as Joint Secretary, Water Resources Department, Govt. of Bihar, Patna.
4. Uma Shankar Prasad, Son of Late Kali Prasad, resident of 102, Lalit Residency, Parmanand Path, Nageshwar Colony, Boring Road, Patna at present posted as Director, Tourism, Govt. of Bihar, Patna.
5. Gopal Krishna Paramhansh, Son of Late Rudranand Mandal, resident of Qtr. No. 44/60, Officer's Colony, Hartali More, Bailwy Road, Patna at present posted as Joint Secretary, Minor Water Resources department, Govt. of Bihar, Patna.
6. Birendra Kumar, Son of Late Udai Ram, resident of Mohalla+ PO- Patel Nagar, PS- Shastri Nagar, Distt.- Patna at present posted at Joint Secretary, Social Welfare Department, Govt. of Bihar, Patna.
7. Rama Shankar Prasad Daftuar, Son of Late Rameshwar Prasad Verma, resident of C-44, Jagat Amrawati Apartment, Bailey Road, Patna at present posted as Director, ICDS, Govt. of Bihar , Patna.
8. Grijesh Prasad Srivastava, son of Late Anant Prasad, resident of Village- Karbana, P.S.- Dhaka, Distt. East Champaran at present posted as Cane Commissioner, Deptt. Of Cane Industries, Govt. of Bihar, Patna.
9. Gajanand Mishra, Son of Late Gandhar Mishra, resident of Mohalla- Lalbagh, PO & PS- Darbhanga, Distt. Darbhanga, Bihar at present posted as Joint Secretary, Deptt. of Water Resources, Govt. of Bihar, Patna.

10. Md. Saleem, Son of Late Gulam Rasool, resident of Mohalla- Dariyapur, Koiri Tola, Kudus Compound, Patna-4 at present posted as Jt. Secretary, Food and Civil Supply Department, Govt. of Bihar, Patna.
11. Rajjev Prasad Singh Ranjan, Son of Bindeshwari Prasad Singh, resident of Village- Sonbarsa Ghat, P.S.- Chautham, Distt.- Khagaria at present posted as Director, Secondary Education, Govt. of Bihar, Patna.
12. Keshav Kumar Singh, Son of Sri Janardhan Prasad Singh, resident of A-202, Hope Shivalik Apartment, West Boring Road, Patna- 800001 at present posted as Jt. Secretary, General Administration Deptt., Govt. of Bihar, Patna.
13. Mohan Prasad Madhukar @Mohan Ram, Son of Late Phulpati Ram, resident of Birbasawan Nagar, Rukunpura, Patna-14 at present posted as Secretary, State Mahadalit Mission, Govt. of Bihar, Patna.
14. Ram Niwas Pandey, Son of Sri Dwarika Pandey, resident of House No. 69-A, Nehru Nagar, Patna, Distt.- Patna, Bihar at present posted as Jt. Secretary, Department of Finance, Govt. of Bihar, Patna.
15. Bipin Kumar Singh, Son of Late Chandrika Prasad Singh, resident of 201, Ramalok Apartment, Kankarbagh, Patna, Distt.- Patna at present posted as Director, Information and Public Relation, Govt. of Bihar, Patna.
16. Jayant Kumar Singh, Son of Late N.P. Singh, resident of A-19, Police Colony, Anisabad, Patna-2, Bihar at present posted at Joint Secretary, Deptt. of Finance, Govt. of Bihar, Patna.
17. Bharat Jha, Son of Late Badri Nath Jha, resident of 203, Suryalok Apartment, Budha Colony, Patna, at present posted as Director, Municipal Administration-cum-Joint Secretary, Urban Development & Housing, Govt. of Bihar, Patna.
18. Harihar Prasad, Son of Late Raghu Yadav, resident of Village- Deokund, PO- Rampur Chai, P.S.- Deokund, Distt.- Aurangabad, at present posted as Director, Mid-day-Meal, Govt. of Bihar, Patna.
19. Narendra prasad Manda, Son of Late Nandan Manda, resident of B/75, Ashopuri Colony, Khajpura, Patna- 14 at present posted as Registrar, Co-operative Society, Govt. of Bihar, Patna.
20. Suresh Prasad Sah, son of Sri Tek Narayan Sah, resident of Village+PO- Champanagar, PS- Nathnagar, Distt. Bhagalpur, at present posted as Joint Secretary, Panchayati Raj Department, Govt. of Bihar, Patna.
21. Smt. Sujata Chalana, D/o Late Prem Kumar Bhala, resident of K-106, Hanuman Nagar, Kankarbagh, Patna-20 at present posted as Joint Secretary, Social Welfare Department, Govt. of Bihar, Patna.
22. Muni Lal Jamadar, Son of Damri Jamadar, resident of Sheopuri, PO+PS- BMP-7, Katihar, at present posted as Joint Secretary, panchayat Raj Department, Govt. of Bihar, Patna.
23. Deo Narayn Mandal, Son of Sri Mahavir Mandal, resident of Mohalla- Officer's Colony, Mirchai Bari, PO + PS- Katihar, Distt.- Katihar, At present posted as Joint Secretary, Department of Home, Govt. of Bihar, Patna.'

