

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.24729 of 2013

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Ramashish Sharma, son of Nunu Prasad Singh, resident of Chitragupta Nagar,
Kankarbagh, Patna – 20.

.... Petitioner

Versus

1. The Union of India, through the Secretary Department of Personnel and Training, Govt. Of India, North Block, New Delhi.
2. The State Of Bihar through the Chief Secretary, Govt. of Bihar, Old Secretariat, Patna – 1.
3. The Secretary, Department of Personnel and Administrative Reforms, Govt. of Bihar, Old Secretariat, Patna.
4. The Chairman, Union Public Service Commission, Dholpur House, Shahjahan Road, New Delhi.
5. The Secretary, Union Public Service Commission, Dholpur House, Shahjahan Road, New Delhi.

.... Respondents

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Appearance :

For the Petitioner	:	Mr. Rohit Mishra, Advocate
For the Respondent No.1	:	Mrs. Kanak Verma, C.G.C.
For respondent Nos.2 & 3	:	Mr. Akhileshwar Singh, A.C. to G.A.3
For respondent Nos.4 & 5	:	Mr. Kaushal Kumar Jha, Advocate

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CORAM: HONOURABLE MR. JUSTICE HEMANT GUPTA

And

HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE HEMANT GUPTA)

Date: 03-03-2016

The challenge in the present writ petition is to an order passed by the Central Administrative Tribunal, Patna Bench, Patna (for short, 'the Tribunal') on 27th May, 2013.

The petitioner has been made to have different rounds of litigations in courts. He was a member of the Bihar Administrative Service, but his integrity certificate was withdrawn which led to his non-encadrement for the Indian Administrative Service (for short, 'I.A.S'). The Tribunal earlier allowed his Original Application.



Consequently, the Union Public Service Commission included the name of the petitioner in the cadre of I.A.S vide letter dated 04.09.2008. The Government of India, Ministry of Personnel, Public Grievances & Pensions Department of Personnel & Training on 19.09.2008 granted notional promotion to the petitioner for the reason that in the meantime he crossed the age of 60 years. The relevant extract of the said order dated 19.09.2008 is as under:

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AND Whereas it was observed that Sh. Ramashish Sharma whose date of birth is 8th February, 1947 has already crossed the age of 60 years, i.e. the normal age of superannuation of IAS officers;

NOW THEREFORE, in pursuance of directions dated 9th August, 2007 of the Hon'ble CAT, Patna Bench and in exercise of the powers conferred by sub-rule (1) of Rule 8 of the Indian Administrative Service (Recruitment) Rules, 1954 read with sub-regulation (1) of Regulation 9 of the Indian Administrative Service (Appointment by Promotion) Regulations, 1955 and Rule 3 of the Indian Administrative Service (Probation) Rules, 1954, the President is pleased to appoint Sh. Ramashish Sharma, member of the State Civil Service of Bihar Cadre to the Indian Administrative Service w.e.f. 23rd September, 2004, i.e. the date on which his immediate senior included in the Select List, viz. Sh. Om S.M. Bande was appointed to IAS, on the basis of his inclusion in the Select List of 2001. However this appointment to IAS w.e.f.23.09.2004 till the date of retirement of Shri Sharma on superannuation would be notional.”

The grievance of the petitioner is that he is entitled to the



pay and allowances attached to the post of IAS from the date he was found entitled for promotion in I.A.S., i.e. 23.09.2004 and also retiral benefits as a member of All India Service. The expression, '*notional*' used in the order is only for the reason that in the meantime, the petitioner has retired, but it does not deny the benefit of pay and allowances and also of post retiral benefits, i.e. pension, gratuity and other retiral benefits as member of IAS.

The Tribunal found in the impugned order that four questions are involved, including one as to whether the petitioner is entitled to Junior Administrative Grade (JAG) on completion of nine years. The Tribunal allowed such benefit but declined other benefits of pay and allowances for the period prior to his superannuation and also linked the age of superannuation with grant of selection grade.

We find that the findings of the Tribunal are not sustainable in law. Once the petitioner was found entitled to promotion, the order is meant for an effective promotion and not promotion on paper only. Since, in the meantime, the petitioner has attained the age of superannuation, the only way to make promotion effective is to grant the benefit of pay and allowances till the age of superannuation and thereafter to grant retiral benefits in the revised salary. It is needless to say that once the petitioner has been inducted in I.A.S., the pay fixation has to be, keeping in view the pay in the

State Administrative Service by granting him pay protection in accordance with Rules, but he cannot be put in the basic scale of I.A.S., since he is not a newly appointed officer to the cadre.

In view of the said fact, the order passed by the Tribunal is set aside. The writ petition is allowed and the respondents are directed to re-compute the pay and allowances payable to the petitioner as a member of I.A.S. from 23.09.2004 till the date of superannuation and to pay the post retiral benefits, including pension, gratuity, leave encashment and other benefits as the member of I.A.S. after properly fixing his salary.

(Hemant Gupta, J)

(Navaniti Prasad Singh, J)

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