

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.149 of 2017

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1. Shiva Kumar Jha, S/o Late Tripti Nath Jha, R/o- 406, Sheela Residency, Nageshwar Colony, East Boring Canal Road, Patna.
 2. Birendra Narayan Jha, S/o Late Madhu Jha, R/o- 302-B, Srideo Apartment, Vivekanand Road, Patliputra Colony, Patna-1.

.... Petitioners

Versus

1. Chief Secretary, Govt. of Bihar, Old Secretariat, Patna.
2. Principal Secretary, Department of Home, Govt. of Bihar, Patna.
3. The Union of India through Secretary, Govt. of India, Ministry of Home Affairs, North Block, New Delhi.
4. The Secretary, Ministry Personnel, Public Grievances & Pensions, Department of Personnel Training, North Block, New Delhi.
5. Principal Accountant General, Bihar, Mahalekhakar Bhavan, Birchand Patel Path, Patna.

.... Respondents

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Appearance :

For the Petitioner/s	:	Mr. Kamala Kant Upadhyay
For the State	:	Mr. Md. Nasrul Hoda Khan, SC-1 Mr. Md. Harun Quarshi, AC to SC-1
For Respondents 3 & 4	:	Mrs. Kanak Verma, CGC
For Respondent 5	:	Mr. Raghwanand, Advocate

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CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI

and

HONOURABLE JUSTICE SMT. NILU AGRAWAL

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI)

Date: 03-04-2017

There are two impugned orders before this Court in the present writ application. The first order is dated 29th of July, 2016, which was passed in OA 315/2016 by the Central Administrative Tribunal, Patna Bench, Patna. It has dismissed the OA refusing to grant any relief or benefit of a higher pay vis-à-vis a so called junior who was subsequently promoted from the State Police Service to Indian Police Service.



The second impugned order is dated 26.09.2016, passed in RA 96/2016 i.e. a review application, in which the Central Administrative Tribunal, Patna Bench after considering the scope of review as well as reconsidering the earlier order passed in OA and the relevant OM dated 11.01.2012 has dismissed the review application holding that there was no error apparent emerging from the previous decision which is required to be corrected. In fact, it was of the opinion that the effort on the part of the present petitioners in the review application was to re-argue their OA, which is not permissible in law.

The following reliefs had been prayed for before the Central Administrative Tribunal in OA 315/2016 :

“8[A] The Order No. 1/Ya-45/2015/Gri.Aa/..... OA/050/00772/2015, dated 17.03.2016 [Annexure-10] may be treated as illegal and the same may be quashed and set-aside.

8[B] The applicants humbly pray that respondents may be directed to step up the salary of applicants to keep at par with their juniors in accordance with the direction of the Government of India contained in Annexure-1 of this petition.”

The two applicants, who are petitioners before this Court, were appointed as Dy.SP in the year 1990 under the State of Bihar. Subsequently, they earned promotion in the Indian Police



Service under the select list of 2010. While they were in service, while snooping around, they came to learn that one Rajesh Tripathi, who was subsequently promoted to the Indian Police Service in the year 2013 under the select list of 2011, was drawing higher salary than them. The two petitioners before this Court moved the Central Administrative Tribunal in an earlier OA 772/2015, in which a direction was issued to treat the OA as representation and decide the issue. When no decision came, a contempt application was filed and then the speaking order came to be passed, which became the subject matter of challenge in OA 315/2016.

The Tribunal after hearing the parties and going through OM dated 11.01.2012 had this to say in its order :

“7. We have heard the parties and perused the records. It is noted that the main contention of the applicants is that since they [i.e. the applicants] and Shri Rajesh Tripathi were in State Police Cadre as well as in IPS cadre and in both the Cadre, the said Shri Tripathi was junior to them, therefore, their pay should not be less than the pay of Shri Tripathi, who was inducted in the IPS cadre later than the applicants as per the DOPT OM dated 11.01.2012. It is further noted that there is no dispute with regard to the facts of the case and in that scenario we have to consider whether the applicants are entitled to get the benefit of stepping up of pay at par with Shri



Tripathi as per DOP&T O.M. dated 11.01.2012. The DOP&T O.M. dated 11.01.2012 stipulates as follows:-

“2. The matter has been examined with reference to the existing instructions of the Government on this subject and it is stated that such anomalies on account of fixation of pay on promotion, including the promotion from State Service to All India Services, can be solved by stepping up the pay of the senior member of Service at par with the pay of the junior in the cadre from the date when the anomaly arose, subject to fulfillment of following conditions :-

[i] Both junior and senior should belong to the same cadre both in lower and higher grade. In the case of anomaly in the pay of officers promoted from State service to IAS/IPS/IFS in a State cadre, both junior and senior should belong to same cadre in the State Service [lower grade].

[ii] Anomaly must have arisen as a result of fixation of pay either on promotion from one grade to another in IAS/IPS/IFS or on promotion from State service to IAS/IPS/ IFS as the case may be.

[iii] Posts in higher and lower grade must be identical and in lower grade senior must not be drawing less pay than junior for whatsoever reasons.

For example if the junior officer draws higher rate of pay than the senior in the lower post or State service post by virtue of advance increments or on any other account, the above provisions will not be



involved to step up the pay of the senior officer.”

8. Therefore, to get the benefits of stepping up of pay at par with junior, the applicants have to fulfill the three conditions stipulated in the said DOP&T O.M. dated 11.01.2012 and in the instant case the applicants are fulfilling the first two conditions undisputedly. However, the third condition stipulates that the posts in higher and lower grade must be identical and in lower grade senior must not be drawing less pay than the junior for whatsoever reason. But in the instant case, though the applicants and Shri Tripathi belong to the same cadre i.e. both in State Cadre and IPS Cadre, but their posts are not identical as when the applicants were promoted to IPS Cadre, they were holding the post of Addl. Superintendent of Police, whereas Shri Tripathi, when promoted to the IPS Cadre, was holding the higher post than the applicants i.e. Staff Officer with higher pay band and Grade Pay. Therefore, as per the stipulation of the O.M. dated 11.01.2012, wherein it has been stated that if the junior officer draws higher rate of pay than the senior in the lower post or in the State Service post by virtue of advance increment or on any other account, the above provisions will not be invoked to step up the pay of the senior officer. As Shri Tripathi, being junior, got promotion as Staff Officer before being appointed as IPS, therefore, provisions of stepping up of pay cannot be invoked in favour of the applicants. Thus, the respondents



have rightly fixed the pay of the applicants and Shri Tripathi as per their own eligibility.”

Even this Bench has gone through the provisions of OM dated 11.01.2012 with special emphasis on Clause (iii). The facts being what they are and the background in which Rajesh Tripathi drew higher salary has been dealt with by the Tribunal correctly. Therefore, what these petitioners are looking for is not equality but a windfall, which is not available to them under the OM dated 11.01.2012.

This is the reason why the Tribunal dismissed the OA as well as the review application by re-looking into the matter on the merit aspect as well.

Decision of the Tribunal does not suffer from any infirmity, which is required to be rectified through the writ. Writ is dismissed.

(Ajay Kumar Tripathi, J)

(Nilu Agrawal, J)

Rajesh/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	06.04.2017
Transmission Date	NA