24. Anirudh Kumar, Son of Late Babu Lal Ram, resident of Bank Colony, Near Mithapur Bus Stand, Bighrapur, Patna- 800001, Bihar at present Jt. Secretary, Deptt. of Disaster Management, Govt. of Bihar, Patna.
25. Surendra Kumar Ram, Son of Sri Suryadeo Ram, resident of Village- Godhaura, PO- Nagpur, Distt. Buxar at present posted as Jt. Secretary, Department of Planning and Development, Govt. of Bihar, Patna.

.... Applicants.

By Advocate: - Mr. M.P. Dixit

-Versus-

1. The Union of India through the Secretary, Ministry of Personnel and Public Grievances and Pensions, Department of Personnel and Training, North Block, New Delhi.
2. The State of Bihar through a Chief Secretary, Govt. of Bihar, Old Secretariat, Patna.
3. The Principal Secretary, Department of General Administration, Govt. of Bihar, Old Secretariat, Patna.
4. Sri Aditya Kumar Das, Son of not known to the applicants at present posted as Excise Commissioner, Govt. of Bihar, Patna.
5. The UPSC through its Secretary, Dholpur House, Sahjahan Road, New Delhi.

.... Respondents.

By Advocate: - Mr. Radhika Raman for UOI
Mr. S.N. Madhuvan for State of Bihar.

WITH

II. OA/050/00768/2016

1. Ram Kishore Mishra, Son of Late Awadh Mishra, resident of Flat No. 310, Hope Shivalik Apartment, Anandpuri, Boring Canal Road, Patna at present posted as Joint Secretary, Transport Department, Govt. of Bihar, Patna.
2. Sohan Kumar Thakur, Son of Late Nilambaer Thakur, resident of Vill.+ P.O.- Muradpur, P.S.- Nauhatta, Distt.- Saharsa at present posted as Jt. Chief Election Officer cum Jt. Secretary, Department of Election, Govt. of Bihar, Patna.
3. Sanjay Kumar @ Sanjay Kumar, Son of Late Gokpal Prasad, resident of Vilalge- Srirampur, Vill.+ P.O.- Bihta, Distt.- Patna at present posted as Jt. Secretary, Rural Works Department, Govt. of Bihar, Patna.
4. Brijraj Rai, son of Late Ramakant Rai, resident Village+ P.O.- Awathahi, Distt.- Gazipur (U.P.) at present posted as Jt. Secretary, Deptt. Of Cabinet Secretariate, Govt. of Bihar, Patna.
5. Birendra Kumar Mishra, Son of Sri Jaichandra Mishra, resident of Village+ P.O.- Kothia, Via- Jhanjharpur, Distt.- Madhubani at present posted as Director, Land Acquisition, Deptt. of revenue and Land Reforms, Govt. of Bihar, Patna.

6. Sunil Kumar, Son of Sri Harinarayan Prasad Verma, resident of 102-D, Harendra Villa, Gardanibagh, Patna at present posted at District Magistrate, Lakhisarai, Bihar.
7. Md. Naushad Yusuf, Son of Late Md. Yusuf Hasan, resident of 201, Noor Apartment, new Patliputra, P.S.- Patliputra, Patna, Distt.- Patna at present posted at District Magistrate, Begusarai, Bihar.
8. Radheshyam Sah, Son of Late Laxmi Kant Sah, resident of Village+ P.O.- Jaipur, Distt.- Banka, at present posted at Director, Animal Husbandry, Govt. of Bihar, Patna.
9. Neel Kamal, Son of Late Kamla Prasad Mahto, resident of Village- Jawahar Nagar, P.O.- Khajaha, Distt.- Purnea, Bihar at present posted as O.S.D, Bihar Vikas Mission, Govt. of Bihar, Patna.
10. Ashok Kumar Singh, son of Late Krishna Padarath Sinha, resident of Village+P.O.- Brahmpura (M.I.T), P.S.- Brahmpuram, Distt.- Muzaffarpur at present posted at Secretary, State Information Commission, Bihar, Patna.
11. Ajay Kumar Srivastava, Son of Late Satyanarayan Prasad, Resident of Vill+ P.O.- Brahmpura (M.I.T.) P.S.- Brampura, Distt.- Muzaffarpur at present posted at Secretary, State Information Commission, Bihar, Patna.

.... Applicants.

By Advocate: - Mr. M.P. Dixit

-Versus-

1. The Union of India through the Secretary, Ministry of Personnel and Public Grievances and Pensions, Department of Personnel and Training, North Block, New Delhi.
2. The State of Bihar through a Chief Secretary, Govt. of Bihar, Old Secretariat, Patna.
3. The Principal Secretary, Department of General Administration, Govt. of Bihar, Old Secretariat, Patna.
4. Sri Aditya Kumar Das, Son of not known to the applicants at present posted as Excise Commissioner, Department of Excise Prohibition, Govt. of Bihar, Patna.
5. The UPSC through its Secretary, Dholpur House, Sahjahan Road, New Delhi.

.... Respondents.

By Advocate: - Mr. G.K. Agrawal for UOI
Mr. S.N. Madhuvan for State of Bihar.

ORDER

Per Dinesh Sharma, A.M:- The facts and issues involved in both the OAs are same and, therefore, these are being disposed of by the following common order.

2. The facts of the case, as summarized in the final written statements filed by the respondent no. 1 (UOI) on 24.07.2019, and not materially disputed by the parties, are as follows: -

3. The applicants have been appointed to IAS from the Select List of 2011 (Select List of 2012 for OA/050/00768/2016) vide Department's Notification No. 14015/04/2015-AIS-1(B) dated 14.01.2016 and their seniority/year of allotment has been determined vide Department's Order No. 14014/04/2012-AIS-1 dated 26.02.2016. Though the applicants are entitled for seniority/year of allotment as 2002(2003 & 2004 respectively w.r.t. OA/050/00768/2016), they have been allotted 2006 as per restriction proviso to rule 3(3) (ii) of IAS (Regulation of Seniority) Rules, 1987 which provides that an officer shall not be assigned year of allotment earlier than the year of allotment assigned to other officer senior to him in that Select List or appointed on the basis of earlier Select List. The seniority/year of allotment of the applicants has been restricted on account of Shri Aditya Kumar Das, who is senior to all these applicants. S/Shri Aditya Kumar Das, Sashi Kant Tiwary and Narendra Kumar Singh were appointed by promotion to the IAS of Bihar cadre vide this Department's notification No. 14014/4/2011-AIS-1(B) dated 02.11.2012 from the select list of 2010 (prepared against vacancies arisen between 01.01.2010 to 31.12.2010). It is submitted that based upon the information furnished by the State Government of Bihar seniority of S/Shri Aditya Kumar Das, Sashi Kant Tiwary and Narendra Kumar Singh was fixed vide this Department's letter No. 14014/04/2012-AIS.I dated 30.04.2013 as under:

Sl. No.	Name of the Officer (S/Shri)	Date from which holding continuous service in SCS not below the rank of Deputy Collector	Completed year of service rendered in the State Civil Service or equivalent till 31 st December of the year for which the meeting of the committee to make selection was held to prepare the Select List on the basis of which the said officers were appointed to IAS (Fractions if any. are to be ignored)	Total weightage in years in terms of the IAS (Regulation of Seniority) Rules, 1987 as amended from time to time, till date.	Year of allotment entitled	Name, year of SL and YOA of the officer in PQ (SCS), immediately senior to the one whose name is in column no. 02	Year of allotment assigned
1	2	3	4	5	6	7	8
1.	Aditya Kumar Das	01.03.1993	17	4	2006	Shri Shashi Bhushan Kumar allotted 2000 on the basis of SL of 2009	2006
2.	Shashi Kant Tiwary	15.03.1983	27	9	2001	As at Sr. No. 1 in Col. 2	2006*
3	Narendra Kumar Singh	04.04.1983	27	9	2001	As at Sr. No. 2 in Col. 2	2006*

The seniority/year of allotment of S/Shri Sashi Kant Tiwary and Narendra Kumar Singh has been restricted under proviso to Rule 3(3) (ii) of IAS (Regulation of Seniority) Rules, 1987 which provided that an 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. Aggrieved by fixation of above seniority, S/Shri Narendra Kumar Singh, Aditya Kumar Das and Shashi Kant Tiwary filed OAs No. 799/2013, 800/2013 and 801/2013 respectively before CAT, Patna Bench contending that their seniority has wrongly been fixed. The

Tribunal vide its order dated 26.09.2014 disposed of the OA No. 800/2013 filed by Shri A.K Das with the following directions:-

“ The State of Bihar is directed to communicate the correct date of seniority of the applicant, i.e. 17.02.1982 to the post of Deputy Collector of equivalent in Bihar Administrative Service Cadre to the DOPT in view of the above observation within a period of one month from the date of receipt of this order. Thereafter, the DOPT shall consider the representation of the applicant regarding year of allotment in IAS, keeping in view the benefit of Defence Service already granted to the applicant by the State Government while fixing his seniority in the year 1982 as also the decision in the case of Shri B.R. Verma claimed to be similarly placed as that of the applicant and decide the matter of allotment of year of service in IAS to the applicant afresh as per rules within a period of three months from the date of receipt of communication from State Government.”

4. The Hon’ble Tribunal disposed of OA Nos. 799/2013 and 801/2013 separately vide order dated 22.10.2014 with its operative part as under:-

“Accordingly, the impugned order dated 30.04.2013 is hereby quashed and set aside. However, it is noted that since Shri Aditya Kumar Das who was admittedly senior to the applicant and whose year of allotment has been fixed by the DOPT in 2006, the applicant could not be granted allotment of year previous to his senior counterpart. As order dated 26.09.2014 has been passed by this Tribunal in OA No. 800/2013 (Aditya Kumar Das) and the representation of the applicant dated 18.08.2013 is still pending before the DOPT, (Respondent No. 1) is directed to consider the representation of the applicant in the light of observations made by us in the instant petition taking into account the case of Shri Das and fix the year of allotment with respect to his senior counterpart

Shri Aditya Kumar Das within a period of two months from the date of receipt of this order.”

5. It was observed that the State Government has not given any equivalence between the service rendered by Shri A.K. Das in IAF with that of Deputy Collector or equivalent in terms of regulation 3(3) (ii) of IAS (Regulation of Seniority) Rules, 1987, which read as under:-

“ (ii) The year of allotment of a promote officer shall be determined with reference to the year for which the meeting of the Committee to make selection, to prepare the select list on the basis of which he was appointed to the Service, was held and with regard to the continuous service rendered by him the State Civil Service not below the rank of a Deputy Collector or equivalent, up to the 31st day of December of the year immediately before the year for which meeting of the Committee to make selection was held to prepare the select list on the basis of which he was appointed to the Service, in the following manner:-

- a. For the service rendered by him upto twenty-one years, he shall be given a weightage of one year for every completed three years of service, subject to a minimum of four years;
- b. He shall also be given a weightage of one year for every completed two years of service beyond the period of twenty-one years, referred to in sub-clause(a), subject to a maximum of three years.”

“Provided that he 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.”

6. The conditions of service of officers appointed to the All Indian Service are regulated by the All Indian Service Act, 1951 passed by the Parliament under the Article 312 of the Constitution and the rules and regulations framed thereunder:

- (I) That regulation 2(j)(ii) of the Indian Administrative Service (Appointment by Promotion) Regulations, 1955 state as under:

2(j) “ State Civil Service” means,

- (i) In all other cases, any services, approved for purposes of the Recruitment Rules by the Central Government in consultation with the State Government, a member of which normally holds, for purposes of revenue and general administration, charge of a sub-division of a district or a post of higher responsibility.”
- (ii) That further fourth proviso to Regulation 5(2) of the Indian Administrative Service (Appointment by Promotion) Regulation, 1955 state as under: “Provided also that the Committee shall not consider the case of member of the State Civil Service unless, on the first day of January of the year for which the select list is prepared he is substantive in the State Civil Service and has completed not less than eight year of continuous service (whether officiating or substantive) in the post of Deputy Collector or in any other post or posts declared equivalent thereto by the State Government.”

7. Several contempt petitions (No. 105 of 2015 in OA No. 801 of 2013 filed by Shri Shashi Kant Tiwary, CP No. 106 of 2015 in OA No. 799 of 2013 filed by Shri Narendra Kumar Singh and CP No. 107 of 2013 in OA No. 800 of 2013 filed by Shri Aditya Kumar Das) were filed before the CAT, Patna for non-compliance of the orders of the Tribunal. Following these, the

matter was examined by the DOPT (UOI) and a speaking order dated 03.11.2015 was issued rejecting the request of the applicant for antedating his seniority in IAS by treating the service rendered by him in Indian Air Force as the same is not found to be in accordance with the regulation 3(3)(ii) of IAS (regulation of Seniority) Rules, 1987. It was also mentioned that since, S/Shri N.K. Singh and S.K. Tiwary are junior to Shri A.K. Das, their seniority has been restricted as per proviso of Rule 3(3) (ii) of the IAS (Regulation of Seniority) Rules, 1987. Comparative affidavits in all three contempt petitions were also filed accordingly.

8. The Tribunal vide its order dated 13.05.2016 in the contempt petitions, rejected the speaking order with the following directions:-

“ The DoPT has filed one show cause by enclosing one speaking order dated 03.11.2015. The counsel for the respondents has tried to convince us that compliance has already been done. The counsel for the respondents has submitted that the State of Bihar has not communicated them the date of seniority and the information that whether the post held by the applicant in Indian Air Force is equivalent to the post of Deputy Collector in the State Civil Services or not. Therefore, they are not in a position to take further action.

We have heard the parties and perused the records. From perusal of order dated 03.11.2015 passed by the Under Secretary of DOPT, it transpires that he has tried to overreach the observation of this Tribunal. According to them, they were not being informed by the State of Bihar with regard to the date of seniority and other particulars of the applicant.

We are not satisfied with this order, therefore, we are rejecting the show cause. However, from the perusal of the reply filed by the applicant, it transpires that even the State of Bihar vide order dated 16.10.2014 had already communicated the requirements of the

Do&PT, i.e. the date of seniority and other particulars about the applicant. Even then, thereafter, they have issued one letter dated 09.03.2015 to applicant asking for clarification that how services rendered by the applicant in Indian Air Force is equivalent to the post of Deputy Collector in the State Civil Services. From perusal of the aforesaid letter, we are of the view that when this Tribunal in its judgment has already referred the order of the Hon'ble High Court dated 24.07.2007 as well as the State of Bihar's own memorandum dated 14.01.2008 and decided the issue then where is scope of asking of this clarification from the applicant instead of conveying the position to the DoPT which amounts to deviation from our order also. Therefore, the State of Bihar is directed to made party and the applicant is directed to file requisites during the course of the day. Let notice be issued to State of Bihar to explain whether they have already communicated the directions of this Tribunal. The DOPT is also directed to take appropriate steps as we are rejecting the show cause."

9. Thereafter, the respondents filed WP No. 16980 of 2016 along with IA No. 8217 of 2016 against the orders dated 13.05.2016 of the Tribunal in Contempt Petition No. 107 of 2015 in OA No. 800 of 2013 filed by Shri A.K. Das. The Hon'ble High Court stayed the contempt proceedings. Accordingly, the Tribunal vide its order dated 27.10.2016 in Contempt Petition No. 107 of 2015 in OA No. 800 of 2013 filed by Shri Aditya Kumar Das passed order as under:-

“ Today the counsel for the respondents placed a copy of order dated 05.10.2016 passed in CWJC No. 16980 of 2016 along with IA No. 8217 of 2016 passed by the Hon'ble High Court by which the Hon'ble High Court has stayed further proceedings in this contempt matter. The order of the Hon'ble High Court is kept on record.

Accordingly, the contempt is adjourned sine die. The parties shall be at liberty to revive the CP depending on the outcome of the order of the Hon'ble High Court."

10. The Hon'ble High Court of Patna vide order dated 21.12.2017 in CWJC No. 16980 of 2016 (UOI Vs. Aditya Kumar Das) ordered as under:

"21. The impugned order dated 13.05.2016 passed by the Ld. Tribunal in Contempt Petitions No. 105,106 and 107 of 2015" is, therefore, liable to be set aside and is, accordingly, hereby set aside.

22. This is not to be taken as any opinion on the merits of the contentions of the parties arising out the speaking order dated 03.11.2015. The Respondent no. 1, if so advised, may contest the legality and validity of the speaking order dated 03.11.2015 in accordance with law as we have deliberately not gone into the merits of the contentions at this stage in detail for obvious reason.

23. The Writ Application is allowed to the extent indicated herein-above."

11. Following this the contempt petition pending with the Tribunal was not revived while giving liberty to the applicant therein (Shri Aditya Kumar Das) to file separate OA to challenge the speaking order dated 03.11.2015. Pursuant to this, Shri Aditya Kumar Das filed OA/050/00394/2018 before this Tribunal which has since been transferred to the Principal Bench of CAT at New Delhi.

12. The main issue in the two OAs now before us is whether the batches of the applicants (which followed the selection made for the year 2010) should also be fixed following the proviso to Rule 3(3) (ii) of IAS (Regulation of Seniority) Rules, 1987 which is again quoted below:-

“Provided that he 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.”

This proviso is the reason for allotting all the applicants (total 36 belonging to batches of Bihar Administrative Service recruited between 1983 to 1987) a year of allotment (2006, mentioned in column 8) which is later than the year of allotment to which they are shown entitled (as per col. 6 of Annex. R/1). The sole reason for this is the decision of the DoP&T to assign Shri Aditya Kumar Das year 2006 as the year of allotment in the IAS, based on his service in the BAS, without taking into account his earlier service in the IAF for this purpose.

13. The applicants have also raised another issue of applying the unamended provisions of Rule 3(3) (ii) of IAS (Regulation of Seniority) Rules, 1987 (which allowed greater weightage for past service and put a higher cap) and not the weightage and the cap as per the amendment dated 18.04.2012 to these rules, on the ground that such a rule cannot be enforced retrospectively. On this issue, there have already been judgments of this Tribunal and of Hon'ble High Court/Supreme Court following which the respondents have already revised the Select Lists as per Annexure R/1. This should settle the matter with respect to applicants in OA/050/00767/2016. The applicants, who belong to selection made with respect to vacancies of the year 2012 onwards are, in any way, bound by the prospective application of the amended rule. Hence, we need not adjudicate on that issue. This leaves us with the only issue about fixing the

seniority following the proviso to Rule 3(3) (ii) of IAS (Regulation of Seniority) Rules, 1987 as mentioned in para 12 above.

14. We have gone through the pleadings and heard the arguments of learned counsels for the parties. It is clear that the whole issue has arisen because of not giving the benefit to Shri Aditya Kumar Das for the number of years he served in IAF while determining his year of allotment to the IAS. All the applicants in the two OAs are sufferers without their having done anything to suffer this loss of seniority. It is also a fact that this Tribunal had decided in favour of considering the claim of Shri Aditya Kumar Das for grant of benefit of his earlier years but it did not happen because of some gap in communication between the Govt. of Bihar and the DoP&T. It appears that the contempt action initiated for implementation of this Tribunal's earlier direction in Aditya Kumar Das's case also could not reach to its logical conclusion for reasons mentioned in paragraph 10 above. Be that as it may, there is no fault, on the part of applicants in the OAs before us, for which they should be punished by a loss of seniority in the IAS which is not only vis-a-vis Aditya Kumar Das but has also to be seen against direct recruits of the batches in the IAS for those respective years. It may be technically correct to say that the proviso to Rule 3(3) (ii) of IAS (Regulation of Seniority) Rules, 1987 clearly prohibits giving seniority to a person above that of the year allotted to a person selected from a senior batch. However, applying that rule, mindlessly, in a case where a person has been apparently not been given due benefit (or, conversely, has been given undue benefit by out of turn promotion) and, for that reason, punishing all persons juniors to him

will be, to use the cliched phrase, a travesty of justice. The application of this proviso in the current case leads to apparent absurdity of punishing a large number of persons who are, by DoPT's own admission, entitled for the year of allotment as shown in column-6 of Annexure R/1, but have not been given that year of allotment due to an accidental reason, entirely beyond their control and without any fault of them. Since the OA filed by Shri Aditya Kumar Das is still pending adjudication and also because Shri Aditya Kumar Das, though joined as respondent in these OAs, has not sought any relief from us in these OAs, we do not think it necessary to make any change with respect to the year of allotment assigned to him. But, we shall be failing in our duty if we do not correct a huge wrong which is being done to others in the queue in order to accommodate an apparently incorrect entry in the queue. For the aforementioned reasons, we direct the respondents to fix the year of allotment of the applicants in both these OAs, and also of other similarly placed persons (viz. S/Shri Shashi Kant Tiwary and Narendra Kumar Singh), ignoring the fact of allotment of year 2006 to Shri Aditya Kumar Das. This should be done within a period of three months from the date of receipt of this order. The OAs are disposed of accordingly. No order as to costs.

[Dinesh Sharma]
Administrative Member
Srk.

[Jayesh V. Bhairavia]
Judicial Member